

# DEVINE MILLIMET

ATTORNEYS AT LAW

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## VIA HAND DELIVERY

NH Site Evaluation Committee  
NH Department of Environmental Services  
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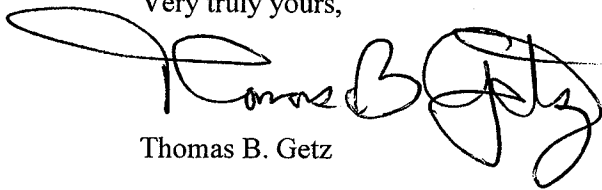
Re: Petition for Jurisdiction  
Timbertop Wind I, LLC

To whom it may concern:

Enclosed for filing with the Site Evaluation Committee, please find an original and 18 copies of a Petition for Jurisdiction for Timbertop Wind I, LLC (Timbertop) for its proposed renewable generation facility in New Ipswich and Temple, New Hampshire. Two copies each are being delivered to the Towns of New Ipswich and Temple and a copy is being delivered to the Office of the Attorney General. Also enclosed is my appearance on behalf of Timbertop.

Please contact me if there are any questions about this filing.

Very truly yours,



Thomas B. Getz

TBG:aec

Enclosures

cc: Michael Iacopino, Esq. (electronic service)  
Town of Temple (via UPS)  
Town of New Ipswich (via UPS)  
Office of the Attorney General (via hand delivery)

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2012-  
Timbertop Wind I, LLC  
Petition for Jurisdiction**

**I. INTRODUCTION**

Timbertop Wind I, LLC (Timbertop) asks the New Hampshire Site Evaluation Committee (SEC) to assert jurisdiction, pursuant to RSA 162-H:2, XII, over the proposed 15 MW wind facility it seeks to construct in the towns of New Ipswich and Temple in Hillsborough County, New Hampshire. The Timbertop project as currently configured would comprise five 3-MW Siemens SWT turbines, two turbines planned to be located in New Ipswich and three turbines in Temple

Timbertop contends that SEC jurisdiction over its project would be consistent with the findings and purposes of RSA 162-H:1 as it applies to the siting, construction and operation of renewable energy facilities. SEC review is necessary under the circumstances inasmuch as the facility is proposed to be constructed in two towns and conducting separate reviews at the town level would result in duplicative, inefficient and untimely processes. Moreover, while the ordinance originally adopted in New Ipswich in 2010 was reasonable, the ordinances as adopted in New Ipswich and Temple in 2012 impose substantive requirements inconsistent with SEC precedent and state law. For these and other reasons more fully set forth below, SEC jurisdiction is required.

**II. BACKGROUND**

In order to provide context for its petition, Timbertop briefly describes below its general corporate activities and the current status of its project. In addition, a summary of the actions of

the New Ipswich and Temple Planning Boards is provided, drawn from the minutes of the respective bodies. Copies of minutes are provided in Attachment 5.

#### **A. Developer and Project Description**

##### **1. Pioneer Green Energy, LLC**

Timbertop is a 100% wholly-owned subsidiary of Lavaca Wind, LLC, which is an affiliate of Pioneer Green Energy, LLC, (Pioneer) headquartered in Austin, Texas. Pioneer was formed in 2009 by seven wind and solar industry veterans with over 40 years cumulative development experience, and Lavaca Wind, LLC was formed in 2011 to pursue Pioneer's wind opportunities in select U.S. markets. Pioneer has raised \$23 million for its project development activities since formation. Pioneer specializes in complex wind and solar projects located in favorable power markets with a strong emphasis on vetting through transmission, wildlife, and permitting matrices. Prior to forming the company, the Pioneer management team collectively developed more than 2,700 MW of wind projects across the country. Currently, Pioneer has more than twenty wind projects totaling 2,000 MW of capacity and six solar projects totaling 400 MW of capacity under development in nine states.

Pioneer has divided its operations into four units, three wind units and a solar unit. The wind units are designated geographically as the Western Unit, the Texas Unit, and the Eastern Unit. Pioneer Vice President and Founder Adam Cohen manages development activities in the Eastern Unit, which currently includes projects in New Hampshire, Connecticut, Pennsylvania and Maryland. See [www.pioneergreen.com](http://www.pioneergreen.com).

##### **2. Timbertop Wind I, LLC**

The Timbertop project has taken shape over time as a result of studying different locations and working with a number of local citizens and public officials. The original

development efforts were undertaken by Mike Mulcahey on behalf of Blue Wave Strategies. Initially, the focus was on the Binney Hill area in the southwestern portion of New Ipswich. The focus later shifted to Kidder Mountain and the northwestern portion of New Ipswich and southwestern portion of Temple due in part to the proximity to an existing transmission line.

The New Ipswich Planning Board approved a met tower for Binney Hill in March, 2009. Mr. Mulcahey formed New Ipswich Wind, LLC and sold its assets to Pioneer in September, 2010. Wind data collection from Binney Hill began in November, 2010; environmental survey work began in April, 2011; and, the project entered the ISO interconnection queue in May, 2011. Timbertop filed its certificate of formation with the New Hampshire Secretary of State in August, 2011. The New Ipswich Planning Board approved a met tower for Kidder Mountain in August, 2011.

Extensive development work has been completed by Timbertop. To date, Timbertop has leased 600 acres for potential development and preliminary civil work, such as, surveying, identifying access roads, and delineating wetlands, is underway. A full year of avian, bat and breeding bird surveys has been completed. Public Service Company of New Hampshire's distribution circuit # 3235 has been identified as the point of interconnection. PSNH completed the system impact study in April, 2012, which it forwarded to the New England Independent System Operator (ISO). Timbertop and the ISO executed the Interconnection Facilities Study Agreement in August, 2012, which is required to permit the physical and electrical interconnection of Timbertop to the grid. In September, 2012, Comsearch issued a Microwave Report, which found that the project would not pose an obstruction to Federal Communications Commission (FCC) licensed microwave paths. The Federal Aviation Administration (FAA) issued determinations of no hazard to navigation for the proposed turbine locations in November,



2012. Furthermore, in November, Timbertop was shortlisted on an RFP for a power purchase agreement with a major utility to begin delivery in calendar year 2015.

### **B. New Ipswich**

On December 2, 2008, Mike Mulcahey and John DeVillars appeared before the New Ipswich Board of Selectmen on behalf of Blue Wave Strategies to discuss their interest in eventually erecting five wind turbines on Binney Hill. (As noted above, Mr. Mulcahey later formed New Ipswich Wind, LLC, the predecessor in interest to Timbertop.) They explained that they needed to erect a meteorological tower (met tower) to test the wind resources and that they envisioned five turbines on property owned by Green Crow Corporation. They also noted that they had been in contact with the Building Inspector, who recommended a meeting with the Zoning Board of Adjustment (ZBA) as well.

On January 8, 2009, after working through the building permit process and submitting, among other things, a request for a special exception, Green Crow Corporation, through Mr. Mulcahey, received a special exception for the met tower from the ZBA. On February 4, 2009, Mr. Mulcahey appeared at an informational session before the Planning Board, which indicated that a site plan review was required. On March 4, 2009, the Planning Board granted conditional approval of the site plan review application for a met tower on Binney Hill, which it extended on July 1, 2009.

On November 4, 2009, the Planning Board decided to work on warrant articles for small wind energy systems and large wind energy systems. Board Member Freeman presented draft ordinances for discussion. On December 2, 2009, the Board reviewed and made changes to the draft ordinances and scheduled a public hearing for December 16, 2009. On January 6, 2010, changes to the draft ordinance were approved. The Town of New Ipswich approved a warrant

article at Town Meeting on March 9, 2010, establishing ordinances for large and small wind energy systems.<sup>1</sup>

On July 20, 2011, Timbertop appeared before the Planning Board to present its application for site plan review for a second met tower, to be located on Old Peterborough Road on Kidder Mountain. The Planning Board held a public hearing, scheduled a site visit, and continued the hearing until August 3, 2011. At that meeting, the Planning Board conditionally approved the site plan review application for the second met tower. The Board also “discussed amending the Zoning Ordinance for large wind energy systems and specifically the maximum noise level allowed.” The minutes note that “Liz [Board Member Freeman] will e-mail links to wind turbine articles and suggested members educate themselves on the pros and cons of wind turbine energy.”

On September 12, 2011, the Planning Board “discussed the possibility of consulting with a sound expert regarding the noise standards in the town’s Large Wind Energy Systems [LWES] ordinance.” At the October 5, 2011 Board meeting, Eddie Duncan “gave a power point presentation on RSG [Resources Systems Group] and on noise from wind power projects.” Board member Freeman indicated that she would call Lisa Linowes (Executive Director of the Industrial Wind Action Group) for her input on RSG. On October 12, 2011, Board Member Freeman “informed the Board that she had spoken with Lisa Linowes who is familiar with wind

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<sup>1</sup> The March, 2010 ordinance was a major impetus to Pioneer’s decision to acquire New Ipswich, LLC. The ordinance set forth reasonable requirements for development of utility scale wind projects, which Pioneer relied upon in its favorable assessment of the project’s ability to receive the local permits required to construct the project.

issues. Ms. Linowes recommended that the Board contact Steven Ambrose and his company [Rand Acoustics] who are well know[n] for their expertise in wind energy systems.”

On October 26, 2011, Board member Somero reported that he had a conversation with Adam Cohen about amendments to the Large Wind Energy Systems Ordinance, which the Board was considering. “The gist of the conversation was...that the amendments would make the ordinance too restrictive and Mr. Cohen would not be able to put a wind turbine in if the amendment passed...” The Board told Mr. Somero he should not talk to Mr. Cohen. “The Board also asked Mr. Cohen not to approach any Board member, that all discussions need to take place in a public forum before the entire Board. Mr. Cohen responded that as he did not have an application submitted he believed he could speak with individual members. He was told that was incorrect, that any conversation that involves work the Planning Board is doing needs to be in public. The conversation is a violation of the Right to Know law, open meeting law and a conflict of interest.”<sup>2</sup> Finally, the Board noted that Mr. Cohen had submitted a letter, which was distributed but not discussed.

On November 14, 2011, the Planning Board “reviewed the final draft of the Zoning Ordinance amendment to Article XIII-2, Large Wind Energy Systems. No changes were made.”

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<sup>2</sup> RSA 91-A, the Right-to-Know law, does not preclude conversations by planning board members with members of the public about a proposed ordinance. The Planning Board appears to regard the conversation between Mr. Somero and Mr. Cohen as an *ex parte* violation. A conversation between a planning board member and any member of the public, about a prospective change to an ordinance is both a permissible legislative function and a proper exercise of the rights of a member of the public; it does not constitute an *ex parte* conversation of the type that might apply if the Planning Board were acting in a judicial capacity. This view would seem to be confirmed by the fact that, at the same time the Planning Board was taking its position relative to conversations with Mr. Cohen, Board Member Lowry was soliciting advice from Ms. Linowes, who has intervened at the SEC in opposition to several wind projects.

A public hearing was also held on a proposed amendment to the Site Plan Review Regulations changing application requirements for large wind energy systems. Mr. Cohen submitted comments objecting to the amendment. The Board approved the amendment.

On November 16, 2011, the Planning Board held a public hearing on Timbertop's application for design review. Timbertop described the proposed project in detail and answered questions from the Board and the public, and members of the public commented on the proposal as well. The Board voted to end the design review.

On November 28, 2011, the Planning Board held a public hearing on the proposed amendment to the zoning ordinance on large wind energy systems. Chairman Dekker stated that "the Planning Board is not against wind farms but is against the negative impacts of wind farms on the community." He also said that "[t]here are communities with wind farms that have had negative effects that have lead [sic] to lawsuits, health problems, decrease in property values and abandonment of homes. The Planning Board did a lot of research including looking at other ordinances, reading studies, reports and papers and consulting with experts and as a result made the proposed changes to the ordinance." Among other things, the noise level provision was lowered to 33 dBA anywhere at any time on a non-participating landowner's property. Mr. Cohen stated that he had brought the project's sound expert to the hearing. "The Board asked that any comments from the sound expert be put in writing and submitted to the Board which will then be forwarded to the town's expert."

On December 7, 2011, a public hearing was held on amendments to the Site Plan Review Regulations, which included the elimination of the provision for Design Review. In addition, a copy of a handout entitled "More FAQ's about Wind Farms" was distributed by the Board. On December 12, 2011, a public hearing was held on the LWES ordinance, at which time the

following subjects were discussed: "Costs associated with dismantling of turbines. Sound levels. Complaint resolution. Enforcement and penalties. Is the ordinance too restrictive? Purpose of the amendment. Hidden agenda of the Planning Board. Providing information to public. Tax, energy and job benefits. 33 dBA will make it impossible for windmill projects in New Ipswich."

Further actions related to the LWES amendment were taken at meetings on December 21 and 28, 2011. The public hearing continued on January 11, 2012, at which time the final draft amendment was approved and a communications plan was discussed.

On January 18, 2012, the Planning Board discussed a briefing to the Zoning Board regarding the changes to the ordinance, a viewpoints letter for the newspaper, and documents to be put on the website. On February 1, 2012, the Board discussed language in its flyer regarding the ordinance with its sound expert and approved it with certain changes.

On February, 15, 2012, "Selectman Conlin met with the Board to discuss the removal of the flyer on large wind energy systems from the lobby of the Town Office. To include the statement on the flyer 'Please Vote Yes on Article 2' is considered politicking and is not permitted on town property. Selectman Conlin agreed to contact Attorney Kinyon on the matter and allow the flyer to be put back in the lobby until further notice." In addition, "[t]he Board discussed the website and the actions of the website administrator in posting his articles on the site. The articles were first posted on the Planning Board's site and he was asked to remove them from there. [Chairman Dekker] made a motion to send a memo to the Town Administrator expressing the Board's outrage about the unapproved material added by the website

administrator at his own discretion, the inappropriateness for personal opinions to appear on the town website, and the inappropriateness in particular for discussion of any specific project.”<sup>3</sup>

On March 7, 2012, the Board met to provide information to the public on the LWES amendment. On March 13, 2012, the Town of New Ipswich approved a warrant article at Town Meeting substantially changing the large wind energy systems ordinance originally passed in 2010.

### **C. Temple**

On April 6, 2011, the Temple Planning Board discussed “formulating an ordinance to regulate wind farms” and continued its discussions at subsequent meetings. Timbertop described its proposed project at a Planning Board meeting on July 13, 2011, pointing out its interest in erecting two to four turbines on Kidder Mountain in Temple and that it had been collecting wind data and avian migration data for some time. The Board set forth a number of action items including contacting the Audubon Society and the Harris Center regarding bird migration issues, arranging a visit to the Lempster wind facility, and reviewing the New Ipswich wind ordinance.

On August 17, 2011, a member of the Temple Economical Energy Committee reported that she had visited the Lempster wind facility and “provided observations, notes and data, including ongoing bird research near wind turbine installations.” The Board discussed how to “craft a large wind energy ordinance to protect the town” and continued to work on the issue over several meetings. On November 2, 2011, Board member Kieley provided a draft ordinance for review.

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<sup>3</sup>See Attachment 6 for Ledger-Transcript coverage of website issues.

On November 17, 2011, the Temple Planning Board held a wind energy forum. Board members “Lowry and Ayvazian provided a PowerPoint presentation with verbal commentary.” Mr. Cohen “was available to address questions and concerns.” On November 30, 2011, the Board held another forum on Large Wind Energy Systems. Among other comments at the forum: “There was a brief discussion of the town’s rights vs. state intervention, and how an extremely restrictive town ordinance might actually encourage the state to step in. Kieley said the town has its ‘hand on the dial’ with regard to how restrictive a LWES ordinance should be.”

On December 7, 2011, the Board continued discussions on the draft ordinance. Board member Pickman “stated if the board wants to encourage wind turbines, the developer must be able to meet requirements stated in the ordinance. If the town wants to discourage them, different language would be indicated.” Board Member Lowry said the bar “must be set high.” Additional work sessions were held on December 14 and 21, 2011, and January 4 and 16, 2012. At the January 4 meeting, Board Member John Kieley described “ongoing changes the Town of New Ipswich was making to their wind energy ordinance.” “This was followed by discussion of whether to continue to use 33dB as a maximum acceptable noise level, and how to define background noise values.” “Connie Kieley urged the board not to create an ordinance that was less stringent than that of New Ipswich, saying it might have unintended consequences.”

On January 18, 2012, the Planning Board held a public hearing on the LWES ordinance. After a presentation by Board Members Kieley and Lowry, and a question and answer period, Board Member Lowry “stated that the town attorney feels this ordinance could be construed as too restrictive.” On January 19, 2012, the Board held a final work session and voted to accept the draft ordinance for posting. A second public hearing was held on February 1, 2012, and during the question and answer session, the Board was asked if Timbertop felt that the town was

zoning it out and the Board replied that “PGE [Timbertop] has indicated they cannot build with certain restrictions, but that is not felt to be true.” The ordinance was approved by the Board at a meeting on February 6, 2012, and was subsequently approved at Town Meeting on March 13, 2012

### **III. ARGUMENT**

Timbertop and its predecessor began efforts to develop a wind facility in the area of New Ipswich and Temple more than four years ago. Inasmuch as the proposed 15 MW project is smaller than the nominal standard 30 MW capacity for Site Evaluation Committee jurisdiction, Timbertop undertook to work at the town level to acquire the necessary regulatory approvals. Timbertop now believes, however, that the integrated approach offered by the Site Evaluation Committee is the better forum for assuring a timely and comprehensive regulatory review as opposed to conducting two separate, duplicative and potentially incompatible proceedings, which could entail separate appeals as well. Furthermore, in light of the adoption of ordinances in New Ipswich and Temple that include substantive requirements inconsistent with SEC precedent and state law, Timbertop believes that the SEC should assert jurisdiction to ensure that the appropriate balance is maintained between state policies designed to promote renewable energy and protect the environment.

#### **A. SEC Precedent**

RSA 162-H:2, XII provides that a renewable energy facility shall include electric generating station equipment, powered by wind, with a nameplate capacity from 5 MW to 30 MW that the SEC “determines requires a certificate, consistent with the findings and purposes of RSA 162-H:1.” The SEC has addressed three petitions to assert jurisdiction over renewable facilities with a capacity less than 30 MW. The Lempster Wind, LLC project was the subject of



SEC Docket No. 2006-01; the SEC issued its jurisdictional order on September 23, 2006. The Clean Power Development, LLC project was the subject of SEC Docket No. 2009-03; the SEC issued its jurisdictional order on April 7, 2010. The Antrim Wind Energy, LLC project was the subject of SEC Docket No. 2011-02; the SEC issued its jurisdictional order on August 10, 2011. In the *Lempster* and *Antrim* cases, the SEC asserted jurisdiction, while in the *Clean Power* case it declined jurisdiction.

In *Lempster*, the host Town of Lempster and the abutting Town of Washington sought SEC jurisdiction over the proposed 24 MW wind facility, essentially taking the position that Lempster did not have the administrative capability to review the siting of the project. A petition was filed by certain Lempster voters and the developer ultimately filed a motion for jurisdiction. The SEC concluded in its decision issued September 23, 2006, with little elaboration, that “asserting jurisdiction over the proposed facility would be consistent with the legislative findings and purposes set forth in R.S.A. 162-H:1.”

In *Clean Power*, certain voters in the host City of Berlin and the abutting Town of Gorham filed petitions asking the SEC to assert jurisdiction over the proposed 29 MW Clean Power Development, LLC biomass facility. The City of Berlin and the developer opposed the petitions. In describing the applicable legal standard, the SEC said that, consistent with the purposes and findings of RSA 162-H:1, it must determine whether a certificate is needed to: maintain a balance between the environment and the need for new facilities; avoid undue delay in construction and provide full and timely consideration of environmental consequences; ensure full disclosure to the public; and ensure that construction and operation are treated as significant aspects of land use planning. The SEC determined that the City’s review process, along with DES and other state reviews, maintained a balance between the environment and the need for

new energy and that asserting jurisdiction would not avoid undue delay but would cause undue delay and unnecessary duplication of review.

In *Antrim*, the developer filed a petition for jurisdiction, as did a number of Antrim voters and the Chairman of the Board of Selectmen. The petitions were opposed by the Antrim Planning Board, Counsel for the Public, and a number of citizens. The Board of Selectmen stated that the town boards did not have the expertise to consider the issues that surround siting. Counsel for the Public argued that the petition was premature. The Planning Board asked that a decision be deferred until the Town voted on a wind ordinance, a position supported by the two citizen intervenor groups. The SEC distinguished the *Antrim* case from the *Clean Power* case, pointing out that the City of Berlin had a regulatory process in place that the Town of Antrim did not. The SEC also found that taking jurisdiction consolidates all issues into a single proceeding, subject to a single appeal, avoiding a fractured and repetitive process.

The facts of this case are distinguishable from the facts of the three previous jurisdictional cases discussed above in that the Timbertop project is proposed to be constructed in two towns, while the other projects were proposed for a single town. Consolidating the review of the Timbertop facility at the SEC rather than conducting separate proceedings in the two towns achieves an integrated review consistent with RSA 162-H:1, and consistent with the outcomes in *Lempster* and *Antrim*, in which both projects were reviewed by a single body, i.e., the SEC. Furthermore, as noted in *Antrim*, at p. 26, “[c]ommittee jurisdiction assures consolidation of all land use planning issues into a single proceeding, subject to a single appeal to the New Hampshire Supreme Court.”

The facts of this case are different from the *Clean Power* case, where the SEC declined jurisdiction. In *Clean Power*, the City of Berlin, in the SEC’s estimation, had review processes

and an ordinance that maintained a balance between the environment and the need for new energy. As explained in the next section below, the New Ipswich and Temple ordinances do not maintain the required balance.

The facts of this case are similar to the *Antrim* case, where the SEC asserted jurisdiction, insofar as SEC jurisdiction is required to adequately protect the objectives and purposes of RSA 162-H:1. In *Antrim*, a dispositive element was the absence of an appropriate ordinance, while in this case a dispositive element is the presence of dual and inappropriate ordinances. In both types of cases, SEC jurisdiction is necessary.

## **B. Ordinances**

In *Antrim*, the SEC noted that the greatest difference between the *Antrim* case and the *Clean Power* case was that Antrim did not have an ordinance while Berlin did. In the absence of an ordinance, the SEC concluded that “it is not possible to determine, with any degree of certainty, that an eventual ordinance will be consistent with the legislative findings and purposes.” While in this case the Towns of New Ipswich and Temple have adopted ordinances, the ordinances do not “adequately safeguard the purpose and findings of RSA 162-H:1” in the way contemplated by the SEC’s language in the *Antrim* decision at p. 25.

The New Ipswich and Temple ordinances are not appropriate ordinances inasmuch as they incorporate standards inconsistent with SEC precedent and set limits that the Legislature has declared unreasonable for small wind energy systems. Notably, the ordinances impose unwarranted standards with respect to sound limits, setbacks, and certain environmental impacts.

New Ipswich and Temple have adopted a noise level/sound pressure level limit of 33 dBA anywhere at any time on a Non-participating Landowner’s property. In *Lempster*, the SEC, after extensive testimony, adopted a general limit of 55 dBA at the property line of nearby

homeowners, subject to certain other conditions such as a 45 dBA limit at the outside façade of residences on summer nights. In SEC Docket No. 2010-01, regarding Groton Wind, LLC, in its decision issued May 6, 2011, the SEC applied the same standard, except that it applied a summer night time standard of 40 dBA for a nearby campground. The Legislature, moreover, prohibited “[s]etting a noise level limit lower than 55 decibels, as measured at the site property line” in RSA 674:63, IV for small wind energy systems. This latter standard does not apply directly to Timbertop but expresses the Legislature’s policy intent relative to noise level limits and provides a compelling basis for assessing the reasonableness of the Towns’ ordinances. The Legislature’s 55 dBA benchmark and the SEC’s adjudicative findings each support a conclusion that the New Ipswich and Temple ordinances are inappropriate because the ordinances improperly shift the balance contemplated among the purposes and findings of RSA 162-H:1 against the development of new facilities. Hence, SEC review is necessary.

RSA 674:63, III prohibits towns from “[r]equiring a setback from property boundaries for a tower greater than 150 percent of the system height.” In the *Lempster* case, the SEC approved a setback at least 1.1 times the turbine height from any non-participating landowner’s property line. The Town of Temple, however, limits wind turbine height to 450 feet and requires a setback from adjacent property lines of 2,000 feet, or roughly 4.5 times the structure height, though it permits a participating landowner to accept a setback of 1.5 times maximum turbine height. At the same time, rather than adopting an objective standard, the Town of New Ipswich requires that setbacks “shall be sufficient to protect people, domestic and farm animals, public and private property, and utilities from Debris Hazard. The ice throw or ice shedding from the LWES shall not cross the Project Boundary.” With respect to the height of structures, New Ipswich provides that “[d]ue consideration shall be given to the scale of the turbines in relation to the surrounding

landscape.” The New Ipswich setback standard causes concern in that it may constitute a maximum setback distance based on a hypothetical concern regarding ice throw potential that is negated by operational measures undertaken by wind projects in cold climates during the winter months. The SEC discussed ice throw in some detail in Docket No. 2001-01 regarding Lempster Wind, LLC in its decision issued June 28, 2007, at pp.36-40.

RSA 162-H:16, IV (c) provides that the SEC, in order to grant a certificate of site and facility, must find that a facility “[w]ill not have an *unreasonable adverse effect* on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.” The Towns of New Ipswich and Temple have adopted more restrictive standards in a number of areas. Their ordinances provide that a Large Wind Energy System: will not have a *significant adverse impact* on wildlife and wildlife habitat; will have no *adverse impact* on bird or bat species; will not *adversely affect* the quality or quantity of ground and surface waters; and will not cause *adverse visual impacts*. Under these standards, it is conceivable that the prospect of insignificant harm to a bird or bat species or the potential appearance of a single turbine above tree top could be deemed to be non-compliant with the ordinance. As a result, the balance contemplated by RSA 162-H:1 would not be achieved.

New Ipswich and Temple have both required the use of Automatic Obstruction Lighting Systems, which they define as a “lighting system that provides continuous 360-degree surveillance of the airspace around a wind farm from the ground level to above aircraft flight altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.” FAA Advisory Circular AC 70/7460-1K CHG 2, Chapter 13. Marking and Lighting Wind Turbine Farms, however, does not provide for the use of such automatic systems. Chapter 1. Administrative and General Procedures provides for requests for

modifications and deviations from the marking and lighting standards but the specified permissible modifications and deviations do not include automatic obstruction lighting systems. In addition, RSA 674:63, V prohibits “[s]etting electrical or structural design criteria that exceed applicable state, federal or international building or electrical codes or laws.”

In addition to the conflict of the town ordinances with SEC precedent and State law benchmarks, the ordinances are incompatible with one another in important ways. For instance, Temple elected to adopt objective height and setback standards while New Ipswich adopted subjective height and setback standards. As a result, turbine selection and placement decisions that would be permissible in one town might not be permissible in the other. Such potentially incompatible requirements pose significant obstacles to the development of renewable energy facilities, lead to undue delay, and promote wasteful litigation.

### **C. Legislative Intent**

The New Hampshire Supreme Court, in *Public Service Company of New Hampshire v. Town of Hampton*, 120 NH 68, 70 (1980), a case in which the Supreme Court determined that local regulation of transmission lines was preempted by State law, observed that:

A fair reading of RSA ch. 162-F [the predecessor to 162-H] reveals a legislative intent to achieve comprehensive review of power plants and facilities site selection. The statutory scheme envisions that all interests be considered and all regulatory agencies combine for the twin purposes of *avoiding undue delay and resolving all issues “in an integrated fashion.”* By specifically requiring consideration of the views of municipal planning commissions and legislative bodies, the legislature assured that their concerns would be considered in the comprehensive site evaluation. (emphasis added)

In 1991, the Legislature passed House Bill 736 (Chapter 295, Laws of NH 1991) incorporating siting provisions from RSA 162-F and 162-H into a single chapter. Among other things, the legislation clarified the types of facilities subject to SEC jurisdiction, increased

opportunities for local participation in the siting process, and reduced the timeframes for SEC decisions. The core purposes of the siting statute have remained substantially intact since 1974. In pertinent part, RSA 162-H:1 recognizes that the selection of sites for energy facilities has a significant impact on the welfare of the population, economic growth, and the environment. In the Declaration of Purpose, the Legislature finds that the public interest requires: that a balance be maintained between the environment and new facilities; that undue delay in construction be avoided; that full and timely consideration of environmental issues be provided; that full disclosure of plans for facilities be provided to the public; that construction and operation of facilities be treated as a significant aspect of land-use planning; and that all environmental, economic and technical issues be resolved in an integrated fashion.

The Supreme Court in its review of legislative intent, and the SEC in the *Antrim* case, highlights the Legislature's focus in its Declaration of Purposes on avoiding undue delay and resolving issues in an integrated fashion. In *Antrim*, at p. 26, the SEC noted that the applicant's claim that SEC "jurisdiction is the superior option for the purpose of avoiding undue delay in the construction of needed facilities, providing for full and timely consideration of environmental consequences and assuring that all environmental, economic and technical issues are resolved in an integrated fashion." The SEC agreed with that assessment and noted as well that there was no guarantee that an ordinance would be passed or that it would be enforced "in a timely and objective manner." *Id.* It is precisely the concern voiced in the *Antrim* decision that has come to pass in this case, and which provokes SEC jurisdiction as the proper response.

#### **IV. PROCEDURAL SCHEDULE**

Timbertop submits extensive documentation with its petition in order to provide full disclosure of its position to the respective towns and other potentially interested parties.

Similarly, Timbertop is hopeful that this approach will accommodate timely consideration of its request. To that end, Timbertop believes that the discrete decision whether to assert jurisdiction can be made substantially “on the papers” both because the documents present an adequate public record on which to base such a decision and the decision to take jurisdiction does not require the level of proof or process that a certificate of site and facility does.

As a matter of process, Timbertop proposes that a technical session be held immediately following the initial public meeting/procedural hearing scheduled in this docket, at which time Timbertop will be prepared to discuss its filing with interested parties. Timbertop suggests a second technical session within a reasonable period to answer potential follow up questions and to discuss stipulations of fact, or other suitable measures, in preparation for hearing, which could be more in the nature of oral argument.

With respect to petitions for intervention, Timbertop does not contemplate any objection to any party or individual with demonstrated connections to New Ipswich or Temple. Timbertop, however, reserves its right to object to intervention by parties that lack such connections. At the same time, Timbertop recognizes that the Committee has broad discretion under RSA 541-A:32 to permit intervention but asks that with respect to interventions by right and interventions by discretion that the Committee combine like interests to promote the prompt and orderly conduct of the proceeding.

Accordingly, Timbertop, recognizing the pressures of timing and coordination for the members of the Committee, proposes a procedural schedule with the following general parameters.



Scheduling Order	end of December, 2012
Initial Meeting and Tech Session	end of January, 2013
Tech Session	mid-February, 2013
Hearing	early March, 2013
Deliberations	mid-March, 2013

## V. CONCLUSION

Timbertop Wind reasonably, diligently, and transparently pursued the development of a wind generation facility in New Ipswich and Temple by working through local zoning and planning bodies. The process for the approval of met towers was timely and fair. In addition, the LWES ordinance originally approved by New Ipswich in 2010 was reasonably conducive to project development. The LWES ordinances approved in New Ipswich and Temple in March, 2012, however, are so restrictive as to make further efforts at the local level futile.

SEC jurisdiction would be more efficient, more timely, more comprehensive, and more in tune with the comprehensive intent underpinning the creation of the SEC. This is particularly true given the nature of the ordinances in each town with which Timbertop would be required to comply. As noted in the *Antrim* decision at pp. 26-27, the SEC: “has a well developed regulatory scheme designed to address the siting, construction and operation of renewable energy facilities;” “is required to exercise its review within an eight month timeframe;” and “is statutorily required to give due consideration to the views of municipal and regional planning commissions and municipal governing bodies.”

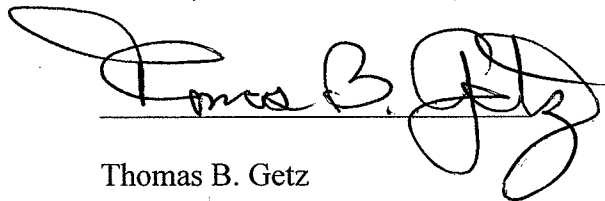
Finally, the SEC may draw logical inferences from the minutes of meetings of the planning boards that support a conclusion that SEC jurisdiction is necessary to maintain the balance required by RSA 162-H:1. For instance, on December 7, 2011, Temple Board Member Pickman described a basic strategy, that is, if the board wants to encourage wind turbines then it

should set requirements that the developer can meet but that if the board wants “to discourage them, different language would be indicated.” Temple Board Member Lowry also stressed that they must “set the bar high” in crafting an ordinance. Subsequently, at the January 18, 2012 meeting, in discussing the draft ordinances Board Member Lowry “stated that the town attorney feels this ordinance could be construed as too restrictive.” Consequently, the SEC could conclude that the interests of renewable energy development were not properly balanced in devising the large wind energy system ordinance.

Accordingly, Timbertop Wind I, LLC asks that the Site Evaluation Committee find that its proposed renewable energy facility requires a certificate, consistent with the purposes and findings of RSA 162-H:1, as permitted under RSA 162-H:2, XII.

Respectfully submitted,

Timbertop Wind I, LLC  
By Its Attorneys  
Devine, Millimet & Branch, PA

A handwritten signature in black ink, appearing to read "Thomas B. Getz", written over a horizontal line.

Dated: December 21, 2012

Thomas B. Getz  
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**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2012-**

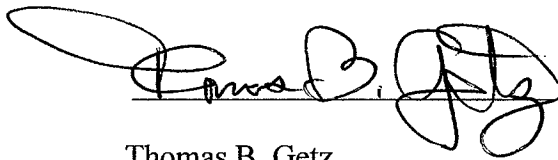
**RE: Timbertop Wind I, LLC  
Petition for Jurisdiction**

**APPEARANCE**

Pursuant to N.H. Admin. Rule Site 202.04, please enter my appearance as counsel for Timbertop Wind I, LLC (Timbertop) in the above-referenced matter. Timbertop asks the New Hampshire Site Evaluation Committee to assert jurisdiction over a 15 MW wind energy facility proposed to be located in the towns of Temple and New Ipswich, New Hampshire (both in Hillsborough County). I am an attorney licensed to practice law in New Hampshire.

Respectfully submitted,

Dated: December 21, 2012

A handwritten signature in black ink, appearing to read "Thomas B. Getz", is written over a horizontal line.

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# **ATTACHMENT 1**

## **STATUTES**

# **TITLE XII**

## **PUBLIC SAFETY AND WELFARE**

### **CHAPTER 162-H**

#### **ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION**

##### **Section 162-H:1**

**162-H:1 Declaration of Purpose.** – The legislature recognizes that the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines, will have a significant impact upon the welfare of the population, the location and growth of industry, the overall economic growth of the state, the environment of the state, and the use of natural resources. Accordingly, the legislature finds that it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire; that undue delay in the construction of needed facilities be avoided and that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, all to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

**Source.** 1991, 295:1. 1998, 264:1, eff. June 26, 1998. 2009, 65:1, eff. Aug. 8, 2009.

# **TITLE XII**

## **PUBLIC SAFETY AND WELFARE**

### **CHAPTER 162-H**

#### **ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION**

##### **Section 162-H:2**

###### **162-H:2 Definitions. –**

I. "Acceptance" means a determination by the committee that it finds that the application is complete and ready for consideration.

II. [Repealed.]

II-a. "Certificate" or "certificate of site and facility" means the document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility.

III. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

IV. [Repealed.]

V. "Committee" means the site evaluation committee established by this chapter.

VI. "Energy" means power, including mechanical power or useful heat, derived from any resource, including, but not limited to, oil, coal, and gas.

VII. "Energy facility" means:

(a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.

(b) Electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more.

(c) An electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines.

(d) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line.

(e) A new electric transmission line of design rating in excess of 200 kilovolts.

(f) A renewable energy facility.

(g) Any other facility and associated equipment that the committee determines requires a certificate, consistent with the findings and purposes of RSA 162-H:1, either on its own motion or by petition of the

applicant or 2 or more petitioners as defined in RSA 162-H:2, XI.

VIII. "Filing" means the date on which the application is first submitted to the committee.

IX. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.

X. [Repealed.]

X-a. [Repealed.]

XI. "Petitioner" means a person filing a petition meeting any of the following conditions:

(a) A petition endorsed by 100 or more registered voters in the host community or host communities.

(b) A petition endorsed by 100 or more registered voters from abutting communities.

(c) A petition endorsed by the governing body of the host community or 2 or more governing bodies of abutting communities.

(d) A petition filed by the potential applicant.

XII. "Renewable energy facility" means electric generating station equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts but less than 120 megawatts and powered by wind energy, geothermal energy, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass technologies, solar technologies, or hydroelectric energy. "Renewable energy facility" shall also include electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity but at least 5 megawatts which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI.

**Source.** 1991, 295:1. 1997, 298:21-24. 1998, 264:2, eff. June 26, 1998. 2007, 25:1, eff. May 11, 2007; 364:3, eff. July 17, 2007. 2008, 348:8, eff. July 7, 2008. 2009, 65:2-4, 24, I-IV, eff. Aug. 8, 2009.

# **TITLE XII**

## **PUBLIC SAFETY AND WELFARE**

### **CHAPTER 162-H**

#### **ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION**

##### **Section 162-H:16**

###### **162-H:16 Findings and Certificate Issuance. –**

I. The committee shall incorporate in any certificate such terms and conditions as may be specified to the committee by any of the other state agencies having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the other state agencies denies authorization for the proposed activity over which it has jurisdiction. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency.

II. Any certificate issued by the site evaluation committee shall be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted shall be made by a majority of the full membership. A certificate shall be conclusive on all questions of siting, land use, air and water quality.

III. The committee may consult with interested regional agencies and agencies of border states in the consideration of certificates.

IV. The site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that the site and facility:

(a) Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.

(b) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.

(c) Will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.

(d) [Repealed.]

V. [Repealed.]

VI. A certificate of site and facility may contain such reasonable terms and conditions as the committee deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued, shall be final and subject only to judicial review.

VII. The committee may condition the certificate upon the results of required federal and state agency studies whose study period exceeds the application period.

**Source.** 1991, 295:1, eff. Jan. 1, 1992. 2009, 65:18-21, 24, IX, eff. Aug. 8, 2009.



# **TITLE LXIV PLANNING AND ZONING**

## **CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS**

### **Small Wind Energy Systems**

#### **Section 674:63**

**674:63 Municipal Regulations of Small Wind Energy Systems.** – Ordinances or regulations adopted by municipalities to regulate the installation and operation of small wind energy systems shall not unreasonably limit such installations or unreasonably hinder the performance of such installations. Unreasonable limits or hindrances to performance shall include the following:

- I. Prohibiting small wind energy systems in all districts within the municipality.
- II. Restricting tower height or system height through application of a generic ordinance or regulation on height that does not specifically address allowable tower height or system height of a small wind energy system.
- III. Requiring a setback from property boundaries for a tower greater than 150 percent of the system height. In a municipality that does not adopt specific setback requirements for small wind energy systems, any small wind energy system shall be set back from the nearest property boundary a distance at least equal to 150 percent of the system height; provided, however, that this requirement may be modified by the zoning board of adjustment upon application in an individual case if the applicant establishes the conditions for a variance under this chapter.
- IV. Setting a noise level limit lower than 55 decibels, as measured at the site property line, or not allowing for limit overages during short-term events such as utility outages and severe wind storms.
- V. Setting electrical or structural design criteria that exceed applicable state, federal, or international building or electrical codes or laws.

**Source.** 2008, 357:1, eff. July 11, 2009.

# **ATTACHMENT 2**

## **ORDINANCES**

ZONING ORDINANCE - TOWN OF NEW IPSWICH, N.H.

ADOPTED BY BALLOT VOTE AT TOWN MEETING MARCH 10, 1987

REVISED MARCH 17, 1990

REVISED MARCH 16, 1991

REVISED MARCH 14, 1995

REVISED MARCH 10, 1998

REVISED MARCH 9, 1999

REVISED MARCH 12, 2002

REVISED MARCH 9, 2004

REVISED MARCH 8, 2005

REVISED MARCH 14, 2006

REVISED MARCH 13, 2007

REVISED MARCH 10, 2009

REVISED MARCH 9, 2010

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provision.”

## **ARTICLE XII-2: LARGE WIND ENERGY SYSTEMS (LWES)**

- A. **PURPOSE:** The purpose of the Ordinance is to provide a regulatory framework for the construction and operation of Large Wind Energy Systems (LWES) in the Town of New Ipswich, subject to reasonable restrictions that will:
1. preserve and protect the public health, safety and welfare and the character of the Town;
  2. minimize the visual impact of wind turbines;
  3. preserve the quality and integrity of the environment; and
  4. insure the financial security necessary for the removal of these systems when they cease operation.
- B. **DEFINITIONS:** As used in this Ordinance, the following terms shall have the meanings indicated:

**AMBIENT NOISE** - Intermittent noise events present for at least 90% of the time.

**APPLICANT/OWNER/OPERATOR** - The person, firm, corporation, company, limited liability corporation or other entity which applies for approval under this Ordinance, as well as the applicant's successor(s), assign(s) and/or transferee(s) as to any approved LWES or testing facility. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the LWES or testing facility. The duties and obligations regarding approval for any approved LWES or testing facility shall be with the owner of the LWES or testing facility, and jointly and severally with the owner and operator or lessee of the LWES or testing facility.

**APPLICATION** - An application for a LWES under this Ordinance.

**BLADE GLINT** - The intermittent reflection of the sun off the surface of the blades of a single or multiple wind turbines.

**FAA** - The Federal Aviation Administration.

**HUB HEIGHT** - The distance to the center of the turbine hub as measured from ground level to the center of the wind turbine hub.

**LARGE WIND ENERGY SYSTEM (LWES)** - An electricity generating facility, with a generating capacity of over 100 kilowatts and less than 30 megawatts, consisting of one or

more wind turbines, including any substations, met towers, cables/wires and other buildings accessory to such facility.

MET TOWER- A meteorological tower used for the measurement of wind speed.

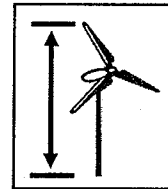
NON-PARTICIPATING LANDOWNER- Any landowner except those on whose property all or a portion of a large wind energy system is located pursuant to an agreement with the system owner or operator.

PARTICIPATING LANDOWNER- Any landowner on whose property all or a portion of a large wind energy system is located pursuant to an agreement with the system owner or operator.

PROJECT BOUNDARY- A continuous line, which encompasses all wind turbines and related equipment to be used in association with a large wind energy system.

SHADOW FLICKER- The effect when the blades of an operating wind turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

TOTAL HEIGHT – When referring to a wind turbine, the Distance measured from ground level to the blade extended At its highest point.



TOWER SHADOWING- The outline created on the surrounding area by the sun shining on a wind turbine.

USEFUL LIFE- The LWES or individual wind turbine(s) will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

WIND TURBINE - A wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator, including the turbine, blade, tower, base and pad transformer, if any.

### C. LARGE WIND ENERGY SYSTEM REQUIREMENTS:

1. Visual Appearance; Lighting; Power Lines.
  - a. Wind Turbines shall use tubular towers of similar design, size, operation, and appearance throughout the project and shall be painted a non-reflective, non-obtrusive color.
  - b. At LWES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and

landscaping that will blend with the natural setting and the existing environment.

- c. The LWES shall be lit to FAA minimal standards only. Where acceptable to the FAA, the Planning Board will approve red lights over white lights, and steady lights over strobed or intermittent lights, except for red strobe lights for nighttime illumination to reduce impacts on migrating birds. (Red pulsating incandescent lights should be avoided.) Lighting shall be shielded to FAA maximum standards to reduce glare and visibility from the ground. Area and security lighting shall be full cut-off and shall not exceed 175 watts each and 25 feet in height and shall be shielded from Non-Participating Landowner's property.
  - d. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the LWES and the utility procuring the power. Such identification shall not be illuminated.
  - e. Electrical controls and control wiring and power lines shall be wireless or below ground except where collector wiring is brought together for connection to the transmission or distribution network adjacent to that network.
2. Height. Due consideration shall be given to the scale of the turbines in relation to the surrounding landscape.
3. Setbacks. Setbacks shall be measured from the project boundary.
- a. Inhabited structures: On participating properties, a LWES shall be set back from the nearest residence, school, hospital, church, public library, and/or places of frequent public gathering (e.g. pavilions, restroom facilities, band shells, campgrounds and cemeteries) a distance no less than two (2) times the total height of the highest wind turbine.
  - b. Property line of a non-participating owner: A LWES shall be set back from the nearest property line of a non-participating landowner a distance no less than the greater of (a) two (2) times the total height of the highest wind turbine or (b) one thousand (1,000) feet.
  - c. Public and private roads: A LWES shall be set back from the nearest public or private road or other right of way the distance of the fall zone as certified by a New Hampshire licensed engineer, plus ten percent (10%) of its total height, or a distance no less than 1.1 times its total height, whichever is greater. This setback shall be measured from the nearest boundary of the underlying right-of-way.

- d. Telephone and electrical lines: A LWES shall be set back from above-ground public electrical power lines, telephone lines, or unimproved utility easements for the distance of the fall zone, as certified by a New Hampshire licensed engineer, plus ten percent (10%) of its total height, or a distance no less than 1.1 times its total height, whichever is greater. Setbacks from existing power or telephone lines shall be measured from the lines themselves. If no power line or telephone line exists within a utility easement, the setback shall be measured from the nearest utility easement right-of-way boundary.
  - e. Public Waters (as defined in RSA 483-B:4): Two times the total height of the highest wind turbine from the reference line of any public water.
  - f. Recognized Historical, Cultural and Archeological Resource: Two times the total height of the wind turbine from all historical, cultural and archeological resources, but in no case less than 600 feet.
4. Communications Interference. Any LWES shall be sited and operated so that it does not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The applicant/owner/operator of the facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems; including relocation or removal of the facility, caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto. The applicant/owner/operator of the LWES shall respond within five business days to any request for a communications interference investigation by a property owner within the project boundary and a three-mile radius beyond the project boundary. Testing shall commence within ten working days of the request. The owner/operator is responsible for mitigating within ten working days from determination of interference cause attributed to the operation of the LWES.
5. Sound levels and measurement.
- a. Audible sound due to LWES operations shall not exceed fifty (50) dBA for any period of time when measured at any place on the property of a non-participating landowner.
  - b. Audible sound due to LWES operations shall not exceed forty-five (45) dBA for any period of time inside any occupied structure existing on the date of site plan approval of any LWES.
  - c. In the event audible sound due to operations contains a steady pure tone, such as a whine, screech, or hum, or a repetitive, impulsive sound, such sound

shall not exceed forty-five (45) dBA for any period of time when measured at the property line of a non-participating landowner.

- d. A wind turbine that emits impulsive sound below 20 Hz that adversely affects the habitability or use of any non-participating landowner's property or structures thereon shall be deemed unsafe and must be shut down immediately.
  - e. If the pre-construction ambient sound level at a proposed LWES site exceeds the applicable standards given above, the applicable standards shall be adjusted to the pre-construction ambient sound level.
  - f. The Planning Board may impose a noise setback that exceeds the other setbacks set out in this ordinance if it deems that such greater setbacks are necessary to protect the public health, safety, and welfare of the community.
6. Shadow Flicker, Tower Shadowing and Blade Glint. The facility shall be designed such that shadow flicker, tower shadowing, or blade glint will not fall on or in any non-participating landowner's property.
- a. Shadow flicker, tower shadowing, or blade glint expected to fall on a roadway or a portion of a non-participating landowner's property may be acceptable under the following circumstances:
    - 1) The shadow flicker, tower shadowing, or blade glint will not exceed twenty (20) hours per year.
    - 2) The shadow flicker, tower shadowing, or blade glint will fall more than 100 feet from an existing residence.
    - 3) The traffic volumes are less than 500 vehicles per day on the roadway.
    - 4) The shadow flicker or blade glint shall not fall onto an intersection.
  - b. Within twelve months of the date when the project becomes fully operational, or at anytime upon receipt of a verified complaint of shadow flicker, tower shadowing, and/or blade glint, the applicant/owner/operator shall submit to the Planning Board a shadow flicker, tower shadowing, or blade glint study as specified in the Submission Requirements of the New Ipswich Site Plan Regulations, certifying that shadow flicker, tower shadowing, or blade glint present no deleterious effects for any occupied structure located within a one-mile radius of any wind turbine. If shadow flicker, and/or blade glint exceeds any of the conditions listed above, the source wind turbine(s) shall be shut

down until the flicker or glint problem is remedied.

7. Public infrastructure. The applicant/owner/operator shall avoid, mitigate and repair any and all adverse impacts to any public infrastructure (e.g., road or highway, drainage system, etc.) occasioned by or in any manner related to the installation, operation, maintenance, and repair or decommissioning of the LWES. This includes reimbursement to the Town or State for any repairs or reconstruction reasonably deemed necessary by the Town or State.
8. Erosion and Storm Water Control. During the Useful Life of the LWES, the applicant/owner/operator shall maintain any erosion and storm water control practices described in the Erosion and Storm Water Control Plans and Life Cycle and Decommissioning Plans submitted with the Application for Site Plan Review.
9. Safety.
  - a. Each Wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. All turbines shall be equipped with redundant braking systems. This includes both aerodynamic (including variable pitch) over speed controls, and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in the case of loss of load on the generator. Stall regulation should not be considered a sufficient braking system for over speed protection. A manual electrical and/or overspeed shutdown disconnect switch shall be provided and clearly labeled on/in the wind turbine structure.
  - b. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 75 feet.
  - c. Any wind turbine and/or accessory structure shall not be climbable up to 15 feet above ground level.
  - d. The LWES shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present.
  - e. Appropriate warning and safety signage shall be placed on any wind turbine, accessory structure and/or electrical equipment, and posted at all LWES entrances.
  - f. All structures shall be self-supporting. No guy wire supported structures shall be permitted with the exception of meteorological towers.
  - g. A sign shall be posted near the tower or operations and maintenance office building that will contain emergency contact information.

- h. Signage placed at the road access shall be used to warn visitors about the potential danger of falling ice.
  - i. Any wind turbine that is found to present an imminent physical threat of danger to life or significant threat of damage to property shall be immediately shut down and repaired or otherwise made safe and certified so by a New Hampshire licensed engineer prior to resumption of operation.
10. Rescue, Fire and Hazard Protection. The owner/operator shall assure that the LWES complies with the following fire control and prevention measures.
- a. Provision for fire fighting and rescue services, including programs and costs associated with any necessary equipment and/or training for local fire protection and rescue personnel.
  - b. Compliance with all laws applicable to the generation, storage, clean up, transportation and disposal of hazardous wastes generated during any phase of the project's life.
11. Environmental Impact. *(To assist applicants to minimize, eliminate, or mitigate potential adverse impacts, the U.S. Fish and Wildlife Service has developed Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines which can be found at <http://www.fws.gov/habitatconservation/wind.pdf>)*
- a. The applicant shall take appropriate measures to minimize, eliminate or mitigate adverse environmental impacts.
  - b. Development and operation of a LWES shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the New Ipswich Master Plan, The New Ipswich Natural Resource Inventory, The Souhegan Watershed management Plan and/or the studies and plans of the Regional Planning Commission.
  - c. Development and operation of a LWES shall not have an adverse impact on bird species.
    - 1) All above-ground lines, transformers, or conductors should comply with the Avian Power Line Interaction Committee (APLIC, <http://www.aplic.org/>) published standards to prevent avian mortality.
    - 2) The design and installation of the LWES shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey,

such as: electrical equipment boxes on or near the ground that can provide shelter and warmth; horizontal perching opportunities on the towers or related structures; and soil where weeds can accumulate.

12. Visual Impact.

- a. Where wind characteristics permit, wind towers shall be set back from the tops of visually prominent ridgelines to minimize the visual contrast from any public access.
- b. Towers shall be designed and located to minimize adverse visual impacts from neighboring residential areas, to the greatest extent feasible.
- c. No large wind energy system shall be installed at any location that would substantially detract from or block the view of a significant portion of a recognized scenic vista or scenic corridor, as viewed from any public road right-of-way or publicly-accessible parkland, frequently traveled hiking trail(s), or open space within the Town.

13. Additional Conditions. The Planning Board may grant a LWES Site Plan approval subject to any condition that it deems necessary to minimize any burden on any person affected by granting the approval. Such conditions or exemptions may include but are not limited to restrictions on the location of the LWES and requirements for the compensation of persons affected by granting approval.

D. WAIVERS TO REQUIREMENTS:

1. At the request of the applicant, the Planning Board may grant partial waivers of the sound, setback, shadow flicker, tower shadowing, and blade glint requirements of this Ordinance where it has determined that literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question and provided that such waiver will not be contrary to the public interest or to the purpose and intent of this Ordinance.
2. Any non-participating landowner may grant a permanent easement to the applicant/owner/operator for any impacts of the LWES on their property. The easement shall be recorded with the Registry of Deeds and shall advise all subsequent owners of the property that the standards permitted by this Ordinance may be exceeded on the property.
3. Nothing in this Ordinance shall be construed to restrict the rights of non-participating landowners.



E. MONITORING:

1. Upon reasonable notice, New Ipswich officials or their designated representatives may enter a lot on which a LWES has been approved for the purpose of monitoring noise, environmental impacts, and other impacts which may arise. Twenty-four hours advance notice shall be deemed reasonable notice.
2. Post-construction Well Testing:
  - a. All previously tested wells shall be tested again within (30) thirty days of LWES start-up. The same procedures shall be followed as those followed in the Pre-construction Notification and Testing procedures. (See Site Plan review Regulations, Section IV, E) The applicant/owner/operator is responsible for all costs associated with well testing and corrective action if necessary.
  - b. If any such well owners contact the applicant after construction commences and provide the applicant/owner/operator with evidence that the integrity of their well or water quality in their well has been damaged by the LWES construction, the applicant shall promptly investigate all such complaints. If such investigation demonstrates that the likely cause of such damage was the construction, then applicant/owner/operator shall correct the problem by implementing reasonable corrective measures.
  - c. The applicant/owner/operator's obligation to take corrective action or implement reasonable corrective measures shall be deemed satisfied if applicant provides the affected well owner with a reasonable emergency water supply immediately and commences measures to implement a permanent fix of the problem with the damaged well within (30) thirty days.
3. The owner/operator shall submit an annual power production report to the Planning Board. The power production report shall cover the proceeding calendar quarter, and shall be in the form prescribed the Planning Board and shall include actual power production in kilowatt-hours for each wind turbine.
4. The applicant/owner/operator shall submit a quarterly report to the New Ipswich Conservation Commission that identifies all dead birds and bats found within 500 feet of the LWES. In the event of an extraordinary avian mortality kill of threatened or endangered species, or discovery of an unexpected large number of dead birds of any variety on site, the New Hampshire Department of Environmental Services shall also be notified within 24 hours. The owner/operator shall, within 30 days of the occurrence, submit a report to the New Ipswich Conservation Commission describing the cause of the occurrence and the steps taken to avoid future occurrences.

5. Estimated total costs of decommissioning, prepared at the applicant's expense by an independent New Hampshire licensed engineer, shall be submitted to the Planning Board every fifth year of operation.
6. The applicant/owner/operator shall submit to the Planning Board a sound study prepared by a New Hampshire licensed engineer, qualified by training, education and experience to conduct such a study, certifying compliance with the sound regulations set forth herein within twelve months of the date when the project becomes fully operational and every twelve months thereafter, or at anytime upon receipt of a verified sound complaint. Noise levels in excess of the limits established in this ordinance shall be grounds for the Selectmen or their designee to order immediate shut down of all non-compliant wind turbines.

E. PUBLIC INQUIRIES AND COMPLAINTS:

The LWES owner/operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project. The Complaint Resolution Process submitted with the Site Plan Review application shall be used to resolve complaints. However, this process shall not preclude the local government from acting on a complaint.

F. DECOMMISSIONING:

1. The owner/ operator shall, at their expense, complete decommissioning (including site restoration) of the LWES, or individual wind turbine(s), within (12) twelve months after it is deemed unsafe, abandoned, or at the end of its useful life.
2. Site Restoration shall include:
  - a. Removal of wind turbines, buildings, cabling, electrical components, foundations and any other associated facilities to a depth of four feet below the ground surface.
  - b. Removal from the property of all items in outdoor storage.
  - c. Road repair, if any, to pre-decommissioning conditions.
  - d. Re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the LWES. The restoration shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features.
  - e. Implementation of the post-decommissioning storm water runoff plan.

G. FINANCIAL ASSURANCE:

1. As a condition precedent to Site Plan approval for a LWES, the applicant/owner must submit an acceptable form of financial assurance such as cash, performance bond, certificate of deposit, or irrevocable letter of credit. The amount of the financial assurance will be established by the Planning Board and be based on what it would cost for the repair of public infrastructure (per Section C, paragraph 7) and for the decommissioning and reclamation of the LWES in the event the applicant/owner/operator fails to do so.
2. The amount of financial assurance shall be reviewed periodically by the Planning Board to assure it equals outstanding decommissioning costs. Financial assurance may be adjusted, upwards or downwards, when required by the Planning Board. For instance, the Planning Board may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for decommissioning.
3. Such financial assurance shall be kept in full force and effect during the entire time a LWES facility exists or is in place. Such financial assurance shall be irrevocable and non-cancelable until such time as the Planning Board certifies that decommissioning and reclamation are complete and releases the obligation. If the owner fails to remove the LWES and reclaim the site, the Town of New Ipswich may remove or cause the removal of the LWES and the reclamation of the site. The Town may recover the cost of decommissioning and reclamation from any financial assurance provided by the owner. Any decommissioning and reclamation cost incurred by the Town that is not recovered from the owner will become a lien on the property where the removal or reclamation takes place and may be collected from the landowner in the same manner as property taxes.
4. If the applicant/owner/operator fails to complete decommissioning within the periods prescribed above, then the Town may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a participating landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town may take such action as necessary to implement the decommissioning plan.
5. The escrow agent shall release the decommissioning funds when the applicant/owner/operator has demonstrated and the Town concurs that decommissioning has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.
6. The entry into and submission of evidence of a participating landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town may take such action as necessary to implement the decommissioning plan.

- H. LAW: All references to the New Hampshire RSAs include the Statute in effect at the time of enactment of this Ordinance or as subsequently amended or revised.
- I. WARNING AND DISCLAIMER OF LIABILITY: This Ordinance shall not create a duty or liability on the part of or a cause of action against the Town of New Ipswich, its officers or employees thereof, for any damages that may result from administration of or reliance on this Ordinance.
- J. SEVERABILITY: The invalidity of any provision of this Article shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this Article.
- K. EFFECTIVE DATE: This Article shall take effect upon its passage, and as amended.

### **ARTICLE XIII-3: SMALL WIND ENERGY SYSTEMS (SWES)**

#### **A. PURPOSE:**

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

#### **B. DEFINITIONS: As used in this Ordinance, the following terms shall have the meanings indicated:**

METEOROLOGICAL TOWER (MET TOWER): Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

MODIFICATION: Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

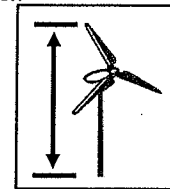
NET METERING: The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

POWER GRID: The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

SHADOW FLICKER: The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

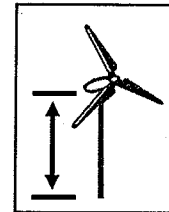
SMALL WIND ENERGY SYSTEM: A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

TOTAL HEIGHT: The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



TOWER: The monopole, guyed monopole or lattice structure that supports a wind generator

TOWER HEIGHT: The height above grade of the fixed portion of the tower, excluding the wind generator.



WIND GENERATOR: The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

C. PROCEDURE FOR REVIEW:

1. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. Application: Applications submitted to the building inspector shall contain a site plan with the following information:

- a. Property lines and physical dimensions of the applicant's property.
  - b. Location, dimensions, and types of existing major structures on the property.
  - c. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - d. Tower foundation blueprints or drawings.
  - e. Tower blueprints or drawings.
  - f. Setback requirements as outlined in this ordinance.
  - g. The right-of-way of any public road that is contiguous with the property.
  - h. Any overhead utility lines.
  - i. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - j. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - k. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - l. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - m. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - n. List of abutters to the applicant's property.
  - o. The Building Inspector may require the stamp of a professional engineer licensed to practice in the state of New Hampshire.
3. Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector, at the expense of the applicant, shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the

proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV. Any aggrieved person may appeal to the Zoning Board of Adjustment pursuant to RSA 676:5, as may be appropriate.

D. STANDARDS: The building inspector shall evaluate the application for compliance with the following standards:

1. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the total height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Building on Participating Landowner Property	Utility Lines	Property Lines of Abutting Property	Public and/or Private Roads
0.0	1.1	1.5	1.5

- a. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - b. Guy wires used to support the tower are exempt from the small wind energy system setback requirements but are subject to all other setback requirements of the New Ipswich Zoning Ordinance.
2. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
  3. Sound level: The small wind energy system shall not exceed 55 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
  4. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting property. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
  5. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for

manufacturer identification or appropriate warning signs.

6. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
7. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424 and subsequent revisions.
8. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - a. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - b. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - c. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
9. Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
10. Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.



11. Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
12. Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

E. ABANDONMENT :

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building

inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

F. VIOLATION:

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

G. PENALTIES:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed under NH law."

**ARTICLE XIV: BOARD OF ADJUSTMENT**

A. AUTHORITY AND ADOPTION OF RULES:

1. The Board of Selectmen shall appoint a Board of Adjustment consisting of five members and five alternates conforming in duties and authority to the provisions of chapters of the New Hampshire revised statutes annotated amended 673-676.
2. The Board of Adjustment shall adopt rules to govern its proceedings in accordance with the provisions of this ordinance, and the provisions of RSA Chapter 676 as amended, and shall provide for a public hearing to be held on all requests for special exceptions, variances, and appeals.

B. POWERS OF THE BOARD:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official, in the enforcement of this ordinance, or any other ordinance, adopted pursuant to this ordinance.
2. To hear and decide special exceptions to the terms of the ordinance upon which such Board of Adjustment is required to pass.
3. To authorize, upon appeal in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest.
4. In exercising the above-mentioned powers, the Board may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the

ZONING ORDINANCE - TOWN OF NEW IPSWICH, N.H.

ADOPTED BY BALLOT VOTE AT TOWN MEETING MARCH 10, 1987

AMENDED MARCH 17, 1990

AMENDED MARCH 16, 1991

AMENDED MARCH 14, 1995

AMENDED MARCH 10, 1998

AMENDED MARCH 9, 1999

AMENDED MARCH 12, 2002

AMENDED MARCH 9, 2004

AMENDED MARCH 8, 2005

AMENDED MARCH 14, 2006

AMENDED MARCH 13, 2007

AMENDED MARCH 10, 2009

AMENDED MARCH 9, 2010

AMENDED MARCH 13, 2012

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provision.”

## **ARTICLE XIII-2: LARGE WIND ENERGY SYSTEMS (LWES)**

A. **PURPOSE:** The purpose of this Article is to provide a regulatory framework for the construction and operation of Large Wind Energy Systems (LWES) in the Town of New Ipswich, subject to reasonable restrictions that will:

1. preserve and protect the public health, safety and welfare and the character of the Town;
2. allow renewable energy in a manner consistent with the vision and goals of the New Ipswich Master Plan;
3. minimize the visual Impact of a LWES;
4. protect individual residents and the Natural Environment from any adverse conditions caused by the LWES and from any potential injury or damage from hazards associated with failure of LWES components and/or Debris Hazards;
5. ensure the financial security necessary for the operation, decommissioning, and removal of these systems;
6. ensure the compatibility of any LWES with other land uses within the Town; and
7. protect property values.

B. **DEFINITIONS:** The following terms shall have the meanings indicated:

**ADVERSE NOISE IMPACTS** – Disturbances that interfere with: normal speech and communications both indoors and outdoors, talking, telephone conversations, reading, tasks requiring concentration, listening to music or television, and sleep.

**AMPLITUDE MODULATION** – Wind turbine noise (measured in 125-millisecond intervals at any location 3.5 to 25 meters outside a dwelling) is defined as exhibiting amplitude modulation (also referred to by AM or impulsive) when and if the A-weighted sound pressure level rises or falls by more than 3 dB within any 2-second period more than five times in any 1-minute period with an average sound level of 28 dBA or more, six or more times in any hour.

**APPLICANT/OWNER/OPERATOR** - The person, firm, corporation, company, or other entity who applies for approval under this Article, as well as the applicant’s successor(s), assign(s) and/or transferee(s) as to any approved LWES or testing facility. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct,

own, and operate the LWES or testing facility. The duties and obligations regarding approval for any approved LWES or testing facility shall be with the owner of the LWES or testing facility, and jointly and severally with the owner and operator or lessee of the LWES or testing facility.

APPLICATION - An application for a LWES under this Article.

AUTOMATIC OBSTRUCTION LIGHTING SYSTEM – A lighting system that provides continuous 360 degree surveillance of the airspace around a wind farm from the ground level to above aircraft flight altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.

A-WEIGHTED (dBA) – The unit of measure for the human response to noise using an electronic filter as specified by ANSI approximating the frequency response of the human ear from 20 Hz to 20 kHz.

BACKGROUND NOISE – The noise level represented without the wind turbines operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude noise level contributions from intermittent noises such as traffic and emergency vehicles, and from seasonal natural sounds such as tree frogs and crickets that are not present year-round.

BLADE GLINT - The intermittent reflection of the sun off the surface of the blades of a single or multiple wind turbines.

CNR (COMMUNITY NOISE RESPONSE) – United States Environmental Protection Agency methodology to predict the community noise reaction to a new sound source introduced into the environment.

C-WEIGHTED (dBC) – An electronic filter with a band-pass frequency response 20Hz to 20kHz.

DAYTIME – Hours from 7:00 AM to 7:00 PM.

DEBRIS HAZARD – Hazard owing to the possibility that the parts of a LWES, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

EXCESSIVE NOISE – Any noise that causes a nuisance or disturbance or degrades health or well-being.

FAA - The Federal Aviation Administration.

FREQUENCY – The number of occurrences of a repeating event per unit time; in cycles per

second, expressed in Hz (Hertz).

HEALTH – State of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.

HERTZ (Hz) – A unit of frequency equal to one cycle per second.

HUB HEIGHT - The distance to the center of the turbine hub as measured from ground level to the center of the Wind Turbine hub.

IMPACT(S) – Any effect on the environment, including sound and visual impacts such as changes in sound pressure, noise, and light in the environment.

IMPULSIVE SOUND – Single or multiple noise events lasting one second or less; measured with the un-weighted peak sound pressure level and “Impulse” (35msec) or “Fast” (125 msec) meter response.

INFRASOUND – Sound energy below 20 Hz.

LARGE WIND ENERGY SYSTEM (LWES)” - An electricity generating facility, with a generating capacity of over 100 kilowatts and less than 30 megawatts, consisting of one or more Wind Turbines, including any substations, Met Towers, cables/wires and other buildings accessory to such facility.

LDN – The day/night level is the 24 hour average of continuous “A-weighted” sound energy having a 10 decibel penalty added to the nighttime hours of 10 p.m. to 7 a.m.

Leq – The equivalent continuous sound level that has the same acoustic energy for a constant sound level as for a fluctuating or intermittent level in the same period of time.

LOAEL – The “Lowest Observed Adverse Effect Level”; 40 dBA, WHO 2009.

MET TOWER- A meteorological tower used for the measurement of wind speed.

NATURAL ENVIRONMENT – Includes navigable waters, waters of a contiguous zone, ocean waters, and any other surface water, groundwater, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States, including wildlife, ecosystems and habitat, historical, cultural, recreational and archeological resources.

NIGHTTIME – Hours from 7:00 PM to 7:00 AM.

NOEL – The “No Observed Effect Level”; 30 dBA, WHO 2009.

NOISE – Unwanted or any sound that is not part of the natural environment.

NOISE EMITTER – Any man-made piece of LWES equipment that is audible beyond the property line of a Participating Landowner.

NOISE LEVEL – Energy-equivalent sound pressure level (Leq) over a minimum of a ten-minute interval.

NON-PARTICIPATING LANDOWNER- All landowners, not including those on whose property all or a portion of a Large Wind Energy System is located pursuant to an agreement with the Applicant/Owner/Operator.

OCTAVE BAND – A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S1.11.

ONE-THIRD OCTAVE BAND – A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S1.11.

PARTICIPATING LANDOWNER- Any landowner on whose property all or a portion of a Large Wind Energy System is located pursuant to an agreement with the Applicant/Owner/Operator.

PROJECT BOUNDARY- A continuous line, which encompasses all Wind Turbines and related equipment to be used in association with a Large Wind Energy System.

PURE TONE – Sinusoidal sound energy for a single frequency or pitch.

SHADOW FLICKER- The effect when the blades of an operating wind turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

SODAR – A meteorological instrument used to measure the wind speed profile at various heights above the ground, and the atmospheric thermodynamic (lower layer) structure (Sonic Detection and Ranging).

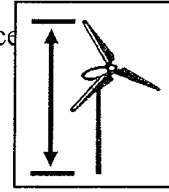
SOUND LEVEL – The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in ANSI specifications for sound level meters (ANSI S1.4-1971, or the latest revision).

SOUND POWER LEVEL –  $L_w$ . Ten times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB<sub>o</sub>). The reference sound power is 1 picowatt (pW).

SOUND PRESSURE LEVEL –  $L_p$ . Twenty times the logarithm to the base ten of the ratio of

a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

TOTAL HEIGHT- When referring to a Wind Turbine, the distance measured from ground level to the blade extended at its highest point.



TOWER SHADOWING- The outline created on the surrounding area by the sun shining on a Wind Turbine.

UN-WEIGHTED (dBL) – A sound pressure level obtained without a weighting filter.

USEFUL LIFE- The LWES or individual Wind Turbine(s) will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

VISUAL CLUTTER – The accumulation of diverse built elements on a site, especially elements that contrast with their surroundings in form, color, texture, or pattern.

WELFARE – A state of well-being.

WELL-BEING – A good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity.

WIND SHEAR – The difference in atmospheric wind speed and direction occurring over relatively small increases in altitude (wind gradient).

WIND TURBINE - A wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator, including the turbine, blade, tower, base and pad transformer, if any.

#### C. LARGE WIND ENERGY SYSTEM REQUIREMENTS:

The Applicant/Owner/Operator has the burden of proof to establish that the LWES complies with the following description of a “small New England rural town” as found in the Vision Chapter of the New Ipswich Master Plan, updated March, 2004.

- A country environment which is free from water, air, noise and light pollution;
- Traditional New England scenes characterized by farmlands and woodlands; hills and mountain ridges; rivers, ponds and streams; and traditional New England buildings;
- Shaded, curving roads, lined with mature trees and with low traffic volume, affording views of the natural beauty of the town;
- Active farming and forestry enterprises;
- Habitat that can sustain a wide variety of native animals, plants and aquatic species;

- Access to land providing opportunity for a wide variety of outdoor recreation;
- A development pattern showing variety in the density of housing and providing opportunities to live in densely settled villages (such as the town's three historic villages) or more sparsely settled areas;
- Historic buildings, fields, stone walls, and cellar holes serving as a reminder of the town's long history and traditions;
- A low density population creating a sense of safety and security, and providing opportunity for meaningful participation in community life.

In addition, the Planning Board, in determining compliance with the following requirements, will be guided by the applicable recommendations in the document "Proposed Wind Power Siting Guidelines – May 29, 2007" which was developed by the Wind Energy Facility Siting Guidelines Working Group and forwarded to the NH Energy Policy Committee Wind Siting Subcommittee.

1. Design, Manufacture, Construction, and Maintenance Standards.

- a. In order to minimize Visual Clutter, Wind Turbines shall use tubular towers of similar design, size, operation, and appearance throughout the project and shall be painted a non-reflective, non-obtrusive color.
- b. At LWES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend with the natural setting and the existing environment.
- c. Wind Turbines shall not be used for displaying any signs or advertising except for signs at ground level for reasonable identification of the manufacturer, owner or operator of the LWES, the utility procuring the power, emergency contact information, and appropriate warnings as required by national, state, and local laws. Such identification shall not be illuminated.
- d. Control wiring and power lines shall be wireless or below ground except where collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network. The Planning Board may permit above ground wiring if, in the opinion of the Planning Board, its Impact is less than the Impact of below ground wiring.
- e. The Applicant/Owner/Operator of an LWES shall not undertake any blasting without specific approval of such blasting during Site Plan Review. Terms and conditions for the blasting, including any necessary notifications, shall be specified during Site Plan Survey.
  - i. The Applicant/Owner/Operator shall prepare an inventory of all

structures, wells, bridges, and other seismically sensitive structures that could potentially be damaged by blasting.

- ii. Before each blasting event, the Applicant/Owner/Operator shall notify all Non-Participating Landowners and any owners of a seismically sensitive structure, identified according to sub-paragraph C.1.e.i., of the time and date of the event. The Applicant/Owner/Operator shall receive signature verification of such notice.
  - iii. Flyrock traveling in the air or along the ground is not permitted to cross into the property of Non-Participating Landowner(s).
  - iv. A blasting log for each blast will be kept on-site at the LWES office for not less than five (5) years, and copies of the required blasting log will be promptly submitted to the Planning Board upon completion of construction of the LWES.
  - v. Pre-blasting and post-blasting inspection and documentation may be required by the Planning Board.
- f. If at any time during construction, operation, or maintenance of the LWES, the Applicant/Owner/Operator wishes to modify the approved Site Plan, the Applicant/Owner/Operator shall submit to the Planning Board an Amended Site Plan for review and approval.
- g. Construction and maintenance activities shall be organized and timed to minimize Impacts on residents and wildlife from noise, disruption (including disruption of wildlife habitat), and the presence of vehicles and people. Construction and maintenance, unless there is an imminent threat to life or property, shall be performed only on weekdays between the hours of 7 AM and 6 PM. The Planning Board has the authority to waive this requirement if, in its opinion, there is good reason to do so.
- h. Any construction equipment or parts (used or unused) kept on site shall be stored indoors except during periods of construction, maintenance, and repair.
2. Height. Due consideration shall be given to the scale of the turbines in relation to the surrounding landscape.
3. Setbacks. Setbacks from the Project Boundary shall be sufficient to protect people, domestic and farm animals, public and private property, and utilities from Debris Hazard. The ice throw or ice shedding from the LWES shall not cross the Project Boundary. The Applicant/Owner/Operator has the burden of proof to demonstrate to the Planning Board that the setback is sufficient to meet these standards.



4. Communications Interference. All LWES shall be sited and operated so that it does not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The Applicant/Owner/Operator of the facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems; including relocation or removal of the facility, caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto. The Applicant/Owner/Operator of the LWES shall respond within five (5) business days to any request for a communications interference investigation by a property owner within the Project Boundary and a three-mile radius beyond the Project Boundary. Testing shall commence within ten (10) working days of the request. The Applicant/Owner/Operator is responsible for mitigating within ten (10) working days from determination of interference cause attributed to the operation of the LWES.
5. Noise Level Limits and Measurement. The intent of this section is to preserve the quiet rural environment of New Ipswich and to provide protection from Excessive Noise levels that cause adverse Impacts to public Health, Welfare, and Well-being. The existing Background Noise Levels in New Ipswich are less than 30 dBA. Annoyance due to Noise, as measured by community surveys, is the consequence of activity interference. Noise Level limits are based on the recommended guidelines found in the United States Environmental Protection Agency's document *Information On Levels Of Environmental Noise Requisite To Protect Public Health And Welfare With An Adequate Margin of Safety*, 550/9-74-004, March 1974 and include levels requisite to protect against activity interference. These Noise Level Limits are consistent with the World Health Organization (WHO) night noise guidelines for exposure to noise during sleep found in the following documents: *Night Noise Guidelines (NNLG) for Europe*, 2007 and ISBN 978 92 890 4173 7, 2009.
  - a. Noise Levels produced by the LWES shall not exceed 33 dBA (Leq 10 minute) anywhere at any time on a Non-Participating Landowner's property.
  - b. LWES Noise Levels shall not exceed a Community Noise Response (CNR) of "sporadic complaints" as shown on the following table based on the United States Environmental Protection Agency Document titled "Information On Levels Of Environmental Noise Requisite To Protect Public Health And Welfare With An Adequate Margin of Safety, 550/9-74-004, March 1974."

Community Noise Reaction (CNR)	Leq
Vigorous Action	50 – 58
Appeals to Stop the Noise	44 – 49
Widespread Complaints	34 – 43
Sporadic Complaints	30 – 33
No Reaction	24 – 29

Chart based on EPA Case Studies normalized to Leq in rural areas

[Leq (-6dB), quiet rural community (-10dB), no prior exposure to intruding noise (-5dB), pure tone or impulsive noise character (-5dB)]

- c. The Planning Board may impose greater noise constraints if it deems such constraints are necessary to protect the public health, safety, and welfare of the community.
- d. Any model used to predict Wind Turbine Noise shall use the following parameters:
  - i. Each Wind Turbine shall be considered as an individual and unique noise emitter;
  - ii. The prediction model shall use the Manufacturer's highest sound power levels;
  - iii. The prediction model shall use a wind shear (wind profile power law exponent, alpha) of no less than 0.50, where wind shear is defined as the difference in atmospheric wind speed and direction occurring over relatively small increases in altitude;
  - iv. No attenuation (zero) for ground cover since a Wind Turbine is an elevated noise emitter;
  - v. No attenuation (zero) for foliage since trees have no leaves from November to April;
  - vi. Add a plus 5 dB design margin to the predicted Noise Levels to account for variations in atmospheric propagation due to refraction (the bending of sound waves in the atmosphere due to changes in air temperature or wind gradient).
- 6. Shadow Flicker, Tower Shadowing and Blade Glint. The facility shall be designed such that Shadow Flicker, Tower Shadowing, or Blade Glint will not fall on or in any Non-Participating Landowner's property.

- a. Shadow Flicker, Tower Shadowing, or Blade Glint expected to fall on a roadway or a portion of a Non-Participating Landowner's property may be acceptable under the following circumstances:
    - 1) The Shadow Flicker, Tower Shadowing, or Blade Glint will not exceed twenty (20) hours per year.
    - 2) The Shadow Flicker, Tower Shadowing, or Blade Glint will fall more than 100 feet from an existing residence.
    - 3) The traffic volumes are less than 500 vehicles per day on the roadway.
    - 4) The Shadow Flicker or Blade Glint shall not fall onto an intersection.
  - b. Within twelve (12) months of the date when the project becomes fully operational, or at anytime upon receipt of a verified complaint of Shadow Flicker, Tower Shadowing, and/or Blade Glint, the Applicant/Owner/Operator shall submit to the Planning Board a Shadow Flicker, Tower Shadowing, or Blade Glint study as specified in the Submission Requirements of the New Ipswich Site Plan Regulations, certifying that Shadow Flicker, Tower Shadowing, or Blade Glint present no deleterious effects for any occupied structure located within a one-mile radius of any Wind Turbine. If Shadow Flicker, Tower Shadowing, and/or Blade Glint exceeds any of the conditions listed above, the source Wind Turbine(s) shall be shut down until the flicker or glint problem is remedied.
7. Public infrastructure. The Applicant/Owner/Operator shall avoid, mitigate and repair any and all adverse impacts to any public infrastructure (e.g., road or highway, drainage system, etc.) occasioned by or in any manner related to the installation, operation, maintenance, and repair or decommissioning of the LWES. This includes reimbursement to the Town or State for any repairs or reconstruction reasonably deemed necessary by the Town or State.
  8. Erosion and Storm Water Control. During the Useful Life of the LWES, the Applicant/Owner/Operator shall maintain any erosion and storm water control practices described in the Erosion and Storm Water Control Plans and Life Cycle and Decommissioning Plans submitted with the Application for Site Plan Review.
  9. Safety.
    - a. Each Wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. All turbines shall be equipped with redundant braking systems. This

includes both aerodynamic (including variable pitch) over speed controls, and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in the case of loss of load on the generator. Stall regulation should not be considered a sufficient braking system for over speed protection. A manual electrical and/or overspeed shutdown disconnect switch shall be provided and clearly labeled on/in the Wind Turbine structure.

- b. The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of not less than 75 feet.
- c. Any Wind Turbine and/or accessory structure shall not be climbable up to fifteen (15) feet above ground level.
- d. The LWES shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present.
- e. Appropriate warning and safety signage shall be placed on any Wind Turbine, accessory structure and/or electrical equipment, and posted at all LWES entrances.
- f. All structures shall be self-supporting. No guy wire supported structures shall be permitted with the exception of meteorological towers.
- g. A sign shall be posted near the tower or operations and maintenance office building that will contain emergency contact information.
- h. Signage placed at the road access shall be used to warn visitors about the potential danger of falling ice.
- i. Any Wind Turbine that is found to present an imminent physical threat of danger to life or significant threat of damage to property shall be immediately shut down and repaired or otherwise made safe and certified so by a New Hampshire licensed Professional Engineer prior to resumption of operation.

10. Rescue, Fire and Hazard Protection. The Applicant/Owner/Operator shall assure that the LWES complies with the following fire control and prevention measures.

- a. Provision for fire fighting and rescue services, including programs and costs associated with any necessary equipment and/or training for local fire protection and rescue personnel.
- b. Compliance with all laws applicable to the generation, storage, clean up, transportation and disposal of hazardous wastes generated during any phase

of the project's life.

11. Environmental Impact. The Applicant/Owner/Operator shall take appropriate measures to minimize, eliminate, or mitigate adverse Impacts on the Natural Environment during the entire life cycle of the LWES and shall comply with all Federal, State, and local laws regulating environmental Impacts. In making its determination under this section, the Planning Board shall consider the U.S. Fish and Wildlife Service "*Wind Turbine Guidelines Advisory Committee Recommendations*," dated March 4, 2010, or subsequent updates, the "Proposed Wind Power Siting Guidelines – May 29, 2007" (which was developed by the Wind Energy Facility Siting Guidelines Working Group and forwarded to the NH Energy Policy Committee Wind Siting Subcommittee), and any recommendations of the New Hampshire Fish and Game Department and the New Ipswich Conservation Commission.
  - a. Environmentally Sensitive Areas. The plan for the LWES shall reflect the natural capabilities of the site to support development. Environmentally sensitive areas, including but not limited to, wetlands, vernal pools, seeps or springs, steep slopes (greater than 15%), watersheds, floodplains, significant wildlife habitats, fisheries, habitat for rare or endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers will be maintained and preserved to the maximum extent. The Applicant/Owner/Operator shall demonstrate appropriate measures for protecting these resources during the entire life cycle of the project.
  - b. Wildlife. The Applicant/Owner/Operator shall demonstrate that the LWES will not have a significant adverse Impact on area wildlife and wildlife habitat. Such analysis shall include but not be limited to adverse Impacts on birds, bats, game animals, and habitat fragmentation. In addition, the Applicant/Owner/Operator must demonstrate that the LWES will have no undue adverse Impact on rare, threatened or endangered wildlife. The wildlife and habitat analysis must include pre-construction field studies conducted by a qualified wildlife biologist approved by the Planning Board and paid for by the Applicant/Owner/Operator.
  - c. Birds and Bats. Development and operation of a LWES shall not have an adverse Impact on bird or bat species.
    - i. All above-ground lines, transformers, or conductors should comply with the Avian Power Line Interaction Committee (APLIC, <http://www.aplic.org/>) published standards to prevent avian mortality.
    - ii. The design and installation of the LWES shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey,

such as: electrical equipment boxes on or near the ground that can provide shelter and warmth; horizontal perching opportunities on the towers or related structures; and soil where weeds can accumulate.

- iii. In order to minimize the detrimental Impacts on bat and bird populations, all Wind Turbines shall be configured and or controlled so that the blades will not turn when wind velocity at hub height is less than 10 mph. Additionally, there may be periods of time when the Wind Turbine operations must be curtailed to protect bats and migratory birds.
- d. Ground and Surface Water. The LWES will not adversely affect the quality or quantity of ground and surface waters. The Applicant/Owner/Operator shall have to demonstrate to the Planning Board's satisfaction that there are no unusual risks caused by the LWES. The Board may require that spill prevention and control measures be installed, and that all activities involving potentially permeable pollutants, including at delivery and transfer points, be conducted under cover and over an impervious surface surrounded by dikes. Whenever sedimentation is caused by stripping vegetation or grading, it shall be the responsibility of the Applicant/Owner/Operator to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any damage at the Applicant/Owner/Operator's expense as quickly as possible.

12. Visual Impact.

- a. A LWES shall be designed and located so as not to cause adverse visual Impacts, including Visual Clutter and Impacts caused by any lighting, and so as not to dominate views from neighboring residential areas, cultural resource areas, public recreational and scenic areas, trails used by the public, open space within the Town, or any public road right-of-way.
- b. Dominance is determined by how a LWES will be seen within its visual context and occurs when the project would cause a change in the balance or feel of the character of the surrounding area or create a very dominant focal point that detracts from other important natural or cultural focal points. (The Planning Board may use as a reference document *A Visual Impact Assessment Process for Wind Energy Projects*, Vissering, Sinclair, and Margolis, May 2011.) Some of the factors to be considered in evaluating the degree of dominance are:
  - i. appearance of proximity;
  - ii. duration of view;

- iii. expectation for natural or intact landscape setting;
  - iv. uniqueness of a scenic resource;
  - v. whether the view is directly ahead over extended distances; and
  - vi. whether large numbers of turbines are visible in many views.
- c. All available mitigation techniques to reduce the visual Impacts of the LWES shall be considered, including methods prescribed by the American Landscape Institute.
  - d. The use of Automatic Obstruction Lighting Systems, such as those manufactured by DeTect and OCAS, is mandatory for Wind Turbines with FAA lighting.
  - e. Area and security lighting shall be full cut-off and shall not exceed 175 watts each and 25 feet in height and shall be shielded from Non-Participating Landowner's property.
13. Additional Conditions. The Planning Board may grant a LWES Site Plan approval subject to any condition that it deems necessary to minimize any burden on any person affected by granting the approval. Such conditions or exemptions may include but are not limited to restrictions on the location of the LWES and requirements for the compensation of persons affected by granting approval.

D. EASEMENTS AND LEASES:

- 1. Any Non-Participating Landowner may grant an easement to the Applicant/Owner/Operator for any Impacts of the LWES on their property and shall advise all subsequent owners of the property that the standards permitted by this Article may be exceeded on the property. The terms of the easement must be consistent with the current application for a LWES. Easement periods shall be limited to 30 years.
- 2. The full terms of any leases or easements shall be recorded with the Registry of Deeds.
- 3. The option period for any land agreement shall be limited to five (5) years.
- 4. Wind rights shall not be sold or leased in perpetuity separately from the land.

- E. MONITORING: Upon reasonable notice, New Ipswich officials or their designated representatives may enter a lot on which a LWES has been approved for the purpose of monitoring noise, Impacts on the Natural Environment, and other Impacts which may arise. In such a case, the Board will provide the Applicant/Owner/Operator with a 24 hour telephone notice, followed by e-mail notification for the record.

1. Post-construction Water Quality Study:

- a. Within six (6) months of the first Wind Turbine becoming operational, and every twelve (12) months thereafter for a period of three (3) years, a water quality study of all wells, springs, and water resources specifically identified during the Site Plan Review shall be designed and carried out by a water quality professional approved by the Planning Board. The same procedures shall be followed as those followed in the pre-construction notification and testing procedures specified in the Site Plan Review Regulations.
- b. Upon receipt of a substantiated complaint that the integrity or water quality of any well has been damaged by the LWES construction, the Planning Board may require prompt investigation of the complaint by a water quality professional approved by the Board.
- c. If degradation or contamination of any well, spring, or water resource is found to have occurred, the Applicant/Owner/Operator shall be considered in violation of this Article and subject to the provisions of the Enforcement Section of this Article.
- d. The Applicant/Owner/Operator is responsible for all costs associated with water quality testing and corrective action if necessary.

2. Annual Power Production Report: The Applicant/Owner/Operator shall submit an annual power production report to the Planning Board. The power production report shall cover the preceding twelve (12) months, and shall be in the form prescribed by the Planning Board and shall include actual power production in kilowatt-hours for each Wind Turbine.

3. Environmental Impact Studies:

- a. The Applicant/Owner/Operator shall submit to the Planning Board at least three (3) sets of post construction field studies conducted at periodic intervals within three (3) years after the LWES becomes fully operational, the first being within six (6) to twelve (12) months of the first Wind Turbine becoming operational. The studies shall be conducted by a qualified wildlife biologist approved by the Planning Board and paid for by the Applicant/Owner/Operator and shall correspond to the pre-construction studies.
- b. If the post-construction field studies demonstrate substantive harm to the Natural Environment, the Applicant/Owner/Operator shall develop an appropriate mitigation plan acceptable to the Planning Board. The



Applicant/Owner/Operator shall be responsible for the full cost of implementing the mitigation plan.

- c. In addition, the Applicant/Owner/Operator shall submit a quarterly report to the Planning Board identifying all dead birds and bats found within 500 feet of the LWES. Reporting shall continue for at least three (3) year after the first Wind Turbine becomes operational, or longer if required by the Planning Board. In the event of an extraordinary avian or bat mortality kill of threatened or endangered species, or discovery of an unexpected large number of dead birds or bats of any variety on site, the Applicant/Owner/Operator shall notify the Planning Board and the New Hampshire Department of Fish and Game within 24 hours. Within 30 days of the occurrence, the Applicant/Owner/Operator shall submit a report to the Planning Board describing the cause of the occurrence and the steps taken to avoid future occurrences.
4. Decommissioning Costs. Estimated total costs of decommissioning, prepared at the Applicant/Owner/Operator's expense by an independent New Hampshire licensed Professional Engineer approved by the Planning Board shall be submitted to the Planning Board every fifth year of operation.
5. Noise Compliance Report. Within four (4) months of the first Wind Turbine becoming operational and again within two (2) months after all Wind Turbines have become operational and at anytime the Planning Board deems it necessary due to the number of complaints received, the Applicant/Owner/Operator shall submit to the Planning Board a noise compliance report certifying compliance with the noise regulations set forth herein. The report shall be prepared by a professional acoustical engineer, approved by the Planning Board, who is a Full Member of the Institute of Noise Control Engineering (INCE), or who possesses some comparable qualification. The report shall comply with the following:
  - a. Except as specifically noted otherwise, sound measurements shall be conducted in compliance with the latest version of the American National Standards Institute (ANSI) Standard S12.18-1994 "Outdoor Measurements of Sound Pressure."
  - b. Sound level meters and calibration equipment shall comply with the latest version of ANSI Standard S1.4 "Specifications for General Purpose Sound Level Meters," and shall have current calibration traceable to the National Institute of Standards and Testing (NIST).
  - c. Noise measurements shall be taken at locations and times when the Wind Turbine is clearly audible and dominating the acoustical environment. All unattended measurements shall consider the Wind Turbine as dominating the

acoustical environment.

- d. Noise measurements shall be taken with the turbines on and off to determine any Background Noise to be accounted for. The Applicant/Owner/Operator shall cooperate by shutting turbines off and turning them on during acoustic testing at times required by the acoustic monitoring personnel.
- e. The acoustic monitoring personnel shall determine if extraneous sounds such as insects, frogs, or other sounds are contributing to the measured Leq noise level and remove their contributions either by relocating the measurement microphone to a spot not affected by such sounds or conducting testing at dates and times when such sounds are not present. The acoustic monitoring personnel may correct the Leq noise level using full or 1/3 octave band analysis to subtract Turbine Off levels from Turbine On levels, and by removing data in 1/3 octave bands from the Leq computation that are contaminated by extraneous sounds.
- f. The wind velocity at the sound measurement microphone shall not exceed 2 m/s (4.5 mph) during measurements of Background Noise, and the maximum wind speed at the microphone for noise measurements during turbine operation should not exceed 4 m/s (9 mph).
- g. During Wind Turbine testing the atmospheric profile shall be Pasquill Stability Class E or F preferred, Class D as alternate. Wind Turbine acoustic testing shall be conducted with wind speeds at Hub Height at 8 m/s or greater.
- h. The Wind Turbine shall be fully engaged blades-to-generator and running the standard power output program and producing the maximum power output for the incoming wind speed at Hub Height. Feathering or other blade angle manipulations that are not part of the normal Wind Turbine program to obtain maximum power output shall be prohibited during acoustic testing unless the Wind Turbine must be feathered due to a high wind condition for safety purposes, in which case the testing shall be rescheduled.
- i. Wind Turbine power output and wind speed data at Hub Height at 10-minute or shorter intervals shall be provided to the acoustic monitoring personnel by the Applicant/Owner/Operator for the entire sound measurement period.

F. PUBLIC INQUIRIES AND COMPLAINTS:

The LWES Applicant/Owner/Operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project, including the decommissioning phase. The Complaint Resolution Process submitted with the Site Plan Review application shall be used to resolve complaints.

However, this process shall not preclude the local government from acting on a complaint and local provisions for complaint resolution shall prevail and supersede all Applicant/Owner/Operator complaint resolution processes.

- a. Any individual, group of individuals or reasonably identifiable entity may file a signed and dated written complaint with the Applicant/Owner/Operator of the LWES. If any complaints are received by phone, the Applicant/Owner/Operator shall inform the complainant that complaints must be submitted in writing. Any complaints received directly by the Board of Selectmen or the Planning Board shall be referred to the Applicant/Owner/Operator.
- b. The Applicant/Owner/Operator of the LWES shall report to the Planning Board all complaints received concerning any aspect of the LWES construction, operation, or decommissioning as follows:
  - i. Complaints received by the Applicant/Owner/Operator shall be reported to the Planning Board or its designee within five (5) business days, except that complaints regarding unsafe or serious violations of this Article as defined in Section H of this Article shall be reported to the Planning Board or its designee the following business day.
  - ii. The Applicant/Owner/Operator shall document each complaint by maintaining a record including at least the following information:
    - Name of the LWES and the Applicant/Owner/Operator
    - Name of complainant, address, phone number
    - A copy of the written complaint
    - Specific property description (if applicable) affected by complaint
    - Nature of complaint (including weather conditions if germane)
    - Name of person receiving complaint, date received
    - Date reported to the Planning Board or its designee
    - Initial response, final resolution, and date of resolution
- c. The Applicant/Owner/Operator shall maintain a chronological log of complaints received, summarizing the above information. A copy of this log, and a summary of the log by type of complaint, shall be sent on or before January 15, March 15, July 15, and October 15 to the Planning Board, covering the previous calendar quarter. An annual summary shall accompany the January 15 submission.
- d. The Planning Board shall forward copies of any health related complaints to the State Board of Health.
- e. All complaints regarding unsafe and serious violations as defined in Section H of this Article shall be investigated on site. The complainant and a Planning Board designee shall be invited to the investigatory meeting(s).

- f. The Planning Board may designate a person to seek a complaint resolution that is acceptable to the complainant, the Planning Board and the Applicant/Owner/Operator. If such a resolution cannot be obtained, the Board of Selectmen may take action as authorized by the enforcement section of this Article.
- g. The Board of Selectmen may at any time determine that a complaint shall be subject to enforcement and penalties as defined in Section H of this article.

G. ADMINISTRATION AND ASSOCIATED COSTS:

- 1. This Article shall be administered by the Planning Board. Violations found by the Planning Board upon examination of required reports, or from other sources, shall be forwarded to the Board of Selectmen for enforcement action. This does not foreclose any legitimate legal action by the Planning Board.
- 2. As a condition of approval, the Applicant/Owner/Operator shall deposit into an escrow account the amount of \$25,000.
  - a. The purpose of this joint escrow account is:
    - i. To reimburse the Town of New Ipswich for the costs incurred to hire consultants and experts as the Town, at its sole discretion, deems desirable to examine, evaluate, and verify the data and statements presented by the Applicant/Owner/Operator.
    - ii. For the life of each Wind Turbine, to cover the administrative and legal costs incurred by the Town of New Ipswich in monitoring and enforcing the Applicant/Owner/Operator's ongoing compliance with this Article.
  - b. The escrow account shall be managed as follows:
    - i. Funds may be withdrawn from this account only by the Board of Selectmen.
    - ii. If at any time the balance of this account shall fall below \$15,000, the Applicant/Owner/Operator shall deposit an amount sufficient to bring the account to a minimum value of \$25,000.
    - iii. If at any time the balance of this fund shall fall below \$15,000 for a continuous period of thirty (30) days, the application shall be considered to have been withdrawn, or the Site Plan approval for the LWES may be revoked.

- iv. The Board of Selectmen or its designee shall be charged with monitoring the escrow account and giving quarterly reports to the Planning Board.
- v. After the wind energy system has been removed and site restoration has been completed, as defined in this Article, any balance remaining in this account shall be returned to the Applicant/Owner/Operator.

H. ENFORCEMENT AND PENALTIES:

1. The enforcement of this Article shall be the responsibility of the New Ipswich Board of Selectmen or its agent who is hereby authorized to cause any LWES, building, place, premises or activities to be inspected, and to order in writing the remedying of any condition found to exist in violation of this Article.
2. The Board of Selectmen, Planning Board, or any official having jurisdiction, in addition to other remedies, may institute an action or proceeding to prevent the unlawful erection, alteration, reconstruction, maintenance or use of any LWES, building, place, premises or land and require the Applicant/Owner/Operator to correct or abate any unlawful act or to prevent the illegal occupation of any LWES, buildings, places, premises, or land and to prevent any illegal act in or about such premises.
3. An Applicant/Owner/Operator not responding to the following conditions in the manner specified shall be considered to be in violation of this Article.
  - a. Unsafe. If a Wind Turbine or the LWES presents an imminent physical threat of danger to life or significant threat to property, as determined by the Planning Board, the Board of Selectmen, or one of their designated agents, it shall be deemed unsafe and immediately shut down and repaired or otherwise made safe and certified so by a New Hampshire licensed Professional Engineer approved by the Planning Board prior to resumption of operation. Members of the Board of Selectmen, or its designee, shall have the right to access the LWES to verify conditions and/or repair progress.
  - b. Serious Violations. The Applicant/Owner/Operator of the LWES is responsible for mitigating any serious violations of standards within ten (10) business days upon receipt of written notification of determination of any cause attributed to the operation of the LWES. A serious violation is defined as any of the following:
    - i. Any measured Noise Level (Leq 10 minute) which exceeds 35 dBA where the Wind Turbine(s) is the dominant and controlling source.

- ii. The occurrence of Shadow Flicker, Tower Shadowing, or Blade Glint exceeding the standards specified in Section C.6 of this Article.
    - iii. Degradation or contamination exceeding US Environmental Protection Agency standards of any surface or subsurface water resource. (In the case of degradation or contamination of a well, the obligation for mitigation shall be deemed satisfied if the Applicant/Owner/Applicant provides the affected well owner with a reasonable emergency water supply and within (30) thirty days commences implementation of corrective measures to the satisfaction of the well owner and subject to the approval of the Planning Board.
    - iv. Any hazardous substance spill.
    - v. Communication/electromagnetic interference (other than emergency communication).
  - c. Emergency Communication. Interference with emergency communications must be mitigated with 24 hours.
  - d. Other Violations. If the Board of Selectmen determines that a violation of this Article has occurred, and the violation is determined neither to be unsafe, nor a serious violation, nor interferes with emergency communications, the Board of Selectmen shall provide written notice to the Applicant/Owner/Operator, and the Applicant/Owner/Operator is responsible for mitigating the problem within thirty (30) days. Mitigation involving significant construction or physical modification may have up to ninety (90) days to be completed pursuant to Section XIII-2. C.
4. An Applicant/Owner/Operator failing to comply with any provision of this Article by failing to resolve a violation before the expiration of the mitigation periods defined in Subsection 3 of this Section may be subject to:
- a. Revocation of Site Plan Approval, and shut down and removal of any Wind Turbine(s);
  - b. Fines pursuant to RSA 676:17;
  - c. Any other remedies the Board of Selectmen deems necessary to assure the safe operation of the LWES and protection of residents;
  - d. Reimbursement to the Town of New Ipswich, for expenses incurred in obtaining relief, including but not limited to, reasonable attorney fees.

I. DECOMMISSIONING:

1. The Applicant/Owner/Operator shall, at their expense, complete decommissioning (including site restoration) of the LWES, or individual Wind Turbine(s) within twelve (12) months after it is deemed unsafe, abandoned, or at the end of its useful life.
2. Site Restoration shall include:
  - a. Removal of Wind Turbines, buildings, cabling, electrical components, foundations and any other associated facilities to a depth of four (4) feet below the ground surface.
  - b. Removal from the property of all items in outdoor storage.
  - c. Road repair, if any, to pre-decommissioning conditions.
  - d. Re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the LWES. The restoration shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features.
  - e. Implementation of the post-decommissioning storm water runoff plan.

J. FINANCIAL ASSURANCE:

1. As a condition precedent to Site Plan Approval for a LWES, the Applicant/Owner/Operator must submit an acceptable form of financial assurance such as cash, performance bond, certificate of deposit, or irrevocable letter of credit. The amount of the financial assurance will be established by the Planning Board and be based on what it would cost for the repair of public infrastructure (per Section C, paragraph 7) and for the decommissioning of the LWES and reclamation of the site in the event the Applicant/Owner/Operator fails to do so.
2. The amount of financial assurance shall be reviewed periodically by the Planning Board to assure it equals outstanding decommissioning costs. Financial assurance may be adjusted, upwards or downwards, when required by the Planning Board. For instance, the Planning Board may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for decommissioning.
3. Such financial assurance shall be kept in full force and effect during the entire time a LWES facility exists or is in place. Such financial assurance shall be irrevocable and non-cancelable until such time as the Planning Board certifies that decommissioning

and reclamation are complete and releases the obligation. If the owner fails to remove the LWES and reclaim the site, the Town of New Ipswich may remove or cause the removal of the LWES and the reclamation of the site. The Town may recover the cost of decommissioning and reclamation from any financial assurance provided by the owner. Any decommissioning and reclamation cost incurred by the Town that is not recovered from the owner will become a lien on the property where the removal or reclamation takes place and may be collected from the landowner in the same manner as property taxes.

4. If the Applicant/Owner/Operator fails to complete decommissioning within the periods prescribed above, then the Town may take such measure as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town may take such action as necessary to implement the decommissioning plan as specified in the New Ipswich Site Plan Review Regulations.
  5. The escrow agent shall release the decommissioning funds when the Applicant/Owner/Operator has demonstrated and the Town concurs that decommissioning has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.
  6. The entry into and submission of evidence of a Participating Landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town may take such action as necessary to implement the decommissioning plan.
- K. LAW: All references to the New Hampshire RSAs include the Statute in effect at the time of enactment of this Article or as subsequently amended or revised.
- I. WARNING AND DISCLAIMER OF LIABILITY: This Article shall not create a duty or liability on the part of or a cause of action against the Town of New Ipswich, its officers or employees thereof, for any damages that may result from administration of or reliance on this Article.
- J. SEVERABILITY: The invalidity of any provision of this Article shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this Article.
- K. EFFECTIVE DATE: This Article shall take effect upon its passage, and as amended.



### ARTICLE XIII-3: SMALL WIND ENERGY SYSTEMS (SWES)

#### A. PURPOSE:

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

#### B. DEFINITIONS: As used in this Ordinance, the following terms shall have the meanings indicated:

METEOROLOGICAL TOWER (MET TOWER): Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

MODIFICATION: Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

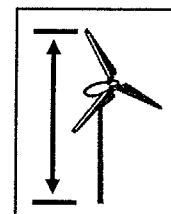
NET METERING: The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

POWER GRID: The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

SHADOW FLICKER: The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

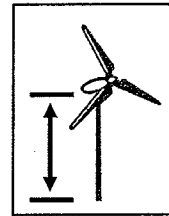
SMALL WIND ENERGY SYSTEM: A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

TOTAL HEIGHT: The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



TOWER: The monopole, guyed monopole or lattice structure that supports a wind generator

TOWER HEIGHT: The height above grade of the fixed portion of the tower, excluding the wind generator.



WIND GENERATOR: The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

C. PROCEDURE FOR REVIEW:

1. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. Application: Applications submitted to the building inspector shall contain a site plan with the following information:
  - a. Property lines and physical dimensions of the applicant's property.
  - b. Location, dimensions, and types of existing major structures on the property.
  - c. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - d. Tower foundation blueprints or drawings.
  - e. Tower blueprints or drawings.
  - f. Setback requirements as outlined in this ordinance.
  - g. The right-of-way of any public road that is contiguous with the property.
  - h. Any overhead utility lines.
  - i. Small wind energy system specifications, including manufacturer, model,

rotor diameter, tower height, tower type, nameplate generation capacity.

- j. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - k. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - l. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - m. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - n. List of abutters to the applicant's property.
  - o. The Building Inspector may require the stamp of a professional engineer licensed to practice in the state of New Hampshire.
3. Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector, at the expense of the applicant, shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV. Any aggrieved person may appeal to the Zoning Board of Adjustment pursuant to RSA 676:5, as may be appropriate.

D. **STANDARDS:** The building inspector shall evaluate the application for compliance with the following standards:

1. **Setbacks:** The setback shall be calculated by multiplying the minimum setback requirement number by the total height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Building on Participating Landowner Property	Utility Lines	Property Lines Of Abutting Property	Public and/or Private Roads
0.0	1.1	1.5	1.5

- a. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - b. Guy wires used to support the tower are exempt from the small wind energy system setback requirements but are subject to all other setback requirements of the New Ipswich Zoning Ordinance.
2. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
3. Sound Level: The small wind energy system shall not exceed 55 decibels using the scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
4. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting property. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
5. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
6. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
7. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424 and subsequent revisions.
8. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - a. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include,

but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.

- b. The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - c. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- 9. Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
  - 10. Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
  - 11. Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
  - 12. Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

E. ABANDONMENT:

- 1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- 2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and

at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:

- a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
  4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

F. VIOLATION:

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

G. PENALTIES:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed under NH law.

# **TOWN OF TEMPLE, N.H.**

## **Zoning Ordinance**

**(As amended through March 31, 2012)**

TOWN OF TEMPLE, NH - ZONING ORDINANCE  
(As amended through March 31, 2012)

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- (f) Scenic views from public roads and prominent ridgelines are conserved as much as possible; and
- (g) Creative and successful achievement of the Objectives listed in Section A.

**SECTION 25: (2009) SMALL WIND ENERGY SYSTEMS ORDINANCE (SWES)**

**A. Purpose:**

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

**B. Definitions:**

**Meteorological tower (met tower).** Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

**Modification.** Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

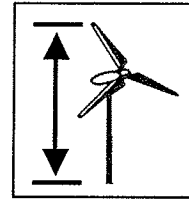
**Net metering.** The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

**Power grid.** The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

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**Shadow flicker.** The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

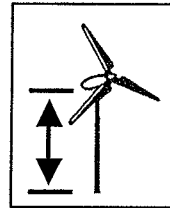
**Small wind energy system.** A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.



**System height.** The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

**Tower.** The monopole, guyed monopole or lattice structure that supports a wind generator.

**Tower height.** The height above grade of the fixed portion of the tower, excluding the wind generator.



**Wind generator.** The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

**C. Procedure for Review:**

1. **Building Permit:** Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. **Application:** Applications submitted to the building inspector shall contain a site plan with the following information:
  - i) Property lines and physical dimensions of the applicant's property.
  - ii) Location, dimensions, and types of existing major structures on the property.
  - iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - iv) Tower foundation blueprints or drawings.
  - v) Tower blueprints or drawings.
  - vi) Setback requirements as outlined in this ordinance.
  - vii) The right-of-way of any public road that is contiguous with the property.
  - viii) Any overhead utility lines.
  - ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - x) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.

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- xii) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - xiii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - xiv) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - xv) List of abutters to the applicant's property.
3. Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

**D. Standards:**

1. The building inspector shall evaluate the application for compliance with the following standards;
- a. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.
  - b.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
- b. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 125 feet.
- c. Sound Level: The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.

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- d. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- e. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
- f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
- j) Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
- k) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the

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ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

- I) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

**E. Abandonment:**

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

**F. Violation:**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

**G. Penalties:**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

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**Section 26 (2010) Workforce Housing**

**I. Purpose.** The purposes of this Section are as follows:

- A. To encourage and provide for the development of affordable workforce housing;
- B. To ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households;
- C. To meet the goals related to affordable housing provisions set forth in the town's Master Plan; and
- D. To comply with the requirements of SB 342, An Act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing (RSA 674:58-61). In the course of implementing this Article, the Town of Temple has considered the region's affordable housing needs.

**II. Authority.** This innovative land use control Article is adopted under the authority of RSA 674:21, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e, effective July 2009, which states:

"All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers."

**III. Applicability**

- A. **Zoning District.** Development in accordance with the provisions of this Article is permitted as a conditional use in the Rural Residential and Agricultural District.
- B. **PRD Requirement:** Projects including workforce housing shall be limited to Planned Residential Developments, and follow the procedures of Article IV Section 19, this Section and the Town of Temple Subdivision Regulations.
- C. **Permitted Uses:** Single family, duplex, and multi-family housing, or a mix of housing types within the same development are permitted within an application under this Article.

**IV. Procedural Requirements / Applicant**

- A. **Notice of Intent to Build Workforce Housing.** Any person who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this subdivision shall file a written statement of such intent as part of the application.
- B. **Waiver.** Failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61 (the builder's remedy), but shall not preclude an appeal under other applicable laws.
- C. **Statement Required.** In any appeal where the applicant has failed to file the statement required by this section, the applicant shall not be entitled to a judgment by a court on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

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**V. Procedural Requirements/ Planning Board**

- A. **Notice of conditions.** If the Planning Board approves an application to develop workforce housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The Board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4 I (i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.
- B. **Submission of evidence to establish cost of complying with conditions.** Upon receiving notice of conditions and restrictions as described above, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the Board, which shall not be less than 30 days. Upon receipt of such evidence, the Board shall allow the applicant to review the evidence at the Board's next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the Board may also receive and consider evidence from other sources. The Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.
- C. **Final decision.** The Board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the Board, in which case it may issue its final decision any time after the expiration of the period. If an applicant notifies the Board in writing at any time that the applicant accepts the conditions and restrictions of approval, the Board may issue its final decision without further action under this paragraph.
- D. **Appeals.** Any person who has filed the written notice and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the Superior Court under RSA 674:61 or RSA 676:5 III seeking permission to develop the proposed workforce housing.

**VI. Definitions**

- A. **Affordable:** Affordable means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.
- B. **Multi-family housing:** Multi-family housing for the purpose of workforce housing, means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.
- C. **Reasonable and realistic opportunities for the development of workforce housing:** opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e.
- D. **Workforce housing/owner occupied:** housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development.

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- E. **Workforce housing/renter occupied:** rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this section.
- F. **Area Median Income (AMI):** the median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which the community belongs, as is established and updated annually by the United States Department of Housing and Urban Development. Income considers both wage income and assets.
- G. **Market Rate Housing:** any units within a development, whether the unit is to be owner or renter occupied, that is intended to be available for sale or occupancy at the prevailing market value for the area similar to comparable real estate transactions.

**VII. Density Bonus**

- A. **Formula.** A Planned Residential Development plan that will guarantee a designated percentage of units no lower than 20 percent, reserved as workforce housing, will be granted one additional dwelling unit for every two workforce housing units built up to a maximum total of 3325% more total units than would be allowed for a development with less than 20% designated workforce housing units.
- B. **Yield Plan.** The applicant shall submit a yield plan with sufficient detail including soil types and slope as well as any natural resource constraints zoning such as wetland/lot size or percentage restrictions to determine the achievable density on the parcel that would meet the standards of the underlying zoning district.

**VIII. General Requirements of Workforce Housing Units**

- A. **Architectural compatibility of all units.** The dwellings qualifying as workforce housing shall be compatible in architectural style and exterior quality of materials and appearance with the market rate dwellings of similar type, (i.e., affordable and market rate multifamily units, affordable and market rate single family homes) in the proposed development. The workforce housing units should be interspersed throughout the overall development and not concentrated in a separate area of the development. Workforce housing units shall be mixed with, and not clustered together or segregated in any way from market rate units.
- B. **Phasing.** The phasing plan for the development shall provide for the development of workforce housing units concurrently with the market-rate units.
- C. **MultiFamily Housing,** up to six units per structure, is allowed only as part of a workforce housing development. The ratio of workforce housing units to market rate housing units within each structure must match as closely as possible the ratio of the whole proposed project.

**IX. Affordability**

- A. **Certification of Income Levels.** To ensure that only eligible households purchase/rent the designated affordable housing units, the purchaser/renter of a workforce housing unit must submit copies of their last three years federal income tax returns and written certification, verifying that their annual income level, combined with household assets, does not exceed the maximum level as

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established by this ordinance. The tax returns and written certification of income and assets must be submitted to the developer of the housing units, or the developer's agent, prior to the transfer of title. A copy of the tax return and written certification of income and assets must be submitted to the Monitoring Authority within 30 days following the transfer of title.

- B. Assurance of continued affordability.** Workforce housing units offered for sale shall require a lien, granted to the Town of Temple be placed on each workforce housing unit. The value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The municipality's lien is inflated over time at a rate equal to the Consumer Price Index (CPI). Future maximum resale values shall be calculated as the fair market value minus the CPI adjusted lien value. Subsequent sales are not limited based on income targets, but the combination of maintenance of the municipality's lien and adherence to this Article's definition of affordable housing for a period of 30 years.
- C. Rent Increases.** Workforce housing rental units shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions.
- D. Documentation of restrictions.** Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Article must be documented on all plans filed with the town's Planning Board and with the Registry of Deeds.

**X. Administration, Compliance, and Monitoring**

- A. Administration.** This Article shall be administered by the Planning Board.
- B. Certificate of Occupancy.** No certificate of occupancy shall be issued for a workforce housing unit without written confirmation of the income eligibility of the tenant or buyer of the workforce housing unit and confirmation of the rent or price of the workforce housing unit as documented by an executed lease or purchase and sale agreement.
- C. Monitoring Authority:** Ongoing responsibility for monitoring the compliance with resale and rental restrictions on workforce housing units shall be the responsibility of the Temple Planning Board, until such time as the Town of Temple establishes a Municipal Housing Authority.
- D. Annual report.** The owner of a project containing workforce housing units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of workforce housing units have been maintained in accordance with this Article. Such reports shall be submitted to the Monitoring Authority on or before February 15<sup>th</sup> and shall list the contract rent and occupant household incomes of all workforce housing units for the previous calendar year.

**SECTION 27: (2012) LARGE WIND ENERGY SYSTEMS (LWES)**

- A. PURPOSE:** The purpose of this Ordinance is to provide for the development and use of wind power as an alternative energy source, benefiting both the economy and the environment, while protecting public health, safety, property values, wildlife, and general welfare; preserving environmental, historic and scenic resources; controlling Sound Pressure Levels; and preventing electromagnetic interference. This ordinance provides a permitting process to ensure compliance with requirements and standards

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established therein.

This Ordinance is adopted pursuant to the enabling provisions of NH RSA 674:1,V, NH RSA 674:16, NH RSA 674:17(j), and NH RSA 162-H. In addition, pursuant to the provisions of NH RSA 674:21, the Temple Board of Selectmen is hereby granted the authority to issue permits for the construction or operation of Large Wind Energy Systems, including Meteorological Towers, in the Town of Temple, subject to these provisions.

If there is a conflict between provisions in this Ordinance, or between its provisions and those in any other ordinance or regulation, this Ordinance shall apply. Should any section or provision of this Ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of the Ordinance.

B. DEFINITIONS: The following terms shall have the meanings indicated:

“Adverse Noise Impacts” - Disturbances that interfere with: customary speech and communications both indoors and outdoors, telephone conversations, reading, tasks requiring concentration, listening to music or television, and sleep.

“Applicant” - The person, firm, corporation, company, or other entity who applies for approval under this Section, as well as the Applicant’s successor(s), assign(s) and/or transferee(s) as to any approved LWES or testing facility. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the LWES or testing facility. The duties and obligations regarding approval for any approved LWES or testing facility shall be with the owner of the LWES or testing facility, and jointly and severally with the owner and operator or lessee of the LWES or testing facility.

“Application” - An application for a LWES under this Section.

“Automatic Obstruction Lighting System” - A lighting system that provides continuous 360-degree surveillance of the airspace around a wind farm from the ground level to above aircraft flight altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.

“Background Sound Pressure Level” – The Sound Pressure Level represented without the wind turbines operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude Sound Pressure Level contributions from intermittent noises such as traffic and emergency vehicles, and from seasonal natural sounds such as tree frogs and crickets that are not present year round.

“Blade Glint” - The intermittent reflection of the sun off the surface of the blades of a single Wind Turbine or multiple Turbines.

“Debris Hazard” - Hazard owing to the possibility that the parts of a LWES, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

“FAA” - The Federal Aviation Administration.

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“Health” - State of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

“Impact(s)” - Includes any effect on the environment, including sound and visual impacts such as changes in sound pressure, noise and light in the environment.

“Large Wind Energy System (LWES)” - An electricity-generating facility with a generating capacity of over 100 kilowatts, consisting of one or more Wind Turbines, including any substations, Met Towers, cables/wires, and other buildings accessory to such facility.

“Leq” - The equivalent continuous Sound Pressure Level that has the same acoustic energy for a constant Sound Pressure Level as for a fluctuating or intermittent level in the same period of time.

“Met Tower” - A meteorological tower used for the measurement of wind speed.

“Natural Environment” – Includes navigable waters, waters of a contiguous zone, ocean waters and any other surface water, groundwater, drinking-water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States, including wildlife, ecosystems, and habitat, and historical, cultural, recreational and archeological resources.

“Noise” – Any unwanted sound or any sound that is not part of the natural environment.

“Non-Participating Landowner”- Any landowner who is not a Participating Landowner pursuant to definition below.

“Octave Band” - A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S1.11.

“One-Third Octave Band” - A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S1.11.

“Participating Landowner”- Any landowner on whose property all or a portion of a Large Wind Energy System is located pursuant to an agreement with the Applicant or any landowner who has waived his or her rights for protection under this Ordinance.

“Permit to Construct” – After the application has been accepted by the Planning Board, the Temple Board of Selectmen shall issue a Permit to construct the project.

“Permit to Operate” – A written approval issued by the Temple Board of Selectmen to operate a LWES once such project has been approved by the Planning Board.

“Project Boundary” - A continuous line that encompasses all Wind Turbines and related equipment to be used in association with a Large Wind Energy System.

“Public Infrastructure” – Roadways, culverts, and bridges maintained by the Town of Temple or State of New Hampshire.

“Setback” – The distance a LWES tower base is set back from abutting property lines, structures, or other features.

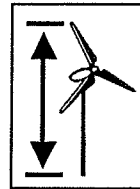
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“Shadow Flicker” – The effect when the blades of an operating Wind Turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

“Sound Power Level” - Lw. Ten times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB). The reference sound power is 1 picowatt (pW).

“Sound Pressure Level” - Lp. Twenty times the logarithm to the base ten of the ratio of a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

“Total Height” - When referring to a Wind Turbine, the distance measured from ground level to the blade extended at its highest point.



“Tower Shadowing” - The shadow created on the surrounding area by the sun shining on a Wind Turbine.

“Useful Life” - The LWES or individual Wind Turbine(s) will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

“Visual Clutter” - The accumulation of diverse built elements on a site, especially elements that contrast with their surroundings in form, color, texture, or pattern.

“Welfare” - A state of well-being.

“Well-being” - A good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity.

“Wind Shear” - The difference in atmospheric wind speed and direction occurring over relatively small increases in altitude (wind gradient).

“Wind Turbine” - A wind-energy conversion system that converts wind energy into electricity through the use of a wind-turbine generator, including the turbine, blade, tower, base, and pad transformer, if any.

C. LARGE WIND ENERGY SYSTEM REQUIREMENTS:

1. Design, Manufacture, Construction, and Maintenance Standards.

- a. In order to minimize Visual Clutter, Wind Turbines shall use tubular towers of similar design, size, operation, and appearance throughout the project, which shall be painted a nonreflective, nonobtrusive color. Blades shall be coated or otherwise designed with a material to minimize Blade Glint.
- b. At LWES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will

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blend with the existing natural setting and environment.

- c. Wind Turbines shall not be used for displaying any signs or advertising except for signs at ground level for reasonable identification of the manufacturer, owner, or operator of the LWES, the utility procuring the power, emergency contact information, and appropriate warnings as required by national, state, and local laws. Such identification shall not be illuminated. All signage shall meet Temple's ordinance requirements. Any graffiti on LWES structures shall be removed as soon as practical.
- d. Control wiring and power lines shall be wireless or below ground except where collector wiring is brought together for connection to the transmission or distribution network adjacent to that network. The Planning Board may permit above-ground wiring, if in the opinion of the Planning Board, its Impact, including but not limited to environmental and visual Impacts, is less than the Impact of below-ground wiring.
- e. The Applicant of an LWES shall not undertake any blasting without specific approval of such blasting during Site Plan Review. Terms and conditions for the blasting, including any necessary notifications, shall be specified during Site Plan Review.
  - i. The Applicant shall prepare an inventory of all structures, wells, bridges, and other seismically sensitive structures that could potentially be damaged by blasting.
  - ii. Before each blasting event, the Applicant shall notify all Participating and Non-Participating Landowners whose property can be potentially damaged of the time and date of the event. The Applicant shall receive signature verification of such notice.
  - iii. Flying rock traveling in the air or along the ground is not permitted to cross into the property of Non-Participating Landowner(s).
  - iv. A blasting log for each blast shall be kept on site at the LWES office for not less than five (5) years, and copies of the required blasting log shall be promptly submitted to the Planning Board upon completion of construction of the LWES.
  - v. Pre-blasting and post-blasting inspection and documentation may be required by the Planning Board.
- f. If at any time during construction, operation, or maintenance of the LWES, the Applicant wishes to modify the approved Site Plan, the Applicant shall submit to the Planning Board an Amended Site Plan for review and approval.
- g. Construction and maintenance activities shall be organized and timed to minimize Impacts on residents and wildlife from noise, disruption (including disruption of wildlife habitat), and the presence of vehicles and people. Construction and maintenance, unless there is an imminent threat to life or property, shall be performed only on weekdays between the hours of 7 AM and 6 PM. The Planning Board has the authority to waive this requirement if, in its opinion, there is good reason to do so.
- h. Any construction equipment or parts (used or unused) kept on site shall be stored indoors except during periods of construction, maintenance, and repair.



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2. Height.

- a. The Total Height of the Wind Turbines shall not exceed 450 feet.
- b. Met Towers must be less than 200 feet in height, and must be designed so as not to require lighting in compliance with FAA regulations. Guy wires are allowed on Met Towers, but must be designed so as to limit environmental hazards to wildlife, especially birds and bats.

3. Setbacks.

All LWES tower bases must be sited so as to be set back from adjacent property lines by at least two thousand (2,000) feet. An exception can be made to this requirement in the case of a Participating Landowner who waives his or her rights under this ordinance; such waiver shall exclude the ability of the owner of that property to have or build any structures within 2,000 feet of the closest LWES tower and shall be recorded in the Hillsborough County Registry of Deeds. In no case shall the Setback be less than 1.5 times the maximum height of the Wind Turbine from the nearest property line.

Additional Setbacks may be required to meet noise standards.

The applicant shall submit a graph of the required Setback for each hazard as a circle for a single tower or as a series of connected arcs for multiple towers centered on each turbine and submitted with the required Setback graphically superimposed to scale on town maps identifying lot owners, structures, and lot property lines.

4. Communications Interference.

Any LWES shall be sited and operated so that it does not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The Applicant shall provide certification from a NH licensed Professional Engineer confirming that the proposed project will not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The Applicant shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or to correct any problems. Remedies may include relocation or removal of the LWES. The Applicant of the LWES shall respond within five business days to any request for a communications interference investigation by a property owner within the Project Boundary and a three-mile radius beyond the Project Boundary. Testing shall commence within ten working days of the request. The Applicant is responsible for mitigating within ten working days from determination of interference cause attributed to the operation of the LWES.

5. Sound Pressure Level Limits and Measurement.

The intent of this section is to preserve the quiet rural environment of Temple and to provide protection from Excessive Sound Pressure Levels that cause adverse Impacts to public Health, Welfare, and Well-being. The existing Background Sound Pressure Levels in Temple are less than 30 dBA. Annoyance due to Noise, as measured by community surveys, is the consequence of activity interference. Sound Pressure Level limits are based on the recommended guidelines

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found in the United States Environmental Protection Agency's document *Information On Levels Of Environmental Noise Requisite To Protect Public Health And Welfare With An Adequate Margin of Safety*, 550/9-74-004, March 1974 and include levels requisite to protect against activity interference. These Sound Pressure Level limits are consistent with the World Health Organization (WHO) night-noise guidelines for exposure to noise during sleep, found in the following documents: *Night Noise Guidelines (NNLG) For Europe*, 2007 and ISBN 978 92 890 4173 7, 2009.

- a. Sound Pressure Levels produced by the LWES shall not exceed 33 dBA (Leq 10 minute) anywhere at any time on a Non-Participating Landowner's property.
- b. The Planning Board may impose greater noise constraints if it deems such constraints are necessary to protect the public health, safety, and welfare of the community.
- c. Any model used to predict Wind Turbine Noise shall use the following parameters:
  - i. Each Wind Turbine shall be considered as an individual and unique noise emitter.
  - ii. The prediction model shall use the Manufacturer's highest sound-power levels, as measured using standard IEC 61400-11 (edition 2.1, dated November 2006), which shall be submitted in 1/3 octave band for frequencies 31.5 to 8000 Hz. Test reports performed for the same model(s) proposed for the LWES shall be submitted in full.
  - iii. The prediction model shall use a Wind Shear (wind profile power law exponent, alpha) of no less than 0.50, where Wind Shear is defined as the difference in atmospheric wind speed and direction occurring over relatively small increases in altitude.
  - iv. There shall be no attenuation (zero) for ground cover, since a Wind Turbine is an elevated noise emitter.
  - v. There shall be no attenuation (zero) for foliage, since trees have no leaves from November to April.
  - vi. Add a plus-5-dB design margin to the predicted Sound Pressure Levels to account for variations in atmospheric propagation due to refraction (the bending of sound waves in the atmosphere due to changes in air temperature or wind gradient).
  - vii. Ground absorption values used in the modeling software shall be set to 0 for water and hard concrete or asphalt surfaces and 0.5 for all other surfaces.
- d. Noise measurements shall be taken with the Wind Turbines turned on and turned off to determine any Background Noise to be accounted for. The Applicant shall cooperate by shutting Wind Turbines off and turning them on during acoustic testing at times required by the acoustic-monitoring personnel.
- e. The wind velocity at the sound measurement microphone shall not exceed 2 m/s (4.5 mph) during measurements of Background Sound Pressure Level, and the maximum

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wind speed at the microphone for noise measurements during Wind Turbine operation shall not exceed 4 m/s (9 mph).

6. Shadow Flicker, Tower Shadowing, and Blade Glint.

- a. The facility shall be designed such that Shadow Flicker or Tower Shadowing falling on or in any Non-Participating Landowner's property or a public road shall be limited as follows:
  - i. The Shadow Flicker or Tower Shadowing shall not exceed twenty (20) hours per year in total.
  - ii. The traffic volumes shall be fewer than 500 vehicles per day on the roadway.
  - iii. The Shadow Flicker or Tower Shadowing shall not fall onto an intersection.
- b. Blades shall be coated or otherwise designed with a material to minimize Blade Glint.
- c. Within twelve months of the date when the project becomes fully operational, or at any time upon receipt of a verified complaint of Shadow Flicker, Tower Shadowing, and/or Blade Glint, the Applicant shall submit to the Planning Board a Shadow Flicker, Tower Shadowing, and Blade Glint study certifying that Shadow Flicker, Tower Shadowing, or Blade Glint present no deleterious effects for any occupied structure located within a one-mile radius of any Wind Turbine. If Shadow Flicker and/or Blade Glint exceeds any of the conditions listed above, the source Wind Turbine(s) shall be shut down until the Shadow Flicker, Tower Shadowing, or Blade Glint problem is remedied.

7. Public Infrastructure.

The Applicant shall avoid, mitigate, or repair any and all adverse impacts to any Public Infrastructure occasioned by or in any manner related to the installation, operation, maintenance, and repair or decommissioning of the LWES. This includes reimbursement to the Town or State for any repairs or reconstruction reasonably deemed necessary by the Town or State.

8. Erosion and Storm Water Control.

During the Useful Life of the LWES, the Applicant shall maintain any erosion and storm-water control practices described in the Erosion and Storm-Water Control Plans and Life Cycle and Decommissioning Plans submitted with the Application for Site Plan Review.

9. Safety.

- a. Each Wind Turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. All Wind Turbines shall be equipped with redundant braking systems. This includes both aerodynamic (including variable pitch) over-speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in the case of loss of load on the generator. Stall regulation shall not be considered a sufficient braking system for over-speed protection. A manual electrical and/or over-speed shutdown disconnect switch shall be provided and clearly labeled on/in the Wind Turbine structure.

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- b. The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of not less than 75 feet.
- c. Any Wind Turbine and/or accessory structure shall not be climbable up to above 15 feet above ground level.
- d. The LWES shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present.
- e. Appropriate warning and safety signage shall be placed on any Wind Turbine, accessory structure, and/or electrical equipment, and posted at all LWES entrances.
- f. All structures shall be self-supporting. No guy-wire-supported structures shall be permitted, with the exception of Met Towers.
- g. A sign bearing emergency contact information shall be posted near the tower(s) or operations and maintenance office building.
- h. Signage shall be placed at the road access to warn visitors about the potential danger of falling and thrown ice and the Debris Hazards.
- i. Any Wind Turbine that is found to present an imminent physical threat of danger to human life, wildlife, or property, or that is found to exceed the noise standards of this Ordinance, shall be immediately shut down. Following repair or redesign to comply with the noise standards of this Ordinance, the Wind Turbine shall be certified to be safe and to comply with this Ordinance by a NH licensed Professional Engineer prior to resumption of operation.

10. Rescue, Fire, and Hazard Protection.

The Applicant shall assure that the LWES complies with the following fire- control and - prevention measures.

- a. A plan acceptable to the Temple Fire Chief for fire-fighting and rescue services, including water accessibility, any necessary equipment, and/or training for local fire protection and rescue personnel, shall be prepared and updated annually. The full cost of implementing and maintaining the plan, including equipment, equipment maintenance, and staffing, shall be the responsibility of the Applicant.
- b. The Applicant shall comply with all laws applicable to the generation, storage, clean-up, transportation, and disposal of hazardous wastes generated during any phase of the project's life.

11. Environmental Impact.

The Wapack Range, situated along the western edge of Temple, is the centerpiece of a crucial migration route that is recognized by the Federal government. The Wapack Range, approximately 22 miles long, is part of a unique geological formation known as a "leading line," which creates a

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long, reliable updraft that birds intentionally travel to, to assist in their migration. There is no other "leading line" formation for hundreds of miles --effectively, there is not another one in New England. Well-documented records indicate that more than 5,000 migrating raptors have been known to travel through this precise corridor in the course of a single day. More than 13,000 migrating raptors are counted each fall migration season. Therefore, we take particular care in protecting this critical flyway and the natural environment which supports it.

The Applicant shall take appropriate measures to minimize, eliminate, or mitigate adverse impacts on the natural environment during the entire life cycle of the LWES and shall comply with all Federal, State and local laws regulating environmental impacts. In making its determination under this section, the Planning Board shall consider the U.S. Fish and Wildlife Service "*Wind Turbine Guidelines Advisory Committee Recommendations*," dated March 4, 2010, or subsequent updates, the "Proposed Wind Power Siting Guidelines - May 29, 2007" (which was developed by the Wind Energy Facility Siting Guidelines Working Group and forwarded to the NH Energy Policy Committee Wind Siting Subcommittee), and any recommendations of the New Hampshire Fish and Game Department and the Temple Conservation Commission.

- a. Environmentally Sensitive Areas. The plan for the LWES shall reflect the natural capabilities of the site to support development. Environmentally sensitive areas--including but not limited to wetlands, vernal pools, seeps or springs, steep slopes (greater than 15%), watersheds, floodplains, significant wildlife habitats, fisheries, habitat for rare or endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers--will be maintained and preserved to the maximum extent possible. The Applicant shall demonstrate appropriate measures for protecting these resources during the entire life cycle of the project.
- b. Wildlife. The Applicant shall demonstrate that the LWES will have no significant adverse Impact on area wildlife and wildlife habitat. Such analysis shall include but not be limited to adverse Impacts on birds, bats, raptors, animals, and habitat fragmentation. In addition, the Applicant must demonstrate that the LWES will have no undue adverse Impact on rare, threatened, or endangered wildlife. The wildlife and habitat analysis must include pre-construction field studies conducted by a qualified wildlife biologist selected by the Planning Board and paid for by the Applicant. Such studies shall span at least two coincident migration cycles.
- c. Avian and Bat Species. Development and operation of a LWES shall have no adverse impact on bird or bat species.
  - i. All above-ground lines, transformers, or conductors should comply with the Avian Power Line Interaction Committee (APLIC, <http://www.aplic.org/>) published standards to prevent avian mortality.
  - ii. The design and installation of the LWES shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey; e.g., electrical equipment boxes on or near the ground that can provide shelter and warmth and horizontal perching opportunities on the towers or related structures.
  - iii. In order to minimize the detrimental Impacts on bat and bird populations, all Wind Turbines shall be configured and or controlled so that the blades will not turn when wind velocity at hub height is less than 10 mph. In addition, there may

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be periods of time when the Wind Turbine operations must be curtailed to protect bats and raptors and other migratory birds.

- d. Ground and Surface Water. The LWES will not adversely affect the quality or quantity of ground and surface waters. The Applicant shall demonstrate to the Planning Board's satisfaction that there are no unusual risks caused by the LWES. The Board may require that spill prevention and control measures be installed, and that all activities involving potentially permeable pollutants, including at delivery and transfer points, be conducted under cover and over an impervious surface surrounded by dikes. Whenever sedimentation is caused by stripping vegetation or grading, it shall be the responsibility of the Applicant to remove it from all adjoining surfaces, drainage systems, and watercourses and to repair any damage as quickly as possible at the Applicant's expense.
- e. Historical, Cultural, Archeological. Because the preservation of historic resources is very important to the Town of Temple, the Applicant shall be required to:
  - i. Inventory and map all historically significant sites located within two thousand (2000) feet of the proposed LWES project area, including stone walls, structures, roadways, and cellar holes.
  - ii. Provide a plan outlining how the Applicant proposes to minimize the impact of construction and ongoing operation of the LWES on those sites.

As a condition of approving the Applicant's Historical, Cultural, Archeological protection plan, the Planning Board may require specific setbacks of LWES structures or roadways from significant sites and/or other actions that protect or restore items of historic significance.

12. Visual Impact.

- a. An LWES shall be designed and located so as not to cause adverse visual Impacts, including Visual Clutter and Impacts caused by any lighting, and so as not to dominate views from residential areas, cultural resource areas, public recreational and scenic areas, trails used by the public including the Wapack Trail, open space within the Town, or any public road right-of-way.
- b. Dominance is determined by how an LWES will be seen within its visual context and occurs when the project would cause a change in the balance or feel of the character of the surrounding area or create a very dominant focal point that detracts from other important natural or cultural focal points. (The Planning Board may use as a reference document *A Visual Impact Assessment Process for Wind Energy Projects*, Vissering, Sinclair, and Margolis, May 2011.) Some of the factors to be considered in evaluating the degree of dominance are:
  - i. appearance of proximity,
  - ii. duration of view,
  - iii. expectation for natural or intact landscape setting,
  - iv. uniqueness of a scenic resource,

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- v. whether the view is directly ahead over extended distances, and
- vi. whether large numbers of turbines are visible in many views.
- c. All available mitigation techniques to reduce the visual impacts of the LWES shall be considered, including methods prescribed by the American Landscape Institute. The use of Automatic Obstruction Lighting Systems, such as those manufactured by DeTect and OCAS, is mandatory for Wind Turbines with FAA lighting.
- d. Photographic simulations shall be provided from potentially sensitive public and private viewpoints. The Planning Board may request that particular viewpoints be illustrated. Such locations could include the center of Town, public recreation areas, historic sites, and scenic sections of Town or State roads.

Simulation photographs shall be taken at 50mm (or digital equivalent) and illustrated on 11 x 17" printed copies for each simulation. If several photographic frames are required to illustrate the breadth of the project from a particular viewpoint, illustrations shall be provided of each 50mm frame, plus a combined panoramic view. Any visible roads, site clearing, and all project infrastructure shall be depicted on the simulations.

The report shall employ a standard visual-impact-assessment methodology for detailing what the visual impacts of the project would be and explaining why these may be acceptable or unacceptable.

The report shall identify all mitigation methods proposed by the applicant, if any, to address the potential visual impacts of the LWES. These methods may include turbine siting and distance between towers; reductions in turbine height or numbers; design and size; hazard lighting mitigation by employing Automatic Obstruction Lighting Systems; underground placement of collector lines; and other methods.

The Planning Board may require additional mitigation measures to minimize the impact on scenic resources of the Town.

13. Financial, Technical, and Managerial Capability.

Applicant shall demonstrate to the Planning Board that it has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this ordinance.

D. APPLICATION PROCEDURE.

1. Applications for new and replacement LWESs shall be filed and processed in accordance with the Town of Temple Planning Board's Site Plan Review regulations.
2. An LWES is presumed to have regional impacts. Therefore the procedure shall include notification as

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per NH RSA 36: 54-57.

3. Submission Requirements: In addition to standard Planning Board requirements, applicants for a LWES shall submit the following:
  - 3.1 A demonstration satisfactory to the Planning Board that the Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this ordinance.
  - 3.2 Plans prepared and stamped by a NH licensed Professional Engineer that show the location, shape, size, color, materials, textures, landscaping, design, and total height of all proposed components of Met Towers and LWES, including the proposed access to the project site (including Town and State roads) and associated transmission lines.
  - 3.3 A location map to scale of current and planned land uses within the project boundary and a one-mile radius beyond the project boundary, showing the location of all proposed Wind Turbines and required setbacks for each, and that identifies Participating Landowners. These maps must be prepared by a NH licensed land surveyor.
  - 3.4 A site grading and clearing plan that shows all areas to be cleared and all grade changes. The plan shall include details on the collector lines, locations and heights of poles, clearing limits for above-ground lines, substations, transmission line details, and upgrades or changes to existing power lines. This plan should delineate environmentally sensitive areas.
  - 3.5 Historical, Cultural, Archeological Inventory and Resource Map prepared by NH licensed land surveyor, and Applicant's plan to minimize impact of LWES construction and operation on these sites.
  - 3.6 Environmental Resource Map prepared by a qualified NH licensed land surveyor.
  - 3.7 Intended period of data collection for the Met Tower.
  - 3.8 Certification of the non-reflecting properties of the external surfaces of the LWES.
  - 3.9 Calculations and supporting data for all setbacks for each turbine.
  - 3.10 List of property owners whose property wholly or in part falls within the standard setback areas.
  - 3.11 Studies and Reports as required by the Planning Board, including but not limited to those listed below. The cost of any required study, report, plan, mitigation effort, or any other work required to be done by the Planning Board, is the full responsibility of the applicant.
    - 3.11.1 Sound Pressure Level Study
    - 3.11.2 Rescue, Fire, and Hazard Protection Plan
    - 3.11.3 Road and Property Risk Assessment



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- 3.11.4 Wildlife and Bird Impact Study and Protection Plan
- 3.11.5 Groundwater and Surface Water Quality studies
- 3.11.6 Visual Impact Assessment, including photographic simulations
- 3.11.7 Communication Interference Certificate
- 3.11.8 Shadow Flicker, Tower Shadowing, and Blade Glint study
- 3.11.9 Safety Plan
- 3.12 A Complaint Resolution Plan to address any complaints from affected parties during construction and over the life of the operation. The Plan shall identify a contact person and a process for mediation.
- 3.13 A Decommissioning and Site Restoration Plan as outlined in Section J (Decommissioning).
- 3.14 Storm Water Management Plan – pre- and post-decommissioning.
- 3.15 Erosion Control Plan
- 3.16 Landscape Plan showing restoration of disturbed areas after completion of construction.
- 3.17 Estimate of decommissioning costs prepared by a NH licensed Professional Engineer
- 3.18 Blasting plan, including inventory of all potentially affected structures
- 3.19 Any other information deemed necessary by the Board in order to make an informed decision.
- 4.0 Repowering. When an LWES is planned for a retrofit, the Applicant must apply to the Planning Board for approval before any portion of the LWES may be repowered.
- 5.0 Permit to Operate.
  - 5.1 Following construction of an LWES, before commencing operation, the Applicant shall apply to the Board of Selectmen for a Permit to Operate. The application shall include the following:
    - 5.1.1 An Inspection Report prepared and signed by a NH licensed Professional Engineer certifying the structural and operational integrity of the LWES, and completion of construction in accordance with all submitted and approved building, road, and lighting plans, and any other plans submitted to the Planning Board as required.
    - 5.1.2 A decommissioning fund.
    - 5.1.3 A signed statement that the Applicant and project site landowner(s) have read this Ordinance, understand all its provisions, and agree to abide by them.

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- 5.2 A Permit to Operate shall be valid for thirty (30) years. Application for renewal requires a new Application to the Planning Board, governed by then-current ordinances.
- 5.3 Applications for a Permit to Operate or a Renewal Permit will be heard at the next regularly scheduled Planning Board or Board of Selectmen meeting for which adequate legal notice has been posted.
- 5.4 If a Permit to Operate is transferred to a new Owner or Operator, the new Owner or Operator is bound by all conditions, requirements, and financial obligations of the original permit.
- 5.5 All conditions of approval shall be reviewed annually by the Planning Board or Board of Selectmen.
- 5.6 A Permit to Operate may be revoked and the LWES required to cease operations if the Board of Selectmen determines that there is a violation of any provision of this ordinance or other applicable regulations. The Permit shall not be reinstated until the Board of Selectmen determines at a duly noticed public meeting that all violations have been corrected.

E. EASEMENTS AND LEASES:

1. Any landowner may grant an easement to the Applicant for any Impacts of the LWES on their property and shall advise all subsequent owners of the property that the standards permitted by this Section may be exceeded on the property. The terms of the easement must be consistent with the current application for an LWES. Easement periods shall be limited to thirty (30) years.
2. The full terms of any leases or easements shall be recorded with the Registry of Deeds.
3. The option period for any land agreement shall be limited to five (5) years.
4. Nothing in this Ordinance shall be construed to restrict the rights of Non-Participating Landowners.

F. ONGOING REQUIREMENTS:

1. Monitoring: Upon reasonable notice, Town of Temple officials or their designated representatives may enter a lot on which an LWES has been approved for the purpose of monitoring noise, Impacts on the Natural Environment, and other impacts that may arise. In such a case, the Town will provide the Applicant with 24-hour advance telephone notice, followed by e-mail notification for the record.
2. Post-construction Water-Quality Study:
  - a. Within six (6) months of the first Wind Turbine becoming operational, and every twelve (12) months thereafter for a period of three (3) years, a water-quality study of all wells, springs, and water resources specifically identified during the Site Plan Review shall be designed and carried out by a water-quality professional approved by the Board of Selectmen.
  - b. Upon receipt of a substantiated complaint that the integrity or water quality of any well has been damaged by the LWES construction, the Planning Board may require prompt

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investigation of the complaint by a water-quality professional approved by the Board of Selectmen, at the expense of the Applicant.

- c. If degradation or contamination of any well, spring, or water resource is found to have occurred, the Applicant shall be considered in violation of this Section and subject to the provisions of the Enforcement Subsection of this Section.
  - d. The Applicant is responsible for all costs associated with water-quality testing and corrective action if necessary.
3. Annual Power Production Report: The Applicant shall submit an annual power-production report to the Board of Selectmen. The power-production report shall cover the preceding calendar year, and shall be submitted by February 15 of the following year. The report shall be in a form agreed to by the Board of Selectmen and shall include actual power production in kilowatt-hours for each Wind Turbine.
4. Environmental Impact Studies: Recognizing the importance of wildlife as described in C. 11, continuing environmental impact studies shall be required.
- a. At least every 3 years, and more frequently if deemed appropriate by the Board of Selectmen, an environmental study shall be conducted by a qualified wildlife biologist selected by the Board of Selectmen and paid for by the Applicant.
  - b. If the post-construction field studies demonstrate substantive harm to the Natural Environment, the Applicant shall develop an appropriate mitigation plan acceptable to the Board of Selectmen. The Applicant shall be responsible for the full cost of implementing the mitigation plan.
  - c. In addition, the Applicant shall submit a quarterly report to the Board of Selectmen identifying all dead birds and bats found within 500 feet of the LWES. Reporting shall continue for at least three (3) years after the first Wind Turbine becomes operational, or longer if required by the Board of Selectmen. In the event of an avian or bat mortality kill of threatened or endangered species, or discovery of more than six (6) dead birds or bats of any variety on site, the Applicant shall notify the Board of Selectmen and the New Hampshire Department of Fish and Game within 24 hours. Within thirty (30) days of the occurrence, the Applicant shall submit a report to the Board of Selectmen describing the cause of the occurrence and the steps taken to avoid future occurrences. During migration seasons, the Board of Selectmen reserves the right to request video surveillance as part of environmental-impact studies.
5. Decommissioning Costs. Estimated total costs of decommissioning, prepared at the Applicant's expense by an independent NH licensed Professional Engineer approved by the Board of Selectmen, shall be submitted to the Board of Selectmen every fifth year of operation. Funds required under Section J of this ordinance shall be updated within 90 days of acceptance by the Board of Selectmen.
6. Noise Compliance Report. Within four (4) months of the first Wind Turbine becoming operational and again within two (2) months after all Wind Turbines have become operational, and at any time the Board of Selectmen deems it necessary due to the number of complaints received, the Applicant shall submit to the Board of Selectmen a noise-compliance report certifying compliance with the noise regulations set forth herein. The report shall be prepared

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under the direction of a Professional Engineer or a Board Certified member of the Institute of Noise Control Engineering (INCE). The report shall be signed or stamped by this person. This person shall be selected by the Board of Selectmen, and the report paid for by the Applicant. The report shall comply with the following:

- a. Except as specifically noted otherwise, sound measurements shall be conducted in compliance with the most recent version of the American National Standards Institute (ANSI) Standard S12.18-1994 "Outdoor Measurements of Sound Pressure." Sound data shall be recorded with both dBA filtering and unfiltered down to 0.5Hz. Wind speeds shall be logged simultaneously with Sound Pressure Level data.
- b. Sound Pressure Level meters and calibration equipment shall comply with the most recent version of ANSI Standard S1.4 "Specifications for General Purpose Sound Pressure Level Meters," and shall have a calibration traceable to the National Institute of Standards and Testing (NIST) performed within the preceding 24 months.
- c. Noise measurements shall be taken at locations and times when the Wind Turbine is clearly audible and dominating the acoustical environment. All unattended measurements shall consider the Wind Turbine as dominating the acoustical environment.
- d. Noise measurements shall be taken with the Wind Turbines on and off to determine any background noise to be accounted for. The Applicant shall cooperate by shutting Wind Turbines off and turning them on during acoustic testing at times required by the acoustic-monitoring personnel.
- e. The acoustic-monitoring personnel shall determine if extraneous sounds such as those made by insects, frogs, or other wildlife are contributing to the measured Leq Sound Pressure Level and remove their contributions either by relocating the measurement microphone to a spot not affected by such sounds or conducting testing at dates and times when such sounds are not present. The acoustic-monitoring personnel may correct the Leq Sound Pressure Level using full or 1/3 octave band analysis to subtract Wind Turbine "off" levels from Wind Turbine "on" levels, and by removing data in 1/3 octave bands from the Leq computation that are contaminated by extraneous sounds.
- f. The wind velocity at the sound-measurement microphone shall not exceed 2 m/s (4.5 mph) during measurements of Background Sound Pressure Level, and the maximum wind speed at the microphone for noise measurements during turbine operation should not exceed 4 m/s (9 mph).
- g. During Wind Turbine testing the atmospheric profile shall be Pasquill Stability Class E or F preferred, Class D as alternate. Wind Turbine acoustic testing shall be conducted with hub-height wind speeds varying between cut-in and cut-out speeds.
- h. The Wind Turbine shall be fully engaged blades-to-generator and running the standard power output program and producing the maximum power output for the incoming hub-height wind speed. Feathering or other blade angle manipulations that are not part of the normal Wind Turbine program to obtain maximum power output shall be prohibited during acoustic testing. If the wind turbine must be feathered due to a high wind condition for safety purposes, the testing shall be rescheduled.

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- i. Wind Turbine power output and hub-height wind speed data at 10-minute or shorter intervals shall be provided to the acoustic-monitoring personnel by the Applicant for the entire sound-measurement period.
  - j. Noise measurements shall be taken at locations specified by the Planning Board, which shall also set the direction of noise monitoring. The Planning Board may employ a NH licensed Professional Engineer, whose fees shall be paid by the Applicant, for advice regarding these measurements.
7. If the Applicant intends to assign or transfer the ownership, control, or authority of the LWES, the Applicant must give the Board of Selectmen 30 days' advance notice. Applicant shall also provide notice of any change in name or contact information.

G. PUBLIC INQUIRIES AND COMPLAINTS:

Throughout the life of the project, including the decommissioning phase, the LWES Applicant shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints. The Complaint Resolution Plan submitted with the initial application shall be used to resolve complaints. However, this process shall not preclude the local government from acting on a complaint, and local provisions for complaint resolution shall prevail and supersede all Applicant complaint resolution processes.

- a. Any individual, group of individuals, or reasonably identifiable entity may file a signed-and-dated written complaint with the Applicant of the LWES. If any complaints are received by phone, the Applicant shall inform the complainant that complaints must be submitted in writing. Any complaints received directly by the Board of Selectmen shall be referred to the Applicant.
- b. The Applicant of the LWES shall report to the Board of Selectmen all complaints received concerning any aspect of the LWES construction, operation, or decommissioning as follows:
  - i. Complaints received by the Applicant shall be reported to the Board of Selectmen or its designee within five business days; except that complaints regarding unsafe and serious violations of this Section shall be reported to public-safety personnel immediately, and the Board of Selectmen or its designee by the following business day.
  - ii. The Applicant shall document each complaint by maintaining a record including at least the following information:
    - Name of the LWES and the Applicant
    - Name of complainant, address, phone number
    - A copy of the written complaint
    - Specific property description (if applicable) affected by complaint
    - Nature of complaint (including weather conditions if germane)
    - Name of person receiving complaint, date received
    - Date reported to the Board of Selectmen or its designee
    - Initial response, final resolution, and date of resolution
- c. The Applicant shall maintain a chronological log of complaints received, summarizing the above information. A copy of this log, and a summary of the log by type of complaint, shall be sent on or before January 15, March 15, July 15, and October 15 to the Board of Selectmen, covering the previous calendar quarter. An annual summary shall accompany the January 15 submission.

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- d. The Board of Selectmen shall forward copies of any health-related complaints to the Temple Board of Health and the State Board of Health.
- e. The Board of Selectmen may designate a person to seek a complaint resolution that is acceptable to the complainant, the Board of Selectmen, and the Applicant. If such a resolution cannot be obtained, the Board of Selectmen may take action as authorized by Section H: Enforcement and Penalties.
- f. The Board of Selectmen may at any time determine that a complaint shall be subject to enforcement and penalties as defined in Section H: Enforcement and Penalties.

H. ENFORCEMENT AND PENALTIES:

- 1. The enforcement of this Section shall be the responsibility of the Temple Board of Selectmen or its agent, who is hereby authorized to cause any LWES, building, place, premises, or use to be inspected, and to order in writing the remedying of any condition found to exist in violation of this Section.
- 2. An Applicant not responding to the following conditions in the manner specified shall be considered to be in violation of this Section.
  - a. Unsafe. If a Wind Turbine or the LWES presents an imminent physical threat of danger to life or significant threat to property, as determined by the Planning Board, the Board of Selectmen, or one of their designated agents, it shall be deemed unsafe and immediately shut down. It shall then be repaired or otherwise made safe and certified so by a NH licensed Professional Engineer selected by the Planning Board prior to resumption of operation. Costs for the NH licensed Professional Engineer shall be the responsibility of the Applicant. The Board of Selectmen, or its designee, shall have the right to access the LWES site to verify conditions and/or repair progress.
  - b. Serious Violations. The Applicant of the LWES is responsible for mitigating any serious violations of standards within ten business days upon receipt of written notification of determination of any cause attributed to the operation of the LWES. A serious violation is defined as any of the following:
    - i. Sound Pressure Level exceeding the levels specified in Subsection C. 5 of this ordinance, for anything other than a freak occurrence.
    - ii. The occurrence of Shadow Flicker, Tower Shadowing, or Blade Glint exceeding the standards specified in Subsection C. 6 of this Ordinance.
    - iii. Degradation or contamination exceeding US Environmental Protection Agency standards of any surface or subsurface water resource. (In the case of degradation or contamination of a well, the obligation for mitigation shall be deemed satisfied if the Applicant provides the affected well owner with a reasonable emergency water supply and within thirty (30) days commences implementation of corrective measures to the satisfaction of the well owner and subject to the approval of the Planning Board.)
    - iv. Any hazardous-substance spill.

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- v. Communication/electromagnetic interference (other than emergency communication).
  - c. Emergency Communication. Interference with emergency communications must be mitigated within 24 hours.
  - d. Other Violations. If the Board of Selectmen determines that a violation of this Section has occurred, and the violation is determined to be neither unsafe nor a serious violation, or to interfere with emergency communications, the Board of Selectmen shall provide written notice to the Applicant, and the Applicant shall be responsible for mitigating the problem within 30 days. Mitigation involving significant construction or physical modification may take up to 90 days to be completed.
3. An Applicant failing to comply with any provision of this Section by failing to resolve a violation before the expiration of the mitigation periods defined in this Subsection may be subject to:
- a. Revocation of Site Plan Approval, requiring shutdown and removal of any Wind Turbine(s) and restoration of the site as described under Subsection J,
  - b. Fines pursuant to RSA 676:17,
  - c. Any other remedies the Board of Selectmen deems necessary to assure the safe operation of the LWES and the protection of residents,
  - d. Reimbursement to the Town of Temple for expenses incurred in obtaining relief, including but not limited to reasonable attorney fees.

I. DECOMMISSIONING:

- 1. The Applicant shall, at his or her expense, complete decommissioning (including site restoration) of the LWES, or individual Wind Turbine(s), within twelve (12) months after it is deemed unsafe, abandoned, or at the end of its useful life.
- 2. Site Restoration shall include:
  - a. Removal of Wind Turbines, buildings, cabling, electrical components, foundations, and any other associated facilities to a depth of two feet below the ground surface. Conduits buried deeper than two feet may remain in place, but all cables must be removed, and any pull boxes, junction boxes, transformer vaults, and other structures within two feet of the surface must be removed and remaining conduit ends permanently sealed and capped.
  - b. Removal from the property of all items in outdoor storage.
  - c. On-site-road and open-work-area removal, if any, to preconstruction conditions, excepting portions of roads useful for the proposed use of the site. If any roads are retained, excess paving and gravel shall be removed back to an appropriate width approved by the Planning Board, and the remaining areas loamed and seeded.
  - d. Regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the LWES. The restoration shall reflect the site-specific

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character including topography, vegetation, drainage, and any unique environmental features. If, in the opinion of the Planning Board, grades and vegetation existing at the time of decommissioning are sufficiently stable and well established, they may be allowed to remain.

- e. Implementation of the post-decommissioning storm-water runoff plan.

J. FINANCIAL ASSURANCE:

1. As a condition precedent to Site Plan Approval for an LWES, the Applicant must submit an acceptable form of financial assurance such as cash, performance bond, certificate of deposit, or irrevocable letter of credit. The amount of the financial assurance shall be established by the Planning Board and be based on what it would cost for the repair of public infrastructure and for the decommissioning of the LWES and reclamation of the site in the event the Applicant fails to do so.
2. The amount of financial assurance shall be reviewed periodically by the Board of Selectmen to ensure that it equals outstanding decommissioning costs. Financial assurance may be adjusted, upwards or downwards, when required by the Board of Selectmen. For instance, the Board of Selectmen may adjust financial assurance based upon prevailing or projected inflation rates, or the latest cost estimates for decommissioning.
3. Such financial assurance shall be kept in full force and effect during the entire time a LWES facility exists or is in place. Such financial assurance shall be irrevocable and non-cancelable until such time as the Board of Selectmen certifies that decommissioning and reclamation are complete and releases the obligation. If the Applicant fails to remove the LWES and reclaim the site, the Town of Temple may remove or cause the removal of the LWES and the reclamation of the site. The Town may recover the cost of decommissioning and reclamation from any financial assurance provided by the Applicant. Any decommissioning and reclamation cost incurred by the Town that is not recovered from the Applicant will become a lien on the property where the removal or reclamation takes place and may be collected from the landowner in the same manner as property taxes.
4. If the Applicant fails to complete decommissioning within the periods prescribed above, then the Town may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, and of their respective heirs, successors, and assigns, that the Town may take such action as necessary to implement the decommissioning plan.
5. The escrow agent shall release the decommissioning funds when the Applicant has demonstrated and the Board of Selectmen concurs that decommissioning has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.
6. The entry into and submission of evidence of a Participating Landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, and of their respective heirs, successors and assigns, that the Town may take such action as necessary to implement the decommissioning Plan.



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- K. LAW: All references to the New Hampshire RSAs include the Statute in effect at the time of enactment of this Section or as subsequently amended or revised.
- L. WARNING AND DISCLAIMER OF LIABILITY: This Section shall not create a duty or liability on the part of or a cause of action against the Town of Temple, its officers, or employees thereof, for any damages that may result from administration of or reliance on this Section.
- M. SEVERABILITY: The invalidity of any provision of this Section shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this Section.
- N. EFFECTIVE DATE: This Section shall take effect upon its passage, and as amended.

**ARTICLE V: DISTRICTS AND USES**

**A. Village and Historic Preservation District**

The Village and Historic Preservation District shall enjoy the following provisions: (It shall be mainly a District of dwellings and farms and include in its purpose the preservation and protection of the historical heritage of buildings and lands in the District).

**Section 1: Permitted Uses**

Buildings may be erected, altered, or used for one-family year-round dwellings and farms. (See General Provisions, Article IV, Section 7.)

**Section 2: Lot Area and Dimensions**

The area of each lot shall be at least two acres. Each lot shall be capable of containing a square two hundred feet by two hundred feet. The minimum frontage requirement shall be two hundred fifty feet on a class V or better road.

**Section 3: Prohibited Uses**

Manufactured housing and manufactured housing parks are prohibited. Commercial enterprises of any kind are prohibited other than those existing or as outlined in General Provisions, Article IV, Section 13. Home businesses shall be allowed pursuant to Article IV, Sections 11-A and 11-B.

**B. Rural Residential and Agricultural District**

The Rural Residential and Agricultural District shall enjoy the following provisions: (It shall be mainly a district of farms, residences, and woodlands.)

**Section 1: Permitted Uses**

# **ATTACHMENT 3**

## **SEC DECISIONS**

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2006-01**

**JURISDICTIONAL ORDER**

**Re: Community Energy, Inc. and Lempster Wind, LLC. A jurisdictional inquiry regarding the proposal to construct a wind powered generation project in Lempster, Sullivan County, New Hampshire.**

On or about December 1, 2005, the New Hampshire Site Evaluation Committee (Committee) received a letter from the Selectmen of the Town of Lempster (Sullivan County), New Hampshire, requesting "an initial site inspection" of a wind powered electric generation facility proposed by Community Energy, Inc. (CEI), for a prominent ridge line in Lempster. On or about March 30, 2006, the Selectmen of the abutting Town of Washington "joined in the request from the Town of Lempster" and formally requested that the Committee "review the significant wind energy project proposed for a prominent ridge line in Lempster." On or about April 10, 2006, the Committee received a petition to review the project which was signed by 122 registered Lempster voters and certified by the Town Clerk.

Treating the correspondence from the Towns of Lempster and Washington as petitions defined by R.S.A. 162-H:2, X-a and XI ( c), the Committee held hearings on June 21, 2006, and July 6, 2006, to determine whether the proposed wind powered electric generation facility should require the issuance of a Certificate of Site and Facility as set forth at R.S.A. 162-H: 1 *et. seq.*

On June 20, 2006, the Attorney General appointed Senior Assistant Attorney General Peter C.L. Roth to serve as Public Counsel in the proceedings pursuant to R.S.A. 162-H: 9.

On June 21, 2006, the Committee considered and granted requests to intervene in the proceedings filed by The Town of Lempster via Planning Board Member Mark Adams; Richard D. Webb, an abutter; Deborah Stone, a Lempster resident; Elizabeth O'Grady, an abutter; and Jeffrey P. Dwyer, an abutter.

At the hearing on June 21, 2006, the Committee heard testimony from Brett Alderferer, Chief Executive Officer of CEI and Jeffrey Keeler, Project Manager for CEI. The Committee also took comments from members of the public. Due to the late hour, the hearing was recessed until July 6, 2006.

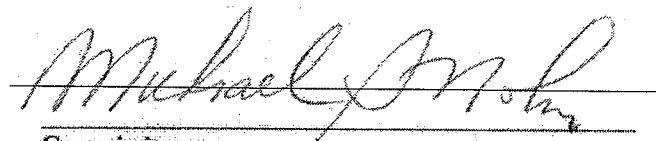
On or about June 30, 2006, CEI filed a Motion for Jurisdiction and for a Condensed Procedural Schedule. The Motion for Jurisdiction requested the Committee to assert jurisdiction over the project pursuant to R.S.A. 162-H: 2.

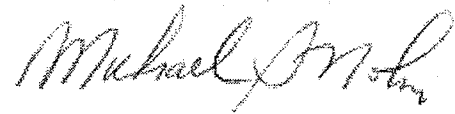
On July 6, 2006, the recessed hearing commenced with consideration of CEI's Motion for Jurisdiction and Condensed Procedural Schedule. There were no objections to the Motion as it pertained to jurisdiction over the proposed facility.

After hearing from the parties, the Committee determined that asserting jurisdiction over the proposed facility would be consistent with the legislative findings and purposes set forth in R.S.A. 162-H:1. Accordingly, on July 6, 2006, the Committee unanimously voted to assert jurisdiction over the proposed facility. The matter will retain the same docket number. All persons who have been permitted to intervene to this point may continue to participate as intervenors. Upon receipt of a formal application complying with R.S.A. 162-H: 7, the Committee will undertake its review as required by statute.

By **ORDER** of the Site Evaluation Committee, this 23rd day of September, 2006.

New Hampshire Site Evaluation Committee

  
Commissioner



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Michael P. Nolin, Chairman

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

Docket No. 2009-03

**Petitions of Michael Laflamme and Howard Jones (including 116 Registered Voters from Berlin and 104 Registered Voters from Gorham) for Review of a 29 MW Biomass Power Plant Developed by Clean Power Development, LLC and Located in Berlin, Coos County, New Hampshire**

**FINAL ORDER DENYING PETITIONS  
FILED BY MICHAEL LAFLAMME AND HOWARD JONES  
April 7, 2010**

**Background**

The Clean Power Development, LLC Berlin Project ("CPD Facility" or "Project") is a 29 megawatt (MW) Biomass Power Plant proposed to be located at 20 Shelby Street in Berlin, New Hampshire. The CPD Facility is a Renewable Energy Facility<sup>1</sup> of less than 30 megawatts, but greater than 5 megawatts.

On November 25, 2009, Michael Laflamme of Berlin, New Hampshire and Howard Jones of Gorham, New Hampshire each filed a petition signed by over 100 registered voters (hereinafter referred to as the "Berlin Petition" and "Gorham Petition" respectively, or "Petitions" collectively) with the Site Evaluation Committee (the "Committee" or "SEC") requesting that the Committee assert jurisdiction over the Clean Power Development, LLC project located in Berlin, Coos County, New Hampshire and require Clean Power Development, LLC (CPD) to apply for a certificate of Site and Facility. The Petitions comport with the standards set forth in RSA 162-H:2, XI. Clean Power Development, LLC, objected to the Petitions in a timely manner. On January 29, 2010, the Committee commenced an adjudicatory proceeding and heard evidence from both of the Petitioners and from CPD. On February 3, 2010, the Committee publicly considered the Petitions in a deliberative session. After due consideration, the Committee unanimously voted to deny the Petitions. Therefore, CPD is not required to obtain a Certificate of Site and Facility prior to the siting, construction and operation of the Facility. This Order memorializes the reasons for the denial of the Petitions.

**Procedural History**

**The Petition**

The Petitions urge the Committee to assert jurisdiction over the Project in order

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<sup>1</sup> A "renewable energy facility" means electric station generating equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts but less than 120 megawatts and powered by wind energy, geothermal energy, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass technologies, solar technologies, or hydroelectric energy. See, RSA 162-H:2, XII.

to determine "whether it is consistent with state energy policy and whether it will have a significant impact upon the local and state environment and the orderly development of the region." The transmittal letter accompanying the Petitions requests Committee review because a different biomass project proposed to be located in the City of Berlin will require Committee approval, and because the Petitioners have concerns regarding truck traffic in the abutting neighborhood. Additionally, they are concerned with ancillary projects slated for the CPD Facility, such as algae cultivation. The Petitioners also suggest that Committee review is necessary to properly gauge the financial viability of the CPD Facility.

### **CPD's written response**

On January 8, 2010, CPD filed a written response to the Petitions. In its response, CPD describes the project as a renewable biomass fueled electric generating facility capable of generating not more than 29 MW of gross power. The CPD facility is located at 20 Shelby Street in Berlin. CPD asserts that the site is a "Greenfield", explaining that no other facilities have existed at the site. CPD asserts that the project will use 340,000 tons of biomass per year. CPD asserts that its project size is based on a study performed by Innovative Natural Resource Solutions, LLC that concluded that there was a maximum of 30 MW of fuel available at a reasonable cost on a sustainable basis within a 30 mile radius of the Facility. CPD also reports that it intends to sell steam to the Fraser/Gorham Mill, thus decreasing the use of fossil fuels at that mill.

CPD opposes the relief requested in the Petitions for the following reasons:

1. CPD asserts that Committee review is not needed to maintain a balance between the environment and the need for energy, because the facility is using the best available technology and is subject to new source emission standards for air pollution control. CPD also asserts that it will utilize the City of Berlin Wastewater Treatment Facility, thereby reducing effluent discharges to the Androscoggin River. Finally, CPD asserts that there is no need to balance the environmental concerns against the need for energy because the facility has been designed with that balance in mind. According to CPD, the facility is sized so that it will not exceed the sustainable supply of biomass, and thus will support responsible forestry management practices and reduce the overall carbon footprint of the project by decreasing the amount of diesel fuel needed to transport biomass to the CPD Facility.

2. CPD asserts that Committee review is not necessary to avoid undue delay in construction, or to ensure timely analysis of the environmental consequences of the project. In this regard, CPD claims that Committee review will take approximately nine months and could cause CPD to lose access to federal stimulus monies, loan guarantees and specialized tax credits and grants. CPD asserts that it has completed review of all local permits and that all state permits have been granted with the exception of the wetlands permit. CPD also asserts that this plant will be the most efficient biomass facility in the State of New Hampshire, and that effluent discharge into the Androscoggin River will be reduced as a result of the project.

3. CPD claims that Committee review is not necessary for complete disclosure to the public because it has already participated in numerous appearances before the zoning and planning boards of the City of Berlin, and has participated in all of the state permitting processes to the point where all state permits, except the wetlands permit, have been granted. CPD also claims that its efforts have been widely publicized in the local press.

4. CPD also claims that Committee review is not necessary because the local and state review processes have already treated the project as a significant aspect of land use planning, and that all issues have been resolved in an integrated process before the various city and state boards and agencies, including the participation of the City Manager and the City Planner throughout the process.

### **City of Berlin's Written Response**

The Committee also received written correspondence from the City of Berlin. The City of Berlin supports the project and recommends that the SEC not assert jurisdiction. The City's letter outlines the various steps that have been taken within the City for review of the project. The highlighted steps are:

- Site Plan Review Approval from the Berlin Planning Board, last amended August 4, 2009
- Three Special Exceptions from the Zoning Board of Adjustment March 11, 2009
- Alteration of Terrain Permit dated September 4, 2009 (Permit AoT:0030)
- Temporary Permit and Non-Attainment New Source Review (NSR) Permit from the Air Resources Division of the New Hampshire Department of Environmental Services (DES) - (Permit: TP-0033)
- CPD has applied to DES for a Shoreland Permit in accordance with RSA 483-B:5
- CPD has applied for a Wetlands Permit and is currently working with DES to secure a mitigation solution for wetlands disturbance
- CPD has submitted storm water management plans to EPA

The City reports that the issue of truck traffic was addressed at site plan review and that CPD will construct a new road between Unity and Shelby Streets. If CPD is unable to build a new road between Unity Street and its property on Shelby Street, it will have to come back to the Planning Board for review and approval of an alternative. The Site Plan approval also indicates that Shelby Street will need to be brought up to city street

standards by CPD and that no certificate of occupancy shall be issued until city street standards are met.

Based on the foregoing the City supports the project and requests that the Committee not exercise its jurisdiction.

## **The Hearing**

On January 29, 2010, the Committee commenced a duly noticed adjudicatory hearing.

Howard Jones and Michael Laflamme testified and presented exhibits on behalf of the Petitioners. Michael Laflamme identified himself as a boiler operator with Fraser Paper for twenty five years, currently employed in northern Vermont operating two wood fired boilers and a turbine generator. Tr. I, p. 17.<sup>2</sup> Howard Jones identified himself as a process control engineer with the responsibility for overseeing advanced computer controls on recovery boilers. Tr. I, p. 20. The Petitioners assert that it is not their intention to undermine the CPD project, but that they believe that all projects should be judged on the same basis and using the same process, that being the Site Evaluation Committee process. The Petitioners raised several issues in the course of their testimony.

The Petitioners each expressed concern regarding the relationship between CPD and Concord Steam. Concord Steam Corporation is owned and operated by Peter Bloomfield. Mr. Bloomfield is the Vice President of CPD. The Petitioners submitted an OSHA news release asserting that Concord Steam had recently been cited for 73 violations of safety standards at its Concord facility and was facing a fine of more than \$100,000.00. See, Petitioner's Exhibit 3; Petitioner's Exhibit 2, slide 19 – 20; Tr. I, p. 18; Tr. I, p. 34 – 36.

The Petitioners also expressed concerns about the capacity of the existing roadways in the vicinity of the proposed facility to handle increased truck travel. Using computer presentation equipment and software, the Petitioners presented a series of photographs of existing roads and argued that the existing roads were incapable of accommodating the increased use required by the proposed facility. See, Petitioner's Exhibit 2; Tr. I, p. 26 – 30. The Petitioners also claimed that there was insufficient information made publicly available about CPD's plans to construct a new road between Unity and Shelby Streets. Tr. I, p. 41. Similarly, the Petitioners testified that there was insufficient public information concerning the facility itself, despite the fact that CPD referred to the project as "shovel ready." Tr. I, p. 37.

The Petitioners also disputed the biomass resource study presented by CPD

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<sup>2</sup> An adjudicatory hearing was held on January 29, 2010. References to the transcript of that proceeding are identified as Tr. 1, p. \_\_\_\_\_. A deliberative session was held on February 3, 2010. Reference to the transcript of that proceeding is identified as Tr. 2, p. \_\_\_\_.



and argued that Committee review would put all potential projects in the area on the same footing.<sup>3</sup> The Petitioners also asserted that the size of the CPD project - 29 MW - was derived for the sole purpose of avoiding the requirement of a Certificate of Site and Facility under RSA 162-H: 2, XII. Finally, the Petitioners expressed concerns that the local procedures used by the City of Berlin were not well informed, Tr. I, p. 38, and may have been subject to the personal biases of city officials, Tr. I, p. 55.

CPD presented the testimony of Melvin Liston and William Gabler. Mr. Liston is the President of CPD and Mr. Gabler is employed as the project manager. Tr. I, p. 67-68. CPD's witnesses testified that the sizing of the proposed facility was directly related to the Biomass Fuel Availability study prepared by Innovative Natural Resources Solutions, LLC (the Wood Basket Study). The Wood Basket Study concluded that the net available biomass fuel (between 200,000 and 300,000 tons), when combined with one third of the traditional pulpwood harvest<sup>4</sup>, would support approximately 30 MW of new biomass fueled generation. See, CPD Exhibit 1, p. 39. Mr. Liston testified that the Wood basket Study was commissioned to take a conservative view of the resource availability, limiting the area of available biomass to a thirty mile radius of the proposed facility. Mr. Liston explained that such conservative assumptions would limit the volatility of pricing for biomass fuel, as use of locally harvested biomass would insulate the price from the cost of diesel fuel used in transportation of the biomass and from weather and other environmental conditions that could affect the cost of the biomass. Tr. I, p. 79; 88. Mr. Liston also testified that the proposed facility would employ a boiler that would permit the proposed facility to generate either electricity for distribution to the electric grid or steam that could be distributed to the existing Fraser Paper Mill in Gorham, and decrease that mill's reliance on oil for steam generation. Tr. I, pp. 80-81. Mr. Liston testified that the sizing of the proposed facility was entirely related to the Wood Basket Study and that once size was determined, CPD chose to seek local approvals though the city processes in order to show its good will toward the city. Tr. I, p. 82-83.

CPD also presented testimony and evidence concerning the development of a new road between Unity Street and Shelby Street. Mr. Gabler testified that the construction of the new road would eliminate the truck traffic on Goebel Street envisioned by the Petitioners. He also testified that the road construction portion of the project had been fully vetted by the City of Berlin Planning and Zoning Boards, with ample opportunity for public comment. Tr. I, p. 95. CPD introduced minutes of the Berlin Planning Board, see, CPD Exhibit 6, and the Berlin Zoning Board of Adjustment, see, CPD Exhibit 7. Although public participation at the hearing was minimal, the minutes demonstrate that the public had the opportunity to address both municipal boards in public session to raise any concerns. See, CPD Exhibits 6 & 7. Mr. Gabler

<sup>3</sup> The Petitioners made frequent reference to a 70 megawatt biomass fueled facility also proposed to be operated in Berlin by Laidlaw BioPower, LLC (Laidlaw). The Laidlaw project is subject to Committee review in docket no. 2009-02. The Petitioners assert that these projects would compete with each other for both biomass supply and transmission line capacity. However, no evidence regarding the Laidlaw project was received in this docket and we are incapable of making such comparisons on this record.

<sup>4</sup> The Wood Basket Study assumed that the closure of two pulp mills in Coos County would redirect approximately one-third of the pulp wood production to biomass. See, CPD Exhibit 1, p. 35.

also testified that CPD's special exception and zoning variances each had a condition that requires a return to the local boards in the event that CPD cannot construct the road. The conditions also require CPD to ensure that the re-constructed Shelby Street meets city standards. See, CPD Exhibit 6.

Finally, CPD provided evidence that, in addition to obtaining site plan approval from the Berlin Planning Board and a renewable energy special exception and certain variances from the Berlin Zoning Board of Adjustment, Tr. I, p. 97 -98, it had obtained the following state permits:

State of New Hampshire Air Permit (Temporary Permit and Non-Attainment New Source Review Permit # TP-0033)

State of New Hampshire Alteration of Terrain Permit (AOT # 0030)

State of New Hampshire Shoreland Permit (# 2009-02205)

See, CPD Exhibit 3; Tr. I, p. 99 – 101. In addition, Mr. Gabler testified that CPD has made good progress in pursuing a Wetlands Permit through the Department of Environmental Services and had recently agreed to make a wetlands mitigation payment to the State. While review and comments for the New Hampshire Division of Historic Resources are still pending, the application for the Wetlands Permit is in its final stages.

Representatives from the City of Berlin also testified at the hearing. Paul Grenier, Mayor of Berlin, testified and requested that the Committee respect the permitting process exercised by the City. He advised the Committee that the City review process fully vetted the project and that he had confidence in the technical capabilities of the City Planning Office, the Planning Board and the Zoning Board of Adjustment. Tr. I, p. 164-167. Pamela Laflamme, City Planner for Berlin, also testified. She provided the Committee with an overview of the planning resources available to the City and the process used by the City in reviewing CPD's project. Ms. Laflamme also advised the Committee that all records pertaining to the City's review of the proposed facility are, and have been, open to the public for inspection at her office. She also advised that the process used by the City was a public process. Tr. I, p. 176-181.

After concluding the testimony the Committee also permitted public comment.

The hearing that commenced on January 29, 2010, was recessed until February 3, 2010. On February 3, 2010, the Committee met in deliberative session and after substantial review and consideration of the issues, voted to deny the Petitions.

## Legal Analysis

### **A. Jurisdiction**

In accordance with RSA 162-H: 2, XII, the Committee has jurisdiction over renewable energy facilities "of 30 megawatts or less nameplate capacity, but at least 5 megawatts which the Committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1 either on its own motion or by petition of the applicant, or 2 or more petitioners as defined in RSA 162-H:2, XI."

In the instant matter, the CDP facility is a renewable energy facility of less than 30 megawatts, but greater than 5 megawatts. The Berlin Petition and the Gorham Petition both satisfy the requirements of RSA 162-H: 2, XI. The question for the Committee is whether a certificate should be required, consistent with the findings and purposes set forth in RSA 162-H: 1.

### **B. Legal Standard for Requiring a Certificate**

Before it can assert jurisdiction, the Committee must find that the requirement of Certificate is consistent with the findings and purposes set forth in RSA 162-H:1. The purpose of RSA 162-H:1 is to "assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principals." Specifically, the Committee must determine whether a Certificate is needed to:

- (1) Maintain a balance between the environment and the need for new energy facilities in New Hampshire;
- (2) Avoid undue delay in the construction of needed facilities and provide full and timely consideration of environmental consequences;
- (3) Ensure that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and,
- (4) Ensure that the construction and operation of energy facilities are treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

In considering whether this project will require Committee review and a Certificate of Site and Facility, the Committee must consider the foregoing purposes of the siting statute. If the Committee finds that review is not necessary to achieve the goals of the statute, then the Committee should deny the petitions. However, if the Committee decides that the goals of the statute are best met by requiring review, then the Petitions should be granted. In this case, review is not necessary and the Petitions will be denied.

## **Discussion**

### **A. The Balance Between the Environment and the Need for New Energy**

At the outset, it should be noted that New Hampshire is a state that produces more energy than it consumes. Tr. II, p. 15. However, the state has set forth goals that describe the need for new renewable energy. These goals are set forth in the state's renewable energy portfolio standards statute, RSA 362-F, and in the Governor's "25X25" plan to obtain at least 25% of the state's total energy needs from renewable sources by the year 2025 See, e.g. Executive Order No. 2007-003. In this regard, the Committee recognizes that the State of New Hampshire maintains a need for new, clean and renewable energy sources. It is against this need that the Committee will balance the effect of the proposed facility on the environment.

In assessing the balancing test between the environment and the need for new energy, the Committee recognizes that substantial environmental permitting has already occurred or is well underway. CPD has obtained an air permit, an alteration of terrain permit, a shoreland permit, and is in the final stages of obtaining a wetlands permit. At the adjudicatory hearing, CPD advised that it had chosen to make a mitigation payment to the DES in the sum of \$76,000.00 to complete the wetlands permitting process. Tr. 1, p. 101. In addition, the New Hampshire Division of Historical Resources will be submitting comments to the DES to complete the wetlands permit. It appears as though CPD has undertaken, through various state permitting agencies, to ensure that the environment is protected as this project is sited and constructed. In addition, the proposed Project will use waste water from the City of Berlin Waste Water Treatment Facility for cooling purposes and thereby decrease the flow of effluent into the Androscoggin River.

In finding that a Certificate of Site and Facility is not necessary in order to maintain a balance between the environment and the need for new energy, the Committee also recognizes that the site for the proposed Project is already in an industrial area, abutting the City of Berlin's Waste Water Treatment Facility. This Project is not sited in an area of pristine wilderness but is, in fact, consistent with its existing neighborhood. Finally, the Committee notes that the City of Berlin has folded many of the environmental considerations into its review processes. The City has specifically researched and adopted a renewable energy ordinance that provides for a special exception review by the Zoning Board of Adjustment for such projects. In addition, it appears that many of the environmental concerns have also been addressed in the consideration of the Project by the City departments. Therefore, it is not necessary for CPD to file an Application for a Certificate of Site and Facility and obtain approval from this Committee in order to maintain a balance between the environment and the need for new energy.

### **B. Undue Delay**

Asserting jurisdiction will likely cause, rather than avoid, undue delay in the

construction of needed facilities. The status of CPD's state permitting process and the review undertaken by the City planning process also assists this Committee in determining that SEC review is not necessary. Based upon the record of these proceedings, it appears that further review by the Committee would be unnecessarily duplicative of the work already undertaken by the various state agencies and the City of Berlin. In fact, review by the Committee would likely require CPD to prepare and file a substantial Application. Thereafter, the process of review of that Application by the Committee, as well as the holding of both public informational hearings and adjudicatory proceedings, would last approximately eight months. Such a delay is unnecessary in this case because CPD has already obtained most of the environmental review that is required for the Project. Therefore, the Committee finds that asserting jurisdiction would not avoid undue delay and, in fact, would cause undue delay and unnecessary duplication of review that has already been completed by local and state authorities and agencies.

### **C. Full and Complete Disclosure**

At the hearing in this case, the Petitioners complained that they were "left in the dark" about the scope of the proposed facility, as well as the construction of the proposed connecting road between Unity Street and Shelby Street which is part of the project. However, the record also reveals that the Petitioners were aware of the review process being conducted by the City of Berlin. Tr. I, pp. 38-41. The record further reflects that all of the hearings conducted by the City of Berlin Planning Board and Zoning Board of Adjustment were public hearings and that the Petitioners simply chose not to attend. Tr. I, p. 38. The processes used by the City were open. All of the City meetings were noticed in the local press and permitted members of the public to voice their opinions. Additionally, the results of those proceedings were well published in the local press. Additionally, the minutes from all of the various Planning Board and Zoning Board of Adjustment meetings were publically available. Likewise, the site plan and the road plans were, and still are, publically available in the Office of the City Planner for Berlin.

Similarly, the Department of Environmental Services conducted a public process in determining whether or not to grant an air permit to CPD. CPD's alteration of terrain permit, shoreland permit, and wetlands application are all public records that are freely open to review by any member of the public.

Committee review would add little to providing full and complete disclosure to the public of CPD's plans for the siting, construction and operation of this renewable energy facility.

### **D. Significant Aspect of Land Use Planning**

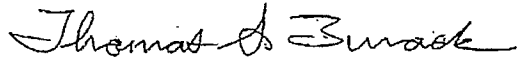
The record supports a finding by this Committee that the City of Berlin used an integrated review process to consider those issues of land use planning that relate to this Project. A review of the minutes of the meetings from the Zoning Board of

Adjustment and Planning Board demonstrate that these local boards considered numerous factors pertaining to the siting and construction of this Project. See, CPD Exhibits 5 and 6. Many of the considerations are very similar to the considerations that would be addressed by this Committee. In addition, CPD has obtained, or is about to obtain, all of the necessary state permits which also bear on land use planning considerations. The Committee notes that the site for the proposed Project is a "greenfield", and there is no prior use that would normally create environmental issues, historical review issues, or other planning issues. Access to the facility has been well addressed by CPD and the City of Berlin, and CPD's construction of the project has been conditioned by the City on the completion of a connecting road between Unity Street and Shelby Street which would provide for better ingress and egress for the trucking that will accompany the operation of this facility. In addition, CPD has indicated that it will be bonding this Project so that, once construction has commenced, there will be economic resources available to the City in the event that construction is not completed. Tr. I, p. 121. Finally, the Committee notes that the proposed facility has been completely reviewed by the City Planner, the Zoning Board of Adjustment, and the Planning Board of the City of Berlin, and also has been reviewed by the North Country Council, which is the regional planning agency. All of these local agencies support the siting and construction of this Project. On this record, the Committee finds that local review of this proposed Project has treated the Project as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion and, therefore, there is no need for further review by this Committee.

Finally, some of the opposition to the CPD facility focused on the fact that the facility falls just short of the 30 MW jurisdictional size requirement. However, RSA 162-H:4 provides, even in the case of facilities that are larger than the jurisdictional size requirement, that the Committee may exempt a facility from the approval and certificate provisions of the statute if it determines that "[e]xisting state or federal statutes, state or federal agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1." The substance of the analysis and discussion above demonstrates that adequate protection of the objectives and purpose of RSA 162-H:1 is provided in these circumstances by the City of Berlin and the Department of Environmental Services.

### **Conclusion**

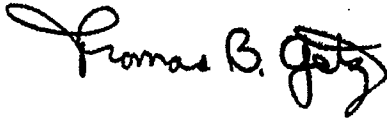
Having considered the record of this matter and the legal standards to be applied, the Committee finds that it is not necessary to assert Committee jurisdiction in this matter in order to comply with the purposes set forth at RSA 162-H:1. Therefore, the Committee denies the Petitions and will not require CPD to file an Application for a Certificate of Site and Facility.



Thomas S. Burack, Commissioner  
Dept. of Environmental Services  
Chairman

4/7/10

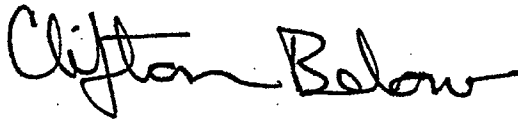
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Thomas B. Getz, Chairman  
Public Utilities Commission  
Vice Chairman

4/7/10

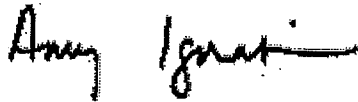
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Clifton C. Below, Commissioner  
Public Utilities Commission

4/7/10

Date



Amy L. Ignatius, Commissioner  
Public Utilities Commission

4/7/10

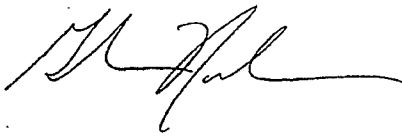
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Michael Harrington, Designated Engineer  
Public Utilities Commission

4/7/10

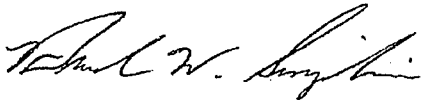
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Glenn Normandeau, Director  
Fish and Game Department

4/7/10

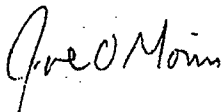
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Brad Simpkins, Director  
Division of Forests & Lands (DRED)

4/7/10

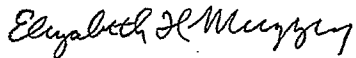
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Joanne Morin, Director  
Office of Energy & Planning

4/7/10

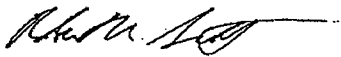
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Elizabeth Muzzey, Director  
Division of Historical Resources

4/7/10

Date



Robert Scott, Director  
Air Resources Division (DES)

4/7/10

Date



David J. Brillhart, Asst. Commissioner  
Department of Transportation

4/7/10

Date



**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket Number 2011-02  
Petition for Jurisdiction Over Renewable Energy Facility  
Proposed by Antrim Wind Energy LLC**

**August 10, 2011**

**JURISDICTIONAL ORDER**

**I. THE PETITION FOR JURISDICTION**

On February 7, 2011, Gordon Webber, then Chairman of the Board of Selectmen of the Town of Antrim, New Hampshire, filed a letter with the Site Evaluation Committee (“Committee”) requesting that the Committee take jurisdiction of “the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of a renewable energy facility proposed to be developed by Antrim Wind Energy, LLC and located in the Town of Antrim.” See, Letter from Gordon Webber dated February 7, 2011 (Board of Selectmen’s Petition). By letter dated April 20, 2011, the Board of Selectmen reaffirmed its position and, once again, requested the Committee to assume jurisdiction over the proposed development. See, Letter from Michael Genest dated April 20, 2011.<sup>1</sup>

On March 11, 2011, Antrim Wind Energy, LLC (“AWE”) filed a Petition for Jurisdiction Over Renewable Energy Facility Proposed by Antrim Wind Energy LLC (“AWE’s Petition”), requesting the Committee to assert jurisdiction over a proposed wind energy project proposed to be located in Antrim, New Hampshire (“Project” or “Facility”). See, Ex. AWE 1, ¶6.

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<sup>1</sup> Mr. Webber no longer serves on the Board of Selectmen of the Town of Antrim. Mr. Michael Genest assumed the role of Chairman of the Board of Selectmen in March, 2011.

On April 15, 2011, the Committee received a petition signed by more than one hundred registered Antrim voters requesting the Committee to assert jurisdiction over the Project. The petition was presented to the Committee and sponsored by Gordon Webber ("Webber Petition").

AWE is a Delaware limited liability company that was formed to develop, build, own and operate the Project. See, Ex. App. 1, ¶1. AWE has two members: (i) Eolian Antrim, Inc. ("Eolian") and (ii) Westerly Antrim, Inc. ("Westerly Antrim"). Eolian, in turn, is owned by Eolian Energy, LLC, and Westerly Antrim is owned by Westerly Wind, LLC. See, Ex. App. 1, ¶1. In its Petition, AWE asserts that between the two entities, Eolian Energy, LLC and Westerly Wind, LLC and their principals, have significant experience in developing, building and operating wind energy facilities and other types of energy and real estate development of the same magnitude as the Project. See, Ex. AWE 1, ¶1.

The Facility is proposed to be located in the northwest portion of the Town of Antrim and oriented from the east summit of Tuttle Hill to the flank of Willard Mountain to the west. See, Ex. AWE 1, ¶4. AWE asserts that the Project will be located on a mostly contiguous ridgeline running east northeast to west southwest, and nearly parallel to New Hampshire Route 9, which is approximately 3/4 of a mile to the north. See, Ex. AWE 1, ¶4. AWE has already leased 2,000 acres from landowners in order to construct the Facility. See, Ex. AWE 1, ¶4. As proposed, the Project will be accessible from Route 9 coming up the north slope of Tuttle Hill ridge. See, Ex. AWE 1, ¶4. The Project will require construction of approximately 1.5 miles of new road to access the ridge from Route 9 and construction of approximately 2 miles of additional road along the ridge to access each turbine location. Ex. AWE 2, at 8.

AWE reports that the Facility is anticipated to consist of 10 turbines in the 2 MW size class. See, Ex. AWE 1, ¶6. The Facility is expected to have an installed nameplate capacity of

greater than 5 MW but less than 30 MW. See, Ex. AWE 1, ¶6. It is expected that the total turbine heights from foundation to blade tips will be no more than 475 feet. See, Ex. AWE 1, ¶6. As proposed, the electrical output generated by the Facility will be transmitted to the PSNH 34.5 kV distribution circuit running through the right-of-way along the north base of Tuttle Hill and interconnected via a direct tap to the existing 3140 X1 line that continues to Jackman substation in Hillsborough. See, Ex. AWE 1, ¶6. AWE expects to file a full application for a Certificate of Site and Facility prior to the end of 2011. See, Ex. AWE 1, ¶14.

## **II. PROCEDURAL BACKGROUND**

On March 21, 2011, an Order and Notice of Public Meeting was issued scheduling a public meeting of the Committee on April 22, 2011. See, Order and Notice of Public Meeting (issued March 21, 2011). The purpose of the meeting was to consider the requests that the Committee take jurisdiction over the Project. See, Order and Notice of Public Meeting (issued March 21, 2011).

On April 20, 2011, the New Hampshire Attorney General's Office appointed Senior Assistant Attorney General Peter C.L. Roth as Counsel for the Public pursuant to RSA 162-H:9. Counsel for the Public also filed a reply to the Petitions. See, Response of Counsel for the Public to Petition for Jurisdiction dated April 20, 2011. Counsel for the Public urged the Committee to deny the Petitions. See, Response of Counsel for the Public to Petition for Jurisdiction dated April 20, 2011. Specifically, Counsel for the Public noted that AWE has not yet filed its Application for a Certificate of Site and Facility with the Committee and did not fully develop and describe its Project. Id. Therefore, Counsel for the Public argues that the assertion of jurisdiction at this stage of the Project's development is premature. Id.

On April 22, 2011, AWE filed a response to Counsel for the Public's reply objecting to the position taken by Counsel for the Public and further complaining that the appointment of Counsel for the Public was premature. See, Petitioner's Reply to Response of Counsel for the Public dated April 22, 2011. AWE requested that Counsel for the Public's reply be stricken from the record and, by implication, suggested that Counsel for the Public should not be permitted to participate in the pending proceedings. See, Petitioner's Reply to Response of Counsel for the Public dated April 22, 2011. On May 2, 2011, Counsel for the Public objected to AWE's request to strike. See, Reply Memorandum of Counsel for the Public dated May 2, 2011. On May 6, 2011, the Committee acknowledged Counsel for the Public's statutory role under RSA 162-H:10, denied AWE's request to strike the response of Counsel for the Public, and ruled that the participation of Counsel for the Public is helpful to the Committee. See, Order on Motions to Intervene and Further Procedural Order (issued May 6, 2011). Counsel for the Public was permitted to participate with all the rights, privileges and obligations of a party to the proceeding. See, Order on Motions to Intervene and Further Procedural Order (issued May 6, 2011).

On April 22, 2011, at the public meeting, the Committee heard comments from AWE, the Town of Antrim through its present Chairman of the Board of Selectman, Michael Genest, a former Selectman, Gordon Webber, and Martha Pinello representing the Antrim Planning Board. The Committee also allowed each party seeking to intervene an opportunity to address the Committee.

A scheduling conference was held at the conclusion of the public meeting on April 22, 2011. As a result of the scheduling conference, a procedural schedule was issued. See, Order on Motions to Intervene and Further Procedural Order (issued May 6, 2011). Thereafter, on May

27, 2011, the Committee conducted a technical session designed to allow the parties to conduct discovery.

The Committee received letters in support of and opposed to the Petitions. These letters were received as public comment. The letters opposing the Committee's jurisdiction generally asserted that the Antrim Planning Board was capable of providing a full review of the Project. The letters in support of the Committee's jurisdiction generally stated that the Antrim Planning Board does not have a regulatory scheme nor the experience to provide proper review and oversight of the Project in accordance with the purposes of RSA 162-H:1. The Committee also received a separate Petition, sponsored by Mary Allen and signed by more than 100 registered voters, opposing the Petitions for Jurisdiction. Ex. Allen B.

The Committee has considered the views and comments of the public, as expressed at public hearings and in writing in this docket. The transcripts of public comments can be reviewed on the Committee's website or at the Office of the Chairman of the Committee. Written public comments are also available for public review at the office of the Chairman of the Committee (NH Department of Environmental Services).

The Committee received nineteen motions to intervene in this docket. The Committee ruled on each of the motions in its Order of May 6, 2011. See, Order on Motions to Intervene and Further Procedural Order. The participation of intervenors was consolidated for the purpose of the presentation of witnesses, argument, cross-examination and other participation in these proceedings. Id. See, RSA 541-A:31, V(c), N.H. CODE OF ADMINISTRATIVE RULES, SITE 202.11(D).

On May 24, 2011, Richard Block and Lorraine Block filed a Motion to Reconfigure Intervenor Groups with the Committee. See, Motion to Reconfigure Intervenor Group, dated

May 24, 2011. The Blocks requested the Committee to combine the intervenors in the following groups of intervenors: (1) "Block Group of Intervenors" consisting of Richard Block, Lorraine Carey Block, Spencer Garrett, Mark and Brenda Schaefer, Janice D. Longgood, Annie Law, Robert Cleland, Samuel and Michelle Apkarian, Keith and Julie Klinger, Elsa Voelcker, and James Hankard; and (2) "Allen Group of Intervenors" consisting of Robert Edwards, Brian Beihl, Barbara Gard, and Mary Allen. See, Motion to Reconfigure Intervenor Groups dated May 24, 2011. There was no objection to this request. On June 1, 2011, the Committee granted the Intervenors' Motion to Reconfigure Intervenor Groups.

On June 1, 2011 and June 27, 2011, the Committee held adjudicatory and deliberative proceedings. During the deliberative proceedings, the Committee first considered whether or not the Petitions, as filed, were statutorily sufficient. The Committee unanimously determined that the Petitioners were statutorily sufficient. See, Tr., 06/27/2011, p. 67; Section V, A, set forth below. The Committee also deliberated on the question raised by Counsel for the Public as to whether or not this matter was ripe for review in the absence of a formal Application for a Certificate of Site and Facility. The Committee unanimously determined that the matter was, in fact, ripe for review. See, Tr., 06/27/2011, pp. 69-70; Section V, B, below. The Committee next deliberated on a motion made by Vice Chairman Getz (seconded by Mr. Harrington) to delay deliberations until a time when the Town of Antrim had voted on a proposed amendment to the zoning ordinance. The motion failed to carry on a split decision of the Committee. See, Tr., 06/27/11, p. 128; Section V, C, below. A motion was then made that the Committee should assert its discretionary jurisdiction over the Project. After deliberation on this issue, a majority

of the Committee voted to assert jurisdiction.<sup>2</sup> See, Tr., 06/27/2011, Afternoon Session, at 136; Section V, C, below. Finally, as a requirement of maintaining jurisdiction, the Committee voted to require AWE to file a complete Application for a Certificate of Site and Facility before January 31, 2012. The purpose of this Order is to memorialize the considerations and deliberations of the majority of the Committee on these issues.

### **III. POSITION OF THE PARTIES**

#### **A. Town of Antrim Board of Selectmen**

On February 10, 2011, the Committee received a letter from the Board of Selectmen of the Town of Antrim, signed by then Chairman of the Board, Gordon Webber, requesting the Committee to provide review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation the Project. See, Letter from Gordon Webber dated February 10, 2011. After the March 2011 elections the Board of Selectmen reaffirmed its position before the Committee by letter dated April 20, 2011.<sup>3</sup> See, Letter from Michael Genest dated April 20, 2011.

In their letter of April 20, 2011, the Selectmen provided a history of the municipal process concerning the proposed Project. Id. The letter indicates that the Project was first formally brought to the attention of the community in a conceptual format, at an April 2, 2009 Planning Board meeting. Id. Since that time, and up to the time of the correspondence, the

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<sup>2</sup> The motion passed on a 6-4 vote. Voting in favor of the motion: Director Stewart, Director Morin, Director Normandeau, Director Scott, Commissioner Below and Commissioner Bald. Vote against: Vice Chairman Getz, Commissioner Ignatius, Director Muzzey, and Mr. Harrington.

<sup>3</sup> A second letter dated April 20, 2011, was also filed with the Committee by Mr. Genest on behalf of the Antrim Board of Selectmen objecting to the Petition for Intervention by the Antrim Planning Board and noting that the Selectmen are tasked with managing the prudential affairs of the Town and is the only local governing body with the authority to act on behalf of the Town.

Selectmen assert that the Planning Board held 12 meetings concerning renewable energy facilities and/or wind energy facilities. Id. The Selectmen also report that the Zoning Board of Adjustment ("ZBA") held 13 meetings on requests for variances for a meteorological tower. Id. The ZBA granted a variance for the meteorological tower. Id. However, the granting of the variance led to two lawsuits against the Town. Id. In their letter, the Selectmen also report that the Planning Board had voted to endorse a zoning amendment that would allow wind energy facilities as a permitted use in the Rural Conservation District. Id. However, due to notice errors, the zoning amendment could not be placed on the ballot for the March, 2011 town meeting. Id. The Selectmen also report that, in light of the notice error, the Planning Board held a public hearing and voted to recommend the zoning amendment and to request a special town meeting. Id. However, after the March, 2011, municipal election the composition of the Planning Board changed and, on March 17, 2011, the "new Planning Board" voted not to recommend the zoning amendment and nullified the special town meeting which had already been approved by the Board of Selectmen. Id.

The Board of Selectmen argues that the Town's land use boards do not have sufficient technical knowledge or expertise to consider the issues that surround the siting, construction, and operation of the Project. Id. The Board of Selectmen believes that invoking the provisions of RSA 162-H and the jurisdiction of the Committee will provide a better alternative. Id.

In support of this position, the Selectmen also proffered the testimony of Michael Genest, the present chair of the Board of Selectmen. Ex. BOS 1. In his testimony, Mr. Genest adopts the position set forth in the letters from the Board of Selectmen. Ex. BOS 1, at 2. Mr. Genest notes that the land use process in the Town has already resulted in two litigations in the Superior Court stemming from the review of the variance for the meteorological tower. Ex. BOS 1, at 2. Mr.



Genest expressed concern that additional litigation will follow if the full Project is considered by the local boards. Ex. BOS 1, at 2. He is concerned about the significant legal costs incurred by the Town as a result of the matter. Ex. BOS 1, at 3. In addition, Mr. Genest points out that the Town's current Ordinances and regulations are not designed to address construction and operation of renewable energy projects. Ex. BOS 1, at 3-4. Mr. Genest is concerned that there is no certainty that an appropriate ordinance and/or regulation will ever be developed in the Town. Ex. BOS 4-5. He is also concerned that any vote on a new local ordinance will result in nothing more than a referendum on this particular Project rather than a fair application of principles for the consideration of such projects. Ex. BOS 1, at 5. In contrast, Mr. Genest notes that the statutory process of RSA 162-H provides a clear framework for review of renewable energy facilities and urges the Committee to assert jurisdiction over the Project, regardless of the Town's progress in developing a new ordinance.

Ex. BOS 1, at 4 – 5; Tr., 06/01/2011, Afternoon Session, at 93-94.

**B. AWE**

AWE submitted the pre-filed and supplemental pre-filed testimony of Mr. Jack Kenworthy, Chief Executive Officer for Eolian Renewable Energy, LLC. Ex. AWE 2, 3. Mr. Kenworthy asserts that the review of the Project by the Town of Antrim will not permit a timely and impartial consideration of the Project and states that it is necessary and appropriate for the Committee to assert jurisdiction over the Project. Ex. AWE 2, at 2. Mr. Kenworthy argues that the Committee is best qualified to evaluate a project of this type, size and scope and that the Town of Antrim does not have the capacity to evaluate an application for a utility-scale facility in a fair, reasonable, and timely manner. Ex. AWE 2, at 14. For example, Mr. Kenworthy states that AWE has dealt with the Town of Antrim on three different matters: (i) when it submitted an

initial height variance application to erect a temporary meteorological tower; (ii) when it submitted a request for a building permit for the temporary meteorological tower; and (iii) when the Town of Antrim attempted to amend the Antrim Zoning Ordinance to expressly identify construction of commercial wind energy facilities as a permitted use in the Rural Conservation District. Ex. AWE 2, at 14, 17-18. According to Mr. Kenworthy, each effort was fraught with procedural errors and entailed lengthy application and appeal processes and the reversal of previous decisions by various Town land use boards. Ex. AWE 2, at 14. Ultimately, AWE's involvement with the Town's land use boards concluded with the litigation currently pending before the Hillsborough County Superior Court and with two cancelled ballot votes concerning the zoning ordinance amendment. Ex. AWE 2, at 14.

As additional support for its claim that the Town of Antrim is not equipped with addressing renewable energy facilities of this magnitude, AWE states that the Town of Antrim does not have a separate ordinance specifically addressing renewable energy facilities of this type. Ex. AWE 2, at 24. Under the current regulatory scheme, the Town's general zoning ordinance and site review process would regulate the construction and operation of the Project. Ex. AWE 2, at 24. According to AWE, this regulatory scheme is not well-suited to evaluate all environmental, economic, and technical issues associated with the construction and operation of the Facility. Ex. AWE 2, at 24. AWE also disputes APB's assertion that an ordinance will be developed and enacted in the timely manner. Tr., 06/01/2011, Afternoon Session, at 33, 60. AWE further disputes the APB *ad hoc* committee's ability to develop the Ordinance which would adequately address the findings and purposes set forth in RSA 162-H:1. Tr., 06/01/2011, Afternoon Session, at 50, 66. According to AWE, the *ad hoc* committee lacks qualification and experience required for development of such Ordinance. Tr., 06/01/2011, Afternoon

Session, at 50-51. Therefore, AWE asserts that the Committee's involvement is needed to ensure the promotion of the purposes set forth in RSA 162-H:1. Ex. AWE 2, at 24.

In his Supplemental Prefiled Testimony, Mr. Kenworthy responds to the position of the Planning Board and argues that the primary issue before the Committee is whether the Committee should assert jurisdiction pursuant to the statute. Ex. AWE 3. Mr. Kenworthy testifies that this decision should be made without regard to the present efforts of the APB to propose and adopt a new Ordinance that might provide new rules and a process for consideration of such projects. Ex. AWE 3, at 1-2. See also, Ex. AWE 3, at 9-14 (disputing various opinions and characterizations of the pending "*ad hoc*" planning board process).

Mr. Kenworthy also disputes various opinions of Loranne and Richard Block and asserts that the Project is well-defined. Ex. AWE 3, at 3-4. Mr. Kenworthy also disputes the Block's claims that AWE has taken multiple simultaneous approaches to permitting and by doing so demonstrated that the Project is undefined and vague. Ex. AWE 3, at 5-6. Mr. Kenworthy also reiterates his company's credentials in his supplemental testimony and urges the Committee to assert the jurisdiction over the Project. Ex. AWE 3.

**C. Counsel for the Public**

Counsel for the Public asserts that the Petitions are not ripe for Committee's consideration and requests the Committee to deny them. See, Response of Counsel for the Public to Petition for Jurisdiction dated April 20, 2011. Specifically, Counsel for the Public states that the assertion of jurisdiction in the absence of an Application for a Certificate of Site and Facility to the Committee is premature. See, Response of Counsel for the Public to Petition for Jurisdiction dated April 20, 2011. In addition, Counsel for the Public asserts that the issue of jurisdiction is not ripe because the Project is not yet clearly defined. Id. According to Counsel

for the Public, the Committee may evaluate the extent of the State's interest in the Project only once its size, location, and power production is better defined through an Application with the Committee. Id. Counsel for the Public concluded that in the meantime, the Committee should let the local process work. Tr., 06/27/2011, Afternoon Session, at 42.

**D. Antrim Planning Board**

In a letter dated April 12, 2011, APB advised the Committee that it voted to oppose the Petitions from AWE and the Antrim Board of Selectmen. See, Letter from the Antrim Planning Board dated April 12, 2011. APB requests the Committee to deny the Petitions or, in the alternative, delay consideration of the Petitions until a time when the legislative body of the Town of Antrim votes on an ordinance specifically addressing industrial wind development. Id. In support of its position, APB submitted the testimony of Martha E. Pinello and the testimony of Charles A. Levesque, both present members of the Antrim Planning Board. Ex. PB 1, 2. Generally, Ms. Pinello and Mr. Levesque assert that APB will be able to address the issues raised by the Project in a timely and efficient way in compliance with various statutory requirements. Ex. PB 2, at 8-10; Ex. PB 1, at 7. Furthermore, Ms. Pinello asserts that all prior delays encountered by AWE in its dealings with the Town of Antrim are attributed to AWE's failure to comply with Antrim's procedural requirements, rules, and regulations. Ex. PB 1, at 10-13. Ms. Pinello and Mr. Levesque admit, however, that the Town of Antrim does not have either an ordinance or regulation specifically designed to address large scale wind energy facilities. Ex. PB 2 at 8-10; Ex. PB 1, at 7. They claim that the Town is in the process of adopting an "appropriate ordinance and regulations". Ex. PB 1, at 7; Ex. PB 2, at 9. On April 7, 2011, APB named "a seven member *ad hoc* committee to oversee the investigation of, and to make recommendations for, comprehensive oversight procedures concerning industrial wind-energy

generating facilities within the Town of Antrim.” Ex. PB 1, at 8. The *ad hoc* committee is required to forward its recommendations to the full Planning Board for their review and implementation within six month of the committee’s creation. Ex. PB 1, at 8. The Antrim Planning Board, in turn, is obligated to deliver its final report, including its recommendations and any proposed changes, to the Antrim Board of Selectmen within three months of receiving the *ad hoc* committee’s report. Ex. PB 1, at 8. Ms. Pinello also asserts that the Antrim Board of Selectmen approved this process. Ex. PB 1, at 8. The Committee received testimony and exhibits evidencing the *ad hoc* committee’s efforts to develop an ordinance and regulations pertaining to renewable energy facilities to be available for the Town’s vote by November 1, 2011. Ex. PB 3, Ex. AWE 8. According to Ms. Pinello and Mr. Levesque, the Town of Antrim will have a comprehensive renewable energy ordinance and will be able to address the Project in accordance with the purposes and findings set forth in RSA 162-H:2, rendering the Committee’s intervention unnecessary. Ex. PB 2, at 9-10; Ex. PB 1, at 14.

**E. ASNH and HCCE**

Neither ASNH nor HCCE takes a position regarding whether the Committee should assert its jurisdiction over the Project. See, Petition for Intervention by Audubon Society of New Hampshire dated April 12, 2011; Petition for Intervention by Harris Center for Conservation Education dated April 12, 2011. ASNH generally states, however, that the Committee’s decision should ensure the protection of natural resources and the environment of the site and region. Tr., 06/27/2011, Morning Session, at 179.

**F. Block Group of Intervenors**

The Committee received pre-filed testimony from the following intervenors:

- Janice D. Longgood (Ex. Longgood 1);
- Robert Cleland (Pre-Filed Testimony of Mr. Cleland);

- Annie Law (Ex. Law 1); and
- Richard and Lorraine Block (Ex. Block 1).

The intervenors request the Committee to deny the Petitions and state that: (i) the issue of jurisdiction is not ripe for adjudication; (ii) APB is, or will be, in the near future fully capable and qualified to review any issues arising from the construction and operation of the Project; and (iii) that people of the Town of Antrim should have a right to consider and decide the issues arising from the construction of the Project in their community. See, Ex. Block 1; Longgood 1; Law 1; Pre-Filed Testimony of Mr. Cleland dated May 20, 2011; Tr., 06/27/2011, Afternoon Session, at 16.

In his pre-filed testimony, Mr. Cleland asserts that APB should exercise its jurisdiction over the Project and that the members of APB are qualified, knowledgeable and capable to handle the Project of this magnitude. See, Pre-Filed Testimony of Mr. Cleland. Ms. Law supports Mr. Cleland's position and asserts that the construction and operation of the Facility should be regulated on a local level and that the people of Antrim should have a right to decide whether to allow the construction of the Facility in their community. See, Ex. Law 1; Tr., 6/27/2011, Afternoon Session, at 18-20.

In addition, Richard and Lorraine Block request the Committee to deny the Petitions, stating that the issue of jurisdiction is not ripe for adjudication. See, Block 1, at 2; Tr., 06/27/2011, Afternoon Session, at 21. Specifically, Richard and Lorraine Block assert that AWE did not file an Application for Site and Facility with the Committee and, therefore, the Committee currently cannot ascertain the merits of AWE's Project. See, Block, at 2. Richard and Lorraine Block further assert that the Committee's jurisdiction over the Project is unnecessary because APB is fully capable of reviewing any issues arising in conjunction with the

construction and operation of the Project. See, Block, at 5; Tr., 06/27/2011, Afternoon Session, at 19. Therefore, they requested the Committee to deny the Petitions. Tr., 06/27/2011, Afternoon Session, at 16.

Ms. Longgood asserts that the New Hampshire tradition of local control should be upheld by the Committee and that the citizens of the Town of Antrim are fully capable, mature and knowledgeable to be able to review AWE's proposal, if any. See, Ex. Longgood 1; Tr., 06/27/2011, Afternoon Session, at 17-18, 20. Therefore, Ms. Longgood urged the Committee to deny the Petitions for Jurisdiction. See, Ex. Longgood; Tr., 06/27.2011, Afternoon Session, at 17-18, 20. Ms. Longgood is joined by Mark and Brenda Schaefer and Spencer Garrett. See, Letter from Brenda Schaefer dated April 13, 2011; Motion to Intervene *Pro Se* of Mark and Brenda Schaefer, dated April 15, 2011.

**G. Allen Group of Intervenors**

The Allen Group of Intervenors requests the Committee to deny the Petitions or, in alternative, to defer its decision on Petitions stating that the issue is not ripe for adjudication and that APB will be adequately equipped to resolve all issues arising from the construction and operation of the Facility at the conclusion of the reorganization of the Town's ordinance and regulations. Ex. Allen A; Tr., 06/27/2011, Afternoon Session, at 38-39.

In addition, the Allen Group of Intervenors assert that the Petition from the Antrim Board of Selectmen is not ripe because it requests the Committee's review "if and when an application is made to construct this facility," and, as of the date of this Order, AWE did not file its Application for Site and Facility with the Committee. Ex. Allen A; Tr., 06/27/2011, Afternoon Session, at 39. The Allen Group of Intervenors also asserts that the construction of the Project is a matter of local control and that the jurisdiction by the Committee may invite unnecessary

expenses and litigation for the Town of Antrim. Ex. Allen A; Tr., 06/27/2011, Afternoon Session, at 38. Therefore, the Allen Group of Intervenor requested the Committee to deny the Petitions or, in alternative, to defer its decision so that APB can develop an ordinance addressing construction and operation of renewable energy facilities and schedule a hearing to review the issue of jurisdiction after such an ordinance is fully developed. Ex. Allen A; Tr., 06/27/2011, Afternoon Session, at 39.

**H. Gordon Webber**

Mr. Webber submitted his pre-filed testimony on May 6, 2011.<sup>4</sup> See, Ex. Webber 1. Mr. Webber generally asserts that ABP does not have the qualification and experience to handle a Project of this magnitude. Ex. Webber 1. Specifically, according to Mr. Webber, APB does not have the experience or responsibility to evaluate the regional impact of this proposed project as would the Committee. Ex. Webber 1, at 2. He also characterized APB as a “dysfunctional” board and concludes that it will not be able to review AWE’s Application in an objective and timely manner. Ex. Webber 1, at 3. In addition, according to Mr. Webber, the adequacy of a future ordinance is questionable, because three members of APB already expressed their concern that the ordinance may be too restrictive and will de facto prevent AWE from building the Project. Tr., 06/27/2011, Morning Session, at 56. Mr. Webber asserts that the Committee should take jurisdiction over the Project to ensure a timely, objective and qualified review. Ex. Webber 1, at 3.

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<sup>4</sup> Mr. Webber represents the interests of and speaks on behalf of over 100 registered voters from the Town of Antrim requesting that the Committee assert jurisdiction over the Project.



#### **IV. ANALYSIS AND FINDINGS**

The Committee may assert jurisdiction over a renewable energy facility consisting of electric generating station equipment and associated facilities with a nameplate capacity of 30 megawatts or less but at least 5 megawatts if the Committee determines that asserting jurisdiction over the Project is “consistent with the findings and purpose set forth in RSA 162-H: 1.” See, RSA 162-H:2, XI, XII; see also, Final Order Denying Petitions Filed by Michael Laflamme and Howard Jones, Docket No. 2009-03 (issued Apr. 7, 2010); Jurisdictional Order, Community Energy, Inc. and Lempster Wind, LLC, Docket No. 2006-001 (issued Sept. 23, 2006).

##### **A. Sufficiency of the Petitions**

The Committee has the discretion to exercise its jurisdiction over a renewable energy facility consisting of electric generating station equipment and associated facilities with a nameplate capacity of 30 megawatts or less but at least 5 megawatts. RSA 162-H:2, XI. See, RSA 162-H:2, XII. Procedurally, the Committee may consider asserting jurisdiction over such a Project on its own motion or if the Committee receives a petition requesting the Committee to assert jurisdiction from the Applicant or two or more petitioners defined in RSA 162-H:2, XI. See, RSA 162-H: 2, XII. RSA 162-H:2, XI, defines “petitioner” as a person who files a petition meeting one of the following conditions: (1) a petition endorsed by 100 or more registered voters in the host community or host communities; (2) a petition endorsed by 100 or more registered voters from abutting communities; (3) a petition endorsed by the governing body of the host community or 2 or more governing bodies of abutting communities; or (4) a petition filed by the potential applicant. RSA 162-H:2, XI.

The Committee received three Petitions to assert jurisdiction over the Project: (1) a Petition from the Board of Selectmen of the Town of Antrim filed on February 2, 2011, and reaffirmed by letter dated April 20, 2011; (2) a Petition to assert jurisdiction over the Project filed by AWE on March 11, 2011; and (3) the Webber Petition signed by more than one hundred registered Antrim Voters filed on April 15, 2011. See, Letter from Gordon Webber dated February 7, 2011; Ex. AWE. 1; Webber Petition. The Petitions were filed by the Applicant, by the governing body of the host community, and by more than 100 registered voters of the hosting community, respectively. These parties are authorized to petition the Committee to assert jurisdiction over the Project under RSA 162-H:2, XI, XII. Therefore, the Committee finds that the Petitions are sufficient and authorize the Committee to determine whether it should exercise discretionary jurisdiction over the Project.

**B. Ripeness**

Counsel for the Public requests the Committee to find that the issue as to whether the Committee should assert jurisdiction is not ripe for adjudication and to deny the Petitions. See, Response of Counsel for the Public to Petition for Jurisdiction dated April 20, 2011. According to the Counsel for the Public, it is premature for the Committee to determine whether it should exercise its jurisdiction prior to AWE's filing of the Application for Site and Facility with the Committee. See, Response of Counsel for the Public to Petition for Jurisdiction dated April 20, 2011.

It is well settled law of statutory construction that, where possible, the plain and ordinary meaning should be ascribed to the words used in a statute by the legislature. See, In Re Town of Pittsfield, 160 N.H. 604, 606 (2010) (citation omitted). When a statute's language is plain and unambiguous, it is not necessary to seek further indications of legislative intent. Id.

The interpretation of a statute must focus on the “statute as a whole, not on isolated words or phrases, presuming that the legislature did not use superfluous or redundant words.” Impact Food Sales, Inc. v. Evans, 160 N.H. 386, 397 (2010). We will neither consider what the legislature might have said nor add the words that it did not see fit to include. Id. (citations and quotations omitted).

The statutory language of RSA 162-H does not require the filing of an Application as a prerequisite for the Committee to consider asserting its discretionary jurisdiction. See, RSA 162-H:2, XII. It is improper to add terms and requirements that the legislature did not see fit to include in the statute and, therefore, we do not find that the filing of an Application of Site and Facility is required for the Committee’s jurisdictional determination.

In addition, the legislature specifically noted that the Petition may be filed by the “potential applicant”. RSA 162-H:2, XI (d). The term “potential” is unambiguous and means “possible” or “capable of becoming”. See, Black’s Law Dictionary (9th ed. 2009) (defining “potential” as capable of coming into being; possible). It follows that the legislature specifically authorized the Committee to consider the Petitions from potential applicants before they file their Applications for Site and Facility, as opposed to the Applicants who already filed their Applications for Site and Facility. The statute also allows the Committee to assert jurisdiction in circumstances where it is highly unlikely that an Application for a Certificate would be filed. For instance, RSA 162-H:XII allows the Committee to assert discretionary jurisdiction where a petition has not been filed by the Applicant at all. In such cases, an Application would not have been filed. Indeed, a potential applicant might oppose the assertion of jurisdiction. The absence of a formal Application for a Certificate of Site and Facility does not prohibit the Committee from asserting jurisdiction.

Counsel for the Public and the Block Group of Intervenors also assert that the issue of jurisdiction is not ripe because the Project is not yet clearly defined. See, Response of Counsel for the Public to Petition for Jurisdiction dated April 20, 2011. However, as addressed in detail in Section 4.C, below, the Committee's review of the issue of jurisdiction is limited to the determination of whether the exercise of such jurisdiction is consistent with the findings and purpose set forth in RSA 162-H:1, as opposed to the comprehensive review that is required for the issuance of the Certificate of Site and Facility. See, RSA 162-H:2, XII; RSA 162-H:16. The Committee does not require a detailed description of the Project to decide whether the exercise of jurisdiction over the Project is consistent with the findings and purpose articulated in RSA 162-H:1. The issue of Committee's jurisdiction is ripe for adjudication as long as the Committee has sufficient facts to determine if the exercise of the Committee's jurisdiction is consistent with the findings and purpose articulated in RSA 162-H:1. In this docket, the Committee has received information pertaining to the location of the Project, Ex. AWE 1, 4; Ex. AWE 2, at 4-5; the environmental conditions, Ex. AWE 2, at 6; the existence of wildlife in the area, Ex., AWE 2, at 6; and the nature of the Project area which falls within the rural conservation district of the Town, Ex. AWE 1, ¶ 4. A comprehensive description of the rural conservation district is included in the Town's Master Plan. Ex. PB 2, Appx. E. In addition, the Committee has received information regarding the proximity of abutters to the proposed Project. Tr., 06/01/2011, Morning Session, at 80. The Committee has also received evidence of the expected size, heights and likely location of each of the wind turbines. Ex. AWE 1, ¶6; Ex. AWE 1, Antrim Wind Energy Project Map dated 3/10/11. While the information received by the Committee does not compare to the extensive permitting documents and engineering drawings that normally accompany an Application for Site and Facility, it is nevertheless adequate to make a determination as to whether or not the Committee should assert its jurisdiction and require the filing of a detailed application.

The Allen Group of Intervenors argues that the Petition of the Antrim Board of Selectmen is not ripe for adjudication because it is conditioned upon AWE's filing of the Application with the Subcommittee. See, Ex. Allen A; Tr., 06/27/2011, Afternoon Session, at 39. We note that, although the Board of Selectmen's first letter requesting the Committee's jurisdiction contained such a condition precedent, the second letter unconditionally established the Board's request for a jurisdictional determination. See, Letter from Michael Genest dated April 20, 2011; Tr., 06/01/2011, Afternoon Session, at 130.

The Committee finds that the Board of Selectmen's Petition is not conditioned upon the filing of the Application for Site and Facility by AWE and is ripe for adjudication.

**C. Jurisdiction**

The Committee may assert jurisdiction over a renewable energy facility consisting of electric generating station equipment and associated facilities with a nameplate capacity of 30 megawatts or less but at least 5 megawatts if it finds that taking jurisdiction over the proposed facility is consistent with the legislative findings and purposes set forth in RSA 162-H:1. See, RSA 162-H:2, XII; see also, Jurisdictional Order, Community Energy, Inc. and Lempster Wind, LLC, Docket No. 2006-001 (issued Sept. 23, 2006). The legislative findings and purposes outlined in RSA 162-H:1 are:

1. to maintain a balance between the environment and the need for new energy facilities in New Hampshire;
2. that undue delay in the construction of needed facilities be avoided; and
3. that full and timely consideration of environmental consequences be provided;

4. that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans;
5. that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion;
6. to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles.

RSA 162-H:1. The Committee's determination on the issue of jurisdiction is governed by the foregoing declaration of purpose.

In other cases when addressing the issue of jurisdiction over a renewable energy project the Committee considered whether potential applicants have already obtained permits; whether the Town or City where the applicants sought to construct the project had a renewable energy ordinance or other rules and regulations designed to address construction and operation of renewable energy facilities and the extent of such rules and regulations; whether review by the Committee would be duplicative of the work already undertaken by various state agencies and the municipality; whether review by the Committee would guarantee greater disclosure than already provided; and whether the local review of the project has already considered the project as a part of a land use planning scheme in which all environmental, economic and technical issues were resolved in an integrated fashion. See, Final Order Denying Petitions Filed by Michael Laflamme and Howard Jones, Docket No. 2009-03 (issued Apr. 7, 2010) [Clean Power Development Project].

As was the case with the Clean Power Development Project, the construction of the Project will assure that the state has adequate and reliable supply of energy. Tr., 06/01/2011, Afternoon Session, at 42-43. Similar to the Clean Power Development, the Facility is a

renewable energy facility the construction of which is encouraged under and consistent with New Hampshire's renewable energy portfolio standards statute, RSA 362-F, and with the State's "25x25" plan to obtain at least 25% of the state's total energy needs from renewable sources by the year 2025. See, RSA 362-F; Executive Order No. 2007-003; Ex. AWE 10; Tr., 06/01/2011, Afternoon Session, at 42-43.

Here, however, unlike City of Berlin's extensive review of Clean Power Development, the Town's review of the Project was limited to the evaluation of the site plan application and the request for variances for the Project's meteorological tower which, ultimately, led to two lawsuits against the Town. Tr., 06/01/2011, Morning Session, at 58; Tr., 06/01/2011, Afternoon Session, at 63. In addition, although AWE anticipates that it will need to obtain similar environmental permits for the Town's and Committee's review, unlike Clean Power Development it did not obtain and did not submit any permits for the Town's review. Tr., 06/01/2011, Morning Session, at 63; Tr., 06/01/2011, Afternoon Session, at 65. The Committee's review of the Project will not be duplicative of the Town's limited review of the meteorological tower and will guarantee greater disclosure than was already provided.

However, the greatest difference between the City of Berlin's review of Clean Power Development and the Town of Antrim's potential review of the Project stems from the fact that, unlike the City of Berlin, the Town of Antrim does not have an ordinance or any other rules or regulations specifically designed to address the construction and operation of the renewable energy facility. Under the Town's current regulatory scheme, the Project must undergo site plan review and would have to receive variances allowing the construction of the facility of this type and magnitude in the Antrim's Rural Conservation District. Tr., 06/01/2011, Afternoon Session, at 62, 82, 105-106, 152. APB admits, however, the present ordinances are not designed to

address the issues raised by construction of a renewable energy facility of the scale proposed here and, therefore, if applied, would not adequately address the issues of the impact of the renewable energy facility on the region in general and on the Town in particular. Tr., 06/01/2011, Afternoon Session, at 159; Tr., 06/27/2011, Morning Session, at 162, 164-165.

The Town's efforts to address the need for regulations specifically designed to regulate the construction and operation of the renewable energy facilities are commendable. The minutes of the APB *ad hoc* committee demonstrate an effort to propose a workable ordinance. Ex. PB 1, Appx. G-1; Ex. PB 4; Tr., 06/27/2011, Morning Session, at 89, 153-157. The *ad hoc* committee may very well succeed in developing a comprehensive ordinance addressing the purpose and findings set forth in RSA 162-H:1. However, the adoption of an appropriate ordinance and regulation is not guaranteed. Although a timeline has been developed, there are still many variables in the Town of Antrim that could lead to further delay. Under APB's resolution, the *ad hoc* committee is required to forward its recommendations to the full Planning Board for review and implementation which, in turn, is obligated to deliver its final report, including its recommendations and any proposed changes, to the Antrim Board of Selectmen within three months of receiving the *ad hoc* committee's report. Ex. PB 1, at 8; Tr., 06/27/2011, Morning Session, at 55. Therefore, it appears that in order to guarantee a timely enactment of an ordinance, the Antrim Board of Selectmen will have to call a special town meeting on November 1, 2011. Tr., 06/27/2011, Morning Session, at 55; Tr., 06/27/2011, Morning Session, at 95-96; Ex. PB 4. Even assuming that the Antrim Board of Selectmen will agree to call the special town meeting and address the ordinance, the implementation of such an ordinance will still be conditioned upon its approval by the voters of the Town of Antrim. Tr., 06/27/2011, Morning Session, at 101. According to the Chairman of the Board of Selectmen, however, the chances are



that the ordinance will be so restrictive that the voters supporting the construction of the Project whom according to certain polls, constitute the majority of Antrim's voting population will not support it and will vote it down. Tr., 06/01/2011, Afternoon Session, at 92-93, 98, 118, 140-141; Ex. BOS 1, 8. The parties agree that it is impossible to predict with any level of certainty whether the people of Antrim will approve an ordinance. Tr., 06/27/2011, Morning Session, at 101.

In the absence of an ordinance, it is not possible to determine, with any degree of certainty, that an eventual ordinance will be consistent with the legislative findings and purposes. Neither the Committee nor general public has been provided with a draft of the ordinance. Tr., 06/27/2011, Morning Session, at 56, 173. At this stage APB requests the Committee to assume that the ordinance will sufficiently assure adherence to the purposes and findings identified in RSA 162-H:1. While we do not question the efforts of the *ad hoc* committee and APB to fashion an appropriate ordinance, we cannot find that such an ordinance will eventually come to fruition or that it will adequately safeguard the purpose and findings of RSA 162-H:1.

Apart from the timing and enactment of a new ordinance and the issue of its adequacy, AWE raised concerns that even if the Town enacts such ordinance, it will not be able to review the Project in a timely and objective manner. AWE asserts that the Committee's jurisdiction is required to avoid such delay. Tr., 06/01/2011, Morning Session, at 40-41. As an example, AWE submits the experience it had with the Town's Zoning Board when it attempted to receive a height variance for its meteorological tower. Tr., 06/01/2011, Morning Session, at 40-41. Specifically, AWE states that it has been nearly two years since it first applied to receive the variance from the Antrim's Zoning Board and the matter is still contested because its initial grant of height variance was reheard, re-decided a year later, and then appealed to the Hillsborough

County Superior Court. Tr., 06/01/2011, Morning Session, at 40-41. AWE asserts that the delay exemplifies the prolonged nature of any type of considerations undertaken by the Town and demonstrates that the review of the Project by the Town will cause undue delay in construction of the Project. Tr., 06/01/2011, Morning Session, at 40-41. In addition, AWE complains that consideration of the Project through town ordinances and review will lead to a fractured and repetitive appeals process. Committee jurisdiction assures consolidation of all land use planning issues into a single proceeding, subject to a single appeal to the New Hampshire Supreme Court. In this regard, AWE claims that Committee jurisdiction is the superior option for the purpose of avoiding undue delay in the construction of needed facilities, providing for full and timely consideration of environmental consequences and assuring that all environmental, economic and technical issues are resolved in an integrated fashion. The majority of the Committee agrees with this assessment.

In sum, there can be no guarantee that an ordinance, if enacted, will be developed and voted upon in a timely manner, will ensure the enforcement of the findings and purposes set forth in RSA 641-H:1, and will be enforced by APB in a timely and objective manner.

The Committee considered deferring its decision until the time identified as a deadline for introduction of a preliminary draft of the ordinance to the public. However, even then, the Committee would have to base its decision on a preliminary draft of the ordinance without knowing whether the final version would actually render the Committee's jurisdiction unnecessary to assure the enforcement of the findings and purposes set forth in RSA 641-H:1.

In contrast, the Committee's review of the Project is statutorily defined and will assure that the findings and purposes identified in RSA 162-H:1 will be enforced and complied with. The Committee already has a well developed regulatory scheme designed to address the siting,

construction and operation of renewable energy facilities consistent with the purposes and findings articulated in RSA 162-H:1.

In addition, under RSA 162-H:6-a, the Committee is required to exercise its review within an eight month timeframe. The timeframe contained at RSA 162-H:6-a, VIII guarantees that consideration of the Project is conducted in a timely manner in keeping with the findings and purposes set forth at RSA 162-H:1.

It is also important to note that the Antrim Board of Selectmen, as the locally elected governing body which has the authority to speak and act on behalf of the town as a whole (see RSA 41:8), petitioned the Committee to assert jurisdiction over the Project and asserted that the Town does not have the level of expertise to address and regulate a project of this magnitude. Although the request from the Town's governing body to assert jurisdiction does not automatically mean that the Committee should assert such jurisdiction, due weight and consideration should be given to such request. See, RSA 162-H:16, IV (B). It is clear that the planning board and the municipal governing body (the Selectboard) are at loggerheads over the manner in which the Project should be considered. The friction between the local governmental entities does not suggest that future consideration of the Project by town boards will be conducted in a timely manner, respecting the due process rights of all participants.

Furthermore, we note that the Committee's jurisdiction will not preclude the Town from raising its concerns during the adjudicative process. The Committee is statutorily required to give due consideration to the views of municipal and regional planning commissions and municipal governing bodies while deciding whether to grant the Certificate of Site and Facility to the Applicant. RSA 162-H:16, IV (b). This statutory requirement guarantees that the Town and

its political sub-entities will have the opportunity to express their respective positions in regard to AWE's Application for Site and Facility.

Taking into consideration that the Town does not have an ordinance designed to address renewable energy facilities, that it is unknown whether and when such an ordinance will actually be enacted and whether it will adequately address the purposes and findings set forth in RSA 162-H:1, together with the findings and substance of the discussion above, a majority of the Committee finds that adequate protection of the objectives and purpose of RSA 162-H:1 requires the Committee to assert jurisdiction over the Project.

However, it is not our intention to allow AWE to delay in filing an Application for a Certificate of Site and Facility. AWE has represented that an Application would be filed before the end of 2011. That representation has informed the majority's decision in this matter and, therefore, as a condition of maintaining jurisdiction, we require that AWE file a complete Application before January 31, 2012.

## **V. CONCLUSION AND ORDER**

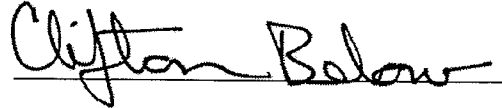
Having considered the record of this matter and the legal standards to be applied, a majority of the Committee find that, subject to the conditions discussed herein and made a part of the Order that adequate protection of the objectives and purpose of RSA 162-H:1 requires the Committee to assert the jurisdiction over the Project. In order for the Committee to maintain jurisdiction, AWE shall file a complete Application for a Certificate of Site and Facility on or before January 31, 2012.

By Order of the Site Evaluation Committee this 10th day of August, 2011.

**[MAJORITY SIGNATURES]**

A handwritten signature in cursive script, appearing to read "Harry Stewart", written over a horizontal line.

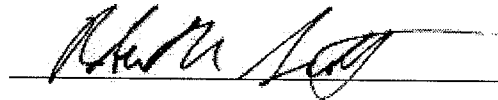
Harry Stewart, Director-Water Division  
Department of Environmental Services

A handwritten signature in cursive script, appearing to read "Clifton Below", written over a horizontal line.

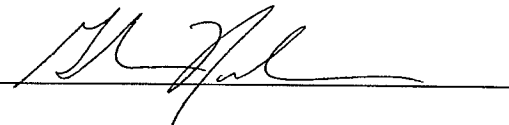
Clifton Below, Commissioner  
Public Utilities Commission

A handwritten signature in cursive script, appearing to read "George Bald", written over a horizontal line.

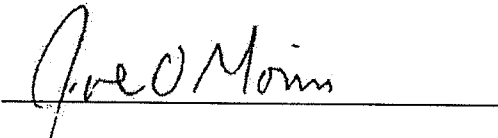
George Bald, Commissioner  
Dept. of Resources & Economic Dev.

A handwritten signature in cursive script, appearing to read "Robert Scott", written over a horizontal line.

Robert Scott, Director-Air Resources Div.  
Department of Environmental Services

A handwritten signature in cursive script, appearing to read "Glenn Normandeau", written over a horizontal line.

Glenn Normandeau, Exec. Director  
NH Fish & Game

A handwritten signature in cursive script, appearing to read "Joanne Morin", written over a horizontal line.

Joanne Morin, Director  
Office of Energy and Planning

**ATTACHMENT 4**

**LEGISLATIVE INTENT**

120 N.H. 68

Supreme Court of New Hampshire.

PUBLIC SERVICE COMPANY of New Hampshire

v.

TOWN OF HAMPTON et al.

No. 79-322. | Jan. 31, 1980.

Utility brought petition for declaratory judgment and injunctive relief against towns seeking an order declaring void as applied to it, certain votes of towns purporting to require underground construction of electric transmission lines. The Superior Court, Hillsborough County, Goode, J., transferred, without ruling, certain questions of law in advance of trial. The Supreme Court held that: (1) where utility had been granted certificate of site and facility authorizing above-ground transmission lines for nuclear generating station, towns lacked power to require underground transmission lines, and (2) site evaluation committee had jurisdiction over the transmission lines.

Remanded.

West Headnotes (6)

[1] **Towns**

⚡ Nature and Status

**Towns**

⚡ Governmental Powers in General

Towns are merely subdivisions of the state and have only such powers as are expressly or impliedly granted to them by legislature.

6 Cases that cite this headnote

[2] **Towns**

⚡ Governmental Powers in General

Whatever power towns may have to regulate location of transmission lines within their borders, that power cannot be exercised in any way that is inconsistent with state law.

3 Cases that cite this headnote

[3] **Municipal Corporations**

⚡ Operation and Effect of Legislative Acts

Local regulation is repugnant to state law when it expressly contradicts a statute or is contrary to legislative intent that underlies a statutory scheme.

5 Cases that cite this headnote

[4] **Electricity**

⚡ Permit or Consent by Public Authorities

Where public service company had been granted certificate of site and facility authorizing above-ground transmission lines for nuclear generating station, towns lacked power to require underground transmission lines. RSA 162-F:1 et seq.

1 Cases that cite this headnote

[5] **Electricity**

⚡ Permit or Consent by Public Authorities

Site evaluation committee had jurisdiction over transmission lines which were located substantially "over a route not already occupied by a transmission line or lines \* \* \*" so as to authorize public utilities commission to issue certificate of site and facility to utility, even though some lines were located over existing routes. RSA 162-F:2, subd. 1(b).

1 Cases that cite this headnote

[6] **Electricity**

⚡ Permit or Consent by Public Authorities

Site evaluation committee had jurisdiction over transmission lines so as to authorize public utilities commission to issue site and facility to utility by virtue of a design rating necessitating a finding by committee of "a substantial environmental impact." RSA 162-F:2, subd. 1(c).

### Attorneys and Law Firms

**\*\*164 \*68** Sulloway, Hollis & Soden, Concord (Dorothy M. Bickford and Martin L. Gross, Concord, orally), for plaintiff.

Upton, Sanders & Upton, Concord (Richard F. Upton, Concord, orally), for defendants.

### Opinion

**\*69** PER CURIAM.

The issue we decide in this interlocutory transfer is whether the defendant towns may require the plaintiff to use underground transmission lines after the public utilities commission has issued to the plaintiff a certificate of site and facility authorizing above-ground transmission lines for the Seabrook Nuclear Electric Generating Station, in compliance with RSA ch. 162-F. We hold that the towns lack power to require underground transmission lines.

In this petition for declaratory judgment and injunctive relief brought by the Public Service Company of New Hampshire against the town of Hampton and other **\*\*165** towns, the plaintiff seeks an order declaring void, as applied to it, certain votes of the towns purporting to require underground construction of electric transmission lines above a rated capacity of 69 kilovolts. The Seabrook transmission lines have a rated capacity of 345 kilovolts. The Court (Goode, J.) transferred, without ruling, the following questions of law in advance of trial:

1. Do the votes purportedly adopted by the defendant towns endow them with any legal authority to interfere with the construction of overhead transmission lines associated with the Seabrook Project, in light of RSA 162-F, the Certificate and the other permits held by the plaintiff?
2. Do the votes purportedly adopted by the defendant towns endow them with any legal authority to interfere with the construction of overhead transmission lines by the plaintiff in connection with the Seabrook Project, in light of the requirements of the Zoning Enabling Act (RSA 31:60 et seq.) or other provisions of law relating to actions taken by Town Meetings?

The plaintiff holds a certificate of "site and facility" authorizing the construction of the Seabrook Nuclear Power Plant and the necessary transmission lines. This certificate, issued by the public utilities commission (PUC) on January

29, 1974, after compliance with RSA ch. 162-F, specifically authorizes the erection of overhead transmission lines within the boundaries of the defendant towns. Incorporated into the certificate are permits issued by the water resources board, and by the department of public works and highways authorizing the erection of overhead transmission lines within the defendant towns.

The plaintiff also holds a construction permit from the United States Nuclear Regulatory Commission authorizing the construction of the Seabrook Nuclear Station with associated overhead transmission lines within the defendant towns. The plaintiff claims to have already invested over two million dollars in preparing for the **\*70** construction of overhead lines in accordance with the certificate and permits.

In March 1979, the defendant towns voted to adopt certain ordinances requiring all electric transmission lines over 69,000 volts to be buried underground. The plaintiff's lines have a capacity much in excess of this voltage.

Enacted in 1971, the declared purpose of RSA ch. 162-F is to provide a resolution, in an "integrated fashion," of all issues involving the selection of sites and routing of associated transmission lines. RSA 162-F:1. It establishes a site evaluation committee composed of certain officials from specified State agencies. RSA 162-F:3. The committee is required to review all plans for the siting and construction of bulk power plants and the routing of transmission lines as defined in the statute. The statute requires joint public hearings to be held by the committee, the PUC and such other agencies as have jurisdiction over the subject matter. The initial hearing and every fourth hearing thereafter must be held in the county where the facility is to be located. RSA 162-F:7 I. It provides that no additional application shall be required to satisfy the requirements of individual agencies and departments. RSA 162-F:7 IV. The committee is required to give due consideration to the views of municipal and regional planning commissions and municipal legislative bodies in determining the effect of such a project on esthetics, historic sites, air and water quality, the natural environment and the public health and safety. RSA 162-F:8 I. It is provided that the findings of the committee shall be conclusive on all questions of siting, land use, air and water quality. RSA 162-F:8 II.

In the instant case, the site evaluation committee followed all the procedural and substantive requirements of RSA ch. 162-F. After thirty-two days of hearings lasting almost a year, the committee approved the plaintiff's application for



a certificate of site and facility on July 27, 1973. During the hearings, the committee considered both overhead and underground transmission \*\*166 lines and heard evidence regarding both methods. In its report, the committee approved overhead lines over specific routes. Incorporating the report of the committee, the PUC issued a "certificate of site and facility" on January 29, 1974. After rehearings were denied, an appeal was brought to this court. On April 23, 1975, we upheld the decision of the committee. *Society for Protection of N. H. Forests v. Site Evaluation Commission*, 115 N.H. 163, 337 A.2d 778 (1975).

A fair reading of RSA ch. 162-F reveals a legislative intent to achieve comprehensive review of power plants and facilities site selection. The statutory scheme envisions that all interests be \*71 considered and all regulatory agencies combine for the twin purposes of avoiding undue delay and resolving all issues "in an integrated fashion." By specifically requiring consideration of the views of municipal planning commissions and legislative bodies, the legislature assured that their concerns would be considered in the comprehensive site evaluation. Thus, the committee protects the "public health and safety" of the residents of the various towns with respect to the siting of power plants and transmission lines falling under the statute.

[1] [2] We regard it as inconceivable that the legislature, after setting up elaborate procedures and requiring consideration of every imaginable interest, intended to leave the regulation of transmission lines siting to the whim of individual towns. Towns are merely subdivisions of the State and have only such powers as are expressly or impliedly granted to them by the legislature. *Lavallee v. Britt*, 118 N.H. 131, 383 A.2d 709 (1978); *City of Dover v. Wentworth-Douglas Hospital Trustees*, 114 N.H. 123, 316 A.2d 183 (1974). Whatever power towns may have to regulate the location of transmission lines within their borders, that power cannot be exercised in a way that is inconsistent with State law. *Lavallee v. Britt*, supra; See *State v. Hutchins*, 117 N.H. 924, 380 A.2d 257 (1977).

[3] [4] Local regulation is repugnant to State law when it expressly contradicts a statute or is contrary to the legislative intent that underlies a statutory scheme. *State v. Driscoll*, 118 N.H. 222, 385 A.2d 218 (1978); *State v. Boisvert*, 117 N.H. 291, 371 A.2d 1182 (1977). The action by the defendant towns in this case is repugnant to RSA ch. 162-F because it is contrary to the legislative intent that all matters regarding the construction of bulk power plants and transmission lines

covered by the statute be determined in one integrated and coordinated procedure by the site evaluation committee whose findings are conclusive. See *State v. Boisvert*, supra at 292, 371 A.2d at 1183. By enacting RSA ch. 162-F, the legislature has preempted any power that the defendant towns might have had with respect to transmission lines embraced by the statute, and the actions by the defendant towns with regard to transmission lines is of no effect. *Id.*; See *State v. Hutchins*, 117 N.H. 924, 380 A.2d 257 (1977).

[5] The defendant towns argue that the transmission lines in question are not covered by the statute. RSA 162-F:2, entitled "Definitions," provides:

I. "Bulk power supply facilities" means:

(a) Electric generating station equipment and associated facilities designed for or capable of operation at a capacity of 50 megawatts or more;

\*72 (b) An electric transmission line of a design rating of 100 kilovolts or more, associated with a generating facility outlined in (a), Over a route not already occupied by a transmission line or lines ;

(c) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length over a route not already occupied by a transmission line Or electric transmission lines of a design rating in excess of 100 kilovolts which the site evaluation committee or commission determines should require a certificate because of a substantial environmental impact.

(Emphasis added.) Relying on paragraph (b), the towns argue that the committee has no jurisdiction over the lines in question because they do not run entirely over routes \*\*167 not already occupied by transmission lines. The record shows, however, that one line, 28.75 miles long, is located along over 17 miles of new route while a second, 7.25 miles long, is located entirely over a new route. The third line, 18 miles long, runs 8.5 miles over a new route and 9.5 miles over an existing route.

We believe that these routes fall within the definition of "(b)ulk power supply facilities" contained in RSA 162-F:2 I (b), and are, thus, within the committee's jurisdiction. In each case, the transmission lines are of a design rating in excess of the statutory minimum and run substantially "over a route not already occupied by a transmission line or lines . . . ." *Id.* We

decline to read into the statutory language a requirement that the routes be Entirely new.

[6] Moreover, it would appear that the committee possesses jurisdiction over these transmission lines by virtue of the italicized language contained in RSA 162-F:2 I (c). Where the statutory benchmark of design rating is met, issuance of the necessary site permit implies, Ipso facto, a finding by the committee of "a substantial environmental impact."

Accordingly, we hold that the lines here in question are within the jurisdiction of the committee and cannot be regulated by the town. Our view is buttressed by the fact that in its original proposal for the Seabrook transmission lines, the plaintiff desired to locate a much greater proportion of the lines

over new routes. Only after consultation with the defendant towns and the committee did the plaintiff agree to locate a greater portion of the lines over routes already occupied by transmission equipment. That decision, motivated in part to satisfy the affected towns, should not later be used to divest the committee of site review authority.

\*73 In view of our answer to the first question, we need not answer the second.

Remanded.

#### Parallel Citations

411 A.2d 164

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# **ATTACHMENT 5**

## **PLANNING BOARD MINUTES**

## Selectmen Meeting Minutes December 2, 2008

In Attendance: Selectmen James Coffey, David Keurulainen, Bentti Hoiska

6:30 Selectmen Coffey opened the meeting with the Pledge of Allegiance and reviewed the agenda.

**Credit Card** – Bob Boynton asked if it would be feasible for the town to have a credit card. The board is interested in having the Town Administrator pursue the option of having a town card.

**Page Hill Rd** -Selectman Keurulainen has received complaints about the stop signs on Page Hill Rd. Administrator Knowlton will speak with Chief Chamberlain to make a recommendation as to keeping the sign, removing it or enforcement

**Police Chief vehicle** – Administrator Knowlton updated the board on the status of the Chiefs old cruiser. The bid was won by William Doucette of Somerville and they agreed to send a check this week and will work with Garrett Chamberlain on a time to pick up.

**Video Camera** - Selectman Coffey requested that George Slyman make the purchase of a video camera. He would like it done prior to next week. If the purchase is not made by the end of the year the funds will be lost. The camera must be compatible with the playback device to play the meetings on the local TV channel. Bob Boynton noted that very often the camera is not moved and while guests are speaking it is not known who the speaker is.

**Community Events** – The prior Board of Selectmen budgeted \$5,000 in 2008, Selectman Hoiska asked what the board is interested in doing for 2009. Selectman Keurulainen made a motion to set the Community Event at \$2,000 2<sup>nd</sup> Selectman Hoiska

**Cemetery Trust Funds** – Selectmen Hoiska mentioned that at the FAC meeting of Dec 1, The Cemetery Trustees asked about the funds negative funds that appear in their report. The Trustees of the Trust Funds have presented all of the documentation to the Town Administrator.

**Blue Wave Strategies** -John DeVillars and Mike Mulcahey came before the board to explain that they are investigating the possibility of creating new wind structures on on property owned by Green Crow on Binney Hill Rd. They had approached the town to erect a 106 ft tower as a test device. They have spoken to Building Inspector, Jim Shultz who recommended they meet with the Zoning Board of Adjustment. Selectman Coffey noted that if they are putting up a structure that will last over 1 year they will need a building permit. If they disagree with the findings of the building inspector they must file an appeal with the Zoning Board of Adjustment for a variance, special acception or variance. The Board of Selectmen can not override the Building Inspector. Selectman Hoiska asked why do they test for a year? The reason they test for a year is to-gather long term results. Bob Boynton, Conservation Commission Chair noted that there is a large deer wintering area and endangered species are in the area of Binney Hill. Selectman Hoiska stated that the Master Plan shows Binney Hill area is a pristine area and the residents have a desire to keep it pristine. Jeff Krout an abutter asked where do they want to position the test tower? A spot has been cleared that is not far from Binney Hill Rd. Mr Krout asked what is the method of transmission of power out? Mr. Mulcahey said there are several choices in the area that could be used. The test tower is wireless. Al Jenks asked how many windmills are envisioned on the property. Mr. Mulcahey answered 5. Generally each windmill can power 500 homes in a year. Liz D'Entremont from Monadnock Ledger Transcript asked what their relationship is with Green Crow. Mulcahey has a brother who introduced him to Green Crow. Liz asked why New Ipswich? There seems to be a good wind flow, there are transmission lines available, and Green Crow owns property. Bob Bergeron asked if the lines were above or under ground and was told the lines are underground. Bob Boynton would like a strategic plan for the erection of wind towers for the entire town. Al Jenks asked how far apart are the windmills, Mr.

Mulcahey said it depends on wind direction. Jeff Krouk asked about Blue Ray Strategies connection with solar. Mr DeVillars said that they do solar energy but they have not been asked about it for this land. A wind tower is 262 feet and each blade is about 120-140 ft. When the blade goes around it is over 400 feet end to end. The blades turn slowly and can be adjusted. The footprint is approx 15 ft, the foundation is underground. Liz Freeman asked for clarification from Wendy Freeman as to when the public hearing is scheduled. Wendy Freeman said that the applications will be received on Thursday and then a public hearing will be scheduled. Alice Altman asked if this is the only site they are looking at in New Ipswich. Mr Mulcahey said that other properties are being looked at including town property directly adjacent to Green Crow property. Liz E'entremont asked if the Board of Selectmen knew that Town owned land was being considered. Jim Coffey said he had heard that but a decision like that would go before the town voters. Selectman Hoiska asked what the cost is to set up a test tower? \$25,000-\$30,000 and they could be re used.

**Transfer Station Stickers** – Road Agent Goewey has purchased some date strips that can be placed over the current stickers.

**Transfer Station Management** – Selectman Hoiska noted that he noticed a MA plate at the Transfer Station, he also noticed that people are just throwing bags and no one is checking. The Board agrees that the Transfer Station needs to be better managed. Stickers need to be attached to the windshield. Administrator Knowlton will address the concerns with the Road Agent Peter Goewey.

**Annual Report** – The Board of Selectmen are interested in having the report printed on 8/12 by 11. Suggestions were made for additional content, there is a list of required content set by the state. Advertisements could be put in, list of salaries, clarification of reporting.

**Souhegan Valley Ambulance Service** – Selectman Keurulainen made a motion to nominate Tom Liubakka, Bill Kivela and Darel Oja as representatives to the Souhegan Valley Ambulance Board 2<sup>nd</sup> by Selectman Hoiska voted in favor 3-0. The Board of Selectman expressed thanks to Rhonda Traffie for her service as a board member. A letter will be sent to Rhonda to thank her and to the Ambulance board to accept the nominations.

**Electric Light Fund** – the Selectmen are requesting the interest accumulated on the Electric Light Fund from the Trustees of the Trust funds be returned to the General Fund. The Board discussed the options of converting the electric light fund to some other asset.

**Highway Budget** – Selectman Hoiska discussed the Highway Block Grant. In 2009 the Highway Block Grant will be placed within the operating budget. The Highway Block Grant will no longer be a warrant article.

**Greenville NH** invited the Board of Selectmen to attend a meeting on December 10, 2008 to discuss the Souhegan Valley Ambulance Service. The Selectmen would like to have one of the representative come to a Board of Selectmen meeting instead.

8:25 Keurulainen made a motion to enter non public 2<sup>nd</sup> Selectman Hoiska motion passed in favor 3-0.

9:00 Selectman Coffey made a motion to adjourn, 2<sup>nd</sup> Selectman Keurulainen motion passed in favor 3-0.

Submitted by, Marie Knowlton, Town Administrator

Approved by, \_\_\_\_\_ James Coffey, Chairman  
\_\_\_\_\_ David G. Keurulainen, Selectman  
\_\_\_\_\_ Bentti Hoiska, Selectman

ZONING BOARD OF ADJUSTMENT MEETING  
JANUARY 8, 2009

PRESENT: Wendy Freeman, Chairman, Toni Lovell, Marianne Graham, Suzan Schafer Meiszner, David Cotzin, Joanne Meshna

The meeting was called to order at 7:30 p.m. at the Town Office.

7:30 p.m. Green Crow Corporation – Public hearing for an appeal of an administrative decision, special exception and area variance applications:

Mr. Michael Mulcahy was present to represent the applicant. Green Crow Corporation is proposing the installation of a meteorological tower to gather weather related data on their property located on West Binney Hill Road, lot 4/11, in the rural district.

The Board first discussed the application for an appeal of an administrative decision. The applicant is appealing a decision made by Jim Shultz, Building Inspector, not to grant a building permit for the tower because the height of the tower exceeds the Zoning Ordinance regulation of 45 feet for any structure. Mr. Mulcahy stated that the tower is a temporary structure held by power wires and would not require any services by the town. Mr. Shultz stated that the Zoning Ordinance does not define temporary or permanent and only allows any structure above the 45 feet by special exception.

Abutters Lee Somero, Bob Bergeron, and Joanne Bergeron had no questions. Owen Bertram, an abutter, was in support of the application. David Keurulainen stated he had no problem with the temporary tower. He questioned what the heaviest piece of equipment would be that would be used and was told a pickup truck and winch. Mr. Mulcahy was asked how long the tower would be up and he responded approximately 12-24 months. He expected to begin installation within 30-60 days. The tower is 60 meters tall, the guide wires extend out 100 feet in four directions, and the diameter of the tower is 12-16 inches.

Suzan made a motion to close the public hearing and enter into deliberations. Marianne seconded the motion and it passed unanimously. Suzan stated that the Building Inspector's decision is valid and that the applicant needs a special exception. Wendy added that "temporary" does not exist in the ordinance and that Mr. Shultz acted appropriately. David and Toni stated that they agreed that there is a height restriction. At the end of deliberations, Suzan made a motion to deny the appeal of an administrative decision. Toni seconded the motion and it passed unanimously.

The Board reviewed the criteria for granting the special exception. The special exception is required from Article VI, Section C.3 of the Zoning Ordinance to allow a commercial use in the rural district by permitting the installation of the tower. Mr. Mulcahy addressed the five criteria for granting the special exception:

- 1) The specific site is an appropriate location for such use – wind energy facilities in the northeast are often sited on ridges exposed to the prevailing wind direction. The property on Binney Hill Road could be well suited for this purpose and the use variance proposed is for a non-invasive gathering device used to help make that determination. The tower will be installed about 200 feet from Binney Hill Road which is a Class VI road, and no improvements will need to be made to the road. The Wapack Trail runs through the property. Green Crow Corporation has been talking with the Friends of the Wapack about relocating the trail. The Friends of the Wapack would like to see the trail moved to be more in the wild. A cleared area already exists on the lot where the tower would be located. Guide wires will have reflective markers and a fence will be built around the perimeter.
- 2) The use as developed will not adversely affect the adjacent area – this is a temporary installation that does not require electric power, no foundation and no maintenance. It will be located on the 125 acre tract among heavy tree cover where it will likely not be visible. The Met Tower is a structure very similar to domestic radio and television antennas. There are no lights and no noise generated. Suzan suggested that local airports should be informed of the installation of the tower. She also questioned what happens if the tower falls and Mr. Mulcahy responded that they have an insurance policy to cover that.
- 3) There will be no nuisance or serious hazard to vehicles or pedestrians – vehicles and pedestrians will not be graveling at or near the Met Tower unless they are trespassing.
- 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use – No facilities are required for the Met Tower's operation.
- 5) Such approval would be consistent with the intent of the Master Plan ... - allowing the temporary installation of a Met Tower to gather information to properly determine if a more permanent installation would be appropriate in the future is consistent with RSA 674:17 (1)(j) which is consistent with the statutory purpose of zoning. It also furthers public policies set out by both the State of New Hampshire and the federal government to encourage renewable energy.

The Board then reviewed the criteria for granting the area variance, Article XII, Section A of the Zoning Ordinance:

- 1) The proposed use would not diminish surrounding property values – The tower will be located on a 125 acre lot among heavy tree cover and there are no residents in the vicinity. The lot is located on a Class VI road that does not have much travel.
- 2) Granting the variance would not be contrary to the public interest – Title XXXIV Public Utilities Chapter 362-F states that renewable energy generation technologies can provide fuel diversity to the state and New England generation

supply through use of local renewable fuels and resources that serve to displace and thereby lower regional dependence on fossil fuels. It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire whether at new or existing facilities.

- 3) Denial of the variance would result in unnecessary hardship to the owner – wind energy facilities in the northeast are often sited on ridges exposed to the prevailing wind direction. The property on Binney Hill Road could be well suited for this purpose and the area variance proposed is for a non-invasive gathering device used to help make that determination. All commercial wind energy projects need to install one or more Met Tower prior to a final determination that commercial wind facilities will be viable at the location. It would be virtually impossible to secure the capital required to build commercial wind facilities without confirmed meteorological data.
- 4) Granting the variance would do substantial justice – the applicant will be able to verify whether the property is suitable for a more permanent wind project. If they are unable to perform this data gathering effort, the result would be both unjust to the applicants and contrary to public policy.
- 5) The use is not contrary to the spirit of the ordinance – a conclusion that the use is contrary to the spirit of the ordinance would mean the ordinance is divergent from New Hampshire's stated public policy.

Wendy stated that the Zoning Board is only considering a special exception application and area variance application for a wind test tower. An approval of the applications in no way suggests that the town would approve a wind energy farm. All that is before the Zoning Board is the request for approval of one Met Tower to test wind energy.

Lee Somero suggested that it made more sense to place the tower in an existing cleared area rather than clear another area. Jim Shultz noted that if the Zoning Board approved the applications, the applicant would need to appear before the Planning Board who would determine the specific location, etc. Suzan stated she would like to hear from the Friends of the Wapack that the Zoning Board is not causing damage to the Wapack Trail by approving the applications. Marianne agreed that she would like to be assured that the Friends of the Wapack were aware of these discussions.

At 8:30 p.m. Toni made a motion to close the public hearing. David seconded the motion and it passed unanimously. The Board entered into deliberations. At the end of the deliberations Suzan made a motion to approve the special exception application and area variance application as submitted with the following conditions:

- 1) one tower no more than 60 meters tall
- 2) consideration be made for relocation of the Wapack Trail
- 3) proof of liability insurance be submitted



- 4) guide wires be marked to protect snowmobilers and other users of the property
  - 5) regional airports within a 40 mile radius are to be notified of the installation
- David seconded the motion and it passed unanimously.

The Board made the following recommendations to the Planning Board:

- 1) the existing cleared site is the preferred location rather than clearing a new site
- 2) consider a reasonable time frame for dismantling the tower and assurance that it will be done

8:45 p.m. Roger and Linda Hall – Continuation of public hearing for variance applications and public hearing for new variance application:

David recused himself from the hearing and Joanne was appointed in his place. The hearing was continued from September 4, 2008. Also, a new application for a use variance to Article XII. Section A. of the Zoning Ordinance, to allow a driveway on lot 9/34B within the 50 foot setback of a wetland and within the 25 foot wetland buffer was submitted.

Tim Ferwarda informed the Board that he had met with Rick Van de Poll, who had delineated the wetlands, and the new plan reflected slight changes to the wetlands. Attorney Little explained that with the new plan the driveway now meets the 20 foot setback to the property line. However, the driveway is now entirely in the buffer setback and in the 50 foot wetland setback in some areas.

The Board noted that the 75 x 75 foot building square was not shown on the plan. The posted zoning amendment requires the square to be shown on any lot in the Steep Slopes Overlay District or the Wetlands and Surface Water Conservation Overlay District. Attorney Little referred to Article X. C. 6, exemptions, which states that lots of record recorded at the Registry of Deeds prior to the adoption of the ordinance are exempt from the requirements of Article X, Sections A. and C.

After a brief recess to allow the applicant and their attorney to review the amendment, Attorney Little asked that the hearing be continued to the next meeting. Marianne made a motion to continue the hearing to February 5, 2009 at 7:30 p.m. Toni seconded the motion and it passed unanimously.

9:20 p.m. Brett Kivela – Public hearing for an appeal of an administrative decision:

David recused himself from the hearing. Wendy explained that the Board would be made up of three members and that Mr. Kivela would need to have a unanimous vote in order to be approved. Mr. Kivela agreed to continue with the hearing and the three member board.

Mr. Kivela owns lot 7/82, 34 Wheeler Road. Wendy read the letter from the Building Inspector which stated that the automotive service garage is no longer allowed because

the use as a service garage has been discontinued for three consecutive years. Also, the mobile home on the site was granted as a temporary structure and cannot remain as a dwelling unit.

Mr. Kivela purchased the property in 2006 and submitted a sales agreement to that affect. Also, he submitted invoices for 2005, 2006, 2007 and 2008 for work done at the garage.

David Cotzin submitted a statement from the NH Local Government Center as follows: "As noted in the introduction, the reporter and the landowner will often have a markedly different perspective on the facts. Before enforcement action is considered or taken, it is critical to find and verify as many of the true facts as possible. Often, the task is delegated to the building inspector or code enforcement officer."

Mrs. Muriel LeBlanc, an abutter, stated that a stone wall between her and the applicant had been knocked down and wood from Mr. Kivela's property was on her land. Mr. Kivela agreed to fix the wall. Mr. William Kivela, an abutter, stated that the applicant is operating a garage on his property on Will Drive until he has everything done to the garage on Wheeler Road and that he is anxious for Brett to move. Mrs. Linda Kivela, an abutter and mother of Brett, stated Brett was brought up in a Christian home and would only do right. Mr. Bradley Little, an abutter, stated he hoped that there would be a better garage with Mr. Kivela than was there previously. Mr. David Cotzin stated that Mr. Kivela would not be here if the statement he had handed out had been followed. Mr. Dennis Krook, an abutter, stated that he hoped the applicant would respect the neighbors.

The Board next discussed the mobile home. The assessing record was reviewed and it was determined that a building permit had been issued for the mobile home but no occupancy permit had been issued except for the temporary mobile home. Mr. Krook stated that this summer the mobile home had been moved to the front of the lot from the back and was now more out in the open. Mrs. LeBlanc stated it was now in her view. Wendy noted that the moving of the trailer to a new area required a building permit.

At 10:20 p.m. Toni made a motion to close the public hearing. Marianne seconded the motion and the Board entered into deliberations. Marianne noted that the applicant had shown due diligence, bought the property in good faith, and proven that the garage had been used consistently. Suzan stated that the applicant had shown due diligence in proving his case and also commended the Building Inspector for doing his job and following through. At the conclusion of the deliberations, Marianne made a motion to grant the appeal of an administration decision. Toni seconded the motion and it passed unanimously. The Board added that the building permit for the dwelling in its previous location was satisfactory to the Board, but the dwelling unit in its current location may not be satisfactory.

The meeting adjourned at 10:30 p.m.

Respectfully submitted,  
Joanne Meshna, Land Use Manager

PLANNING BOARD WORK SESSION  
JANUARY 28, 2009

PRESENT: Oliver Niemi, Chairman, Ed Dekker, Bentti Hoiska, Jay Lewis, Liz Freeman, Woody Meiszner, Jim Shultz

The Board met to review proposed amendments to the Subdivision Regulations.

Amendment 1. The first regulation for discussion was to amend Appendix A., A.01 as follows: in the first and second sentences, replace the words "three copies" with the words "four copies".

Ollie made a motion to accept the amendment as written. Liz seconded the motion and it passed unanimously.

Amendment 2. Regarding deadend streets, replace Appendix B:02, E. in its entirety with the following:

"E. Deadend Streets

1. For the purposes of this section, a loop road having a single access point is considered a dead end street.
2. Permanent deadend streets shall either terminate in a turnaround or loop at least 100 feet in diameter with a paved area at least 80 feet in diameter, or in other turnarounds acceptable to the Board, such as hammerheads, provided that all of the following conditions are met:
  - a. Each leg of any turnaround shall be at least 60 feet in length with a paved area 50 feet in length, measured from the near edge of the abutting street or leg of the turnaround.
  - b. The radius at any corner of any turnaround, and at any corner of the paved area, shall be not less than 40 feet.
  - c. Each turnaround shall be maintained to the same extent as the street of which it forms an end.
  - d. Prior to approval, the Board shall have consulted with the Road Agent and Fire Chief regarding the geometry of the turnaround.
3. The maximum length of a deadend street shall not exceed 1,000 feet. The length of a deadend street shall include all deadend streets accessed from the deadend street or used to access the deadend street. The length of a deadend street is measured along the path of the street from an intersection with two unique access routes to the farthest point on the deadend street. Unique access routes shall consist of roads maintained to class 5 standards or better any may not cross or have any portion of the route in common."

Replace Appendix B:02, F. in its entirety with the following:

"F. Temporary deadend streets where future extension to another outlet is approved by the Board, or where indicated on the subdivision plat, may exceed 1,000 feet in length. In such a case, bonding must be provided to ensure construction of that future extension."

Concern was raised by Ollie that the new definition of measuring the length of a deadend street on existing deadend streets would eliminate new deadend streets. Woody may a motion to accept the amendment as written. Liz seconded the motion and after further discussion the amendment passed with six in favor and one against.

Amendment 3: Amend Section 4:05 – Plat Identification and Lot Layout as follows: add the following sentence at the end of paragraph B: "Lots shall generally be rectangular in nature."

A public hearing on the amendments will be scheduled for February 18, 2009.

The Board reviewed the January 21, 2009 discussion with Attorney Michael regarding the forwarding of his letter to town counsel explaining his position regarding the need for additional special exceptions and variances applications by the 1808 Corporation. The Board decided to inform Attorney Michael that they will forward his letter to town counsel upon receipt of a site plan review application.

The Zoning Board of Adjustment members will be invited to attend the interviews of prospective land use attorneys.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Oliver E. Niemi, Chairman

PLANNING BOARD MEETING  
FEBRUARY 4, 2009

PRESENT: Oliver Neimi, Chairman, Ed Dekker, Woody Meiszner, Craig Dudley, Liz Freeman, Jay Lewis, George Lawrence, Bentti Hoiska, Jim Shultz, Joanne Meshna

The meeting was called to order at 6:30 p.m. at the Town Office. George made a motion to enter a non-public session to interview a land use attorney. Bentti seconded the motion and it passed unanimously. Suzan Schafer Meiszner and Marianne Graham were present at this meeting. At 7:30 p.m. Liz made a motion to return to public session. Bentti seconded the motion and it passed unanimously.

7:30 p.m. William Rzepa – Conditional approval:

The hearing was continued from January 21, 2009. The Board reviewed a letter from Attorney Michael dated January 22, 2009 in which he summarized the discussions between the Board and Mr. Rzepa. Woody noted that there will need to be a bond for the wintering over of the final coat of pavement. Upon conclusion of the discussion, Jay made a motion to extend Mr. Rzepa's conditional approval to September 1, 2009, and added that the Board agrees to the conditions outlined in Attorney Michael's letter of January 22, 2009. Ed seconded the motion and it passed with one abstention. (Woody and Jim were not voting members.)

7:50 p.m.:

George made a motion to approve the minutes of the January 21, 2009 meeting. Bentti seconded the motion and it passed unanimously.

The minutes of the January 7, 2009 meeting were reviewed and the following correction made: first page, third paragraph under Ralph Somero, last sentence should read "Only the Planning Board has the authority to waive the requirement." Ed made a motion to approve the minutes as amended. Liz seconded the motion and it passed unanimously.

8:00 p.m. Mike Mulcahy for Green Crow Corporation – Informational session:

Mr. Mulcahy, representing Green Crow Corporation, explained to the Board that they were interested in installing a temporary Met Tower on lot 4/11, Binney Hill Road. A special exception application and a variance application were approved by the Zoning Board in January. Mr. Mulcahy stated that the tower is to measure wind speeds, temperature and wind direction, and the installation does not require electric power or road upgrade.

The Board informed Mr. Mulcahy that they would need a site plan review. An expedited review would be determined by the Board at time of review for completeness. The applicant should request waivers for any items they determine do not apply to the application.

8:15 p.m.:

The minutes of the January 28, 2009 work session were reviewed and corrections made. Liz made a motion to approve the minutes as amended. Ed seconded the motion and it passed unanimously.

Joanne distributed a letter from Attorney Michael dated February 3, 2009, regarding the 1808 Corporation. No action was taken.

The Board discussed a letter from Bruce Simpson, President of USA Properties, Inc., in which he requests that the Board reconsider its decision to deny the continuation of their site plan review. The Board reviewed RSAs 676:12 VI and 676:4 II. (b). It was noted that since 2006, USA Properties had four design review hearings at which time numerous issues with the proposed subdivision were identified and discussed at length. The Board agreed that they had more than adequately met its obligations to assist the applicant in the application process. Craig made a motion to end the design review process for USA Properties. Ed seconded the motion and it passed unanimously. Ollie will send a letter to Mr. Simpson informing him that the Board voted to end the design review process for their proposed subdivision on February 4, 2009.

With regard to informing applicants in writing that the design review process has ended, Liz will contact the LGC to see how far back the Board needs to go. Ed will prepare a draft of rules of procedure for design reviews.

Joanne distributed a public notice from the Francetown Zoning Board of Adjustment for a public hearing on February 5 to increase the height and to vary the setbacks for the rebuild of an existing tower on Crotched Mountain.

Ed suggested the Board invite representatives and senators to a meeting to discuss the burden that is being placed on towns, both monetary and time wise, with such legislation as the Shoreland Protection Act and the Workforce Housing Act. Bentti noted his involvement with the LGC working on legislation for the annual conference; he will find out when the next meeting is and let Ed know.

At 9:30 p.m. Liz made a motion to go into non public session to discuss the interview held at 6:30. Ed seconded the motion and it passed unanimously.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
FEBRUARY 18, 2009

PRESENT: Ed Dekker, Vice Chairman, Liz Freeman, George Lawrence, Craig Dudley, Jim Shultz, Woody Meiszner, Bentti Hoiska, Joanne Meshna

The meeting was called to order at 6:30 p.m.

The Board interviewed Attorney William Drescher as a potential land use attorney for the land use boards. Wendy Freeman, Marianne Graham and Suzan Schafer Meiszner from the Zoning Board were present. Attorney Drescher has been an attorney for forty years and his practice now is only municipal.

Once the interview was over and Attorney Drescher had left, members discussed the two attorneys they had interviewed. It was agreed that Attorney Fernald would be offered the position. Bentti will inform the Selectmen at their next meeting and then Ed will inform Attorney Fernald. Bentti stated that the Selectmen will inform the firm of Tower and Crocker that they will not be handling land use cases. Joanne will write a letter to Attorney Drescher to thank him for attending the interview.

7:50 p.m. Ralph Somero – Continuation of public hearing:

Mr. Somero had asked that his hearing be continued to May 20, 2009. Ed informed the Zoning Board members that the variance to the Subdivision Regulations that they had granted Mr. Somero, according to the LGC, was not an acceptable variance as they cannot grant variances to the Subdivision Regulations.

8:30 p.m. Public hearing for amendments to Subdivision Regulations:

Woody was appointed to fill Ollie's vacancy and Jim was appointed to fill Jay's vacancy.

First proposed amendment replaces Appendix B:02 paragraph E. in its entirety with the following:

E. Deadend Streets

1. For the purposes of this section, a loop road having a single access point is considered a deadend street.
2. Permanent deadend streets shall either terminate in a turnaround or loop at least 100 feet in diameter with a paved area at least 80 feet in diameter, or in other turnarounds acceptable to the Board, such as hammerheads, provided that all of the following conditions are met:
  - a. Each leg of any turnaround shall be at least 60 feet in length with a paved area 50 feet in length, measured from the near edge of the abutting street or leg of the turnaround.

- b. The radius at any corner of any turnaround, and at any corner of the paved area, shall be not less than 40 feet.
  - c. Each turnaround shall be maintained to the same extent as the street of which it forms an end.
  - d. Prior to approval, the Board shall have consulted with the Road Agent and Fire Chief regarding the geometry of the turnaround.
3. The maximum length of a deadend street shall not exceed 1,000 feet. The length of a deadend street shall include all deadend streets accessed from the deadend street or used to access the deadend street. The length of a deadend street is measured along the path of the street from an intersection with two unique access routes to the farthest point on the deadend street. Unique access routes shall consist of roads maintained to class 5 standards or better and may not cross or have any portion of the route in common.

Craig made a motion to approve the amendment to the Subdivision Regulations. Jim seconded the motion and it passed unanimously.

Second proposed amendment replaces Appendix B:02 paragraph F. in its entirety with the following:

- F. Temporary deadend streets where future extension to another outlet is approved by the Board, or where indicated on the subdivision plat, may exceed 1,000 feet in length. In such a case, bonding must be provided to ensure construction of that future extension.

George made a motion to approve the amendment to the Subdivision Regulations. Craig seconded the motion and it passed unanimously.

Third proposed amendment amends Appendix A, paragraph A:01 as follows:

In the first sentence, replace the words "three copies" with the words "four copies" and in the second sentence, replace the words, "three copies" with the words "four copies".

Craig made a motion to approve the amendment to the Subdivision Regulations. George seconded the motion and it passed unanimously.

Fourth proposed amendment amends Section 4:05 – Plat Identification and Lot Layout as follows:

Add the following sentence at the end of paragraph B: "Lots shall generally be rectangular in nature."

The Board changed the amendment to read as follows:



In keeping with the intent of side boundaries, the lot shapes shall approach the look of being rectangular in shape. Where boundaries are along stone walls and existing properties the straightness of boundary lines are waived.

Craig made a motion to approve the amendment to the proposed amendment. Liz seconded the motion and it passed unanimously. Liz made a motion to approve the amendment to the Subdivision Regulations. Bentti seconded the motion and it passed unanimously.

8:50 p.m.:

Liz made a motion to approve the minutes of the February 4, 2009 meeting. Bentti seconded the motion and it passed unanimously.

The Board discussed the design review process and if the 1808 Corporation should be sent a letter that their design review process has ended. Ed will seek advice from Attorney Fernald. Joanne will prepare documents for Attorney Fernald for her review to include the letter from USA Properties and the Board's response, the proposed amendment to the Subdivision Regulations on design reviews prepared by Liz, and minutes of the 1808 Corporation design review hearing.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

## PLANNING BOARD MEETING

MARCH 4, 2009

PRESENT: Oliver Niemi, Chairman, George Lawrence, Woody Meiszner, Bentti Hoiska, Jim Shultz, Joanne Meshna

The meeting was called to order at 7:30 p.m. at the Town Office. Woody was appointed to fill Craig Dudley's vacancy and Jim was appointed to fill Jay Lewis' vacancy.

### 7:30 p.m. Green Crow Corporation – Public hearing for site plan review:

Mr. Ed Rogers, Rogers Engineering Solutions, and Mr. Mike Mulcahy, Blue Wave Strategies, were present for the applicant. The application is for the erection of a temporary weather monitoring tower to be located on lot 4/11, Binney Hill Road, owned by Green Crow Corporation. The Board reviewed the application for completeness by referring to Karen O'Rourke's letter of February 16, 2009 and Mr. Rogers response letter dated March 4, 2009:

#### Existing Data and Information:

- Checklist item 1, include abutter information and location on vicinity map for lot 5B/2-1 - has been added to the plan.
- Checklist item 2, include the name of person or firm providing edge of wetland information – has been added to the plan.
- Checklist item #8, include the use of abutting lots or state if undeveloped – has been added to the plan.
- Checklist item #9, no existing utilities shown – Mr. Rogers stated that there are no existing utilities and none are required for the operation of the tower.

#### Proposed Development:

- Checklist item #5, any proposed landscaping or screening to be included – there is an existing log landing where the tower will be located. There are no residences in the area that require screening. No landscaping or screening is proposed.
- Checklist item #10, any clearing for tower construction needed and if so, provide erosion control information as needed – there is some additional tree clearing that will be required for anchoring the tower; however, no additional areas will be stumped or grubbed, and no trees will be cleared within the wetland buffer, or within the 50' wetland setback. The additional area of trees to be cut is less than ¼ acre. As such, erosion control plans and drainage analysis are not applicable.
- Checklist items #3, 4, 6-9, 11-15 appear not be applicable for this proposal – Mr. Rogers concurred that these items are not applicable to this site.

Woody questioned if the Board needed the wetland information signed and stamped by the wetlands scientist. Mr. Rogers noted that the wetland scientist delineates the edge of the wetlands and that he certifies the location and mapping of the wetlands. Also, he noted that there will be no erosion generated by the erecting of the tower. Jim made a

motion to waive the requirement of stamping and signing the wetland information. George seconded the motion and it passed unanimously.

George made a motion to accept the application as complete. Woody seconded the motion and it passed unanimously.

The Zoning Board of Adjustment approved a variance application for the height of the tower which will be 196 feet. Mr. Mulcahy stated that the tower should be up for 1-2 years. The wind testing covers a 2-3 mile radius. The anchors will be screwed into the ground and if there is ledge, rock anchors will be used. The temporary anchors shown on the plan are for erecting the tower and will be removed. The Board inquired if there would be fencing around the site and Mr. Mulcahy responded that there will not be any fencing, that the pole cannot be climbed. The applicant also did not want to block the Wapack Trail which runs through the lot. It was also noted that the fall line for the tower is far from any development. There will be no sign erected.

The Board discussed a date for removal of the temporary tower. The Board and applicant agreed that three years from date of approval would be an adequate time. The Board also discussed the posting of a bond for removal of the tower and agreed that a bond of \$5,000 from a surety company authorized to do business in New Hampshire or cash be posted for removal of the tower. Mr. Mulcahy stated that the value of the equipment is worth more than the cost to take it down. There is no chance that the tower will be abandoned or useless in 2-3 years. It is difficult to obtain credit at banks these days. Requiring the bond puts an unnecessary burden on the company.

Woody made a motion to conditionally approve the site plan review application for the erection of the temporary weather monitoring tower the conditions being posting of surety in the amount of \$5,000 and payment of fees. The temporary tower is to be removed three years from date of the approval of the site plan. Benti seconded the motion and it passed unanimously. If a bond or letter of credit is received, the Planning Board's attorney will review it at the applicant's expense.

Mr. Rogers questioned the Board if it was necessary to file a mylar with the Registry of Deeds. He stated that if there are no boundary lines on the plan, the Registry does not like to record the plan. Ollie stated that it has always been the practice of the Board to record site plan reviews and that they would do so in this case. Failure by the Registry to not file the plan will not invalidate the approval.

8:30 p.m.:

Joanne distributed copies of the Office of Energy Planning annual spring conference to be held May 2, 2009. Distributed previously by e-mail was information on another conference sponsored by Southwest Region Planning Commission on Innovative Land Use Planning to be held on March 28.

Bentti discussed the protection of aquifers and if the Board should be considering an ordinance to do so. Discussion on the subject will be added to the "to do" list for 2009. Also, Ollie referred to the conference on March 28 which offers a session on aquifers. He asked that members review both conferences and determine by next Planning Board meeting if they would like to attend.

Ollie read a public hearing notice from the Goffstown Planning Board to co-locate six antennas on an existing water tank and construction of accessory facilities.

Joanne distributed copies of a notice from the Department of Environmental Services regarding the Butternut Hill Road Development which amends the original alteration of terrain permit with conditions.

The Board certified the amendments to the Subdivision Regulations that were approved February 18, 2009 by signing them.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

DRAFT MINUTES  
PLANNING BOARD MEETING  
OCTOBER 21, 2009

PRESENT: Ed Dekker, Chairman, Liz Freeman, Oliver Niemi, Woody Meiszner, Bentti Hoiska, Joanne Meshna

The meeting was called to order at 7:30 p.m. at the Town Office. Woody was appointed to fill Jim Shultz's vacancy.

At 7:30 p.m. the Board met with Gary Somero and Kyle Barker to review the plans for the new elementary school as well as changes to be made at Boynton Middle School and the Mascenic High School. Some of the points made by Mr. Barker:

- The new school is planned for a capacity of 600 students.
- There is a total of 127 acres with 65 acres in New Ipswich and 62 in Greenville.
- There will be 100 parking spaces.
- A one way loop at the front of the building will accommodate cars dropping students off while another one way loop in the back of the building will be for buses only.
- Another loop road will be for kindergarten students only.
- The school will house kindergarten through fourth grade students with each grade in an area of their own.
- There are several areas that require crossing of wetlands that will need DES approval.
- Finished drawings should be ready early in December. They expect to pour the foundation in April and be ready for occupancy September 2011.
- The new elementary school has been designated a community shelter.
- The high school will have changes made to the entrance for security purposes and a new building will be located behind the school for science and technology.
- Boynton has minor changes including reconstruction of the entrance for security purposes.
- The new school has areas for expansion for each of the grade levels.

Mr. Somero and Mr. Barker offered to return to the Board when more detailed plans are available.

9:00 p.m.:

Ed checked again with Attorney Fernald regarding the enforcement of unpermitted gravel pits. In her experience, enforcement has been done by the Board of Selectmen. Also, Attorney Fernald stated that any enforcement action needs to reference RSA 155-E-10 and RSA 676:15 and 676:17.

The Board briefly discussed open space and if the cluster regulations need to be amended. Liz asked that members review the Open Space Plan. Further discussion will continue at the next meeting.

Liz spoke with Lisa Murphy from SW Region Planning Commission regarding the updating of the Land Use Chapter and referencing the Souhegan River Watershed management Plan. Joanne distributed copies of a summary of the Plan. Liz explained that usually the Plan is referred to in an appendix. Liz made a motion to ask Lisa Murphy, as part of the work on the Land Use chapter of the Master Plan, to write the necessary language to address both the NRI and Souhegan River Watershed Management Plan. Woody seconded the motion and it passed unanimously.

Joanne asked the Board if they would like to form a committee to assist Lisa Murphy on her update or should she report directly to the Board. Lisa will report directly to the Board.

Woody suggested the Board work on developing regulations to address wind farms. Ed will make inquiries on just what the Board regulate.

Joanne informed the Board that the site plan for the met tower for Green Crow Corporation had been returned from the Registry of Deeds as they do not record construction plans, construction details and maps that do not define the limits or extent of legal rights or interest in land. It will be kept on file.

Notices of public hearings were received from the Keene Planning Board on a telecommunications tower for New Cingular Wireless in two different areas and from the Bedford Planning Board on a public hearing for a telecommunications facility for Verizon Wireless.

The minutes of the October 7, 2009 meeting were reviewed and the following changes made: page 3, under Rzepa, fourth paragraph, 2<sup>nd</sup> sentence should read "Bentti responded that the Board has yet to accept the quality of the work on the road."; page 4, third paragraph, fourth sentence should read "Mr. Rzepa stated that the pavement ends ten feet from the centerline of Emerson Hill Road."; page 5, first sentence should read "Liz added that Kent states some erosion control is ..." and same page, second paragraph under Ronald Vaillancourt, last sentence should read "The applicant confirmed that no structures including wells..." Bentti made a motion to approve the minutes as amended. Liz seconded the motion and it passed with one abstention.

Joanne reminded the Board that tapes of meetings will be destroyed once the minutes have been approved in accordance with a policy adopted several years ago by the Planning Board.

The Board agreed to change the time of the meetings to 7:00 p.m.

The meeting adjourned at 10:10 p.m.

Respectfully submitted,  
Joanne Meshna  
Land Use Secretary

DRAFT MINUTES  
PLANNING BOARD WORK SESSION  
NOVEMBER 4, 2009

PRESENT: Ed Dekker, Chairman, Liz Freeman, Woody Meiszner, Bentti Hoiska, Oliver Niemi

The meeting was called to order at 7:00 p.m. at the Town Office.

After some discussion, the consensus was to work on the 2010 Planning Board warrant articles which were condensed to the following: 1) communication towers, 2) small wind energy systems, and 3) large wind energy systems. Other considerations which were tabled to the 2010 planning season are open space, zoning ordinance and planning regulations and revising the cluster development zoning ordinance and subdivision regulations.

As a result of her excellent research, Liz led the discussion on using the Temple ordinance as a guide for the New Ipswich version for a communication towers zoning ordinance. Also, from her research, the Board members discussed the example ordinances for small and large wind energy systems that Liz presented and agreed to review the suggested changes and to work to finalize the drafting of these ordinances as well as the communications tower ordinance at the Planning Board's next work session.

To meet the required deadlines for the required public sessions and allow ample time for changes, the Board members present agreed to meet again on Wednesday, November 11 at 7:00 p.m. This meeting will primarily focus on completing the draft of these three zoning ordinance for presentation to the public as warrant articles for their consideration and vote for the year 2010.

Respectfully submitted,

Oliver Niemi  
Acting Secretary

PLANNING BOARD WORK SESSION  
DECEMBER 2, 2009

PRESENT: Ed Dekker, Chairman, Woody Meiszner, Bentti Hoiska, Jay Hopkins, Jim Shultz, Liz Freeman, Ollie Niemi, Joanne Meshna

ZONING BOARD: Becky Doyle, David Lage

The meeting was called to order at 7:05 p.m. at the Town Office.

The Board reviewed and made changes to the draft ordinances for telecommunications facilities, small wind energy systems and large wind energy systems. The public hearing will be held on December 16 with a second public hearing held on January 6 if needed.

Joanne informed the Board that USA Properties was requesting another design review. Reference was made to the letter sent to them in February of 2009 in which all the design reviews were enumerated and the design process for the proposed subdivision ended. The Board denied USA Properties' request for another design review.

Jim noted that Mr. Craven is planning to demolish the barn on his property which he had received approval from the Planning board to renovate into six new condos. Mr. Craven plans to put another building on the same footprint. The Board stated that he can demolish the barn but as it was a different plan he would need to get site plan approval for the new building.

Joanne asked the Board about appealing of an impact fee assessed for a new house. The Board referred to the ordinance which stated appeals must be made to Superior Court. She will also get legal advice on the issue.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager



PLANNING BOARD MEETING  
JANUARY 6, 2010

PRESENT: Ed Dekker, Chairman, Woody Meiszner, Liz Freeman, Jay Hopkins, Jim Shultz, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office.

7:00 p.m. Public hearing for amendments to the Site Plan Review regulations:

Two amendments were proposed by the Board. The first amendment adds a new paragraph E. to Section IV. Submission Requirements of the Subdivision Regulations and outlines additional requirements for large wind energy systems. The second amendment adds a new paragraph F. to Section IV. Submission Requirements of the Subdivision Regulations and outlines additional requirements for telecommunications facilities.

To the amendment on large wind energy systems, the Board added a definition for large wind energy systems and to the amendment on telecommunication facilities, the Board added a definition for telecommunications facilities. Woody made a motion to adopt the amendments to the Site Plan Review regulations. Liz seconded the motion and it passed unanimously. The approved amendments are attached to the original minutes.

7:20 p.m.:

Becky Doyle was present to discuss working on the Zoning Ordinance to correct style, nomenclature, and reformatting and to eliminate inconsistencies. She will read the ordinance, re-write a section and present it to the Board.

7:30 p.m. Jim Traffic – Design review hearing:

Mr. Traffic presented a design for Phase II of his subdivision on Westbrook Drive, lots 9/33 and 9/33-1. He has received approval from the Zoning Board to permit the roadway to be constructed within wetlands and to encroach on minimum wetland setbacks and to permit drives for proposed lots 9/33-5 and 9/33-6 to encroach on wetland buffers.

Phase II consists of five new lots and a roadway of approximately 1,375 feet in length that ends in a hammerhead. Eventually this roadway will connect with Westbrook Drive to provide a loop road. Mr. Traffic also owns an abutting lot to the west of 52 acres. He may develop that lot with approximately 15 new houses and is considering a cluster development. The Board noted that a traffic study may be required on Page Hill Road to determine the impact to the road and safety issues.

The Board discussed the length of the Phase II roadway, the fact that it exceeds the regulation of 1,000 feet, their reluctance to approve a roadway beyond that length and to approve the roadway to be built in phases. The Board noted that if a loop road is built in phases, typically the Board's practice is to require that the entire road be bonded which

would require that the roadway be engineered to show that it can be built all the way through and that it conforms to the regulations. The roadway would also need to be bonded.

Phase II has no back lots proposed. The one acre contiguous was shown on each lot. Mr. Traffic stated there were no steep slope issues.

Mr. Kenneth Mason, an abutter, stated he had issues with the dead end road and extra traffic. He noted the entrances to Westbrook Drive and the new road were close together and questioned if this caused any safety issues. He stated that there was no guarantee that the road would be built all the way through and that there was no definitive plan to connect them.

Other possible configurations of the proposal were discussed. At 8:40 p.m. the design review hearing was closed.

8:40 p.m. Jim Fenton, Hemlock Hills:

Mr. Fenton reminded the Board that the town holds two bonds on the development of Hemlock Hills, one for the fire road in the amount of \$77,621 and the other for the road construction in the amount of \$27,437.41. There are only two lots in New Ipswich and the fire road is to be constructed for their safety.

Mr. Fenton stated that he would like to have the bonds reduced or released. The Board responded that for release of the road bond he should complete the road and have it weather over for a year and then the bond could be considered for release. Review of the approved subdivision plans did not show that the fire road had to be paved. Mr. Fenton was advised to have the Fire Chief determine if the road meets NFPA requirements and whether it must be paved. If the road as built is approved by the Fire Chief, Brown Engineering will be asked to inspect the road. Approval from the Fire Chief must be in writing to the Board.

9:00 p.m.:

The minutes of the December 16, 2009 meeting were reviewed and the following correction made: page 1, first paragraph, last sentence should read "Woody was appointed to fill a vacant position for this meeting." Woody made a motion to approve the minutes as amended. Jay seconded the motion and it passed unanimously.

Jay made a motion to approve the minutes of the September 2, 2009 meeting. Liz seconded the motion and it passed unanimously.

Liz made a motion to approve the minutes of the October 21, 2009 meeting. Woody seconded the motion and it passed with two abstentions.

Liz made a motion to approve the minutes of the November 4, 2009 meeting. Woody seconded the motion and it passed with two abstentions.

Jay made a motion to approve the minutes of the December 2, 2009 meeting. Woody seconded the motion and it passed unanimously.

Ed read a notice from the NH DOT stating that a meeting will be held on January 19, 2010 at the Mascenic High School at 6:00 p.m. to review and discuss replacement of the NH Route 123/124 bridge over the Souhegan River.

The February 3 meeting is cancelled.

For the next meeting on January 20, the Board was asked to be ready to discuss open space.

The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
JANUARY 20, 2010

PRESENT: Oliver Niemi, Liz Freeman, Jim Shultz, Bentti Hoiska, Woody Meiszner, Joanne Meshna

The meeting was called to order at 7:10 p.m. at the Town Office. Woody was appointed for the evening to fill an open vacancy.

Lisa Murphy and Tara Germond from Southwest Region Planning Commission were present to discuss the updating of the Land use and Transportation chapters for the Master Plan.

8:00 p.m.:

The Board discussed the three open vacancies on the Planning Board and suggested possible candidates. The sign up time is from January 20 to January 29.

A discussion on open space and cluster development was held.

The minutes of the January 6, 2010 meeting were reviewed and the following corrections made: page 1, last sentence should read "The Board noted that if a loop road is built in phases, typically the Board's practice is to require that the entire road be bonded which would require that the roadway be engineered..."; page 2, fourth paragraph, first sentence should read "Other possible configurations of the ..." page 2, second paragraph under Fenton, second to last sentence should read "If the road as built is approved by the ..." Woody made a motion to approve the minutes as amended. Jim seconded the motion and it passed with one abstention.

The Board re-signed the lot line adjustment mylar between Vaillancourt and Kiely as the original mylar was returned for cross hatching and had to be redone.

The meeting adjourned at 9:10 p.m.

Submitted by,

Joanne Meshna  
Land Use Manager

PLANNING BOARD WORK SESSION  
FEBRUARY 17, 2010

PRESENT: Oliver Niemi, Woody Meiszner, Bentti Hoiska, Liz Freeman, Jim Shultz

The meeting was called to order at 7:00 p.m. at the Town Office.

The Board received a merger request from William Rzepa for lots 9/3, 9/3-6 and 9/3-9. The exaction agreement between the Town and Mr. Rzepa was discussed. Bentti will follow-up with the Selectmen before the Planning Board acts on the merger request.

The Board discussed the cluster ordinance and open space.

Respectfully submitted,

Oliver Niemi  
Vice Chairman

PLANNING BOARD MEETING  
MARCH 3, 2010

PRESENT: Bentti Hoiska, Liz Freeman, Jim Shultz, Jay Hopkins, Joanne Meshna

The meeting was called to order at 7:15 p.m. at the Town Office. Bentti chaired the meeting.

William Rzepa: Bentti informed the Board that the Selectmen recommend to the Planning Board that the merger requested by William Rzepa of lots 9/3, 9/3-6 and 9/3-9 not be granted until such time as all fees have been paid as outlined in the Emerson Hill Road Exaction Agreement, May 2007, between the Town and Mr. Rzepa. The agreement states that "in the event the Planning Board denies Phase II of the Rzepa subdivision, Rzepa shall pay Two Thousand, Five Hundred Dollars (\$2,500.00) per lot for each of the lots approved in Phase I, within 40 days of the Planning Board decision." The Selectmen recommend that Mr. Rzepa pay the fees on the six lots before the merger is approved.

Liz made a motion that the Planning Board not approve the merger of lots 9/3, 9/3-6, and 9/3-9 until such time as the fees outlined above have been paid. Jim seconded the motion and it passed unanimously. The Board agreed that once the fees have been paid the merger will be allowed.

Joanne distributed a letter from Mr. Rzepa dated February 22, 2010 in which he requested a written decision on issues discussed at the October 7, 2009 meeting. The Board reviewed and approved Joanne's outline of the issues and decisions made by the Board. Joanne will send it to Mr. Rzepa.

112 Chestnut St., Charles Watt: The Board reviewed a letter from Mr. Watt dated February 23, 2010 in which he requested a two year extension on the payment of impact fees on the subdivision at Oakwood Commons. The Board discussed setting a precedent by granting the approval. Liz made a motion that the request for a two year extension on payment of impact fees be denied. Jim seconded the motion and it passed with three in favor, one against.

USA Properties, LLC: Joanne informed the Board of the status of a 48 lot subdivision application submitted to her on February 3, 2010 for USA Properties by Holden Engineering. Fees for Kent Brown's review were never received and she has been in contact with Holden Engineering but has not been able to obtain them. Joanne will e-mail Attorney Fernald for advice on how to proceed with the application.

Joanne distributed a letter from Attorney Fernald on a new Supreme Court opinion regarding approvals of subdivisions.

The minutes of the January 20, 2010 and February 27, 2010 meetings were reviewed. Liz made a motion to approve both sets of minutes. Jim seconded the motion and it passed with one abstention.

The Board continued their discussion on cluster development and open space. Jim suggested developers Leif Traffie and Jim Craven be invited to a meeting to give their opinions on clusters.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
JULY 20, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Ned Nichols, Jim Shultz, Roger Somero, Paul Termin, Oliver Niemi, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Paul was appointed to fill Ollie's vacancy until his arrival at 7:20 p.m.

Pioneer Green Energy – Public hearing for site plan review application:

Mr. Adam Cohen from Pioneer Green Energy and Mr. Ed Rogers presented the application to the Board. The proposal is for the erection of a 198 foot tower to accommodate meteorological instruments which will gather data to determine wind project feasibility. The tower would be erected on an 80 acre parcel of land owned by Walter Maki located on Old Peterborough Road, lot 6/16, on Kidder Mountain.

Mr. Rogers explained that the proposed tower was similar to the one erected on the Green Crow Corporation property on Binney Hill Road. There is an existing logging trail that is passable and would be used to access the site. For approximately 300 feet, the logging trail coincides with the Wapack trail. The tower will not be lit and the top will be painted orange.

The Board reviewed the waiver requests:

- #4, existing data, a complete boundary survey – the tower site is a minimum of 220 feet from the nearest property line and 1,650 from the furthest line. A compass and tape survey has been conducted on the eastern and southern boundaries of the property, and the western boundary is depicted per a survey of record of the abutting property. The approximate northern boundary of the property is the New Ipswich-Temple town line.
- #5, existing data, 5 foot contours – 10 foot contours have been depicted. The project does not require any site grading and the 10 foot contour intervals adequately represent the condition of the site.
- #3, proposed development, proposed streets, etc. – there are no proposed streets, driveways or parking facilities. Data from the tower is accessed wirelessly from the site and does not require vehicular site access. Erection of the tower can be adequately achieved using the existing logging road depicted on the plan.
- #4, proposed development, utilities – there are no proposed utilities, the data is retrieved wirelessly from the site and the instruments are solar powered.
- #5-9, proposed development, landscaping, lighting – No landscaping or exterior lighting is proposed, no parking, site grading or vehicular access is proposed, and no structures will be built other than the proposed tower.



- #10, proposed development, erosion control – Erosion control will not be required as no site grading is proposed. The road will not need any improvements. There are no foundations. Transport of the tower is by a pickup truck.
- #11, proposed development, common land dedications – No common land dedications are proposed in conjunction with this proposal.
- #12, proposed development, phasing – The project does not require phasing.
- #13, proposed development, fire safety – Fire safety, prevention and control will not be required as there are no combustible structures and no employees required to man the facility.
- #14, proposed development, stormwater drainage plan – A stormwater drainage plan will not be required as there will be no site grading, no alteration of existing hydrology and virtually no impervious surfaces will be added to the watershed.
- #15, proposed development, deed restrictions – No existing deed restrictions were found on record and none are proposed.
- #17, proposed development, impact to community facilities – No impact to community facilities is anticipated from the proposed use.

Jim made a motion to approve the waiver requests. Bentti seconded the motion and it passed unanimously.

Jim made a motion to accept the application as complete. Bentti seconded the motion and it passed unanimously.

Fred Smith, an abutter, questioned if there would be any impact on the Kidder Mountain hiking trail. Mr. Rogers responded that the project is approximately 400 feet from the trail and there would be no restriction on people using it.

Tasha Urbanowski, an abutter, asked if this tower would be in the same location as a final wind tower. Mr. Cohen responded that it would not be in that exact location but in that general vicinity. She also inquired about the property tax implications for Mr. Maki and Mr. Cohen stated that a land use change tax would be assessed for the land disturbed and the tower would be taxed.

A site visit was scheduled for August 2, 2011 at 9:00 a.m. Liz made a motion to continue the hearing to August 3, 2011 at 7:00 p.m. Ned seconded the motion and it passed unanimously.

7:40 p.m.:

Ollie made a motion to approve the minutes of the March 16, 2011 meeting. Bentti seconded the motion and it passed with one abstention.

Ned made a motion to approve the minutes of the April 20, 2011 meeting. Liz seconded the motion and it passed unanimously.

7:45 p.m. William Rzepa – Continuation of public hearing for a lot line adjustment and two lot subdivision:

The hearing was continued from June 15, 2011. Mr. David Cassidy from Centrix Bank and Mr. Ed Rogers were present for the applicant. Mr. Rogers explained that based on the discussions from the June 15 meeting, he was submitting a revised plan set including information in lieu of which he had previously requested waivers. He summarized as follows:

- Items #22 and 23, wetlands certification and stamp – have been provided.
- Item #42, indicate slopes in excess of 12%, 15% and 25% - sheet S1 of the plan set has been revised to include color coding of slopes in the required ranges, as well as a delineation of the contiguous acre of non-steep and non-wet areas for each lot. Also included on this sheet are the 4K areas for each property and proposed driveway locations.
- Item #49, identification of one contiguous acre – sheet S1 depicts the contiguous acre for each proposed lot as well as the lots being adjusted.
- Item #52, drainage plan – required drainage improvements have been depicted on sheets 2 and 3. Ed noted that there was considerable erosion coming off the road cut and Mr. Rogers responded that there is an approved alteration of terrain permit that covers the reclamation.
- Item #53, construction on land with slopes over 15% - it is likely that some construction may occur on land with slopes over 15%. Proposed erosion control measures have been added on sheet 2 and sheet 4 contains erosion control recommendations and details.

Item #58, a copy of the deed showing easements or restrictions as a covenant to the deed – a waiver is still required for this item. The location and purpose of the easements are depicted on the plat, and all deeds conveying land according to this plat must be drafted from the approved, recorded plan and will reflect the proposed easements on the final approved plat.

Mr. Rogers stated that a waiver is also requested from the maximum dead end road length as the location of the proposed hammerhead turnaround is 1,187 feet from Emerson Hill Road and approximately 3,287 feet from the intersection of Binney Hill and Emerson Hill Roads. The applicant is requesting the waiver due to the fact that the Emerson Hill/Huntee Loop Road dead end combination currently serves only 9 residences, will serve a maximum of 16 residences including approval of this application, and cannot serve more than 27 to 30 residences if all properties on the roads were developed to their maximum potential under the current zoning ordinance (including the potential for duplex structures to be constructed on some properties). He further stated that for public safety reasons, it is generally considered good planning practice to limit the number of residences accessed by a single point to not more than 40. Length is not generally a consideration where fire protection has been accommodated for the proposed residences. In this case, all structures further than the fire department's requested

maximum distance of 1,400 feet from the Emerson Hill Road fire pond, will require sprinkler systems and this is indicated on the plat.

Liz made a motion to accept the application as complete. Jim seconded the motion and it passed unanimously.

Mr. Rogers noted that there is an alteration of terrain permit with a reclamation plan that is still in effect and restoration will be to the original contours as much as possible. An esker with gravel was used and the contours will not be back to the original contours but will be reclaimed so as not to impede natural water flow. There is some gravel piled up which will be leveled and some may be used on site. There is no date certain for when the reclamation will be done. There is a bond in place for Phase 1 of the project but not for Phase 2.

Ned questioned if the land that was part of the application previously approved for a lot line adjustment is included in the restoration. Mr. Rogers responded that there is a part of that land that may need improvements.

Mr. Rogers stated that he had prepared a bond estimate based on the change in the Phase 1 configuration and asked if the town engineer could review it. The reclamation was not included in the bond figure. The Board stated the reclamation should be part of the bond estimate.

Discussion ensued on the waiver request for the length of the dead end road. Liz inquired how Mr. Rogers had come to a figure of 40 residences. He responded that there are no guidelines and it becomes a public safety planning issue and in the engineering community there is really no consensus. It was his professional opinion that number was a safe practice. Liz referred to Southwest Region Planning Commission's recommendation of 10 and noted the Board had determined 16. Liz referred to House Bill 109 which prohibits the Planning Board from requiring sprinkler systems and asked what the status of the bill was. Jim thought the bill had passed; however, in this case, the applicant is offering to do the sprinklers but the Board questioned if it would be binding.

Ed noted that the dead end road regulations are by length and not number of houses and with the original application there was a waiver of monumental proportion for the length. He was not inclined to waive the dead end road length any further to put more houses on a dead end road.

Liz summarized the issues:

- 1) dead end road
- 2) source of water
- 3) bonding
- 4) exaction fees
- 5) condition of the road
- 6) status of House Bill 109 and sprinklers

Ned referred to a drop off on Hunttee Loop Road into the ditch with no shoulder that may require a guardrail. Mr. Rogers did not think it would need a guardrail but did agree that the shoulders were less than he had expected and inadequate. Ed also noted that there is a part of the road that is folding and cracking. Mr. Rogers responded that there is a property owner hauling in 20 yard dump loads of material for the last month and a half at the rate of 10 or more a day and it was not anticipated that Hunttee Loop Road would be carrying that type of traffic. Also, he added that compaction tests had been done and passed when the road was constructed. Another consideration is the paving company and what they placed. Jim noted that Brown Engineering had done an inspection of the road when Mr. Rzepa had asked for a bond reduction and had made recommendations none of which had been done.

Mr. Cassidy stated they were trying to fix the situation with as little impact to the bank as possible and return as much of the capital as possible back to the bank. In his mind 2870 feet of the road has been approved and they were asking for an additional 130 feet which makes the unbuildable lots buildable.

Ned noted his priority was clean up of what is there now and getting everything done right. Ed noted his priority was that the 1000 foot dead end road length requirement remain.

Mr. Rogers asked the Board how they would feel about separating the application into two. The erosion control on Phase 1 would remain. Ned did not think the land should be divided any further. Ed stated a solution for the two unbuildable lots might be to merge them into the Phase 2 lot. Liz asked what the bank would do if the project was denied. Mr. Cassidy could not answer the question. It would be their choice to either walk away from it, foreclose on it or have Mr. Rzepa deed it to them. Also he felt the two lots down below seem easier while the ones above are complicated and it might be good to deal with them separately. Liz noted that the large lot if properly reclaimed could be considered as a candidate for conservation. Mr. Cassidy noted it was probably not financially sound for the bank without four lots.

Ollie referred to the two unbuildable lots and huge drop offs and added that the one contiguous acre of non steep and non wet does not exist now. He asked if in the reclamation that would be restored and asked how the lot could be approved now that it does not meet the requirements. Mr. Rogers responded that the lot had one acre contiguous and when it was done it would have less because of the road. Ollie added there were considerable issues there to be addressed.

Mr. Allen, an abutter to the property, noted that they had made an offer to purchase all of the land on Hunttee Loop and had not received a counter offer.

Liz stated that she needed justification for violating the 1000 foot dead end road regulation. She suggested meeting with legal counsel.

Mr. Cassidy was asked if he was willing to post a bond for reclamation. He responded that he did not know because he did not know the cost.

Liz made a motion to continue the hearing until August 17, 2011 at 7:00 p.m. Ned seconded the motion and it passed unanimously.

Mrs. Skidmore questioned her responsibility for the reclamation of that part of her land involved in the lot line adjustment. She was advised to contact her attorney.

Ed asked that members put in writing any questions for legal counsel and he would contact Attorney Kinyon.

9:45 p.m.:

The Board remembered Nat Ober who passed away last week. Nat served on the Planning Board for 14 years.

Joanne will distribute a "to do" list to members.

The meeting adjourned at 10:10 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
AUGUST 3, 2011

PRESENT: Ed Dekker, Chairman, Liz Freeman, Roger Somero, Ned Nichols, Paul Termin, Jim Shultz, Oliver Niemi, Bentti Hoiska, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Paul was appointed to fill Ollie's vacancy until his arrival at 7:30 p.m.

7:00 p.m. Pioneer Green Energy – Continuation of public hearing for site plan review application:

The hearing was continued from July 20, 2011. Mr. Adam Cohen and Mr. Ed Rogers were present for the applicant. Mr. Rogers distributed copies of a new plan. On the plan he had added a note stating the proposed tower would be removed within 3 years from the date of erection. Also, the height of the tower has been added to the plan. A site visit was held on Tuesday and Ned and Roger attended.

Mr. Cohen was asked if there would be any work going on at the site once the met tower was erected. He responded that environmental survey work and/or some civil engineering may be done. The Board discussed posting of a bond for removal of the tower and agreed on a bond of \$5,000.

Liz made a motion to conditionally approve the site plan review application the conditions being payment of final fees and posting of a \$5,000 bond or cash equivalent. Jim seconded the motion and it passed unanimously.

7:20 p.m.:

As all conditions of approval for the lot line adjustment application between Skidmore and Rzepa were met, the Board signed the mylar.

**USA Properties:** Joanne distributed copies of the letter sent by Attorney Fernald to Peter Holden, copies of a letter from Attorney Czekalski to the Selectmen and copies of a letter from Attorney Kinyon to Ed. Attorney Kinyon's response to Attorney Czekalski's letter was that it was not a valid appeal to the Selectmen, the RSA does not apply in this situation and the applicant's remedy was to file a petition in the Hillsborough County Superior Court. In his opinion, the Planning Board's decision was final. Bentti added that the Selectmen will respond to Attorney Czekalski's letter.

Joanne distributed a copy of the letter sent by Attorney Kinyon to Attorney Panciocco regarding Green Crow Corporation.

Liz reported that she had spoken to Attorney Kinyon on the following: 1) granting a waiver has to be specific to that property; the reason for the waiver request has to be clear

and come from the applicant; if another party came in with the same waiver request with the same reason, the Board would have to grant the waiver; the waiver request has to be unique to the applicant; 2) if a subdivision has been approved by the Planning Board and the applicant wants to change what was approved, the applicant has to request a modification to the approved plan; 3) if someone owns two pieces of property, the Board cannot conditional approve one lot with the condition involving the second lot. Regarding House Bill 109 and sprinkling of houses, the Planning Board cannot require anyone to sprinkle their homes; the applicant can volunteer to do so and the Fire Department would have to approve that form of fire protection and inform the Board. Jim will speak with Fire Chief Leel about the process.

The Board discussed amending the Zoning Ordinance for large wind energy systems and specifically the maximum noise level allowed. Liz will e-mail links to wind turbine articles and suggested members educate themselves on the pros and cons of wind turbine energy. Also suggested was that members start looking for consultants that could be used if an application is submitted.

Jim made a motion to approve the minutes of the June 1, 2011 meeting. Liz seconded the motion and it passed unanimously.

The minutes of the June 15, 2011 meeting were reviewed and the following corrections made: page 3, bullet #42, fourth sentence should read "...those plans are now moot..."; add to the beginning of the third to the last paragraph "The Board requested that the waiver requests be submitted in writing."; third to the last paragraph, first sentence should read "...a noted added to the plan to that effect."; fourth paragraph, second sentence should read "...so was the Bank and their intention..."; page 4, third paragraph, second sentence should read "...Mr. Cassidy responded that they were ...". Liz made a motion to approve the minutes as amended. Jim seconded the motion and it passed unanimously.

Liz made a motion to approve the non public minutes from the June 15, 2011 meeting. Jim seconded the motion and it passed unanimously.

Liz made a motion to approve the minutes of the July 6, 2011 meeting. Ned seconded the motion and it passed unanimously.

The Board will hold a work session on September 7 to work on the Master Plan update and gravel pits. Also, Ed will ask George Nitschke if he could come to the meeting to discuss noise levels for wind turbines.

The meeting adjourned at 10:20 p.m.

Respectfully submitted,

Joanne Meshna, Land Use Manager

PLANNING BOARD MEETING  
AUGUST 17, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Ned Nichols, Jim Shultz, Ollie Niemi (7:20), Roger Somero (9:30)

The meeting was called to order at 7:00 p.m. at the Town Office.

William Rzepa – Continuation of public hearing:

The hearing was continued from July 20, 2011. Mr. Ed Rogers and Mr. David Cassidy were present to represent the applicant.

Mr. Rogers informed the Board that Mr. Rzepa recently filed for bankruptcy. This means that the bank cannot technically do anything with the property for probably 90 days.

Ed noted that the Board consulted with legal counsel and the Board is not allowed to put conditions on one property upon improvements on another property. This means that the idea of trading the two lots in Phase 1 for cleanup of Phase 2 cannot happen unless there is a merger of those two lots into Phase 2. Ed added that the Board would be willing to do the two changes in a single vote. The application would be accepted as if the lots were already merged. Mr. Rogers was asked to put in writing a request for another lot line adjustment and then the two lots could be subdivided out of Phase 2. Secondly, waiver requests have to be particular to a certain property. He asked that the waiver requests be rewritten and be specific to this project; the more unique it is the less precedent setting it is.

Mr. Cassidy asked if an approval could be granted by the Board subject to the receipt of a reclamation plan and a bond. It would have to be approved by the town engineer and a public hearing would have to be held for final approval.

Liz referred to the alteration of terrain permit and Mr. Rogers will be meeting with DES on the permit. Mr. Rogers was asked to have DES inform the Board of the status. There are approximately two acres to be reclaimed. Mr. Cassidy noted that the cost of the reclamation will determine what the bank does. Mr. Rogers has spoken to Kent Brown about a reclamation plan that could accomplish what needs to be done without breaking the bank. Mr. Allen added that he wants to see the land reclaimed to prevent eroding; there have been changes in the last two years. No reclamation would be done after Labor Day except for some placing of loam and seeding.

Liz asked if the applicant had spoken with the Conservation Commission about the big lot. They had not but may do so.

Liz informed the applicant that because of House Bill 109 the Planning Board and the Fire Chief cannot require that sprinklers be put into houses. However, if an applicant



volunteers to put in sprinklers as a fire protection measure, the Fire Chief can accept that method and recommend to the Planning Board that sprinklers be allowed. Sprinklers cannot be mandated.

The exaction fees due on the lots in Phase I were discussed. The fees have not been paid and since most of the lots have been sold and Mr. Rzepa is in bankruptcy, the Town will most likely not see those fees.

Kent Brown's letter of August 16 regarding the Huntlee Loop Road bond estimate was discussed. Mr. Cassidy stated he understood that the first five bullets need be included in the bond reduction estimate; however, the last bullet should not be included in the reduction as the current bond does not cover the reclamation. Ed noted that as far as stabilizing Mr. Allen's lot it does. Mr. Allen clarified that it is not his land but rather the land abutting his that is eroding. Mr. Cassidy said he did not want the two bonds together as he has no liability on Phase 2. Mr. Rogers noted that either all of the work gets done or nothing gets done, but Mr. Cassidy would like to keep the two bonds separate and itemized separately. The Board referred to Mr. Rogers' bond estimate breakdown. Liz noted that the road will be shortened in order to allow for two back lots and have the turnaround, and the rest of what would have been road will be dealt with in the Phase 1 road bond. Mr. Rogers will revise his \$35,000 bond estimate to include the five items outlined by Kent. A separate public hearing can be scheduled for the bond reduction.

Liz summarized the issues to be addressed: submission of a new waiver request, resolution of fire protection, and submission of a merger request prior to subdivision approval. Mr. Rogers' bond needs to be recalculated to include Kent's points and reviewed by Kent.

A public hearing was scheduled for September 7, 2011 at 7:00 p.m. for the bond reduction. The public hearing for the subdivision was continued to October 19, 2011 at 7:00 p.m.

8:10 p.m. Fuad Ashour/Richard and Marilyn Aho – Lot line adjustment application:

Mr. Ashour owns lot 9/82 and the Aho's own lot 9/63-5-1. The application is for a lot line adjustment between the two lots that would remove 0.395 acres from lot 9/63-5-1 and add it to lot 9/82.

Waiver requests were submitted with the application. Upon review Ollie made a motion to approve the waivers as requested. Ned seconded the motion and it passed unanimously. Liz made a motion to accept the application as complete. Ned seconded the motion and it passed unanimously.

Ned made a motion to conditionally approve the application, the condition being payment of final fees. Ollie seconded the motion and it passed unanimously.

8:20 p.m.

Joanne distributed the final drafts of the two chapters of the Master Plan that are being updated and are on the work session agenda for September 7. When she receives the maps, she will send them out to members.

Bentti informed the Board that Attorney Czekalski representing USA Properties had appeared before the Selectmen last evening regarding his request under RSA 646:4 I(c)(1) that the Selectmen issue an order directing the Planning Board to act on the application. The Selectmen did not agree or issue the order.

8:30 p.m.:

Mr. Scott Reynolds from North East Ecological Services met with the Board to discuss issues relating to wind turbines and in particular bat population.

The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
SEPTEMBER 7, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Ned Nichols, Jim Shultz, Roger Somero (7:45 p.m.), Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office.

7:00 p.m. William Rzepa – Request for reduction of Phase I bond:

Mr. Ed Rogers and Mr. David Cassidy were present for the applicant. The current bond for Phase I is \$111,330. The Board reviewed a letter from Kent Brown in which he recommends that the bond be reduced to \$83,939. He also stated that “there is nothing in that bond amount that provides any funds for the reclamation of the disturbed areas in phase II. ...it is necessary for the applicant to reclaim the disturbed land in Phase II or to post a bond for the reclamation”.

Reference was made to the large crack in the pavement. Mr. Rogers recommended that the repair be as follows: regrading cut banks, swales and shoulders along the west side of the road per the original approved plan set; replacement of rip-rap in swales on the west side of the road; sealing of the crack and placement of a leveling course of variable depth approximately 400 feet long over the cracked area prior to placing the wearing course; placement of a 1.5” wearing course for the entire road rather than the previously specified 1” wearing course. Work would not begin until spring.

Ned stated that it was premature to release the bond, there was no need to rush, there is only 6 months before this all plays out. He thought it was questionable whether or not the Board could take the bond for phase 2; this is one project and phase 1 and 2 of a single project. The Board wants to get the reclamation done. Mr. Cassidy responded that the letter of credit is for phase 1 and does not cover the reclamation. Ed noted that as there are defects in the road the Board may want to see the road weather over before releasing any of the bond. Mr. Rogers stated that the pavement has been there for two winters and what is there now is the worse of what will occur. Mr. Rogers was asked about any additional erosion. He stated that he was concerned about erosion on the unbuildable lot on the other side of Huntlee Loop Road. Swales have a lot of rip-rap but need to be fixed before placing the final coat on the road.

Bentti reminded the Board that the town had paid for paving at the end of Huntlee Loop onto Emerson Hill Road. Mr. Rzepa stopped 50 feet from Emerson Hill Road and the town had to pay to complete it at a cost of somewhere between \$7,500 and \$8,000. Joanne will provide Mr. Cassidy with documentation on this.

Mr. Rogers asked if the Board wanted them to proceed with formulating a reclamation plan by the October 19 meeting and have Kent review it. The Board responded that they did. Mr. Cassidy stated that he did not want to pay for a reclamation plan unless he gets the lots approved. He referred to the last meeting and discussion of a conditional

approval with the condition being an acceptable reclamation plan. Ed responded that the Board needs a ball park estimate for the reclamation. Mr. Rogers noted that Kent and he had walked the area and believe that a reclamation plan could be done for around \$25,000-\$50,000. Ed asked that Mr. Rogers write up the plan so the Planning Board could also get comments from the Conservation Commission.

Jim made a motion to reduce the bond to \$92,000. Liz seconded the motion and it passed with three in favor and two opposed.

7:45 p.m.:

The Board appointed David Lage to a one year term on the Finance Advisory Committee.

The September 21 meeting is cancelled so members can attend the Law Lecture series.

A work session was scheduled for September 12, 2011 at 7:00 p.m.

Regarding the Koivula gravel pit, the Board had determined during their inspection of the site that the excavation had expanded from lot 6/20C onto lot 6/20B. The original lot was grandfathered. Joanne stated that the owners had raised the question of whether or not lot 6/20B was grandfathered. Reference was made to RSA 155-E:2 I. (b). It was decided that Joanne will contact the LGC for legal advice.

The meeting adjourned at 10:20 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD WORK SESSION

September 12, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Ned Nichols, Roger Somero, Carolyn Dick Mayes

The meeting was called to order at 7:10 p.m. at the Town Office.

Ed reported that he spoke with town counsel, Gary Kinyon, regarding the USA Properties petition to the Superior Court for a writ of Certiorari. Gary would like to meet with Ed and any other interested members of the Planning Board. Ed will schedule a meeting with him in Keene for September 28<sup>th</sup> before the Law Lecture. If the 28<sup>th</sup> isn't possible, he will try for September 21<sup>st</sup>

Carolyn was appointed as an alternate to the Planning Board.

The Board discussed the possibility of consulting with a sound expert regarding the noise standards in the town's Large Wind Energy Systems Ordinance. Carolyn agreed to put together a summary of noise standards found in other town's wind energy ordinances, and Ned, Liz, Roger and Ed agreed to contact various people who might serve as consultants. One important criteria for selecting a consultant is that they have experience working with towns to help them develop wind energy noise standards.

The Board reviewed portions of Antrim's draft wind energy ordinance for any provisions which might be incorporated into the New Ipswich Ordinance in order to make it more consistent with the Town's Master Plan.

Another work session was scheduled for October 3<sup>rd</sup> at 4 PM

Respectfully submitted,

Liz Freeman  
Planning Board Member

PLANNING BOARD WORK SESSION  
OCTOBER 3, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Paul Termin, Ned Nichols, Carolyn Dick Mayes, Joanne Meshna

The meeting was called to order at 4:10 p.m.

The Board discussed large wind energy systems and composed questions to ask a consultant:

- When is the noise measured? Incl. for application, post-construction, continuous monitoring, ad hoc for complaint resolution? Any other?
- How is the noise measured (# times a day/year? Moving average or peak/minimum? Seasonally? Continuous/permanently installed noise recorders for operations)
- Frequency of re-measuring after operating?
- Reporting mechanism for operators to report noise measurements, both ambient & of turbine
- Enforcement and enforceability of standard?
- What's the best standard: decibel level over ambient with a maximum cap?
- What's the lowest noise standard that's been set and upheld by the ruling agency or courts?
- Conversely, can you give us examples of ordinances that have been overturned?
- Can you explain the low frequency or infrasound noise definition in the Centreville ordinance?
- Could you advise us on day and night noise standards versus a single standard that always applies?
- Can summarize the ANSI standards for us as they relate to wind turbines and tell us if tonality (repetitive & impulsive) are covered?
- Is there a standard that would make this requirement enforceable/can we quantify this standard: A Wind Turbine that emits impulsive sound below 20 Hz that adversely affects the habitability or use of any Non-Participating Landowner's property or structures thereon shall be deemed unsafe and must be shut down immediately?
- What should the preconstruction sound propagation require (line of sight? Mileage? Noise propagation pathways?)?
- What is the reason for this provision that we've seen in some ordinances: The increase in ambient statistical noise levels is based on an assumed background L50 ambient noise level of 25 dBA or the actual ambient background level.]?
- If we were to retain you, what information do you need (site plan regulation; draft ordinance; existing ordinance; complaint resolution process)?
- Does the cost to applicant of the required pre-construction studies have to be taken into consideration in the ordinance?

Carolyn will forward the questions to Ed for his feedback and then the questions will be distributed to the Board.

The meeting adjourned at 6:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
OCTOBER 5, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Paul Termin, Ned Nichols, Jim Shultz, Carolyn Dick Mayes, Roger Somero at 7:55 p.m., Joanne Meshna

The meeting was called to order at the Town Office at 5:30 p.m.

5:30 p.m. Eddie Duncan, Resources Systems Group (RSG):

Mr. Duncan gave a power point presentation on RSG and on noise from wind power projects. His company is available to consult with the Board on wind energy and he submitted a proposal for their review.

7:40 p.m. Brad Brock, 40 Jacqueline Drive:

Mr. Brock lives on the corner of Jaqueline Drive and Green Farm Road. His concern was with the performance bond. He noted that a good portion of Green Farm Road has not been completed and has only the binder coat. He questioned if there was any way to get the performance bond increased.

The Board explained that there is a bond for Phase 2 of \$90,000 and a bond for Jacqueline Drive for \$66,000 from New American Homes, and a bond for \$12,250 on Phase 1 from Jim Craven. Brown Engineering recommended that the bond for Jacqueline Drive be increased to \$103,397. The Planning Board can increase a bond by 10% each calendar year but has not done so in the past.

Mr. Brock continued that a lot of people that live on the Phase I portion are concerned that Mr. Craven will not be continuing the plowing of the road. Ed stated that the town has no policy currently to accept new roads and there is no connection between the road been finished and being accepted by the town; the Selectmen have a policy of no new roads. Mr. Brock noted his concern for the binder coat on Jacqueline Drive and Phase 2 of Green Farm Road and questioned what prompts the Board to use the bond. Ed responded that the Board needs to be convinced that the developer is not going to do the work in a timely manner and that the developer has been given sufficient time to do the work. The developer can claim that it is premature to do it at this time because of the economy and lack of sales of lots and/or houses. When the development was approved there was no time limit put in for completion of the road. Mr. Brock added that there are a couple of large holes in the binder coat.

Liz stated that the Board could give the developer reasonable notice to complete the road and if it is not done could call the bond. Ned added that the developer has an obligation to maintain the road and the Board cannot allow it to completely deteriorate. Liz noted that on the subdivision plan the road is built to Class V standards and if that has not been done, the Board can do a partial revocation of the subdivision. Jim noted that doing the



partial revocation puts hardship on the current owners of lots. The homeowners association has not formed. There is a road maintenance agreement.

Mr. Brock again asked what was going to happen with the bond and if he would ever see the road complete. Ed responded that he would be willing to do what the majority of homeowners want. The Board could apply pressure to New American Homes to finish the road. The homeowners would then be responsible for repairs and maintenance of the road. Mr. Brock further stated that it was his understanding that once a road was completed according to town specs the town would take it over. Ed responded that his deed would have referred to the road maintenance agreement. Jim noted that the life expectancy of the binder is probably a few more years.

Ed stated that the first step is to schedule a hearing to increase the bond. In 2011 the bond could be increased by \$6500 and the Board could revisit increasing the bond again in 2012. Bentti added that the developer needs to be asked to increase the bond and then given a reasonable time to perform, the Board needs to check with the attorney what that reasonable time might be, and if not completed, then call the bond.

Liz asked what the alternative to the partial revocation was. A daily fine could be assessed. The fines are set by the RSAs and would be levied by the court. In both cases the developer would be sent a letter that the road has been unpaved for too long and needs to be paved now. The homeowners would have to take the developer to court as they have a road maintenance agreement. The Planning Board is still involved because they hold the bond.

The Board agreed to hold a hearing on November 2 at 7:00 p.m. to evaluate increasing the bonds on Jacqueline Drive and for Phase 2 of Green Farm Road, and to discuss the Stowell Road/Tote Drive intersection work that was to be done. All of Green Farm Road is affected by one road maintenance agreement. Ed will call Attorney Kinyon to see if a public hearing is required and if abutters need to be notified by registered mail. Joanne will get a copy of the homeowners' agreement and the road maintenance agreement for the Board.

8:30 p.m.:

The Board determined the budget for 2012 as follows: training \$500, technical assistance \$3,500, Master Plan \$100, notices \$300, supplies \$300, postage \$200 and postage/hearings \$100.

Joanne distributed a letter from Mary Pinkham-Langer on closed gravel pits and the need for the Board to review the sites to determine if the area has been reclaimed.

Joanne handed out articles from New Hampshire Town and City on "New England's Food System: Distance is Money", and "Legislature Douses Local Fire Sprinkler Requirements."

The mylar for the approved site plan for Pioneer Green Energy/Walter Maki was returned by the Registry of Deeds because of hatching, the stamp going through onto the other side and numbers too light. Ed Rogers made the corrections. The Board signed a new mylar.

Liz distributed copies of dates for posting amendments to the Zoning Ordinance and dates for holding the hearings.

The Board agreed to have a work session on October 12, 2011 from 5:30-7:30, to begin the regular meeting on October 19 at 5:30, and have a work session on October 26 beginning at 5:30 p.m.

Liz will call Lisa Linowes for her input on RSG.

RSG and Liz's handout she prepared on amendments to the large wind energy system are on the agenda for the next meeting.

Joanne will send Attorney Kinyon minutes from the USA Properties' hearings and the recording.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

Stephen E. Ambrose, INCE, Bd.Cert.  
15 Great Falls Road, Windham, ME 04062  
tel: 207.892.6691 - seaa@myfairpoint.net

Robert W. Rand, INCE  
65 Mere Point Road, Brunswick, ME 04011  
rrand@randacoustics.com - tel: 207.632.1215

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October 12, 2011

Elizabeth Freeman  
New Ipswich, NH

Subject: Proposal for Wind Turbine Noise Ordinance & Presentation

Dear Liz,

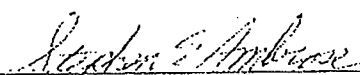
I enjoyed our conversation this past Saturday morning. I think your timing is very appropriate for contacting us. Our wind turbine noise investigations in quiet rural areas have provided us with valuable information for properly siting wind turbines.

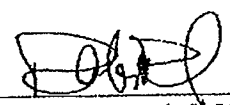
Our method is based on EPA studies, guidelines and recommendations. We have made noise measurements at several wind turbine sites in quiet rural areas. Neighbors were already complaining to town officials to stop the noise. Our noise measurements showed that there were significant changes to the acoustic environment directly related to the wind turbines. Using an EPA assessment methodology, the predicted community reactions ranged from "widespread complaints" to "threats of legal action". This agrees with the actual community response. Wind turbine developers do not address the public response, instead they affirm that the noise limit requirements will be complied with and therefore, no adverse public response. Our method enables us to disagree by using real measurements. Our main focus is protecting nearby neighbors by striving to minimize an adverse community noise response.

Rob Rand and I propose providing the Planning Board with an informative wind turbine community noise presentation using Power Point slides. We would also review your ordinance and suggest changes if needed to minimize an adverse community noise response.

We would like to do a presentation at our earliest convenience which would be Oct 19 or 26. The cost for our presentation and wind turbine noise ordinance guidance is \$2000.00. I hope this letter is sufficient to enable you to schedule the Planning Board meeting. Please advise if you need a more formal submittal. Thank you and best wishes.

Respectfully Submitted,

  
Stephen E. Ambrose, INCE (Bd. Cert.)

  
Robert W. Rand, INCE

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### Background and Qualifications

Bio: Stephen Ambrose is a principal investigator with over thirty-five years of experience in industrial noise control including eighteen years in the Noise Control Group at Stone & Webster Engineering Corporation. A Member INCE since 1978, Mr. Ambrose runs a small business providing cost-effective environmental noise consulting services for industrial & commercial businesses, municipal & state governments, and private citizens.

C

Bio: Robert Rand is a principal investigator with over thirty years of experience in industrial noise control, environmental sound and general acoustics including ten years in the Noise Control Group at Stone & Webster Engineering Corporation. A Member INCE since 1993, Mr. Rand runs a small business providing consulting, investigator and design services in acoustics. His business web site is <http://www.randacoustics.com>.

Mr. Rand has been independently investigating the noise and community reactions to large wind turbines since the spring of 2009. Joined by Mr. Ambrose in 2010, the independent investigators have measured operating sound levels versus distance at several wind turbine facilities in Maine and Massachusetts. Ambrose and Rand published three articles in the fall of 2010 on the acoustics of wind turbines and showed that the community reaction to large industrial wind turbines is *predictable*. The investigators have given expert testimony to towns in Maine and Massachusetts. Mr. Rand has conducted a number of invited presentations on industrial wind turbine noise for towns in Maine and Michigan. Several of these communities have adopted specific noise ordinances to protect the health and well-being of their citizens based on the information provided.

Rand and Ambrose have measured wind turbine noise at several sites, multiple days living near wind turbines, and experienced some of the adverse health effects documented worldwide by people living near large industrial wind turbines. Rand and Ambrose are capable and qualified to evaluate large industrial wind turbine projects.

Communities should develop wind turbine noise limits that adequately protect the public from excessive noise and adverse health impacts. There are industry accepted and recognized noise assessment procedures that can predict the community response to a new noise. Adversely impacted neighbors complain about noise when there is more than a 5 dB increase over the background level, and if there is an objectionable sound character.

# Community reactions and Criteria Wind turbine noise

Robert W. Rand, INCE  
Rand Acoustics  
Brunswick, Maine

Community reactions and Criteria  
Wind turbine noise

EPA Case Studies

Annoyance

Health Effects

## Community Response

Increase in Noise	Estimated Community Response
5 dB	Sporadic Complaints
10 dB	Widespread Complaints
15 dB	Threats of Community Action
20 dB	Vigorous Community Action

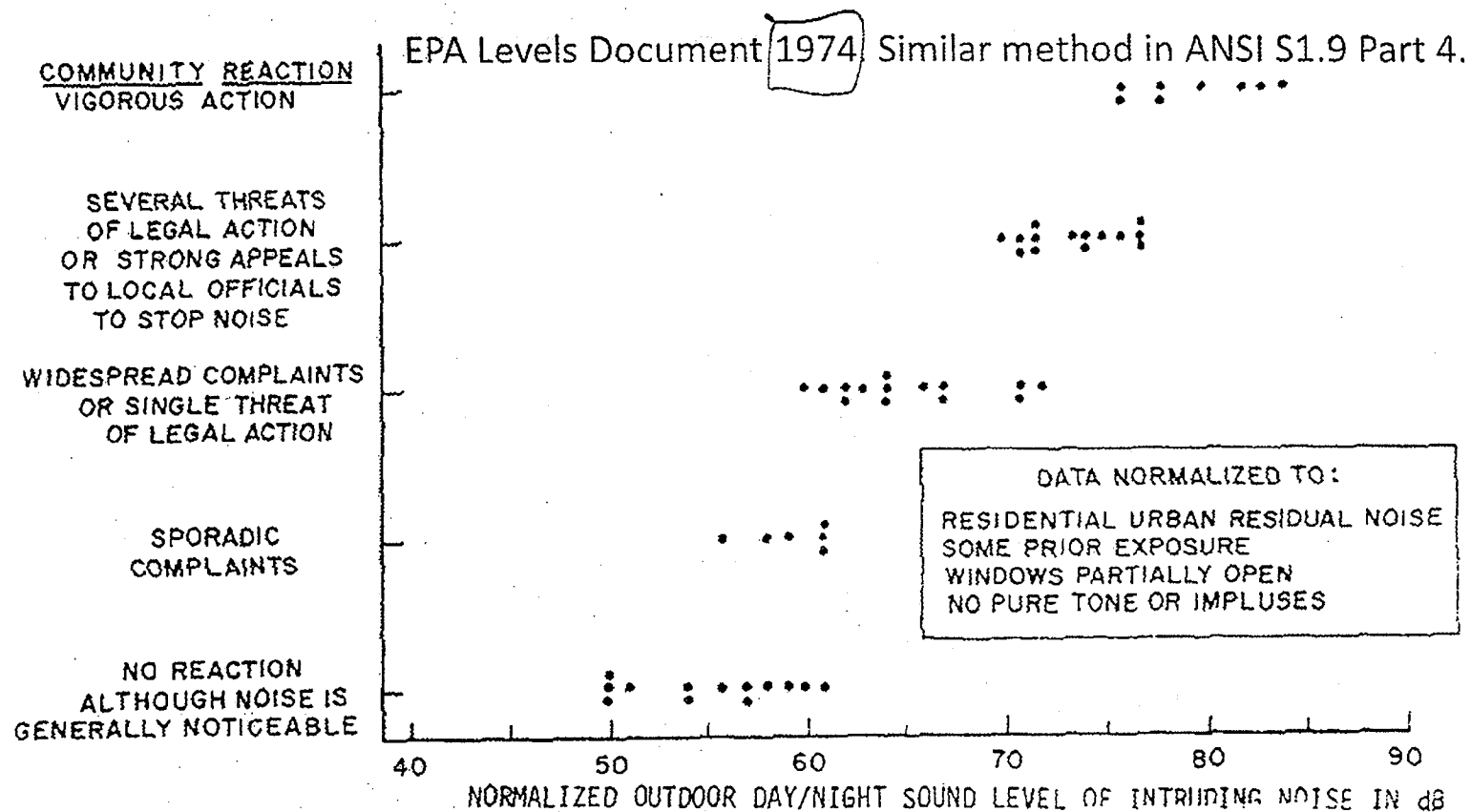


Figure D-7. Community Reaction to Intensive Noises of Many Types as a Function of the Normalized Outdoor Day Night Sound Level of the Intruding Noise D-3

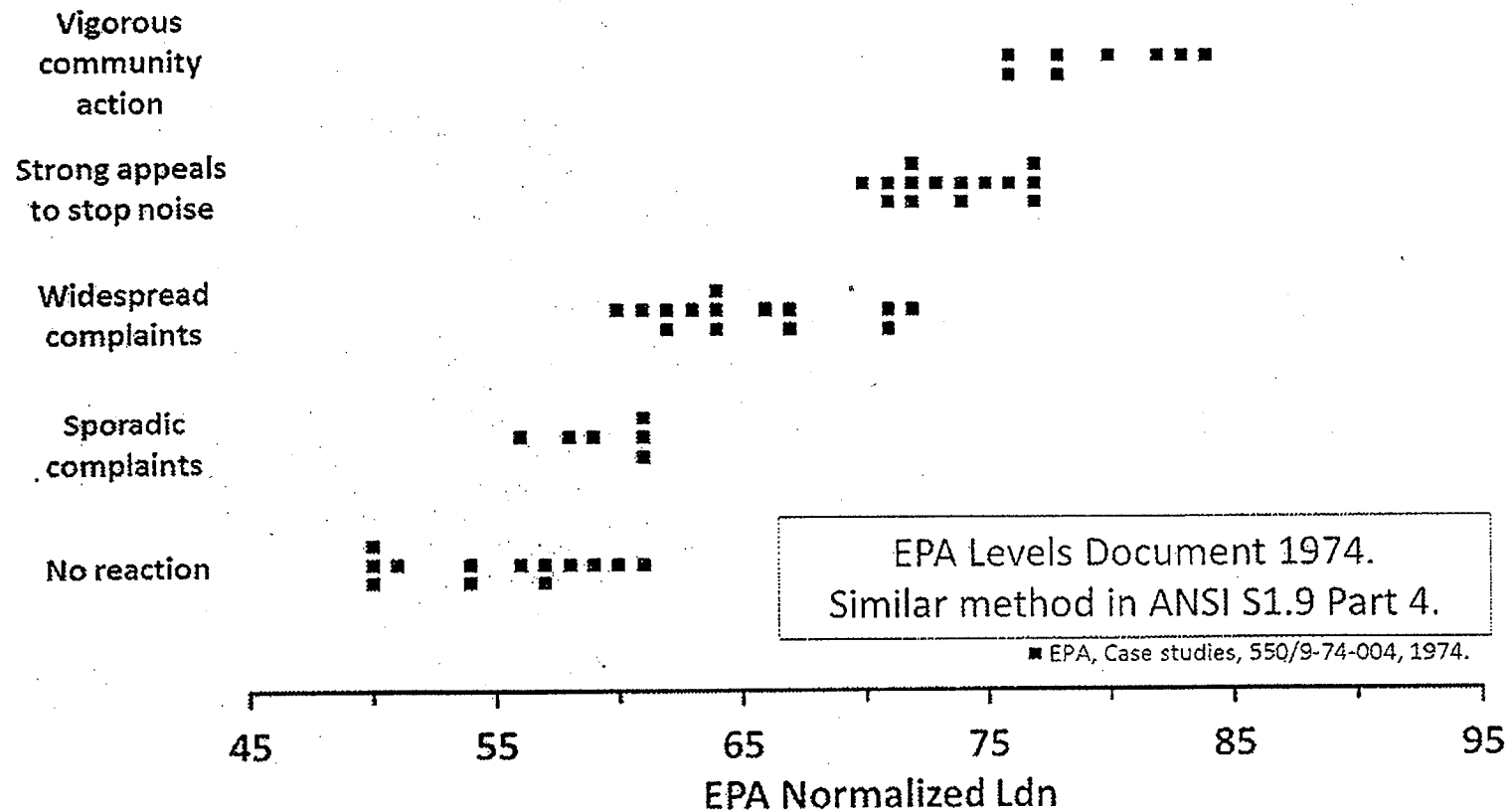


Table D-7

**CORRECTIONS TO BE ADDED TO THE MEASURED DAY-NIGHT SOUND LEVEL  
(L<sub>dn</sub>) OF INTRUDING NOISE TO OBTAIN NORMALIZED L<sub>dn</sub><sup>1</sup>**

Type of Correction	Description	Amount of Correction to be Added to Measured L <sub>dn</sub> in dB
Seasonal Correction	Summer (or year-round operation)	0
	Winter only (or windows always closed)	-5
	Quiet suburban or rural community (remote from large cities and from industrial activity and trucking)	+10
Correction for Outdoor Noise Level Measured in Absence of Intruding Noise	Normal suburban community (not located near industrial activity)	+5
	Urban residential community (not immediately adjacent to heavily traveled roads and industrial areas)	0
	Noisy urban residential community (near relatively busy roads or industrial areas)	-5
	Very noisy urban residential community	-10
	No prior experience with the intruding noise	+5
Correction for Previous Exposure & Community Attitudes	Community has had some previous exposure to intruding noise but little effort is being made to control the noise. This correction may also be applied in a situation where the community has not been exposed to the noise previously, but the people are aware that bona fide efforts are being made to control the noise.	0
	Community has had considerable previous exposure to the intruding noise and the noise maker's relations with the community are good	-5
	Community aware that operation causing noise is very necessary and it will not continue indefinitely. This correction can be applied for an operation of limited duration and under emergency circumstances.	-10
	No pure tone or impulsive character	0
Pure Tone or Impulse	Pure tone or impulsive character present	+5

## COMMUNITY REACTION TO WIND TURBINE NOISE IN RURAL AREAS As a Function of NORMALIZED Day-Night Sound Level (Ldn)



# COMMUNITY REACTION TO WIND TURBINE NOISE IN RURAL AREAS As a Function of NORMALIZED Day-Night Sound Level (Ldn)

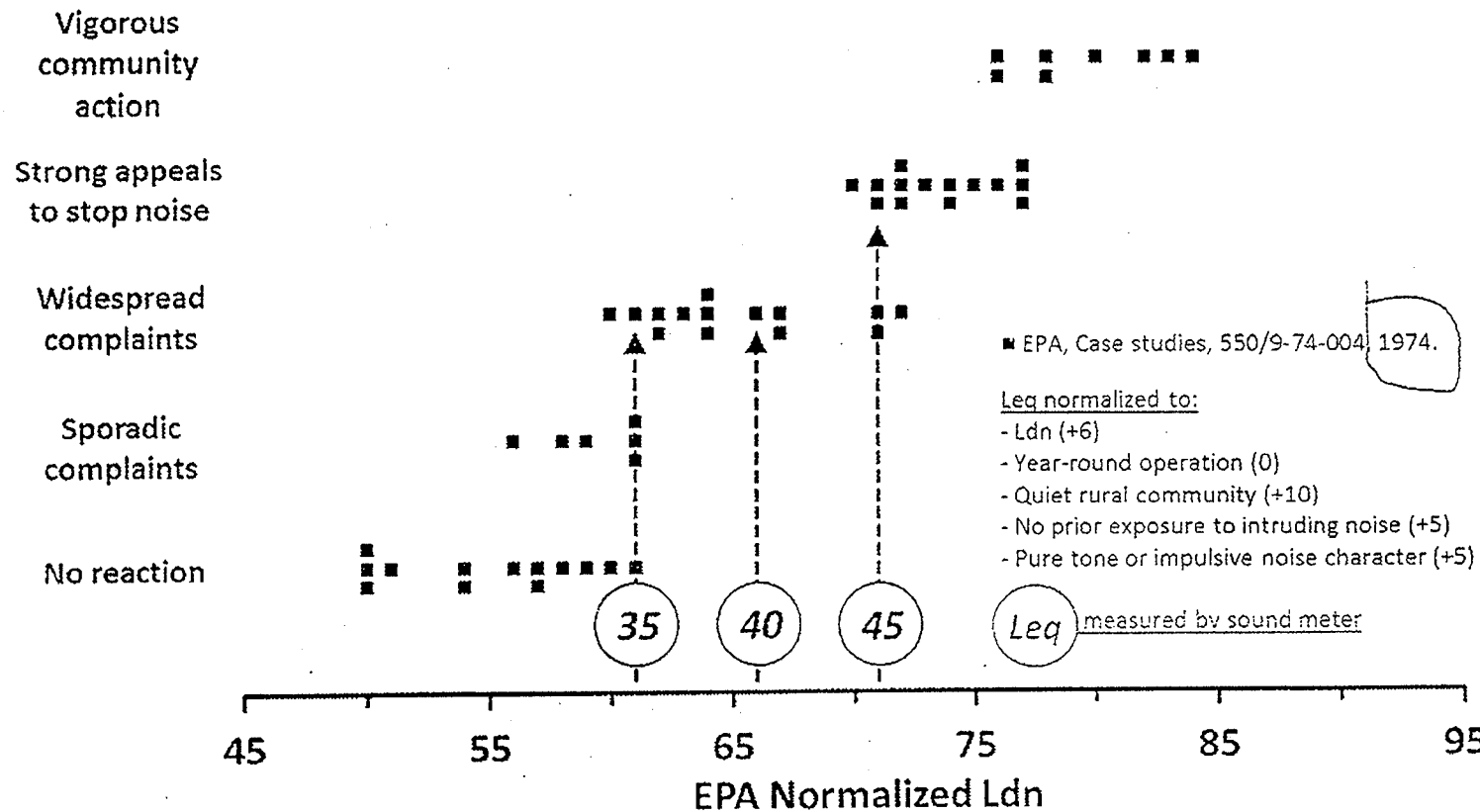


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# COMMUNITY REACTION TO WIND TURBINE NOISE IN RURAL AREAS EPA Case studies normalized to Leq in rural areas.

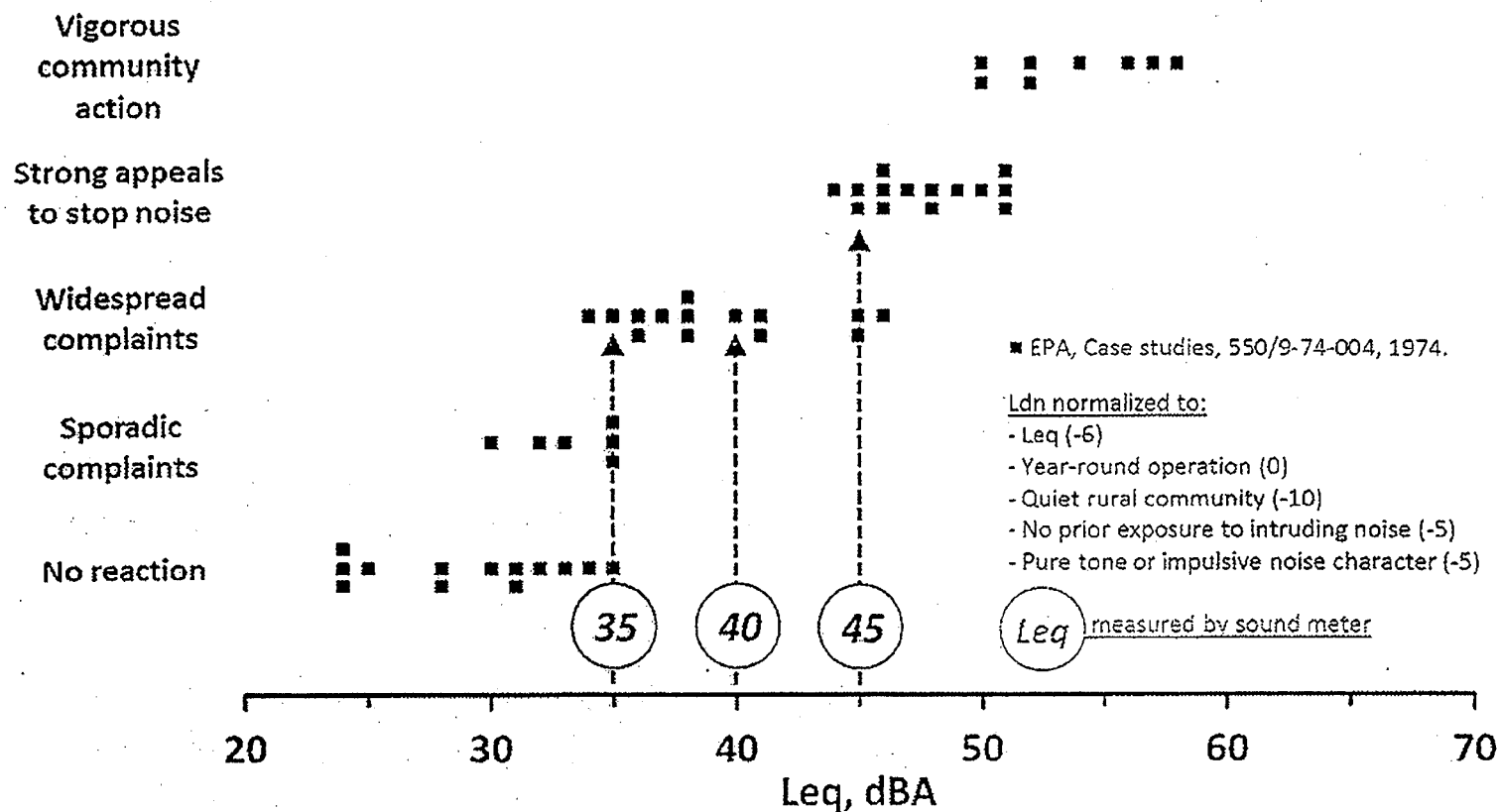


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## COMMUNITY REACTION TO WIND TURBINE NOISE IN RURAL AREAS at Wind Facilities in Maine

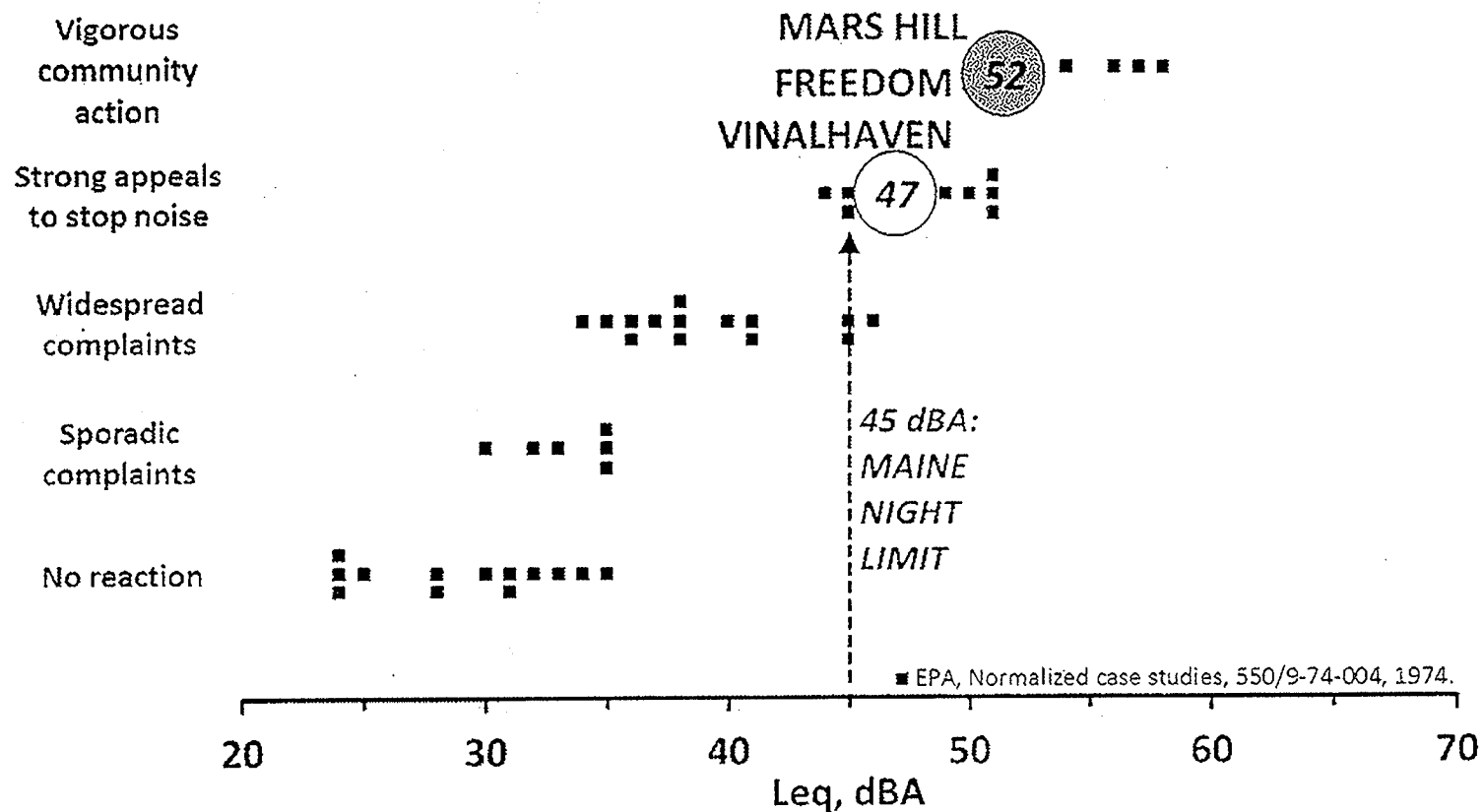


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## CRITERIA TO PREVENT ADVERSE COMMUNITY REACTION

Design to widespread complaints? No.

Design to no more than sporadic complaints: 33 dBA.

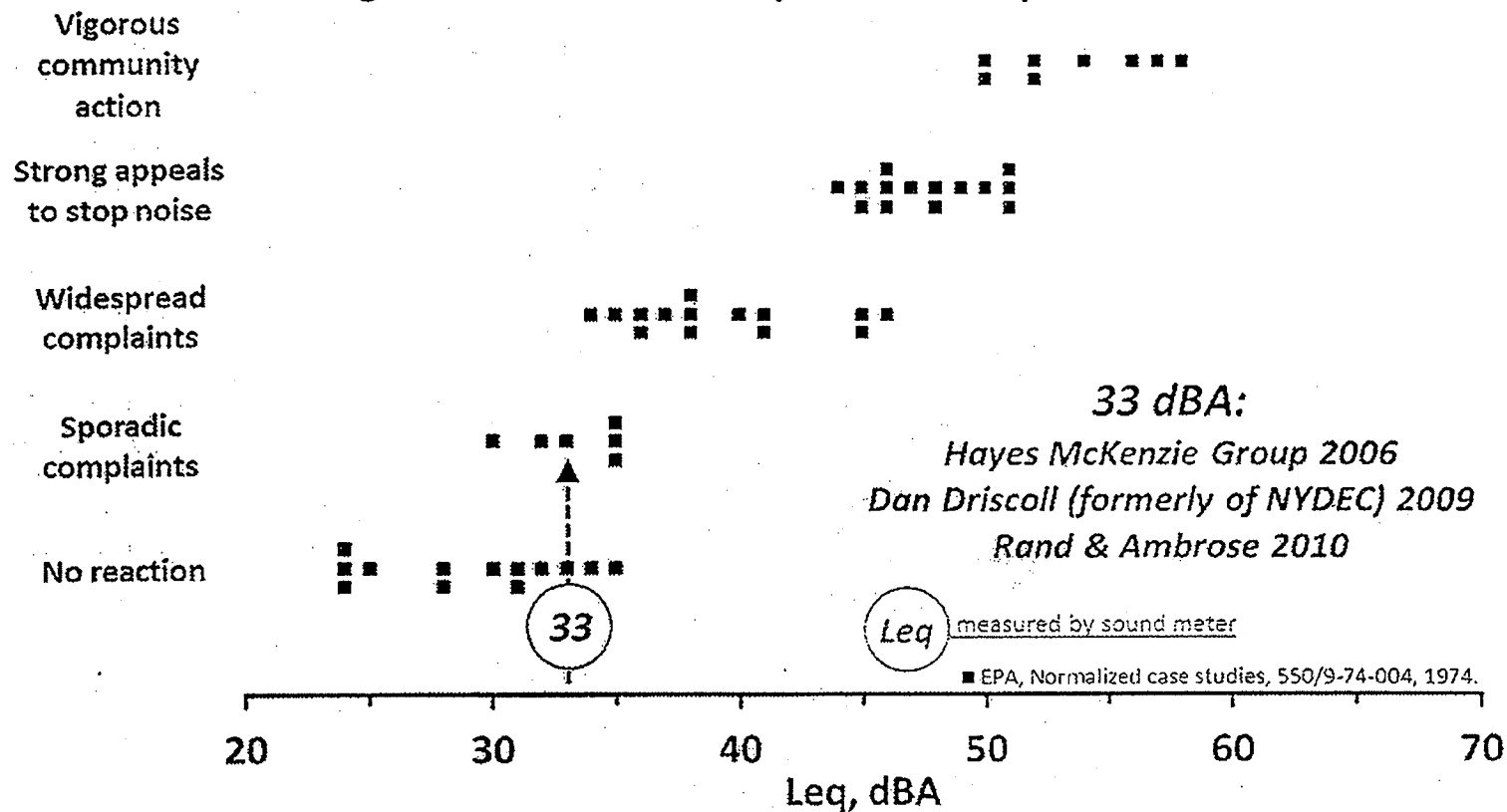


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Wind power development works in other locales with 35 dBA limit.  
 Surely wind power can work in Maine with 35 dBA limit.

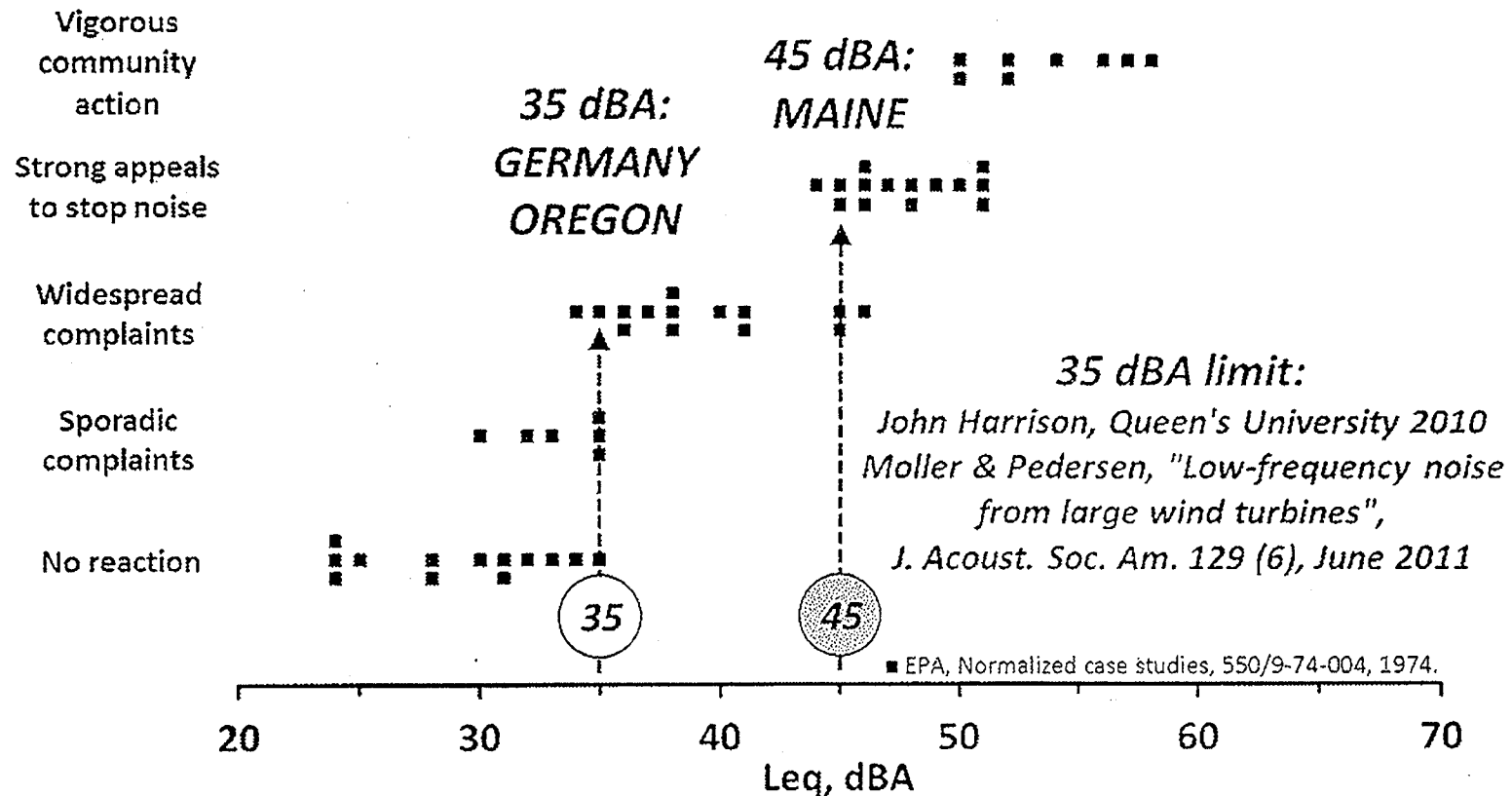
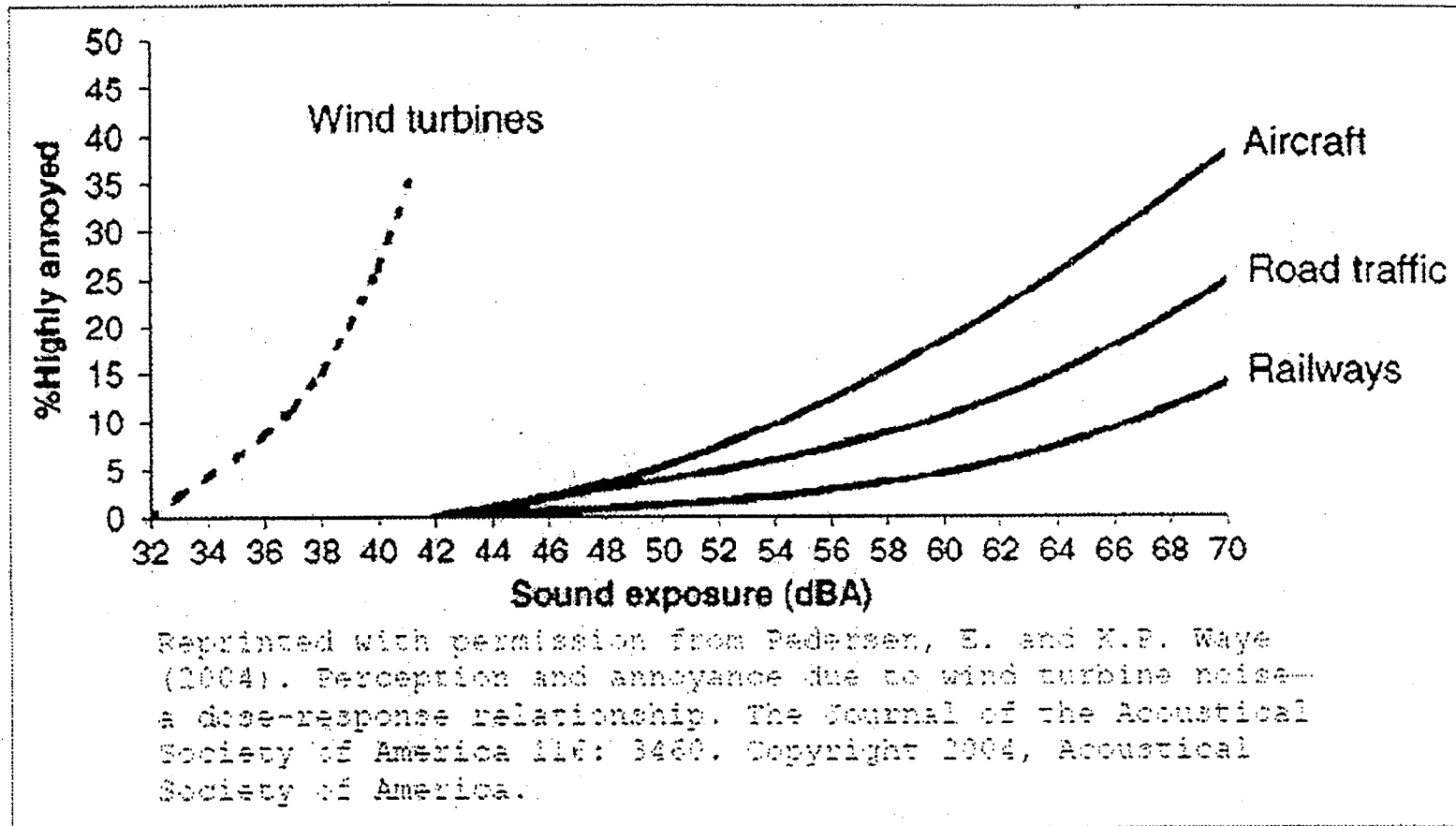


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## Community reaction to wind turbine noise

### Annoyance





## Community reaction to wind turbines and Percent of community highly annoyed

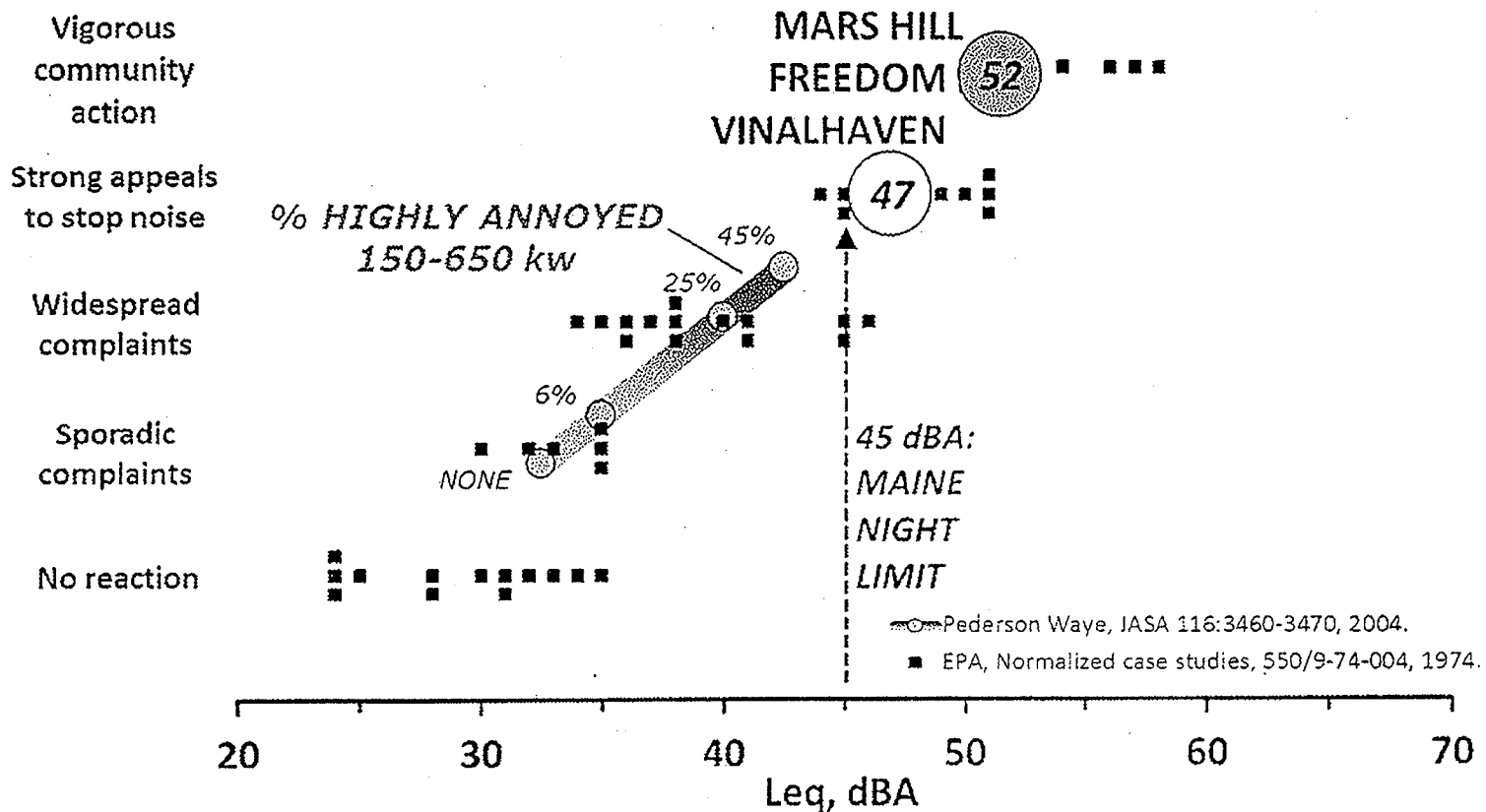


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# Community reaction to wind turbine noise

## Health Effects (WHO 2009)

Average night noise level over a year $L_{night, outside}$	Health effects observed in the population
Up to 30 dB	Although individual sensitivities and circumstances may differ, it appears that up to this level no substantial biological effects are observed. $L_{night, outside}$ of 30 dB is equivalent to the no observed effect level (NOEL) for night noise.
30 to 40 dB	A number of effects on sleep are observed from this range: body movements, awakening, self-reported sleep disturbance, arousals. The intensity of the effect depends on the nature of the source and the number of events. Vulnerable groups (for example children, the chronically ill and the elderly) are more susceptible. However, even in the worst cases the effects seem modest. $L_{night, outside}$ of 40 dB is equivalent to the lowest observed adverse effect level (LOAEL) for night noise.
40 to 55 dB	Adverse health effects are observed among the exposed population. Many people have to adapt their lives to cope with the noise at night. Vulnerable groups are more severely affected.
Above 55 dB	The situation is considered increasingly dangerous for public health. Adverse health effects occur frequently, a sizeable proportion of the population is highly annoyed and sleep-disturbed. There is evidence that the risk of cardiovascular disease increases.

"NOEL"

Table 3  
Effects of different levels of night noise on the population's health

"LOAEL"

## WHO 2009 HEALTH EFFECTS GUIDELINES and Maine DEP Night Noise Limit

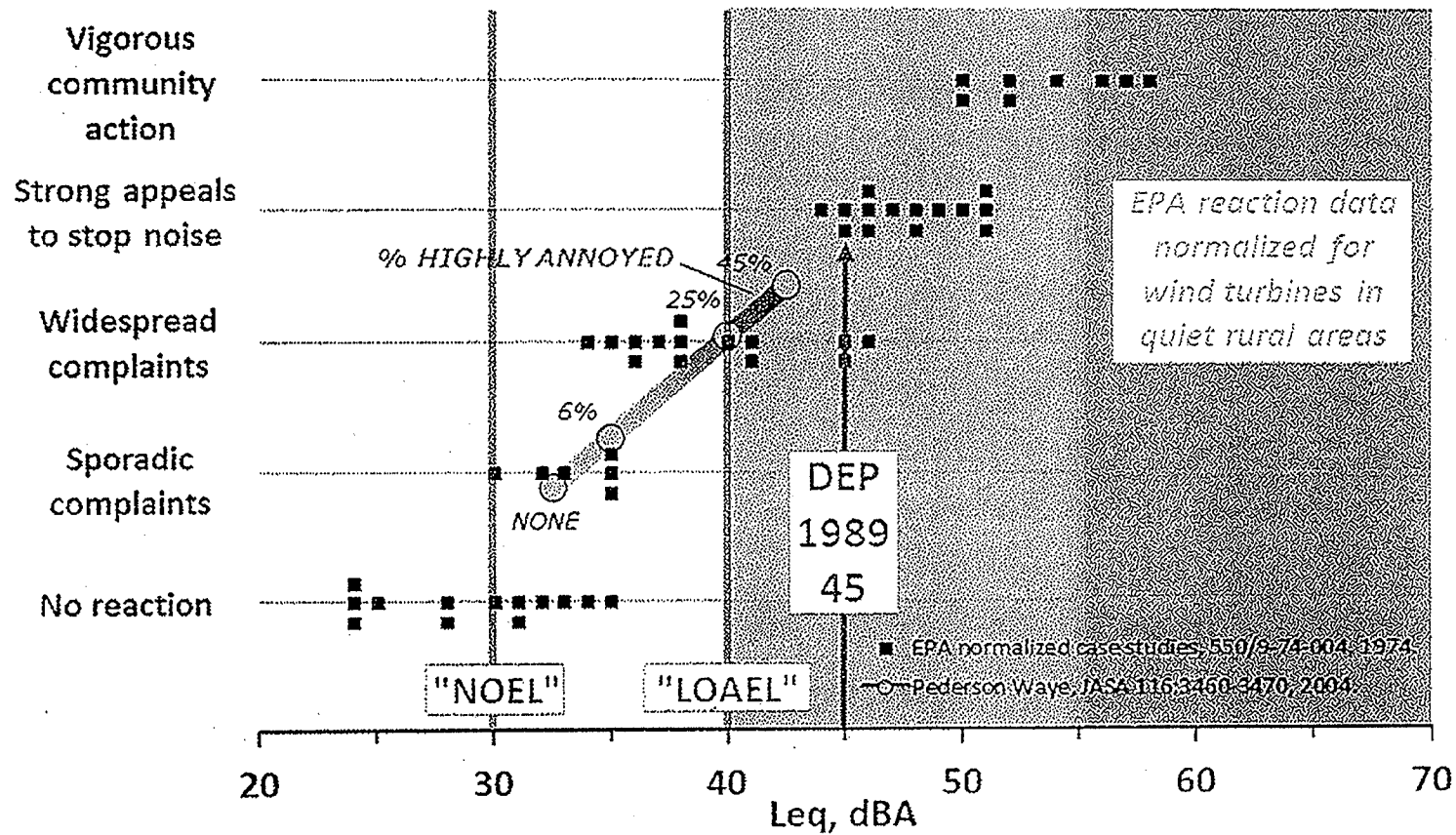


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# WHO 2009 Health Effects Guidelines and Mars Hill Highest Hourly Leq

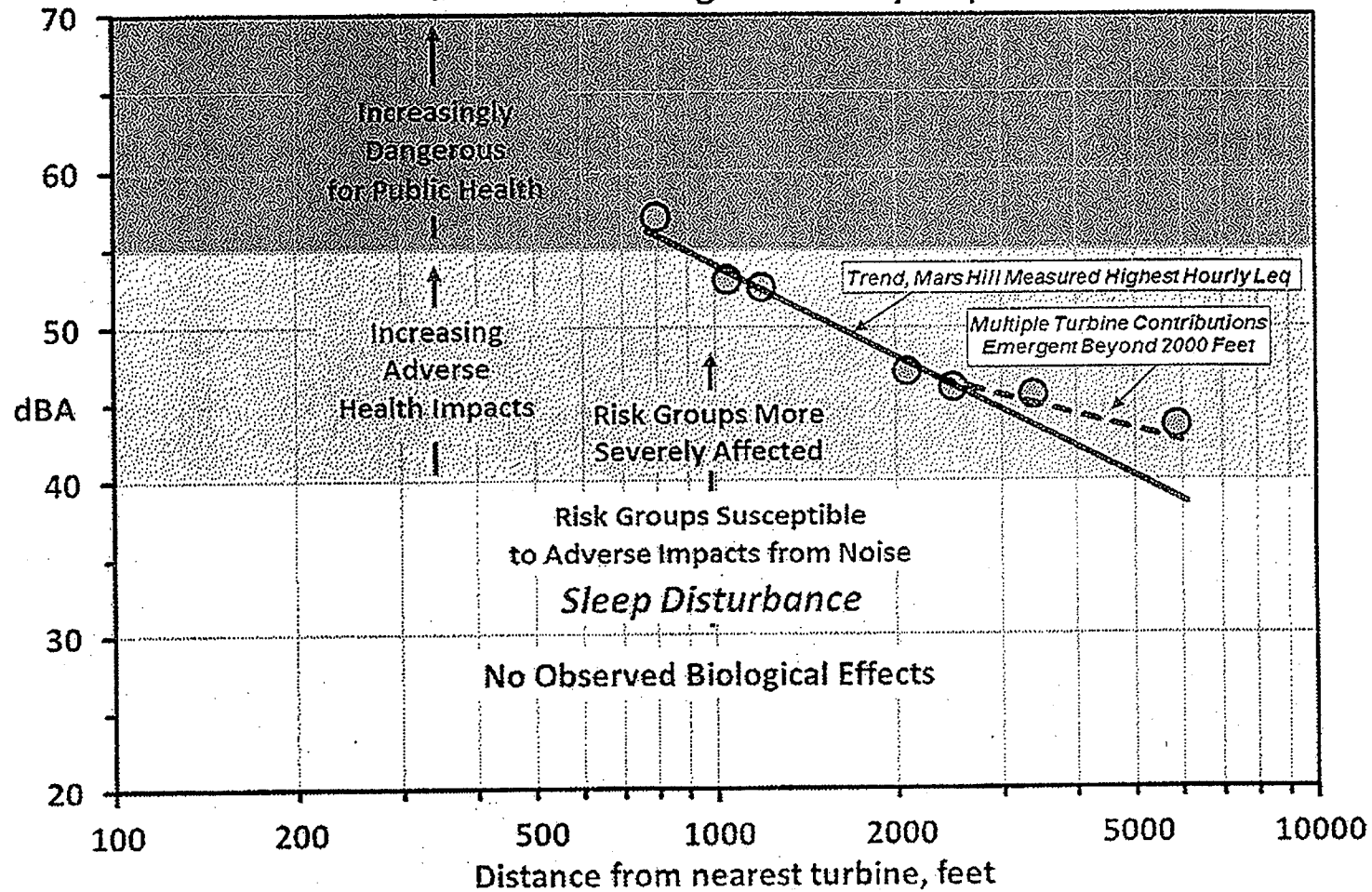


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PLANNING BOARD WORK SESSION  
OCTOBER 12, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Ned Nichols, Paul Termin, Jim Shultz, Roger Somero, Carolyn Dick Mayes, Joanne Meshna

The meeting was called to order at 5:30 p.m. at the Town Office.

Liz informed the Board that she had spoken with Lisa Linowes who is familiar with wind issues. Ms. Linowes recommended that the Board contact Steven Ambrose and his company who are well know for their expertise in wind energy systems. Mr. Ambrose will make a presentation to the Board. Liz will follow-up with him on the date.

Ed spoke with Attorney Kinyon regarding a public hearing on increasing the bond on Green Farm Road. The abutters do not need to be notified for the public hearing. The developer should be informed and invited to the meeting and be allowed to be heard. If the developer does not put up the extra bond, the Board could do a revocation of the subdivision approval. The Board could also file suit in Superior Court for the increased bond amount and get an injunction against the sale and issuance of building permits on the undeveloped lots.

The Board worked on Liz's draft of the amendments to large wind energy systems. Paul will rewrite XII-1: A. 2. and 7. (page 1) into one point, Carolyn will define environmental impacts (e. page 4) and Liz will make the other changes suggested by the Board.

The meeting ended at 7:30 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
OCTOBER 19, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Ned Nichols, Paul Termin, Roger Somero, Joanne Meshna  
PUBLIC: Ed Rogers, Adam Cohen

The meeting was called to order at 5:30 p.m. at the Town Office.

The Board worked on the wind energy amendment:

- Liz distributed and the Board discussed "additional changes" and "12. Visual Impact".
- The Board continued to work on the first draft of the amendment prepared by Liz.
- On page one under purpose, Ned will work on numbers 5 and 8. Paul will work on numbers 2 and 7.
- Liz will send those items that still need to be addressed when she e-mails the updates.
- Ed and Paul will work on setbacks.
- On the article distributed entitled "Wind Energy Facility Siting Guidelines Working Group Proposed Wind Power Siting Guidelines" remove the last two pages and the page before that entitled "Wind Turbine Guidelines Advisory Committee."

At the end of the work session on the wind energy systems, Ed noted that Mr. Cohen had requested a design review hearing on November 2. Ed had wanted to see how much the Board accomplished this evening in order to determine if there would be time on the 2<sup>nd</sup>. He stated that there was still a lot of work to be done for the amendment and informed Mr. Cohen that the Board would be meeting in a work session on the 2<sup>nd</sup> and would have to reschedule him to November 16.

7:10 p.m. William Rzepa – Continuation of public hearing for lot line adjustment and subdivision:

Mr. Ed Rogers and Mr. David Cassidy were present for the applicant. The hearing was continued from September 7, 2011. Bentti discussed the Planning Board meeting when the bond was reduced. He had stated that the town had paid a bill submitted by Brox Paving for paving of a part of Huntlee Loop Road that Mr. Rzepa would not pay. He estimated it to be between \$7,000 and \$8,000. Tonight he corrected that estimate to \$726.00. That bill is still outstanding.

Mr. Rogers distributed a letter to the Board on the waiver request, procedures and the reclamation plan. Upon review of the waiver request, the Board agreed that bullets one and four were unique to this application and if granted would make it economically viable for the applicant to restore the serious environmental damage on lot 3 which would be an important benefit to the Town.

Liz made a motion to approve the following three actions by a single vote:

- 1) The approval of the waiver request from the maximum dead end road length of Hunttee Loop Road is justified by the first and fourth bullets in the applicant's letter of October 18, 2011 and results in a proper resolution of the environmental damage to lot 9/3;
- 2) Merger of lots 9/3-6 and 9/3-9 into lot 9/3;
- 3) Subdivision of lot 9/3 into four lots. The subdivision of lot 9/3 is conditional upon the following:
  - a) preparation of a reclamation plan
  - b) approval by the Planning Board of the reclamation plan after review by the Town Engineer
  - c) setting and posting of a bond for the reclamation plan
  - d) payment of fees
  - e) submission of two mylars, one for the merger and one for the subdivision
  - f) fire protection satisfactory to the Fire Chief and approved by the Planning Board
  - g) the applicant shall prepare a schedule and timeline approved by the Planning Board for all site work involved including the hammerhead turn and reclamation
  - h) addition of a note to the plan that the applicant will run the utilities including electrical power, telephone and cable, to the lots
  - i) submission of an amended letter of credit to cover all work on Hunttee Loop Road

Ned seconded the motion and it passed with five in favor and one opposed. A public hearing will be scheduled to review the conditions when the applicant is ready.

8:45 p.m.:

The minutes of the July 20, 2011 meeting were reviewed and the following corrections made: page 3, last paragraph, first sentence should read "...3,287 feet from the intersection of Binney Hill and Emerson Hill Roads."; page 4, last line should read "...of Bill 109 and sprinklers"; page 5, fifth paragraph, first sentence should read "...added that the one contiguous acre of non steep and non wet does not exist now." Liz made a motion to approve the minutes as amended. Paul seconded the motion and it passed unanimously.

Liz made a motion to approve the minutes of the August 3, 2011 meeting. Ned seconded the motion and it passed unanimously.

The minutes of the August 17, 2011 meeting were reviewed and the following corrections made: page 2, second to last sentence should read "...approve the application, the condition..."; page 3, first sentence should read "...that are being updated..."; page 3, second sentence should read "When she receives the maps,..." Paul made a motion to

approve the minutes as amended. Ned seconded the motion and it passed with four in favor, one abstention.

The following meeting schedule was established:

**October 26, 2011**

5:30 p.m. Steve Ambrose  
Work session

**November 2, 2011**

5:30 p.m. Work session  
7:00 p.m. New American Homes – inc bond Jacqueline Drive and Green Farm  
Road; bond for work at intersection of Tote, Stowell, Temple

**November 7, 2011**

5:30 p.m. Work session.

**November 9, 2011**

5:30 p.m. Work session

**November 14, 2011**

5:30 p.m. Work session  
7:30 p.m. Public hearing for site plan review amendment.

**November 16, 2011**

7:00 p.m. Pioneer Green Energy, design review

**November 28, 2011**

7:00 p.m. Zoning amendment hearing

**December 12, 2011**

7:00 p.m. Zoning amendment hearing

**December 28, 2011**

7:00 p.m. Zoning amendment hearing



January 11, 2012

7:00 p.m.      Zoning amendment hearing

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
OCTOBER 26, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Paul Termin, Roger Somero, Carolyn Dick Mayes, Joanne Meshna  
PUBLIC: Adam Cohen

The meeting was called to order at 5:30 p.m. at the Town Office.

5:30 p.m.

Mr. Stephen Ambrose from SE Ambrose & Associates and Mr. Robert Rand from Rand Acoustics made a presentation to the Board on noise and community reactions to large wind turbines. Their main focus is protecting nearby neighbors by striving to minimize an adverse community noise response.

Upon conclusion of the presentation, Mr. Ambrose submitted a proposal to the Board. They would review the Zoning Ordinance and suggest changes if needed to minimize an adverse community noise response. The fee for their service is \$2,000.

Mr. Ambrose was asked to provide e-mail links on studies presented to the Board.

7:55 p.m.:

Roger disclosed that he had an approximate 15 minute conversation with Mr. Cohen earlier today. The conversation centered around the amendment to the Section XIII-2 Large Wind Energy Systems of the Zoning Ordinance. The gist of the conversation was that the current ordinance should remain, that the amendments would make the ordinance too restrictive and Mr. Cohen would not be able to put a wind turbine in if the amendment passed, and the Board should not work on a new ordinance.

The Board informed Roger that conversations of that kind cannot take place, that Mr. Cohen cannot meet with Board members alone. The Board also asked Mr. Cohen not to approach any Board member, that all discussions need to take place in a public forum before the entire Board. Mr. Cohen responded that as he did not have an application submitted he believed he could speak with individual members. He was told that was incorrect, that any conversation that involves work the Planning Board is doing needs to be in public. The conversation is a violation of the Right to Know law, open meeting law and a conflict of interest.

8:00 p.m.:

The Board returned to the proposal submitted by Mr. Ambrose and Mr. Rand. Liz made a motion to hire Mr. Ambrose and Mr. Rand as proposed in their letter of October 12,

2011 letter to Liz. Paul seconded the motion and it passed with five in favor, one opposed. Liz will contact Mr. Ambrose and send material to him.

The Board worked on the proposed amendment to the Site Plan Review regulations. Liz will e-mail the final draft to the Board for discussion at the work session on November 2.

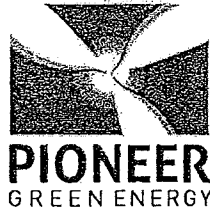
Mr. Cohen submitted and Ed distributed a letter to the Board from Mr. Cohen; it was not discussed.

Liz distributed copies of section of the proposed amendment on "Administration and Associated Costs," "Enforcement and Penalties," and "Additional Proposed Changes" for the Board to review and get back to her with any comments/changes.

The meeting adjourned at 9:50 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager



**VIA E-mail and Hand-Delivered**

October 26, 2011

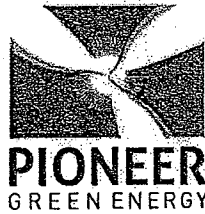
To: Members of the Planning Board of the Town of New Ipswich:

I am writing to request that a representative of Pioneer Green Energy, LLC be allowed the opportunity to speak to the Planning Board prior to it proposing any substantive revisions to Article XIII-2: Large Wind Energy Systems (referred to as the "Wind Ordinance").

As you know, Pioneer Green has been working with the Town and the larger community on a wind energy project for almost two years. We have greatly enjoyed working with the Selectmen, the Board, and the community at large to bring the benefits of clean energy to the region. The Town has rightly recognized the project as a powerful way to generate tax revenue and spur local economic development while also preserving the unique character of the community. It also has been our experience that residents across the community share our enthusiasm for helping our nation move away from imported fossil fuels toward clean, domestic energy sources that can also economically benefit local communities.

A critical component of the Town's balanced approach to proposed wind energy projects was the adoption of the Wind Ordinance last year. To recap, in 2007 the General Court adopted HB 873, which requires electricity providers to source at least 23.8% of their electricity from renewable resources by 2025. Then, in 2008, the General Court passed HB 310, which set forth municipalities' obligations to encourage renewable energy in a manner that also protects health, safety, and welfare. Accordingly, in late 2008, the Town began the process of developing its own tailored approach to wind energy zoning. All of this culminated in the 2010 Town Warrant in which 797 residents voted in favor of the Wind Ordinance. At a 64% rate of approval, this was a strong endorsement of responsible wind energy development.

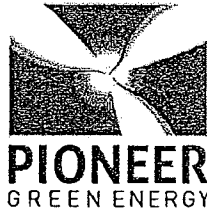
The Wind Ordinance is a comprehensive measure that will enable responsible wind energy projects to proceed while protecting the community from adverse effects. The Wind Ordinance addresses a myriad of subjects: turbine height, turbine appearance, setbacks, Federal Aviation Administration (FAA) lighting requirements, compatibility with communication systems, sound levels, shadow flicker, tower shadowing, blade glint, safety, environmental impacts, and decommissioning. The Wind Ordinance was developed as Pioneer Green was developing its current project and we have used it as a guide in all our planning since its adoption.



As the Board knows, in reliance on the Wind Ordinance, Pioneer Green has taken significant steps toward realization of its project in the Town. We erected a temporary metrological tower to collect weather data on the Green Crow tract in 2010. After passage of the Wind Ordinance, landowners on Kidder Mountain expressed interest in being a part of the project and have since joined the effort. During 2010 and 2011, we continued working with the Town and the community, keeping them consistently updated on the project throughout the development process. Another meteorological tower was proposed at the Board meeting on July 20, 2011, which passed unanimously at the August 3, 2011 meeting. Pioneer Green continues to expend considerable funds and effort on the basis of the Wind Ordinance.

The participation of Green Crow Corporation in the project is a good example of the local positives the Wind Ordinance was intended to facilitate. Originally, Green Crow had explored the development of a residential subdivision on its land. After the passage of the Wind Ordinance, however, it decided to work with Pioneer Green to bring our wind project to reality. This decision is in harmony with the Town Plan for 2010, which attempts to discourage sprawl and cluster development further straining the Town's limited resources and seeks new sources of non-tax revenue.

Despite this significant investment and success, the Board is now investigating the possibility of proposing substantial revisions to the Wind Ordinance at the Town Warrant scheduled for March 2012. From our review, the draft changes would as a practical matter prohibit any utility-scale wind energy project. For instance, one draft of the proposed revisions states that "[i]n order to guard against light pollution, no towers that require Federal Aviation Administration mandated lighting shall be permitted." Since FAA requires aviation safety lighting for most structures higher than 200 feet, and has never exempted an entire wind project from those requirements, adopting this standard would be tantamount to a wind project ban. Another provision of a would require turbines be set back 5 miles from any "critical habitat" of any "endangered species" listed under the federal or State endangered species statues, despite the fact that those very statutes already fully protect endangered species, do not contain any such setback requirement, and the 5-mile distance is the same for all species (whether or not they could be affected by wind turbines) and has no biological foundation. Also, a number of proposed changes are taken directly from the ordinance adopted by another town, which does not reflect the views of the residents of New Ipswich, and that caused permitting for a project there to be removed from local authorities and taken by the State. Other suggested changes in other draft documents are similarly troubling.



We strongly urge the Board not to propose revisions to the Wind Ordinance that would be so contrary to the Town's wishes, as clearly expressed in 2010. There is no need for any changes. The Town has just overwhelmingly approved a comprehensive ordinance that endorses and enables the responsible development of utility-scale wind projects. Pioneer Green has developed its project on this basis of that ordinance and its plans reflect its many substantive requirements. Most troubling, as the drafts currently stand, the proposal would effectively prohibit utility-scale wind energy without informing Residents of that fact.

At the very least, Pioneer Green believes that its is entitled to present to the Board facts regarding wind energy that it should consider before putting any proposals to the residents for their consideration. Many of the draft changes appear to be based on erroneous information. I note that when I asked to speak to the Board at its meeting on October 19, 2011, I was not permitted to do so. Without the benefit of all relevant information, including information from Pioneer and others in the community regarding the benefits of utility scale wind, the Board runs the risk of presenting to the residents of New Ipswich proposed changes to the Wind Ordinance not based on the full and correct facts regarding wind energy.

Pioneer Green has always prided itself in working openly and honestly with communities in which it explores potential projects to ensure that they understand wind power and the tangible benefits it can deliver to the entire community. This is what brought us to New Ipswich and continues to motivate us to develop our project here. We request that the Board reciprocate by allowing us and other stakeholders the opportunity to present important and relevant information on wind energy prior to any formal proposals moving forward.

We appreciate the important work that the Board does for the residents of New Ipswich and respect that it has a process for receipt of public input. We make this request, however, because we believe there is no justification for even proposing substantial changes the Wind Ordinance at this time and, if such proposals are made, that they reflect a full understanding of the relevant facts.

Respectfully yours,

Adam Cohen  
Vice President

cc: Selectmen, Town of New Ipswich

PLANNING BOARD MEETING  
NOVEMBER 2, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Paul Termin, Roger Somero, Carolyn Dick Mayes, Joanne Meshna, Jim Shultz at 7:00 p.m.  
PUBLIC: Adam Cohen

The meeting was called to order at 5:30 p.m. at the Town Office.

The Board continued working on the amendment to the Site Plan Review regulations provided by Liz. The amendment will be posted tomorrow, November 3, 2011 and a public hearing held on Monday, November 14, 2011 at 7:30 p.m.

7:00 p.m. Bonds for Jacqueline Drive and Phase II of Green Farm Road:

The Board discussed the bonds for Jacqueline Drive (currently \$65,598) and phase II of Green Farm Road (currently \$90,744). Under RSA 674:36, the Planning Board is permitted to increase a bond by 10% per calendar year for cost escalation factors. Ed referred to the increase in cost for asphalt and other materials. Carolyn made a motion to raise the bond amounts by the maximum amount allowed of 10% for calendar year 2011. Liz seconded the motion and it passed unanimously.

Joanne will send a letter to Builders Land Company stating that the Board held a hearing and raised the amount of the bonds by 10%, that building permits will be suspended until the bonds are brought up to the correct amount, and the updating of the bonds must be done within 30 days.

With regard to the Stowell Road/Tote Drive intersection, there is no bond in place for the improvement of the intersection. Fines could be imposed on the owner for failure to complete what was approved as off site improvements. Ed will consult with Attorney Kinyon on that process.

Joanne distributed copies of the Declaration of Common Driveway Easement and Covenant, Declaration of Private Road Maintenance Agreement for Green Farm Road, Declaration of Private Road Maintenance Agreement for Jacqueline Drive and Declaration of the Green Farm Village Cluster Development Owner's Association. Members agreed that since the homeowners own the road, the homeowners' association could vote to have the bond money applied to the completion of the road and request that of the Town.

7:25 p.m.:

The Board completed work on the amendment to the Site Plan Review regulations. They also worked on Liz's draft to the amendment to the Zoning Ordinance, Article XIII-2, Large Wind Energy Systems, on sections on enforcement and penalties, setbacks, and visual impacts.

The meeting adjourned at 9:25 p.m.

Respectfully submitted, Joanne Meshna

PLANNING BOARD WORK SESSION  
NOVEMBER 7, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Roger Somero, Liz Freeman, Paul Termin, Joanne Meshna  
PUBLIC: Adam Cohen

The meeting was called to order at 5:30 p.m. at the Town Office.

The Board continued to work on the amendment to Article XIII-2, Large Wind Energy Systems, of the Zoning Ordinance and discussed and commented/changed the following sections:

- Noise limits and measurement.
- Monitoring.
- Enforcement and penalties.
- Public inquiries and complaints.
- Administration and associated costs.
- Easements and leases. Liz will contact Attorney Kinyon regarding informed consents.
- Environmental impact.
- Visual impact.
- Blasting.
- Definitions.
- Purpose.

Liz will draft the complete amendment and forward it to the Board. Members were asked to review it prior to the Wednesday night meeting so that it might be discussed at that time.

The meeting adjourned at 8:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager



PLANNING BOARD MEETING  
NOVEMBER 9, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Roger Somero, Paul Termin, Joanne Meshna  
PUBLIC: Adam Cohen

The meeting was called to order at 5:35 p.m. at the Town Office.

Ed disclosed that a neighbor had wanted to speak with him regarding wind mills and Ed discovered that he had a financial interest in the Kidder Mountain project. Talking to him would be a conflict of interest and Ed suggested the neighbor attend the public hearings on the amendment. Ed cautioned Planning Board members to be careful speaking to anyone outside of a public meeting.

The Board reviewed the complete Zoning Ordinance amendment and made minor changes. Liz will finalize and send to Attorney Kinyon for his review.

Liz distributed a draft of a handout on wind farms for distribution at the hearings and/or voting day. Members will review and discuss at the next meeting.

Liz also handed out a communication from Attorney Fernald. Ed may schedule Attorney Kinyon to meet with the Board on Monday, November 14 or November 16 at 5:30 p.m. to discuss the issue raised in the communication.

Bentti referred to Huntlee Loop Road and the outstanding bill from Brox Industries for \$760 that was for the extra paving the Town required that Mr. Rzepa refused to do. It had been suggested that the payment of the bill come from the bond in place for Phase I.

The meeting adjourned at 7:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
NOVEMBER 14, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Ned Nichols, Paul Termin, Joanne Meshna  
PUBLIC: Adam Cohen

The meeting was called to order at 5:40 p.m. at the Town Office. Joanne and Paul were appointed as regular members for this evening's meeting.

Ms. Harris McWade, 31 Page Hill Road, brought to the Board's attention that a driveway permit had been approved by the State of New Hampshire for lot 9/64-1 for Mr. Steve Krook. This lot is part of a subdivision approved in 2005. A note on the approved subdivision plan states "The new access easement shown hereon is to service lots 1, 3 and 4 for purposes of driveway access across the lots as shown. This is created to allow just one curb cut off of Page Hill Road, per agreement with the New Ipswich Planning Board." Therefore, allowing another curb cut would be in violation of the subdivision approval.

Liz made a motion that the Planning Board send a letter to the Selectmen asking them to enforce the terms of the subdivision approval on lot 9/64-1 and to send a copy of that letter to Mr. Krook. Ned seconded the motion and it passed unanimously.

5:50 p.m.:

The Board reviewed the final draft of the Zoning Ordinance amendment to Article XIII-2, Large Wind Energy Systems. No changes were made. The amendment will be reviewed by Attorney Kinyon.

The minutes of the September 7, 2011 meeting were reviewed and the following correction noted: page 1, third paragraph under 7:00, second to last sentence should read "He stated that he was concerned about erosion on the unbuildable lot on the other side of Huntlee Loop Road." Liz made a motion to approve the minutes as amended. Ned seconded the motion and it passed with one abstention.

The minutes of the September 12, 2011 meeting were reviewed and the typo of Liz's last name corrected. Ned made a motion to approve the minutes as amended. Liz seconded the motion and it passed with one abstention.

Liz made a motion to approve the minutes of the October 3, 2011 meeting. Paul seconded the motion and it passed unanimously.

The minutes of the October 5, 2011 meeting were reviewed and the following corrections made: page 1, first paragraph under 7:40, last sentence should read "...was any way to..."; second paragraph under 7:40, second to last sentence should read "...be increased to \$103,397."; second paragraph under 7:40, last sentence should read "...by 10% each

calendar year..."; third paragraph under 7:40, third to last sentence should read "...going to do the work in a timely..."; third paragraph under 7:40, second to last sentence should read "...economy and lack of sales..."; page 2, first paragraph, second to last sentence should read "The homeowners association has not formed."; page 2, second paragraph, second sentence should read "...he would be willing to do what the majority of homeowners want." Liz made a motion to approve the minutes as amended. Paul seconded the motion and it passed unanimously.

Ned made a motion to approve the minutes of the October 12, 2011 meeting. Paul seconded the motion and it passed unanimously.

Liz distributed a proposed amendment to the Subdivision Regulations amending Section V. Procedure, paragraph 5:01 by deleting design reviews, and the Site Plan Review Regulations, Article III, paragraph 6, by deleting design reviews. Ed explained that design reviews are optional and that conceptual consultations can accomplish much the same thing. The Board has been tripped up several times by design reviews with their one year grandfathering and comments binding the Board. If design reviews are offered, the Board needs to have detailed regulations for submission requirements. The Board scheduled a public hearing for December 7, 2011 at 7:00 p.m.

Ed discussed an e-mail communication from Attorney Kinyon. Pioneer Green Energy is grandfathered under RSA 676:12 VI and is not subject to the new zoning and site plan review amendments assuming they apply within one year of the close of the design review.

Liz distributed a draft of a handout for the public hearing for the zoning amendment. Paul and Ed are preparing a power point presentation. The Board agreed to meet at 5:30 on November 16 to discuss these items.

Ned referred to a proposed amendment to the Subdivision Regulations that he had distributed back in June. The amendment outlines the procedure to follow for waiver requests. The Board agreed to hold a public hearing on December 7.

7:20 p.m.: Recess.

7:30 p.m. Public hearing for amendment to Site Plan Review Regulations:

Public in Attendance: Butch Maki, Mike Maki, David Cotzin, Patty Maki, Adam Cohen

Ed explained that the hearing this evening was for an amendment to Article IV. Section E. of the Site Plan Review Regulations. The Site Plan Review Regulations are the application procedures informing the applicant what needs to be submitted to the Board. The amendment gives the applicant a better idea of what will be required. The Board can request additional studies and information during the hearings. In the case of the Pioneer Green Energy proposal coming before the Board, the amendment is irrelevant under RSA 676:12 VI because of the date of the notice of the design review hearing and, provided

the applicant files an application within one year of the end of the design review, they will be grandfathered in under the old regulations. The amendments will apply to future applications.

Ed referred to the handout on the amendment and explained that the regular print was the regulations as they currently stand, the strikeouts are what is being removed and the bold text is new verbage. The Board went through the amendment and made the following changes:

- Page 1: E. c. Change project ridge in the first sentence to LWES.
- Page 2: E. e. Change audio visual warning to automatic obstruction lighting.
  - 3. a. Change three (3) miles to two (2) miles.
- Page 3: 3. b. Change three (3) miles to two (2) miles.
  - 4. Change three (3) miles to two (2) miles.
- Page 4: 5. c. Sentence should read: Dust and erosion control procedures.
  - 6. b. Keep current text and add professional before engineer; change a) and b) to i) and ii).
  - e. Keep current text; change a) and b) to i) and ii).  
Correct numbering.
- Page 5: 8. First sentence should read: A pre-construction baseline study... water resources including but not limited to those identified in the New Ipswich...
- Page 6: 9. a. Replace with new text as follows:
  - a. A wind turbine Noise Model which shall predict the dBA (Leq) and unweighted octave band levels from 31.5 Hz to 8kHz at all Non-participating Landowners' properties within two (2) miles of any Wind Turbine. The Noise Model shall represent all Wind Turbines and shall use the following parameters:
    - i. Each Wind Turbine shall be considered as an individual noise emitter,
    - ii. The prediction model shall use the Manufacturer's highest sound power levels,
    - iii. The prediction model shall use a wind shear (wind profile power law exponent, alpha) of no less than 0.50, where wind shear is defined as the difference in atmospheric wind speed and direction occurring over relatively small increases in altitude,
    - iv. No attenuation (zero) for ground cover since a Wind Turbine is an elevated noise emitter,
    - v. No attenuation (zero) for foliage since trees have no leaves from November to April,
    - vi. Add a plus 5 dB design margin to the predicted noise levels to account for variations in atmospheric propagation due to refraction (the bending of sound waves in the atmosphere due to changes in air temperature or wind gradient).
- Page 7: 9. b. First sentence should read: A scaled map with:

- b. iii. Change Landowner's to Landowners' in two places and change three (3) miles to two (2) miles.
- 9. c. Change last sentence to read as follows: The LWES developer shall locate the LWES predicted noise level on the x-axis of Figure 1 and determine the highest associated CNR not to exceed sporadic complaints on the y-axis; or determine the highest associated CNR not to exceed sporadic complaints for the predicted LWES noise level using Table 1.
- Page 8. 9. c. Table 1. The Leqs should read as follows: vigorous action 50-58, appeals to stop the noise 44-49, widespread complaints 34-43, sporadic complaints 30-33, no reaction 24-29.
- d. Change first sentence to read as follows: Each and all properties within two (2) miles of any Wind Turbine shall be tabulated by:
- Page 13. 20. Change Article XIII-1 to XIII-2.
- 26. Delete.
- Renumber 26. and 27.

Mr. Adam Cohen from Pioneer Green Energy submitted written comments on the proposed amendments which were discussed and summarized as follows:

- 1) Section 1, c. and d.: Mr. Cohen: too subjective; suggested changes as stated in his letter; amendment should be in the ordinance; having someone say whether the visual impacts are "acceptable or unacceptable" is above and beyond; a landscape plan should be in the ordinance; there is a bias here. Board's response: it is a routine procedure for the Board to seek expert advice; these are submission requirements; no changes made.  
  
Mr. Cohen: Should define where public viewing locations are; vaguely written; should have a list of places in town requiring simulations; issue with two mile requirement; Board's response: would be site dependent; would rely on an expert; no changes made.
- 2) Section 2: Mr. Cohen: section is outdated. Board will review at a later time.
- 3) Sections 3 and 4: Mr. Cohen: should be a one mile distance which is an industry standard; 2 miles adds a big financial burden. Board's comments: based on expert input, the Board would not agree that beyond a mile the potential visual and sound impacts from a project diminish to the point at which extensive study is not needed or justified.
- 4) Section 9: c: Board removed the words "not to exceed sporadic complaints" from the last sentence.

Mr. Cohen referred to the chart and noted it is not an EPA chart but a Rand chart; is subjective; starts at 55 as no reaction. The Board noted that the submission requirement is that the predicted noise levels be shown on the chart; not discussing what the standards are. Mr. Cohen: chart is flawed; the

community deserves to know where the charts are coming from. Board: the Board has consulted a sound expert with sound and noise expertise related to wind turbines; chosen this expert because believe it is a sound rational way to determine it. Mr. Cohen: unfair to the community, the experts are anti wind experts, basically saying no economic development in the whole town. Board: only asking predicted noise levels and to show it on the chart; does not set a standard. Mr. Cohen: standards should be adopted by the Town; the way the Board has tilted the chart from the experts is anti wind. Board: these are not standards.

- 5) Section 12: Mr. Cohen: there are already requirements in Section 24 that experts have to be qualified. Board: removed "approved by the Planning Board" from the first sentence.
- 6) Section 19: Mr. Cohen: financial information is confidential; Mr. Butch Maki stated he was objecting to it as it was his business; does not care to be educated by other landowners, satisfied with lease, landowners have their rights. Mr. Cohen: all leases are on file and are public record. Board: creates divisions in community; following recommended best practices. No changes made. Ed will get an opinion from legal counsel.

Mr. Cohen: general comments – things that are being proposed need to be applied town wide; a lot of restrictions and should think about how it looks to the community; make sure getting sources in a lot of different places; referred back to the first three paragraphs of his letter for general comments; chart is vague as is the source. Board: a lot of the comments are more appropriate for discussion on the amendment to the Zoning Ordinance. Mr. Cohen: there are serious financial burdens being imposed, requirements may not permit the project to happen.

Mr. Butch Maki asked who was advising the Board, what were their credentials, and what were they compensated. Ed responded that all that information is available from Joanne.

Mr. David Cotzin stated that if the amendment is too restrictive there will be a negative vote and the Board will end up with nothing.

Liz made a motion to adopt the amendment to Article IV. Section E. of the New Ipswich Site Plan Review Regulations as proposed by the Planning Board. Benti seconded the motion and it passed unanimously.

The meeting adjourned at 9:45 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

November 14, 2011

Pioneer Green Energy, LLC

Comments on Proposed Amendments  
to the New Ipswich Site Plan Regulations (11/3/11 Draft)

We have reviewed the proposed amendments to the November 3, 2011 draft revisions to the Site Plan Regulations for large wind energy systems ("Site Plan Regulations"). We are concerned that, in many areas, the proposed changes would create regulatory requirements that are vague, inconsistent, excessively burdensome and out of step with widely-accepted wind industry practices. Adoption of these changes would create interpretational issues that would make successfully navigating the new requirements very difficult for any applicant, effectively preventing applicants from the opportunity to bring projects otherwise in conformance with the substantive requirements.

Comments Across Revisions to All Sections

Several proposed changes would extend requirements for assessment and testing from either the project boundary or one mile from the project boundary, to three miles from project boundary. These changes are excessive requirements and are likely to saddle a project with substantial cost, resource and time delays, making it more unlikely to proceed, while promoting questionable substantive improvements. Given that New Ipswich is approximately 6 miles wide, requiring assessment of possible impacts 3 miles from the project's boundary could well require assessing any impacts against hundreds of structures the vast majority of which are quite distant from the project. One example is the requirement that archeological resources identified within 3 miles of the project boundary. Since excavation during construction by definition will not affect lands outside of the project boundary, requiring assessment of all sites within 3 miles of the site is excessively burdensome. Another example is the language used to require water well testing at all wells identified in the Open Space Plan across all of New Ipswich, regardless of their proximity to potential wind improvements.

Other changes in the regulations not only set forth minimum qualifications for certain professionals which the applicant must retain, but also additional requirements that such professionals be approved in advance by the Planning Board. For example, an applicant must ensure that any New Hampshire-licensed Professional Engineer, any wildlife biologist qualified to study wind power projects, and any professional acoustic engineer who is a full member of the Institute of Noise Control Engineering, must in addition to these requirements also be approved by the Planning Board. These requirements also are subjective and excessively burdensome to applicants.

Comments on Revisions to Section 1

This revised section should not call for the visual impact report to opine on whether the visual impacts from a project "may be acceptable or unacceptable." A visual impact assessment should present visual

November 14, 2011

images of a project, but not purport to assess their acceptability, which is highly subjective and not susceptible to "expert" opinion.

This revised section should not include the following sentence: "Of particular concern are public recreation areas where there is an expectation of a natural setting," as it suggests a bias or even a prohibition against a project being visible from a public recreation area. The purpose of the Site Plan Regulations is to implement the existing ordinance, Article XII-2: Large Wind Energy Systems ("LWES Ordinance") and there is no such bias or prohibition in the LWES Ordinance. We suggest that this sentence be revised to state as follows: "The visual impact assessment should focus on visual impacts to public recreation areas."

This revised section should not include the sentence in Section 1.f., as it is a substantive and open-ended requirement and does not serve merely to implement the LWES Ordinance. Moreover, the LWES Ordinance does not require that a project "not impact the scenic resources of the Town" but sets forth the relevant substantive tests in Section 12.

The revised section should not require simulations "from all possible public viewing locations" and from "public recreation areas where there is an expectation of a natural setting." The former requirement are excessively burdensome to an applicant while the latter is vague and inherently subjective such that an applicant could not interpret the language to know from where visual simulations are required to be completed. Instead the planning board should advise the applicant of specific locations from which it requires visual simulations and the total number of simulations should be reasonably limited.

#### Comment on Revisions to Section 2

The requirement to place anemometers at hub height is out of step with accepted industry practice, where met towers are typically installed with anemometers at 59.5m height and extrapolations are conducted to hub height. The requirement that wind resource be at least of wind power class 4 under the USDOE classification system is also out of step with widely accepted wind industry practices. This usage of the US DOE system, adopted in 1986, makes inaccurate assumptions about efficiency of wind turbine technology widely used across the US over the last ten years.

#### Comments on Revisions to Section 3 and Section 4

The relevant boundary for the Site Plan in Sections 3.a, Section 3.b and Section 4 should be the 1-mile distance in the existing regulations, not the 3-mile distance as proposed. Beyond a mile, the potential visual and sound impacts from a project diminish to the point at which extensive study is not needed or justified. The cost of study of an area 3 miles around the perimeter of a project is not justified by the information that would be generated. Moreover, the information provided is not likely to meaningfully inform project design, turbine placement and other relevant decisions.



Comments on Revisions to Section 9

The revised Section 9 would improperly expand the sound-related requirements of the LEWS Ordinance and should not be adopted. The LWES Ordinance addresses sound impacts in Section 5, which consists of the following numerical standards: (1) no greater than 50 dBA for non-participating landowners (45 dBA for certain types of sounds); (2) no greater than 45 dBA for occupied structures; and (3) no less than 20 Hz if the sound results in certain adverse effects. The revised Section 9 would expand the required sound study to a report that not only would confirm compliance with these standards, but would additionally impose multiple substantive sound requirements that are found nowhere in the LWES Ordinance. For instance, this section would now require that a project not result in any adverse "Community Noise Reactions" under the cited EPA document, although the LWES Ordinance contains no such requirement. To revise the Site Plan Regulations in this fashion would be tantamount to circumvention of the legally-required process under which substantive ordinances are voted on at the Town Meeting following public notice and meetings.

It is inappropriate for the Town to use the so-called EPA "Levels Document" for this purpose. The EPA document is grossly out-of-date (1974) and is no longer being used by even EPA. Moreover, the document itself states that it should not be used for regulatory purposes.

The standard that the revision seeks to newly impose (i.e., not through the LWES Ordinance) is ambiguous and cannot be discerned objectively. The revisions purport to prohibit any "adverse Community Noise Reactions," but do not define what that means. The revisions, including the EPA tables they incorporate, could be interpreted to prohibit "sporadic complaints" or sound as low as 34 dBA. Of course, a sound minimum of 34 dBA is inconsistent with the clear standards in the existing LWES Ordinance and prohibiting complaints is impossible, suggesting that the intent of the proposed revisions is to prohibit all wind projects in the Town.

For the same reasons given above, the proposed requirements for information to be generated for locations within 3 miles of a project (Sections 9.a.vi, 9.b.iii, 9.d) should not be included. The appropriate and fully protective distance is 1 mile, as the sound heard past that distance is greatly diminished and does not warrant extensive study, especially at great expense.

Comments on Revisions to Section 12

The revisions to Section 12 would call for the Board to approve a project proponent's wildlife biologist without any basis or standards for the Board's exercise of that authority. At most, the Board should set forth objective, professional qualifications that a wildlife biologist must have in order to be used by a project proponent. The Board necessarily would need to apply such standards in order to approve or disapprove any proposed wildlife biologist; it is those standards that should govern, not the Board's unfettered discretion.

November 14, 2011

Comments on Revisions to Section 19

The revisions to Section 19 would call for a project proponent to submit copies of leases. These are highly-confidential documents containing private information of New Ipswich landowners whose submission is not needed. All of the information needed to implement the Site Plan Regulations can be found in publically-recorded land documents, such as memoranda of leases.

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PLANNING BOARD MEETING  
NOVEMBER 16, 2011

PRESENT: Ed Dekker, Chairman, Carolyn Dick Mayes, Roger Somero, Liz Freeman, Paul Termin, Ned Nichols, Joanne Meshna, Bentti Hoiska at 6:25 p.m. and Jim Shultz at 7:00 p.m.

PUBLIC: Adam Cohen

The meeting was called to order at 5:45 p.m. at the Town Office.

Ed reported that he spoken with town counsel regarding request for financial agreements between wind developers and landowners. Counsel advised to leave it in the ordinance. The applicant could ask for a waiver.

The Board will not include the links to wind energy articles as part of the handout for the public hearing on the amendment to the Zoning Ordinance. However, all documents should be on file in Joanne's office for public review.

The Board reviewed the handout and made some changes. Liz also suggested another handout with information on noise including charts. The Board decided not to distribute that handout. Paul and Ed will work on a one page list of qualifications of the acoustic consultants. It was suggested that the acoustic consultants attend the public hearing on the 28<sup>th</sup>. If there are not able to come, suggestion was made that they videotape something that could be shown, or put together a one page handout on noise. Carolyn will contact them to see what they can provide.

6:50 p.m.: Recess.

7:00 p.m. Pioneer Green Energy – Public hearing for a design review:

PUBLIC: Allyn Granfors, Richard Fressilli, Chris Bradler, Jeremy Bradler, Wildcat Partnership, Kelley and Mark Morrell, Chad Rautiola, Mike Maki, Winslow Paajanen, Grace Morton, Monadnock Ledger-Transcript reporter, Allan Pickman, Daniel McElreary

Ed informed the public the intent of the design review process.

Mr. Ed Rogers and Mr. Adam Cohen presented the review to the Board. Pioneer Green Energy is proposing a wind energy project on several properties surrounding Kidder Mountain. A test tower was erected back in the summer. Mapping of wetlands, topography and boundary surveys have begun. Preliminary turbine locations have been determined as well as possible access sites. He distributed a proposed site plan concept depicting a potential for eight wind turbines accessing on Old Rindge Road. Eight to eleven sites are being considered for the turbines as well as other access sites. The access route needs a maximum grade, certain width and certain radius of curvature for both horizontal and vertical. They had considered going up the power line easement but

that may be too steep. They have ruled out Boynton Hill Road and thought about Todd Road and Old Peterborough Road.

Referring to the plan distributed, Ed noted that participating properties are the properties with turbines.

Mr. Rogers stated that they were not able to use the PSNH easement because there would be more elevation to climb in a shorter distance which means a steeper grade. They are also trying to not impact the Wapack Trail any more than they need to.

Carolyn asked what questions the applicant had around the design review process. Ned stated he thought it was more a conceptual review than design review. Liz also asked what questions they had.

Mr. Rogers asked how the Board and Selectmen felt about the use of a Class V and Class VI road for access. The Board noted this was a Selectmen issue. Mr. Rogers stated that they are not planning to make the access roads in all places up to town standard. The roads will be about 15 feet wide with 1 foot shoulders, only one way, and monitored and flagged. Steep grade areas will be paved. Ed stated that for the on site road it did not seem necessary to meet town standards for the road. He asked what modifications would be needed of town roads. Mr. Rogers responded that the intersection with the state road would need to be modified. That area on Old Rindge Road would need to be flared out at least during the construction phase and the DOT may not let them leave it that way once construction is completed. A turning radius of 400 feet is needed. Ed suggested that they call it a driveway and a driveway standard not a road standard since it is not intended to be a road.

Carolyn noted that the questions the applicant has had so far are more for the Selectmen and asked what questions they had for the Planning Board. Mr. Rogers responded that they want to be sure the Board is ok with the design standards they are proposing. The Board noted that regional impact might affect the towns of Sharon, Peterborough, Temple, Greenville, Ashburnham and Jaffrey and suggested these towns be notified of hearings. Mr. Rogers responded that they are doing a view shed trying to anticipate where the turbines can be seen. Liz suggested that they extend the noise study for two miles. Mr. Rogers noted that Southwest Region Planning Commission also needs to be notified of hearings.

The applicant was asked when they will know how many machines will be placed and Mr. Rogers responded that within the next month they should know. Economics, setbacks and landowners play a part in the determination. The transmission study also is a key driver and they are working through that; it takes several years of study and cost. They are into a year of the study and it includes a system impact study, feasibility study and construction study; they are currently doing the system impact study. The applicant was asked what their timetable was. They did not have a firm date in mind. Ed noted that the bat expert the Board spoke with suggested it was traditional to do a bat study concurrent with the met tower. Mr. Cohen responded that they had been doing that.

Just before the summit, there is a bat monitor. There is a met tower on Binney Hill Road and they are able to use that data because it is so close. There are no endangered species and good results on the environmental side.

Mr. Cohen was asked about the size of the turbines. He responded that it depends on the interconnect study, anywhere from a 1.5 megawatt machine to a 2.5 megawatt type machine. Ned asked when the size of the turbine would be chosen. Mr. Cohen responded that he could not really say and that he is in discussions with several vendors. There are several issues and studies to be done, the biggest one being the interconnect study.

Ed stated that the Planning Board has proposed some changes to the Zoning Ordinance on large wind energy systems. Under RSA 676:12 VI, the proposal from Pioneer Green Energy is not affected by these changes provided they file their application within one year.

Carolyn noted that she had did not have a sense of what design questions for the Planning Board might be. Mr. Rogers stated they may do another design review as they go further along in the process. Paul asked that a topo be provided at the next meeting and any existing buildings.

The public was invited to speak and are summarized below:

Allyn Granfors: all for wind energy and New Ipswich being a generating town might be able to get breaks on power and it will could help with taxes and the schools; need to use resources we have; the more that is generated from alternative sources the less we have to use from oil, etc.; he asked what type of turbines would be used. Mr. Cohen responded that the direct drive turbines are new and are less expensive; they are looking at these for this site.

Doug Shatkin from Wildcat Partnership: the access road would cross the Kidder trail and asked if it would be paved. Mr. Rogers stated he anticipated it would be gravel and would be about 17 feet wide. With regard to the Wapack Trail Mr. Shatkin stated he was concerned for a paved road or an unpaved large road running along the trail; these are heavily used trails. Jim asked if the pavement could be removed once all the machines are on site. Mr. Rogers responded that it was an option, would have to look at that case by case. Further Mr. Rogers stated that the Wapack Trail may be moved where the turbine is close to the trail or the turbine site might be moved; there may be wetlands in the area that may restrict movement to the east. Mr. Cohen stated that he has been working with the Friends of the Wapack and they like the idea of wind power and preserving the land from residential development; they have been communicating their concerns and are supportive of the project.

Mr. Shatkin stated that he hoped people would be able to continue to hike the trails and not feel like they were hiking on a road. He was asked how many people hike the trails

and he did not know. It was suggested that he keep a log if he was concerned about that. Mr. Cohen stated he could talk with Mr. Shatkin about a log.

Allan Pickman from the Temple Planning Board: Temple is looking at wind towers. They toured the Lempster wind farm and was surprised how much area they had to regrade and cut trees just to get access. He was also surprised how quiet the turbines were.

Jim Parison: regarding the access off Old Rindge Road, he asked if it could be left when it is improved. Mr. Rogers responded that he could not come up with a better intersection and for a new intersection DOT requires 400 feet of site in each direction which would be difficult so it is not likely that it could be left.

Mark Morrell: asked how the intersection would be widened. Mr. Rogers said the ledge would be taken down but DOT would not allow to leave it like that for regular traffic because there is such a small amount of site distance for the west bound traffic. Mr. Morrell asked who would take care of the road when the construction was done. The response was that it would be as it is now with the homeowners maintaining it.

Mr. Cohen was asked how many trucks per turbine, including construction and hauling, are involved. Mr. Cohen responded that it depended on the site, he could not give a figure. The Board and Mr. Rogers determined approximately 20 concrete trucks/foundation. Mr. Cohen stated it takes around three days to put the turbine up.

Carolyn asked what happens if the developer causes damage to the road. The Selectmen can request a bond to cover damage to the road or right-of-way.

Daniel McElreary from Temple: runs wilderness camps and was concerned about the impact of noise. He is also supportive of wind energy. He asked if the wind data could be shared and Mr. Cohen stated he would talk to him. Further Mr. Cohen stated the wind data has been great around 7.5 meters/second.

Easements and leases were discussed. The Board explained how easements would work and cautioned that people do their homework before signing and have an attorney look it over.

Jim Murphy from Wildcat: Out of 12 wind turbines in Lempster, 3 whistled. He was concerned about maintenance of the turbines. Mr. Cohen responded that they were having an issue with one of the blades that they fixed. Mr. Murphy inquired if there would be a maintenance shed or building. Mr. Cohen responded that would be off site with full time workers to staff it.

Mr. Cohen encouraged people to visit a wind farm to get a true feeling for the project. Liz suggested that when those visits are made that they be made at more than one time of day, that one time is not enough information to evaluate the impacts. Mr. Cohen also suggested visiting more than one wind farm site.

Liz made a motion to end the design review. Ned seconded the motion and it passed with one abstention.

8:45 p.m.:

Jim received a building permit from Warwick Mills for a building to house a biomass boiler that will be approximately 2290 square feet and inquired if the Board felt they would need a site plan review. It was the consensus of the Board that a site plan review was required.

The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
NOVEMBER 28, 2011

PRESENT: Ed Dekker, Chairman, Liz Freeman, Carolyn Dick Mayes, Paul Termin, Ned Nichols, Bentti Hoiska, Roger Somero, Joanne Meshna

The meeting was called to order at 7:15 p.m. at the Mascenic High School.

Ed explained that the purpose of the meeting this evening was to hold a public hearing on a proposed amendment to the Zoning Ordinance on large wind energy systems. He noted that the amendment was to Article XIII-2 and that it had been incorrectly posted as Article XII-2 due to a typo. Copies of the amendment were distributed along with a handout highlighting the process the Board went through and what would be different if the changes to the ordinance are adopted.

Ed went on to say that the Planning Board is not against wind farms but is against the negative impacts of wind farms on the community. The Board took another look at the existing ordinance because they learned a lot in the two years since they wrote it. There are communities with wind farms that have had negative effects that have lead to lawsuits, health problems, decrease in property values and abandonment of homes. The Planning Board did a lot of research including looking at other ordinances, reading studies, reports and papers and consulting with experts and as a result made the proposed changes to the ordinance.

The amendment provides for a noise standard that conforms to the recommendations of the EPA and World Health Organization that aims to protect against health affects, sleep loss and reduction of property values; it provides a methodology to measure wind impact; it defines an objective methodology to assess visual impact; it provides a complaint resolution process and defines violations, what happens if there is a violation and how it is resolved. The original article allows the Board to negotiate these items while the amendment makes it cleaner and informs the applicant in advance what will be required. The changes to the ordinance still allow wind farms if they are sited to protect the health, welfare and safety of the community.

The Board went through the amendment explaining the changes. Liz made a motion to amend #5. a. and b. to read as follows:

- a. "Noise Levels produced by the LWES shall not exceed 33 dBA (Leq 10 minute) anywhere at any time on a Non-Participating Landowner's property
- b. LWES Noise Levels shall not create an adverse Community Noise Response (CNR) exceeding "sporadic complaints" as shown on the following table based on the United States Environmental Protection Agency Document titled "Information On Levels Of Environmental Noise Requisite to Protect Public Health and Welfare With An Adequate Margin of Safety, 550/9-74-004, March 1974."



and to include the chart as depicted on the handout, and renumber the subsequent paragraphs. Bentti seconded the motion and it passed unanimously.

Residents of New Ipswich were invited to speak and/or ask questions:

Alice Altman – page 12 referring to New Hampshire licensed Professional Engineer, asked if it should read “an independent”...; Board responded that because of quick turnaround if the applicant has one on staff, should be able to use him; page 10, 6.a. 2) questioned if it should read “existing structures” rather than “existing residences”, Board responded standard is in first paragraph, would be on a case by case basis, Planning Board makes the decision; page 6. 1. c. crossed out, cut off lighting is important; Board responded by making the following motion:

Liz made a motion to add a new paragraph d. to 12 as follows:

- d. Area and security lighting shall be full cut off and shall not exceed 175 watts each and 25 feet in height and shall be shielded from Non Participating Landowner's property.

Ed modified the motion by making the second sentence in 12. c. a new “e.” as follows and making Liz's “d” now “e”:

- e. The use of Automatic Lighting Systems, such as those manufactured by DeTect and OCAS, is mandatory for Wind Turbines with FAA lighting.

Carolyn seconded the motion and it passed with two opposed. Ned stated that he could not see any reason for lighting at all, there should not be continuous lighting, only lighted when people are there working. Roger questioned why 175 watts, did not seem like a lot of lighting. The Board agreed to let the motion stand and look into the American Landscape Institute mitigation techniques for the next meeting.

Rick Blanchette - where did the maximum height of 450 feet come from? Board responded that a majority of other ordinances use that figure; the applicant could always ask for a variance.

Butch Maki – visited Lempster and sound was like a running washing machine; try to prevent dueling experts; questioned the statement that a lot of houses had been abandoned; Board responded that there are some property appraisal reports that report lower values and some that were not affected; noise from wind farms varies with time of day, season, day and evening; suggested visit more than one site, read information on turbines in order to be in a better position to negotiate an easement with a developer.

Butch Maki – did the Board get legal advice on disclosure to the Board on what was agreed to by leasing landowners? Board responded that legal counsel recommended that it be left in the amendment; the document does not get approved by the Planning Board, just informed of the agreement.

John Kiley, the Board of Selectmen representative to the Planning Board in Temple, addressed the Board and stated that Temple had been approached to put up towers and Temple does not have a large wind energy system ordinance in place. Temple residents will see and hear the towers proposed for New Ipswich. He appreciated the Board protecting New Ipswich and Temple residents.

Adam Cohen from Pioneer Green Energy stated he had brought a sound expert with him. The Board asked that any comments from the sound expert be put in writing and submitted to the Board which will then be forwarded to the town's expert. Mr. Cohen also stated that he had brought copies of studies on property values and noise. He was asked to leave a copy with Joanne to be filed in the office with all the other studies.

Liz made a motion to continue the public hearing on the zoning amendment to December 12, 2011 at 7:00 p.m. at the Town Office. Paul seconded the motion and it passed unanimously.

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Joanne Meshna, Land Use Manager

What prompted the Planning Board to take another look at our existing ordinance?

The Board learned of negative experiences of many other communities –

- Widespread complaints, to the point of organized community action.
- Communities embroiled in huge lawsuits.
- Serious adverse health effects.
- Property values dropping 40-70%.
- Some residents abandoning their property.

How has the Planning Board responded to this new information?

The Planning Board has done a lot of research –

- Studied experiences and ordinances of multiple communities.
- Read studies, papers, and reports.
- Consulted experts.

The Board has identified some needed changes in the current ordinance, changes supported by experience and research.

What would be different if the changes to the ordinance are adopted?

A noise standard conforming to recommendations of the EPA and World Health Organization to -

- Protect against sleep loss, adverse health affects.
- Protect property values and enjoyment of one's property.

An objective methodology for assessing visual impacts to –

- Protect property values.
- Minimize controversy due to personal preference.

Use of new lighting technology that meets FAA standards to –

- Avoid continuously blinking lights.

A complaint resolution process and clear definitions of violations to –

- Ensure prompt resolution of complaints and avoid lawsuits.

A well defined methodology to measure noise impacts to –

- Minimize misunderstanding and controversy.

Would these changes still allow wind farms in New Ipswich?

Yes, if they are sited so as to protect the health, safety and welfare of the community.

Is the Planning Board against wind farms?

No.

Does the Planning Board want to protect residents from possible negative impacts of wind farms?

Yes.

PLANNING BOARD MEETING  
DECEMBER 7, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Roger Somero, Liz Freeman, Paul Termin, Jim Shultz, Carolyn Dick Mayes, Ned Nichols, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Paul was appointed to fill Ollie's vacancy.

7:00 p.m.

Public hearing for amendments to the Site Plan Review Regulations:

The proposed amendment is to Article II. Definitions of the Site Plan Review Regulations by adding several new definitions related to wind turbines. For the definition of AUTOMATIC OBSTRUCTION LIGHTING SYSTEM, the Board amended it to read "...wind farm from the ground level to aircraft flight...". Liz made a motion to approve the amendment on definitions as amended. Bentti seconded the motion and it passed unanimously.

The second proposed amendment to the Site Plan Review Regulations is to Article III Procedure, Paragraph 6. The Board changed the last sentence of the proposed amendment to read "The Board shall not conduct Design Reviews as specified in RSA 676:4 II (b)." Liz made a motion to approve the amendment on procedure as amended. Bentti seconded the motion and it passed unanimously. With the amendment, Paragraph 6 now reads "The Board recognizes the desirability of being able to meet with a potential applicant prior to the submission of a formal application to discuss concepts of a particular proposal. An owner or his duly authorized agent may request a Preliminary Conceptual Consultation under the procedures specified by the New Ipswich Subdivision Regulations. The Board shall not conduct Design Reviews as specified in RSA 676:4 II (b)."

The third proposed amendment to the Site Plan Review Regulations is to Section III.8. The Board changed the first sentence to now read "An applicant must submit all waiver requests individually and in writing." Professional Engineer and Town Engineer were capitalized. Ned made a motion to approve the amendment on waivers as amended. Jim seconded the motion and it passed unanimously. The new paragraph will now read "An applicant must submit all waiver requests individually and in writing. Each waiver request must identify the specific article of the regulation from which a waiver is requested, why the waiver is needed, and why the waiver should be granted within the guidelines established above. Any waiver involving technical issues must be supported by a recommendation from a New Hampshire licensed Professional Engineer or other recognized expert on the subject. The Board will rule on the waiver request based on the written evidence presented after review by Town counsel and/or Town Engineer (if required)."

Public hearing for amendments to the Subdivision Regulations:

The proposed amendment to the Subdivision Regulations is to Section V Procedure, Paragraph 5:01. The Board changed the second sentence to read "The Board shall not conduct Design Reviews as specified in RSA 676:4 (b)." Liz made a motion to approve the amendment on Design Reviews as amended. Ned seconded the motion and it passed unanimously. Section V, Paragraph 5:01 will now read:

"5:01 Procedure for a subdivision: These regulations provide for two steps, only one of which is mandatory, in obtaining a final action by the Board on a subdivision. The Board shall not conduct Design Reviews as specified in RSA 676:4 II (b). The two steps are:

- A. Preliminary Conceptual Consultation
- B. Final plat submission (mandatory)"

The second proposed amendment to the Subdivision Regulations is to Section V Procedure: 5:03 Waivers. The Board changed the first sentence to now read "An applicant must submit all waiver requests individually and in writing." Professional Engineer and Town Engineer were capitalized. Liz made a motion to approve the amendment on waivers as amended. Benti seconded the motion and it passed unanimously. The new paragraph will read "An applicant must submit all waiver requests individually and in writing. Each waiver request must identify the specific article of the regulation from which a waiver is requested, why the waiver is needed, and why the waiver should be granted within the guidelines established above. Any waiver involving technical issues must be supported by a recommendation from a New Hampshire licensed Professional Engineer or other recognized expert on the subject. The Board will rule on the waiver request based on the written evidence presented after review by town counsel and/or Town Engineer (if required)."

8:00 p.m.:

Joanne distributed a letter from Richard Fresselli, 404 Fish Road, Temple, regarding "Large Wind Energy System Gathering 11-16-2011 Appeal from failure to provide appropriate notice". Joanne will determine if Mr. Fressilli is an abutter to the Pioneer Green Energy proposal presented November 16, 2011 to the Planning Board. If he is an abutter, the matter will be forwarded to legal counsel for review.

Joanne distributed a letter from Gary Litchfield, Manager of Builders Land Co., LLC dated November 15, 2011. A letter had been sent to Mr. Litchfield stating that the current bonds on Jacqueline Drive and Phase II of Green Farm Road were to be increased as permitted under RSA 674:36 for cost escalation factors. Mr. Litchfield responded in the November 15 letter that he will have the bonds increased when they renew next year.

This was not satisfactory to the Board. Joanne will send another letter stating that the bonds must be increased immediately.

Joanne distributed a letter from Michael Maki, 71 Maki Road. Mr. Maki stated that he is unable to process the remaining gravel in his gravel pit and cease operation of the gravel pit by December 31, 2011. He asked that the closure of the gravel pit be delayed until the processing is completed early next year. He still intends to have the reclamation completed by December 31, 2012. The Board was in agreement to the request but required that the pit closure and reclamation be completed by December 31, 2012.

Joanne distributed a copy of RSA 674:39-aa Restoration of Involuntarily Merged Lots to the Board. The RSA states that "Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status..." A notice is to be posted informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. The notice is to be posted by January 1, 2012 and shall remain posted through December 31, 2016. The notice is also to be published in the 2011 through 2015 annual reports.

Joanne will request that the Board of Selectmen encumber the \$1,655 already encumbered monies from 2010 to 2012. This is for payment to Southwest Regional Planning Commission for their update of two Master Plan chapters.

Liz distributed a copy of a handout for the public hearing on Monday evening on the Zoning amendment entitled "More FAQ's about Wind Farms". Some changes were made and Joanne will prepare a final copy.

Ed read a Notice of Decision from the Zoning Board on a variance application from Donald Rand, 86 Main Street.

Bentti informed the Board of the public hearing held last evening at the Selectmen's meeting on acceptance of Phase I of Green Farm Road as a town road. He has scheduled a formal meeting with the Planning Board on December 21 to discuss this further.

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
DECEMBER 12, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Paul Termin, Roger Somero, Ned Nichols, Carolyn Dick Mayes, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Paul was appointed to fill Ollie's vacancy and Carolyn was appointed to fill Jim's vacancy for this evening's meeting.

This evening's meeting was the second public hearing for the amendment to the Zoning Ordinance on large wind energy systems.

The Board reviewed proposed changes to the amendment from Attorney Kinyon. Liz made a motion to approve the changes as discussed. Bentti seconded the motion and it passed unanimously.

Ed submitted an amendment to 12. Visual Impact. He proposed deleting 12.e. and replacing it with a new e. as follows:

- e. Outdoor lighting, including area and security lighting, shall be:
  - i. full cutoff lighting fixtures
  - ii. less than or equal to 400 watts for each lamp
  - iii. less than or equal to 25 feet in height
  - iv. fully shielded from Non-Participating Landowner's property
  - v. illuminated only when the site is attended by a representative or employee of the Applicant/Owner/Operator

The Board amended ii. to read "less than or equal to 600 watts for each lamp". Paul made a motion approve the amendment and changing 400 watts to 600 watts. Liz seconded the motion and it passed unanimously.

The public was invited to ask questions and/or comment. The following subjects were discussed:

- Costs associated with dismantling of turbines.
- Sound levels.
- Complaint resolution.
- Enforcement and penalties.
- Is the ordinance too restrictive?
- Purpose of the amendment.
- Hidden agenda of the Planning Board.
- Providing information to public.
- Tax, energy and job benefits.
- 33 dBA will make it impossible for windmill projects in New Ipswich.



Mr. Adam Cohen from Pioneer Green Energy had submitted comments on the noise ordinance portion of the amendment from their sound consultants, Epsilon Associates, Inc. earlier in the day. Those comments will be sent to Ambrose and Rand for their response.

Liz made a motion to continue the hearing to December 28, 2011 at 7:00 p.m. Ned seconded the motion and it passed unanimously.

The meeting adjourned at 9:40 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
DECEMBER 21, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Paul Termin, Jim Shultz, Carolyn Dick Mayes, Oliver Niemi, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Paul was appointed to fill Roger's vacancy and Carolyn was appointed to fill Ned's vacancy.

7:00 p.m. Marc and Mary Fortier/Nancy Redling, Edmund Wysocki, Cynthia Perkins – Public hearing for Lot Line Adjustment application:

Ms. Redling and Mr. Fortier presented the application to the Board. The applicants are proposing a lot line adjustment between lots 3/55 and 3/53 located on Lower Pratt Pond Road. With the lot line adjustment the acreage of lot 3/55 would be increased from 39.6 acres to 49.2 acres and lot 3/53 would be decreased from 22.9 acres to 13.3 acres. There are houses on both lots.

Based on a letter submitted with the application for waivers, the Board reviewed the waiver requests. Waivers were requested from numbers 8, 13 and 14 of the subdivision checklist. Ed made a motion to approve the waiver requests for 8, 13 and 14. Jim seconded the motion and it passed unanimously. Waivers were requested from numbers 17, 18, 19, 20, 21, 22 and 23 of the subdivision checklist. Ed made a motion to approve the waiver requests for 17, 18, 29, 20, 21, 22 and 23. Jim seconded the motion and it passed unanimously. Waivers were requested from numbers 25, 26, 27 and 28 of the subdivision checklist. Ed made a motion to approve the waiver requests for 25, 26, 27 and 28. Jim seconded the motion and it passed unanimously. Waivers were requested from numbers 37, 40, 41, 42, 44, 45, 46 of the subdivision checklist. Ed made a motion to approve the waivers for 37, 40, 41, 42, 44, 45 and 46. Jim seconded the motion and it passed unanimously. Waivers were requested from numbers 51, 52 and 57 of the subdivision checklist. Ed made a motion to approve the waivers for 51, 52 and 57. Jim seconded the motion and it passed unanimously.

Ollie made a motion accept the application as complete. Jim seconded the motion and it passed unanimously.

Benjamin Croteau, an abutter to the proposal, stated he was in support of the project.

Ollie made a motion to conditionally approve the lot line adjustment application with the conditions being payment of fees and submission of the mylar. Jim seconded the motion and it passed unanimously.

7:25 p.m.:



*Epsilon Comments for PBd 12-09-11.doc*

December 9, 2011

Epsilon Ref. 3252

PRINCIPALS

Theodore A Barten, PE  
Margaret B Briggs  
Michael E Guski, CCM  
Dale T Raczyński, PE  
Cindy Schlessinger  
Lester B Smith, Jr  
Robert D O'Neal, CCM  
Andrew D. Magee  
Michael D Howard, PWS  
Laura E Rome

Mr. Adam Cohen  
Vice President  
Pioneer Green Energy  
1802 Lavaca Street, Suite 200  
Austin, TX 78701

Subject: Comments on Proposed Amendment to New Ipswich Zoning Ordinance  
New Ipswich, NH

Dear Adam:

Samuel G Mygatt, LLB  
1943-2010

Epsilon Associates, Inc. (Epsilon) is providing comments on the Proposed Amendment to the New Ipswich (NH) Zoning Ordinance. Specifically, Article XIII-2: Large Wind Energy Systems (LWES) ("Final for hearing 11/15/11") has been reviewed for noise-related issues in the proposed amendment.

3 Clock Tower Place, Suite 250  
Maynard, MA 01754  
[www.epsilonassociates.com](http://www.epsilonassociates.com)

Qualifications

Epsilon staff has conducted over 50 sound level monitoring and modeling studies for wind farms throughout the United States, including the Groton, NH wind farm recently permitted by Iberdrola Renewables. Epsilon was also the technical noise consultant to the State of NH for the Lempster Wind Project. The consultants at Epsilon have demonstrated their expertise through presenting at major wind energy conferences (AWEA and CanWEA), providing expert testimony, and publishing peer-reviewed papers on wind energy noise topics. Robert O'Neal is the Principal in charge of this review in New Ipswich. His resume highlighting key project experience is included with this letter.

978 897 7100  
FAX 978 897 0099

Topics to Address

Several topics from the proposed amendment are discussed in more detail below. They are listed in no particular order.

### *Background Sound Levels*

Article XIII-2.C.5. "Noise Level Limits and Measurement" states that the existing natural environmental noise levels in New Ipswich are less than 30 dBA. No data or measurements have been provided to support this statement. During the Planning Board's public hearing on November 28, 2011, a handout from the Board stated that background noise was 20 decibels (dB) or less. Again, no data or measurements have been provided to support this statement. It is our experience that while it is possible to have brief periods at selected locations measure background sound levels of 20 dB or less, this is rare, even in rural New Hampshire.

For example, Epsilon measured background sound levels for over two weeks at six locations in the Town of Groton, NH for the Groton Wind Project. Five of the six locations measured were in isolated, rural parts of the town. The sixth location was along a well-traveled road (Route 25). With over 2,000 hours of combined sound level data collected, there were only three hours with sound levels less than 20 dB. The data from Groton, NH are attached to this letter.

### *Required Setbacks to Meet Ordinance*

Article XIII-2.C.5.a. states (in part) that "noise levels produced by the LWES shall not exceed 33 dBA (Leq 10-minute). Article XIII-2.C.5.c.vi notes that a 5 dB "design margin" must be added to the predicted noise levels. Notwithstanding that the ISO 9613-2 propagation standard already contains conservative assumptions, this effectively places a limit of 28 dBA on wind projects (33 dBA -5 dBA). Since utility-scale wind turbines have a sound power level ranging from 106 to 109 dBA per turbine (including the K factor), this means a single wind turbine will need to be more than two (2) miles from a Non-Participating Landowner's property to meet the proposed ordinance. Since the ISO 9613-2 standard requires the analysis to assume all residences are always downwind of a turbine no matter what the wind direction, this amounts to a four (4) mile buffer around each turbine (two miles upwind plus two miles downwind). With these types of setbacks, it is unlikely that any wind energy developer will be able to design a project in New Ipswich.

### *WHO Nighttime Noise Guideline*

The World Health Organization (WHO) European regional office has issued a report on *Night noise guidelines for Europe*. [WHO Regional Office for Europe Scherfigsvej 8 · DK-2100 Copenhagen Ø, Denmark, 2009]:

*"These guidelines are applicable to the Member States of the European Region, and may be considered as an extension to, as well as an update of, the previous WHO Guidelines for community noise (1999)." These European WHO guidelines were in response to a European Directive 2002/49/EC. The European guidelines have an interim target of  $L_{\text{night, outside}} = 55 \text{ dB}$  and a night noise guideline of  $L_{\text{night, outside}} = 40 \text{ dB}$ .  $L_{\text{night, outside}}$  is the yearly average (emphasis added) of the A-weighted sound level  $L_{\text{Aeq}}$  measured outdoors.*

The  $L_{\text{night, outside}}$  is a yearly average, and for a wind farm, it will be several dB lower than the  $L_{\text{Aeq}}$  value determined from computer modeling for maximum short-term conditions, since the wind farm does not operate at maximum noise output all year due to lack of high winds, wind direction, etc.

The "Guideline for Community Noise" (World Health Organization, Geneva, 1999) states that daytime and evening outdoor living area sound levels at a residence should not exceed an  $L_{\text{Aeq}}$  of 55 dBA to prevent serious annoyance and an  $L_{\text{Aeq}}$  of 50 dBA to prevent moderate annoyance from a steady, continuous noise. At night, sound levels at the outside facades of the living spaces should not exceed an  $L_{\text{Aeq}}$  of 45 dBA, so that people may sleep with bedroom windows open. This short-term sound level limit of 45 dBA is the one to compare with the worst-case sound level modeling results specified by the prediction techniques in Article XIII-2.C.5.c. The NH Site Evaluation Committee has determined that 45 dBA is a reasonable limit at residential or noise-sensitive locations. A 45 dBA limit is very different from a 28 dBA limit. Contrary to the statement in the Planning Board handout of November 28, 2011, the proposed ordinance is not consistent with WHO Guidelines for Community Noise. There is nothing in the WHO Guidelines that puts a 33 dBA or 28 dBA limit on community noise sources.

#### ***US EPA Levels Document***

Another useful guideline for evaluating sound levels is the "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety" (U.S. Environmental Protection Agency, Office of Noise Abatement and Control, Washington, DC, 550/9-74-004, March 1974). This document, often referred to as the "Levels" document, identifies an  $L_{\text{dn}}$  of 55 dBA outdoors in residential areas as the maximum level below which no effects on public health and welfare occur due to interference with speech or other activities. This level includes a 10 dBA "penalty" for sound levels at night (10 p.m. to 7 a.m.). This level will permit normal speech communication, and would also protect

against sleep interference inside a home with the windows open. A constant sound level of 48.6 dBA 24 hours per day is equal to an  $L_{dn}$  of 55 dBA.

It is important to understand that the "process" outlined in the November 28, 2011 Planning Board handout that explains how a level of 34 dBA will limit negative community response to noise is not an official US EPA technique. It is the Town's consultants applying potential adjustment factors to the  $L_{dn}$  in order to obtain a "normalized  $L_{dn}$ ." In addition, we disagree with the assertion that wind turbines have a "pure tone", or an "impulsive character." We have not measured a "pure tone" at an operating wind farm as defined by ANSI S12.9-Part 4 Annex C. While the normalized  $L_{dn}$  is a potential diagnostic tool, the "Levels" document says this about using it:

"Unfortunately, readiness to complain and to take action is not necessarily an early indicator of interference with activities and annoyance that the noise creates."

In other words, just because someone complains about sound levels does not mean those sound levels are high enough to interfere with activities. Someone may complain about a source for reasons other than sound, even if sound levels are below 48.6 dBA (55 dBA  $L_{dn}$ ).

#### *Low Frequency Noise/Infrasound*

There are no low frequency or infrasound testing or performance requirements in the proposed amendments to the ordinance. However, the Planning Board handout from its November 28, 2011 meeting states that "turbine noise has unique characteristics." Among them is "low frequency noise – low level vibrations felt (not heard) may cause health effects." Wind turbines do create some low frequency sound levels just as every other source of natural and man-made sound such as trucks, cars, air conditioners, and refrigerators. Low frequency noise is only a concern at very high levels of energy such as might be found in jet engine testing for example. Community sound levels from wind turbines do not produce low frequency energy at levels remotely high enough to cause health effects. This was the subject of a peer-reviewed scientific journal article that measured low frequency sound from wind turbines and found them to be well below levels that might cause health effects. A copy of this journal article is attached.

Mr. Adam Cohen  
Pioneer Green Energy  
December 9, 2011

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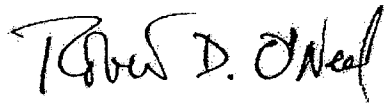
*Compliance Testing Constraints*

Article XIII-2.E.5 outlines noise compliance testing criteria once the wind turbines are operational. In general, the approach of testing under reasonably worst-case conditions is appropriate and ensures that if an applicant passes under these conditions, they will meet the ordinance under any other conditions. However, we wonder if the Town has considered how often during the year conditions (a), (f) and (g) occur simultaneously. Condition (a) specifies ANSI S12.18-1994 which requires no precipitation and the measurements must be downwind of the turbines, among other requirements. In other words one must have: no precipitation, very light winds at the ground, strong winds at hub height, very stable atmosphere (E or F), and measurement locations downwind of the wind turbines. In a year with 8,760 hours, it is likely that a small percentage of the time will meet all these criteria, and thus make compliance testing difficult. It would be helpful for the Board to include an allowance for operators to have some latitude with one or more of these criteria.

If you have any questions on this letter, please feel free to call me at (978) 461-6236, or e-mail me at [roneal@epsilonassociates.com](mailto:roneal@epsilonassociates.com).

Sincerely,

EPSILON ASSOCIATES, INC.



Robert D. O'Neal, CCM, INCE  
Principal

Attachments: Resume of Robert D. O'Neal  
Groton, NH wind farm background sound data  
Noise Control Engineering Journal article on low frequency noise

The minutes of the October 19, 2011 meeting were reviewed and the following corrections made: page 1, sixth bullet, should read "...Group Proposed Wind Power..."; page 1, under William Rzepa, first paragraph, four sentence should read "...stated that the town had paid a bill submitted from Brox Paving for paving of a part..."; first page, last paragraph, last sentence should read "...were unique to this application and if granted would make it economically viable for the applicant to restore the serious environmental damage on lot 3 which would be an important benefit to the Town." Liz made a motion to approve the minutes as amended. Carolyn seconded the motion and it passed unanimously.

The minutes of the October 26, 2011 meeting were reviewed and the following corrections made: page 1, first paragraph under 7:55, second and third sentence should read "...centered around the amendment to Section XIII-2, Large Wind Energy Systems of the Zoning Ordinance. The gist of the conversation..." Liz made a motion to approve the minutes as amended. Paul seconded the motion and it passed unanimously.

7:45 p.m. Matti and Joanne Perkio – Preliminary conceptual consultation:

Mr. Richard Drew and the Perkios were present for the discussion. Mr. Drew explained that the subject property was a 17 acre parcel in the rural district with 650 feet of frontage on Goen Road. There are wetlands on the lot and no steep slopes. Mr. Drew asked the Board about the following:

- Would he have to delineate all the wetlands on the property or could he request a waiver? Needs to delineate the wetlands for the building area and show that it meets all the setbacks (one contiguous acre non steep, non wet and the access routes); the waiver needs to be unique to the property.
- How many houses on a common drive? Four properties can share a common driveway.
- What is the frontage for a back lot? A back lot must have 50 feet of frontage on an approved Class V road and be paired with a front lot that has 200 feet of frontage. The access area is part of the back lot but its area may not be used to meet minimum acreage requirements of the back lot. The access area is considered that portion of the back lot between the approved road and the point at which the back lot is at least 200 feet wide (on a line parallel to the approved road).
- Is there still a 75 foot x 75 foot area required to be shown? The one contiguous acre has to contain the 75 foot x 75 foot area.
- Are there any zoning amendments going on the 2012 warrant that affect the rural district? No, only amendment is to the Large Wind Energy System article.

8:00 p.m.

The minutes of the November 2, 2011 meeting were reviewed and the following corrections made: under 7:00 p.m., third paragraph, first sentence should read "...bond in place for the improvement of the intersection as off...", under 7:25, first paragraph, second sentence should read "...Liz's draft to sections of the proposed amendment to the



Zoning Ordinance, Article XIII-2, Large Wind Energy Systems on enforcement..." Liz made a motion to approve the minutes as amended. Paul seconded the motion and it passed unanimously.

The minutes of the November 7, 2011 meeting were reviewed and the following corrections made: second paragraph should read "...on the amendment to Article XIII-2, Large Wind Energy Systems, of the Zoning Ordinance and discussed..." Liz made a motion to approve the minutes as amended. Bentti seconded the motion and it passed unanimously.

The minutes of the November 9, 2011 meeting were reviewed and the following correction made: fifth paragraph, second sentence should read "Ed may schedule Attorney Kinyon..." Liz made a motion to approve the minutes as amended. Bentti seconded the motion and it passed unanimously.

The minutes of the November 14, 2011 meeting were reviewed and the following corrections made: page 1, under 5:50 first paragraph, first sentence should read "...amendment to Article XIII-2, Large Wind Energy Systems."; page 2, fourth paragraph, second sentence should read "Pioneer Green Energy is grandfathered under RSA 676:12 VI and is ...one year of the close of the design review."; under 7:30, first paragraph, fifth sentence should read "...is irrelevant under 676:12 VI because of...files an application within one year of the end of the design review, they will...". Liz made a motion to approve the minutes as amended. Bentti seconded the motion and it passed unanimously.

8:15 p.m. Warwick Mills – Public hearing for site plan review:

Ms. Maureen MacAdam and Mr. Thomas Houston from Warwick Mills presented the application to the Board. The application is for a building to house a biomass heating system and wood chip storage area.

The Board referred to Kent Brown's review of the application to determine completeness:

- 1) item 4, no boundary information was found on plan 2 – boundary lines of the site need to be on the plan
- 2) item 11, certification of soils survey – Ms. MacAdam noted that she had tried to contact the Hillsborough County Conservation District as directed in the regulations but they no longer exist; a waiver could be requested
- 3) item 6, no exterior lighting shown – exterior lighting needs to be shown on the plan
- 4) item 7, no plans for snow removal – need to provide a snow removal plan and indicate it on the plan
- 5) item 10, no plans for erosion control – need an erosion control plan; state permit should be submitted to Kent
- 6) item 13, no provisions for fire safety – plans need to be given to the Fire Chief for review

- 7) item 14, no storm water drainage plans or drainage report – need pre and post construction plans
- 8) item 15, no covenants or deed restrictions shown on the plan - if there are none there should be a note added to the plan indicating that there are no existing, proposed deed restrictions or covenants
- 9) item 16, location of building setbacks are not shown – need to show setback lines
- 10) item 17, community facilities impact analysis – refer to page 6 of the site plan review regulations

A second review by Brown Engineering is required and the drainage and erosion control plan also needs to be reviewed by Kent. The hearing was continued to January 18, 2012 at 7:45 p.m.

9:00 p.m. Selectman Bentti Hoiska – Green Farm Road discussion:

Selectman Hoiska explained that the Board of Selectmen held a hearing on a petition submitted to accept Phase 1 of Green Farm Road as a town road and the hearing was continued to January 3. The petition if approved would require a part of Phase 2 of Green Farm Road being improved and some money from the letter of credit may have to be used. A turnaround is needed if Phase I is approved and would be on the Phase 2 section. He asked members if they would be inclined to draw down the letter of credit on Phase 2 for the turnaround. The following points were made:

- Ed - Would be reluctant to use the letter of credit to build a temporary turnaround.
- Phase 1 and 2 bonds have specific purposes; building a turnaround is not part of the Phase 2 bond.
- Bentti – Putting the second course of asphalt on a short section of Phase 2 could come out of the bond, the turnaround may need to come out of a different source; it may have to come from the homeowners; Selectmen could do betterment assessments.
- Ron Guptill – Referred to RSA 231:59 which would establish Phase 2 as an emergency lane which gives the Town the authority to, but not the obligation to, maintain it; homeowners and the Road Agent prefer all of Green Farm Road be finished; Builders Land not interested until more developing is done.
- 400 feet of road would have to be paved in Phase 2.
- If money is taken from the Phase 2 bond, does that mean the Board cannot continue to increase the bond amount each year?
- Jim – If we take the bond money, would have to complete what the bond is earmarked for; the money left in the Phase 1 bond is not for paving.
- Liz – If you release any money from Phase 2, do you have to release it all?
- Jim – How can the Town take it upon themselves to phase the construction; cannot take part of the bond and do the paving; there may be a State time limit for completion of roads.
- Liz – Concern about creating a dead end town road.

- The Road Agent stated that there is enough money in the bond to pave Phase 2 of the road; however, the bond is not just for paving.
- Partial revocation of the subdivision could be done by the Planning Board but the Board is not inclined to do that because of negative ramifications for homeowners.
- Issues – Is there a State time limit for completion of roads? Can RSA 231:59 apply? Is it all or nothing when taking the bond for paving and are there implications for increasing the bond 10 % per year? Can bond money be used for something not shown on the plan? What is the bond for and can the total amount be used for paving?

9:50 p.m.:

Joanne informed the Board that Tom Saari has requested his bond be released that he posted on Steve Sebastian's gravel pit for the reclamation. The Town Engineer would need to inspect to determine that the reclamation has been completed according to the escrow agreement and reclamation plans that were approved.

Joanne reviewed the status of Mr. Richard Fressilli's claim that he was an abutter to the Pioneer Green Energy project by reviewing the Temple and New Ipswich tax maps. He is not an abutter and has been sent a letter to that effect.

Liz distributed new wording for ambient and background for the amendment to Article XIII-2, Large Wind Energy Systems, of the Zoning Ordinance.

Carolyn is preparing a draft of questions that could be distributed throughout Town on the amendment to Article XIII-2, Large Wind Energy Systems, of the Zoning Ordinance. Members were asked to forward their questions to her. She will prepare a draft and send to Joanne for distribution to members.

The warrant article for the amendment to Article XIII-2, Large Wind Energy Systems, of the Zoning Ordinance, will be discussed at the work session on December 28, 2011.

The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manage

Stephen E. Ambrose, INCE, Bd.Cert.  
15 Great Falls Road, Windham, ME 04062  
tel: 207.892.6691 - seaa@myfairpoint.net

Robert W. Rand, INCE  
65 Mere Point Road, Brunswick, ME 04011  
rrand@randacoustics.com - tel: 207.632.1215

December 22, 2011

Planning Board  
New Ipswich, NH

Subject: Reply to Comments from Epsilon Associates  
New Ipswich Wind Turbine Noise Ordinance

Dear Planning Board Chairman and Members;

We are responding to the comments and concerns of a December 9, 2011 letter to Mr. Adam Cohen, Vice President of Pioneer Green Energy as expressed by Robert D. O'Neal, CCM, INCE of Epsilon Associates, Inc. As we pointed out in our presentation to the Board earlier this year, our assessment of wind turbine noise is from the perspective of a non-associated, noise-sensitive neighbor; i.e., nearby occupied residence. This is where we differ in our professional assessment approach from acoustical consultants providing their expertise to wind turbine developers.

**1. Qualifications.** Mr. Robert O'Neal's resume is impressive by listing his extensive experience performing noise predictions, preparing environmental licensing documents, and expert public testimony for a wide variety of commercial and industrial projects. We have no dispute with the expertise presented in his resume. However, there was a consistent important omission from each project description; were there any community noise complaints after the project became operational. Epsilon's design for the Barton Chapel Wind Farm produced this public response published on February 16, 2009 by Jana Lynn Rupe in the Jacksboro Gazette-News:

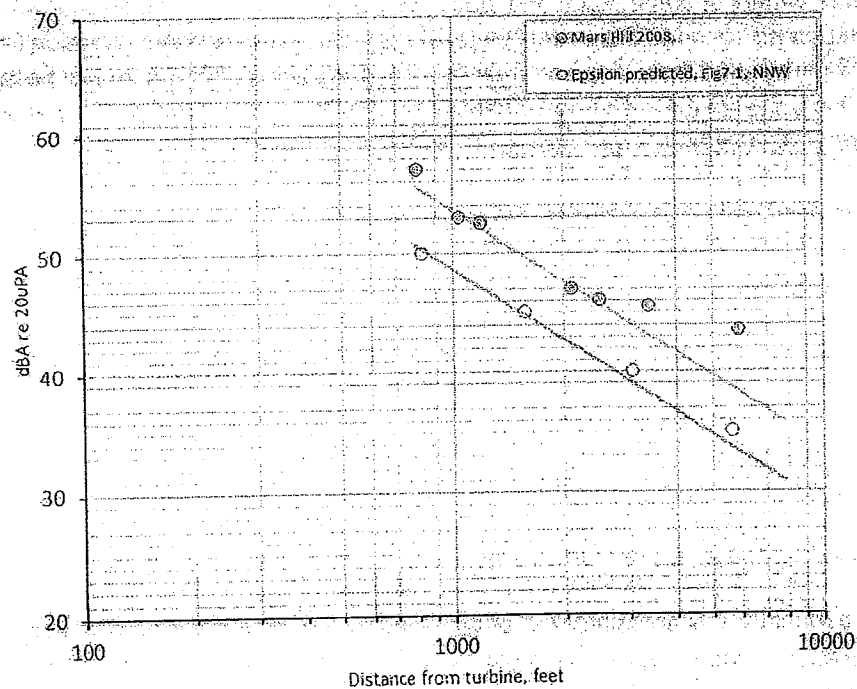
*"Local property owners and residents addressed Jack County commissioners during the public forum portion of Commissioners Court Feb. 9 to petition them for assistance with noise abatement for the 60-turbine Barton Chapel Wind Farm. Tom Fillene pleaded with commissioners to take a trip down to the area and listen for themselves to the "obnoxious noise" coming from the 400-plus foot "monsters." Fillene stated he was speaking on behalf of other family members who lived under the wind turbines and were experiencing health issues due to the noise coming from the giant towers...."*

**2. Background sound levels.** Environmental background (minimum L90) sound levels quieter than 30 dBA are typical and expected for rural areas, such as New Ipswich. This area has few man-made noise sources other than local traffic. Traffic tends to be infrequent or absent in rural areas in the early hours of the morning when people are trying to sleep.

In environmental acoustics, it is accepted that people tend to judge the magnitude of an intrusion with reference to the noise environment that exists without the presence of the intruding noise source. Increases of 10 dB are associated with widespread complaints. We recommend designing projects so as not to produce widespread complaints, by using a

conservative appraisal of existing background sound levels. In contrast, Epsilon chose to take issue with the Town's current understanding of its own quiet background sound levels, noting that in 2000 hours of noise levels measured in Groton, NH there were only 3 hours less than 20 dBA. However, it is worth noting that those "2000 hours" of measurements were made by six instruments running simultaneously during one two-week period in the month of August when insect noise was present and apparently was not factored out. In fact, their report admits that their data were influenced by sounds including "noise from wind blowing through vegetation, aircraft, running water from brooks, birds, insects, boats on Newfound Lake (near Audubon site) and vehicular traffic." Simply put, these sounds would not be present throughout the year. Could the insect-, running-water- and traffic-infused Groton sound data obtained during one noisy two-week period in August be considered representative of the quiet background sound levels in New Ipswich during other parts of the year? Would it make more sense to consider sound data that are not contaminated?

**Required Setbacks to Meet Ordinance.** New Ipswich has no setback distance requirement. Wind turbines have a noise requirement not to exceed 33 dBA contribution and 35 dBA when considering the non-wind turbine ambient noise, especially during the more critical nighttime hours. We would like to point out that if the noise prediction model already includes conservative assumptions, as it should, equivalent to at least a plus 5 dB "design margin", then this requirement has been met. However, we disagree with Epsilon's assessment of total sound levels. The maximum predicted sound power levels for the Groton wind turbines are several dB quieter than expected. The figure below illustrates the difference between the predicted Groton sound levels in one direction (NNW) compared to the actual highest average hourly sound



levels documented at another ridge-top wind turbine facility, in Mars Hill, Maine. The prediction method used for the Groton project is not fully outlined in the Groton report, but does not appear to incorporate the manufacturer's 2-dB uncertainty factor or the 3-dB uncertainty factor stated in the ISO 9613-2 standard used for the prediction. To be truly conservative, the prediction should include these uncertainty factors. It is worth noting that the sound power levels of the Gamesa G87 wind turbines proposed for Groton are at least 2 dB louder than the Mars Hill GE1.5sle turbines, and therefore the report may under-predict sound levels by 7 dB or more compared to real-world sound levels. How then could the author plan against excessive increases?

**WHO Nighttime Noise Guideline.** We referenced the WHO documents as additional information for planning to prevent medical effects of noise, as a parallel consideration to the potential for complaints outlined by the 1974 USEPA "Levels Document". Investigative research for assessing the effects of noise on humans is beneficial, no matter which side of the ocean it occurs.

Epsilon's statement that wind turbines produce no tones or impulses certainly reflects the manufacturer's data, which are averaged during low turbulence, low wind-shear conditions. However uneven wind load from high wind shear encountered in New England may be expected to increase tonal emissions from turbine gearing and bearing components. (We have measured wind turbine tones in the field as defined by ANSI standards.) By averaging during testing, all of the peak-to-peak variations collapse to a representative steady-state level. Any data allowing an appraisal of impulse characteristics such as fast time history trend charts are omitted from the test reports. However, people do not average sound, but hear differences very quickly as approximated by a sound level meter's fast-response, 1/8<sup>th</sup> of a second sampling. Thereby, the ear can easily detect pure tones when present and the impulse energy caused by the blade sweeping past the tower.

**US EPA Levels Document.** It was interesting to note that Epsilon chose to extract a unique quote from the "Levels Document" as an apparent means to discredit neighbors' potential for future complaints.

*Unfortunately, readiness to complain and to take action is not necessarily an early indicator of interference with activities and annoyance that noise creates.*

And omitted the previous sentence that supported this assessment methodology:

*The methodology applied to arrive at the correlation between normalized  $L_{dn}$  and community complaint behavior illustrated in Figure D-7 is probably the best available at present to predict the most likely community reaction in the U.S.*

In fact the EPA Normalized  $L_{dn}$  method which accounts for community's quality of place (for example, "quiet rural") remains useful today as evidenced by acoustical reports employing the method for planning. The EPA Levels Document is careful to note that, "the level of an intruding sound that will cause an interference depends upon its relation to the level of the other background sounds in the environment and the state of the human auditor, e.g., the

degree of concentration when endeavoring to accomplish a mental task, or the depth of sleep, etc." Therefore it is incumbent on the acoustical consultant to be aware of and factor in previously observed community reactions to wind turbines in order to prevent interference with human activities such as sleep and concentration. In other words, since there is already evidence of activity interference from wind turbines in New England and elsewhere, it is doubly important to investigate those complaints, find out what is happening, and factor appropriate safety margins to prevent adverse impacts at a new facility.

**Low Frequency Noise/Infrasound.** The dismissal of wind turbine infrasound and low frequency noise (energy) revealed a lack of knowledge of clinical evidence of the ear's sensitivity to low-frequency and infrasonic sounds you cannot hear, and a profound lack of interest to determine why so many wind turbine neighbors are complaining about adverse health impacts living near wind turbines. There is no question that people living near large industrial wind turbines are being adversely affected and no question that some acousticians continue to deny the people's reports. A recent report of infrasonic and low frequency sound levels obtained during adverse health effects may shed new light. More research needs to be done by medical and acoustic researchers working together to protect public health and well-being.

**Compliance Testing Constraints.** If a facility is properly designed to prevent widespread complaints, compliance testing is simplified because complaints will be few or localized. Compliance testing should be performed as the neighbors ears hear under conditions that comply with ANSI standards and common sense (measure when the wind is light at the microphone), and not solely based on instruments that are limited by restrictive detectors and filters that do not respond as quickly as the ear and brain. Recognized standards are important, but they need to be appropriate for assessing the human response to rapidly changing noise levels. Time averaging and slow response filters restrict or hide important information that can be used to understand complaints and assess for adverse impacts on public well-being.

In conclusion, the success of a wind turbine project should be made evident by the lack of neighbors' complaints and not just that the existing regulations were met. The first step in a successful noise project is to develop a design criterion that limits the noise level increase based on the existing background noise levels. Too many wind turbine sites have been permitted without using this approach. Could this be why there are so many complaints from around the world where wind turbines have been sited too close to people, you decide?

Thank you for your time and consideration. Please feel free to contact us.

Respectfully Submitted,

  
Stephen E. Ambrose, INCE (Ed. Cert.)

  
Robert W. Rand, INCE

PLANNING BOARD MEETING  
DECEMBER 28, 2011

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Oliver Niemi, Liz Freeman, Paul Termin, Ned Nichols, Joanne Meshna  
PUBLIC: Adam Cohen

The meeting was called to order at 7:10 p.m. at the Town Office. Paul was appointed to fill Jim Shultz's vacancy for this meeting.

This meeting was the third public hearing on the amendment to Article XIII-2 of the Zoning Ordinance on Large Wind Energy Systems.

Liz proposed changes to the amendment by deleting the definition of "Ambient" and replacing it with a definition for background noise, amending Section C, paragraph 5 changing "Ambient Noise" to "Background Noise" and amending Section E, paragraph 5 to read "...that cause adverse Impacts to public Health, Welfare, and Well-being. The existing Background Noise levels in New Ipswich are less..." Liz made a motion to approve the changes to the amendment. Paul seconded the motion and it passed unanimously.

Liz proposed changing section C. paragraph 12.a. of the amendment by replacing the words "Wind turbines" with "A LWES". Liz made a motion to approve the change to the amendment. Paul seconded the motion and it passed unanimously.

Ed proposed changing section C. paragraph 2. of the amendment by keeping the current language "Due consideration shall be given to the scale of the turbines in relation to the surrounding landscape." and deleting the proposed new language "The Total Height shall not exceed 450 feet." Ed made a motion to approve the change to the amendment. Paul seconded the motion and it passed with five in favor, one opposed.

Liz made a motion to continue the public hearing on the proposed Zoning amendment to Article XIII-2, Large Wind Energy Systems, to January 11, 2012 at 7:00 p.m. Paul seconded the motion and it passed unanimously.

Ed made a motion to re-open the public hearing on the proposed Zoning amendment to Article XIII-2, Large Wind Energy Systems. Liz made a motion to change section D. paragraph 5. by removing it from the amendment. Paul seconded the motion and it passed unanimously.

Paul made a motion to continue the public hearing on the proposed Zoning amendment to Article XIII-2, Large Wind Energy Systems, to January 11, 2012 at 7:00 p.m. Liz seconded the motion and it passed unanimously.



Members reviewed the proposed warrant article for the amendment to Article XIII-2, Large Wind Energy Systems, of the Zoning Ordinance, prepared by Liz. It was agreed that the bulleted format would be the one used. Liz will consult with Attorney Kinyon on the language for the waiver authority.

The Board brainstormed on handouts on the proposed Zoning amendment to Article XIII-2, Large Wind Energy Systems. Liz will work prepare a draft for discussion at the next meeting.

Liz made a motion to approve an invoice for \$1,500 from Ambrose and Rand for their work on the Epsilon comments. Ned seconded the motion and it passed unanimously.

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

Handout 12/29/2011

## WIND TURBINES – FREQUENTLY ASKED QUESTIONS

Will my electricity bill go down if wind turbines are built in town?

No. The developer sells the energy to PSNH who in turn sets the rates. We have not found a single town with wind turbines where the electricity rates went down but did find some instances where the rates actually went up.

Will a wind farm create a lot of jobs for New Ipswich residents?

No. At most, a handful of temporary jobs may be created to erect the turbines that, according to Pioneer Green Energy, takes only three days. The operation of a wind farm is mostly done by remote controls using the permanent employees of the wind farm developer or operator.

Will my taxes go down?

No. Once a wind farm is built, the Town's assessed value will go up, which in turn will increase what we have to pay in school taxes. If taxed appropriately, this should be offset by the taxes levied on the wind farm but it's hard to know if there's any tax benefit for residents. For example, the town of Lempster had a drop in tax rates the first year after the wind farm there was in operation but the rates have been higher ever since. What is clear is that the Greenville tax rate would drop significantly if a wind farm were built in New Ipswich.

Is it true that the value of my home will go down if wind turbines are built in Town?

Property values have decreased anywhere from 40-70% in towns where commercial wind farms were built and, in some instances, homes were found to be uninhabitable by residents because of the impacts (mostly the noise generated by turbines).

How big are wind turbines?

Commercial wind turbines are typically 450 feet tall – as tall as a 45-story skyscraper. Pioneer Green Energy's proposal is to put at least ten turbines up on Kidder Mountain along the Wapack Trail.

Are wind turbines noisy?

Yes. Wind turbines emit unique sound in that it comes in waves like human speech, which our brains are hard-wired to hear so we tune into wind turbine sound more than other industrial or even natural sounds. The noise wind turbines make has been described at both a "whooshing" sound and like "sneakers in a dryer." Wind turbines also emit sound that we can't hear, called "infrasound," that nonetheless impacts us when those sound waves hit the human ear. It is for these reasons that experts are finding health effects such as sleep disturbance and vertigo resulting from the sound wind turbines make.

Is the Planning Board amending the ordinance in a way that no wind turbines could ever be built in New Ipswich?

No. The proposed amendment would require setbacks to protect residents from being negatively impacted by noise, ice throw and other hazards. The setbacks are no different than what is required by other towns and have, in fact, been met by existing wind farms.

How will the wind turbines affect the landscape and the rural nature of our community?

Under the current ordinance, determining the visual impacts is very subjective, entirely in "the eyes of the beholder." The amendment provides objective guidelines consistent with the Town's Master Plan and the stated desire of residents to keep the rural community intact in New Ipswich. It will be clearer to any developer what the standards are and it will be more objective, ensuring that the same standards are applied for proposed wind farms.

Wouldn't a wind farm be a good thing for the town?

If not sited properly, wind farms may have serious impacts on residents living near them. Residents from towns in New England, as well as other parts of the country, are vigorously objecting to the wind farms that have been built in their community and are taking action ranging from complaining to the town to filing lawsuits. For example, the town of Falmouth, MA just built their own wind turbine to provide electricity to the town but shut it down because of all the complaints from residents. Other towns where residents are objecting and taking action include Groton in New Hampshire and Freedom, Mars Hill, and Vinalhaven in Maine.

Why does our existing ordinance have to be amended?

The amendment would both codify existing practices and update the existing ordinance with all the information that has been developed since the ordinance was first written (for example, there have been technological developments with wind turbines and new studies on their impacts which the Town should consider). So while the Planning Board can accomplish the same under the existing or amended ordinance, the amendments clarify how the Planning Board will make determinations. This helps both the developer and the Board.

Where can I get more information about wind turbines and the Pioneer Green Energy's proposal?

Everything the Planning Board has reviewed is on file in the Town offices and available for any member of the public to view. Contact Joanne Meshna at 603-878-2772 to schedule a visit. We are also working on uploading information to the Town's website at [www.townofnewipswich.org](http://www.townofnewipswich.org). To stay current, you can attend the Planning Board Meetings and Hearings, scheduled the first and third Wednesday of every month. Lastly, we are considering creating a listserv so residents could get information via email. If you are interested in such a service, please let us know by contacting Joanne Meshna.

PLANNING BOARD MEETING  
JANUARY 11, 2012

PRESENT: Ed Dekker, Chairman, Liz Freeman, Bentti Hoiska, Roger Somero, Paul Termin, Carolyn Dick Mayes, Ned Nichols, Joanne Meshna, Jim Shultz (7:10 p.m.)

The meeting was called to order at 6:00 p.m. at the Town Office. Paul was appointed to fill Ollie's vacancy and Carolyn was appointed to fill Jim's.

Ed distributed a copy of the viewpoints article he was working on. Members discussed the communications plan and time line:

- Viewpoints article – 1st week in February.
- Website – as soon as possible; to include warrant article and explanation, flyer, viewpoints article, presentations at Deliberative Session and meetings with the Selectmen, Ambrose publications, Epsilon letter and Ambrose response, Epsilon Groton response, links to sites.
- Deliberative session – February 7 – Bentti.
- Meetings with the Board of Selection on February 21 (Ned) and February 28 (Carolyn).
- Mailer – Liz finalizing; to be distributed February 22.
- Drop in session at town office on March 3 – Ed, Liz, Ned.
- Informational session at town office on March 7 – entire Board.
- Ned will talk to pastors about meeting with their congregations.
- Posters and yard signs?
- Joanne will schedule an informational meeting with Zoning Board members.

7:00 p.m. Public hearing for amendment to Article XIII-2 of the Zoning Ordinance, Large Wind Energy Systems:

The Board discussed the final draft of the amendment identified as “reflecting additional changes made 12/28”. Liz noted that at the December 28, 2011 meeting the change amending Section C and E were reversed. The amendment reflects the correct language.

Upon conclusion of the discussion on the amendment, Liz made a motion to approve the draft amendment posted on 12/28/11 as the final form of the amendment to Article XIII-2 of the New Ipswich Zoning Ordinance, Large Wind Energy Systems, and to forward the final form to the Town Clerk to be placed on the town warrant for 2012. Ned seconded the motion and it passed unanimously.

8:00 p.m.:

A petition article to rescind Article 7, March 9, 2004 with regard to impact fees was submitted to the Selectmen on 1/9/2012 and forwarded to the Planning Board on 1/10/12. Bentti noted that petition articles had to be submitted by December 14, 2011. Marie will

be contacting the DRA to determine if the article still has to appear on the warrant and Ed will check with Attorney Kinyon.

Jim noted that the CIP expires this year and needs to be updated in order to continue assessing impact fees.

The Board reviewed the conditional approval for the lot line adjustment application between Redling and Fortier. All conditions were met and the mylar was signed.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
JANUARY 18, 2012

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Ned Nichols, Roger Somero, Bentti Hoiska, Carolyn Dick Mayes, Jim Shultz, Joanne Meshna, Liz Freeman (7:35 p.m.)

The meeting was called to order at 7:00 p.m. at the Town Office. Joanne was appointed to fill Ollie's vacancy and Carolyn was appointed to fill Liz's vacancy.

7:00 p.m. John Korpi, Susan Bemis, Leona Henrickson – Public hearing for lot line adjustment:

Ed Rogers from Rogers Engineering and Surveying presented the application to the Board. The applicants own lots 10/4 and 10/5, Appleton Road, rural district. They are proposing a lot line adjustment between the two lots. Presently lot 10/4 is landlocked; the lot line adjustment will give the lot 164 feet of frontage on Boynton Hill Road.

The Board reviewed the waiver requests:

- Item #4, datum benchmarks – not required with a lot line adjustment.
- Item #13, setback lines for buildings and structures – not related to new boundary line.
- Item #14, conditions on adjacent land – does not apply.
- Item #17, topography within the tract – does not apply.
- Item #18, geographic features – does not apply.
- Items #20-28, soils information, septic – does not apply.
- Item #42, slopes 12% or over – not required for lot line adjustment.
- Item #44, existing buildings – existing house on lot 10/5 is located about 2000 feet from where lot line is proposed.
- Item #45, existing septic system – need letter from owner that septic system is in good working order.
- Item #49, Conservation Overlay District and one contiguous acre non steep and non wet – with the lot line adjustment, lot 10/4 will be 42 acres.

Jim made a motion to approve the waiver requests. Ned seconded the motion and it passed unanimously.

The Board reviewed the plan presented by Mr. Roger:

- The frontage for lot 10/5 needs to be added to the plan.
- Notation on the plan needs to be made showing the current acreage of the lots and the new acreage once the lot line adjustment has been completed.
- A note needs to be added to the plan that lot 10/4 is a backlot to lot 10/5.
- The ownership of lot 10/10-6 shown on the plan needs to be clarified.

Ed made a motion to accept the application as complete. Jim seconded the motion and it passed unanimously.

Tom Kenney, an abutter to the lots, questioned what would happen to his property when the land has access. He was concerned for his privacy, any blasting that might occur, what kind of development might happen and his well. Mr. Rogers responded that the highest and best use of the lot is for a single family home. Ms. Susan Bemis added that she would like to see the property used for a single family home and not be further developed. Ed noted that could be a deed restriction. Mr. Rogers will discuss with Ms. Bemis.

Jim made a motion to conditionally approve the lot line adjustment between lots 10/4 and 10/5 with the conditions being:

- The frontage for lot 10/5 needs to be added to the plan.
- Notation on the plan needs to be made showing the current acreage of the lots and the new acreage once the lot line adjustment has been completed.
- A note needs to be added to the plan that lot 10/4 is a backlot to lot 10/5.
- The ownership of lot 10/10-6 shown on the plan needs to be clarified.
- Payment of fees.

Joanne seconded the motion and it passed unanimously.

7:40 p.m. Impact fee petition:

Bentti informed the Board that a petition article to rescind the impact fees has been submitted. It was received on 1/10/2012. The last date for filing a petition article to amend the Zoning Ordinance was 12/14/2011. The article will not appear on the warrant.

7:40 p.m. Conditional approval for William Rzepa:

Mr. Ed Rogers submitted a letter to the Board describing progress on the conditional approval granted for lot 9/3 and request for a time extension. He noted that the bankruptcy proceedings have complicated the timeline more than expected. The reclamation plan has been completed along with a proposed project schedule and a corresponding bond estimate which he will be forwarding to Kent Brown for review. He is awaiting Mr. Rzepa's signature on the consolidation plan. Next week he will meet with Chief Leel to finalize fire protection arrangements for the subdivision. A note has been added to the plan that the applicant will run electrical, telephone and cable utilities to the lots. Mr. Rogers requested an extension to March 21, 2012.

The Board noted that they would like a copy of the reclamation plan. They would also like to conduct a site walk before the final meeting to determine compliance with conditions. Liz made a motion to extend the conditional approval to May 16, 2012. Jim seconded the motion and it passed unanimously.

7:45 p.m. Warwick Mills – Continuation of public hearing for site plan review:

The Board received a letter from Maureen MacAdam, Compliance Manager of Warwick Mills, requesting a continuation of this evening's meeting to February 15, 2012. Liz made a motion to continue the hearing to March 21, 2012 in order to allow the applicant sufficient time to complete the requirements of the site plan. Bentti seconded the motion and it passed unanimously.

8:00 p.m.:

Joanne informed the Board that a letter had been sent to Gary Litchfield, Manager of Builders Land Co., requiring that the two letters of credit for Green Farm Road and Jacqueline Drive be increased by January 13, 2012. No response has been received.

The Planning Board had suggested a meeting with the Zoning Board in order to inform them of the changes to the Zoning Ordinance being proposed on the 2012 warrant. Since Carolyn will be at the Zoning Board's meeting on February 9, she will give them a brief overview.

Ed's viewpoints letter for the newspaper was reviewed and changes made. Ed will send another draft to members and requested feedback as soon as possible.

The documents to be put on the website were discussed. The amendment, the explanation of the amendment, the full text of the amendment and the 3 articles published by Ambrose will be put up now. When they are ready, the flyer, viewpoints article, presentation at the deliberative session, a link to the Selectmen's meetings on 2/21 and 2/28, Epsilon letter and Ambrose response, Epsilon Groton report, links and explanations and Ned's letter will be put up.

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

Joanne Meshna, Land Use Manager



PLANNING BOARD MEETING  
FEBRUARY 1, 2012

PRESENT: Ed Dekker, Chairman, Bentti Hoiska, Liz Freeman, Paul Termin, Jim Shultz, Ned Nichols, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Paul was appointed to fill Ollie's vacancy.

Liz distributed the flyer for review by the members. After further discussing the flyer with Steve Ambrose, some of the language was changed. The Board made minor changes and approved the flyer for distribution at the deliberative session and around town.

Liz will finalize the mailer and forward it to Joanne for copying. Liz will ask the mailing company to have it delivered by 3/9/12. The total cost for the mailing is \$430.19.

The Board reviewed the following meeting minutes:

11/16/11 meeting – page 2, last paragraph, fourth sentence should read "...includes a system impact study, feasibility study and construction study; they are currently doing the system impact study."; Last sentence should read "They did not have a firm date in mind."; page 3, second paragraph, first sentence should read "Mr. Cohen was asked about the size of the turbines."; third paragraph second sentence should read "Under RSA 676:12 VI, the proposal from..."; fourth paragraph, delete the second sentence; page 4, fourth paragraph, second sentence should read "Mr. Rogers said the ledge would be taken down but DOT...". Liz made a motion to approve the minutes as amended. Jim seconded the motion and it passed unanimously.

11/28/11 meeting – page 1 third paragraph, second sentence should read "...they learned a lot in the two years since they wrote it."; page 3, second paragraph, second sentence should read "to the Board which will then be forwarded to the ...". Liz made a motion to approve the minutes as amended. Bentti seconded the motion and it passed unanimously.

12/7/11 meeting – Liz made a motion approve the minutes. Jim seconded the motion and it passed unanimously.

12/12/11 meeting – Liz made a motion to approve the minutes. Paul seconded the motion and it passed unanimously.

12/28/11 meeting – page 1, fourth paragraph, first sentence should read "Liz proposed changing section C. paragraph 12.a. of the...; fifth paragraph should read "Ed proposed changing section C. paragraph 2. of the...; seventh paragraph, second sentence should read "Liz made a motion to change section D. paragraph 5. by removing..." Liz made a

motion to approve the minutes as amended. Benti seconded the motion and it passed unanimously.

1/4/12 meeting – page 1, first paragraph under 5:45, first sentence should read “Liz made...”; third paragraph under 7:00, last sentence should read “...would be reviewing issues such as parking, signs...”. Liz made a motion to approve the minutes as amended. Benti seconded the motion and it passed unanimously.

1/11/12 meeting – page 1, fifth bullet should say mailer not flyer; eighth bullet should read “Ned will talk to pastors about meeting with their congregations.” Liz made a motion to approve the minutes as amended. Benti seconded the motion and it passed unanimously.

1/18/12 meeting – page 2, second to last paragraph, first sentence should read “...to the Board describing progress...”; last paragraph second sentence should read “...before the final meeting to determine compliance with conditions.”; page 3, under 8:00, first paragraph, first sentence should read “...Manager of Builders Land Co., requiring...”. Liz made a motion to approve the minutes as amended. Jim seconded the motion and it passed unanimously.

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD WORK SESSION  
FEBRUARY 15, 2012

PRESENT: Ed Dekker, Chairman, Ned Nichols, Jim Shultz, Paul Termin, Roger Somero, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Paul was appointed to fill Liz's vacancy.

Selectman Conlin met with the Board to discuss the removal of the flyer on large wind energy systems from the lobby of the Town Office. To include the statement on the flyer "Please Vote Yes on Article 2" is considered politicking and is not permitted on town property. Selectman Conlin agreed to contact Attorney Kinyon on the matter and allow the flyer to be put back in the lobby until further notice.

The Board discussed the website and the actions of the website administrator in posting his articles on the site. The articles were first posted on the Planning Board's site and he was asked to remove them from there. Ed made a motion to send a memo to the Town Administrator expressing the Board's outrage about the unapproved material added by the website administrator at his own discretion, the inappropriateness for personal opinions to appear on the town website, and the inappropriateness in particular for discussion of any specific project. It will conclude with the Town Administrator being asked to remove it immediately. Ned seconded the motion and it passed with one abstention.

Members reviewed Ned's presentation to the Selectmen on February 21. The Board agreed that Paul should give the presentation to the Selectmen on February 28.

Ed read a letter sent to him from Fran Chapman, Peterborough, in response to his viewpoints article.

Joanne is to add to the website the links to articles that Liz forwarded to everyone today, the Epsilon report and the consultant's response, Ed's viewpoints article and Mr. Cohen's article, and the frequently asked questions document. Links are to be added to the Groton report, the EPA levels document and Best Practices document.

The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

PLANNING BOARD MEETING  
MARCH 7, 2012

PRESENT: Ed Dekker, Chairman, Benti Hoiska, Roger Somero, Liz Freeman, Jim Shultz, Ned Nichols, Oliver Niemi, Joanne Meshna

The Board met to provide information to the public on the amendment to the large wind energy system. Kitty Waitt attended the meeting and the slide show on noise was presented to her.

The minutes of the December 12, 2011 meeting were reviewed and the following corrections made: page 4, first paragraph, second sentence should read "The hearing was continued to January 18, 2012..."; fourth bullet from the end, should read "Jim - If we take the bond money..."; page 5, last bullet, add a question mark. Liz made a motion to approve the minutes as amended. Benti seconded the motion and it passed with one abstention.

Liz made a motion to approve the minutes of the February 1, 2012 meeting. Benti seconded the motion and it passed with one abstention.

Liz made a motion to approve the minutes of the February 15, 2012 meeting. Ned seconded the motion and it passed with one abstention.

Joanne distributed handouts from LGC Town and City on Consultation with Legal Counsel Requires a Two-Way Conversation with the Attorney, Roadway Legal Hazards: Implied Dedication, and Acceptance of Highways, and Capital Budgeting and the Planning Board.

The Board discussed the USA Properties' lawsuit and were in agreement that Attorney Kinyon should attempt to settle the case. Ned made a motion that the Chairman instruct Attorney Kinyon to seek a settlement to the USA Properties' lawsuit. Attorney Kinyon is to offer a rehearing convenient to the applicant and the Board and to be held within three months in exchange for dropping the suit. No damages are to be paid by either side. Liz seconded the motion and it passed unanimously. It was agreed that if Attorney Kinyon objects, the Board would reconsider.

The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Joanne Meshna  
Land Use Manager

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

April 6, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Richard Whitcomb, Randy Martin, John Kieley, Bruce Kullgren, Allan Pickman, Mary Beth Ayvazian, Rose Lowry

Call to order by Pickman at 7:32 p.m.

Review of minutes: Motion by Whitcomb to accept the minutes of March 16, 2011 as written, second by Kullgren, and so voted. Kullgren said he wished to correct a statement made by Pickman within the minutes. He reminded Pickman that the Planning Board, not the Board of Selectmen, could fill a vacancy on the board until the time of the next elections.

Wind farm: Kieley mentioned a recent phone inquiry asking how the town might assess a wind farm. He stated there is currently a controversial wind energy project being proposed in the town of Antrim. He suggested the board may want to consider formulating an ordinance to regulate wind farms. He stated currently this type of plan would seem to fall under Article IV Section 13 (Industry, Commercial and Non Commercial Enterprises). Pickman agreed, and said most issues with wind turbines seem to relate to impact on property values as well as the effect of noise and vibration. He said under current regulations a wind farm proposal would have to go through Site Plan Review and the Special Exception process. Kullgren spoke of a wind farm being installed in the northern part of the state and also of the controversial Northern Pass electric line project. Kieley said Antrim has turned to the state for advice, as they feel they do not have the expertise to deal with this type of project. It was decided board members would research the issue and work towards establishing some kind of regulation.

Upcoming Work Projects: Pickman asked about the status of creating a survey to gather information regarding zoning changes in the Village District. Ayvazian said she and Lowry will work on this. Kieley mentioned updating the Subdivision Regulations. Martin thought Planning Board forms should be standardized, and indicated some work on this had already been done by a previous board member. Kullgren suggested creating a new form to request annual gravel pit renewal.

Bartolomeo subdivision: At 8:00 p.m. Pickman opened the public hearing to address a proposed 2-lot subdivision for map 9 lot 22 owned by the Edward and Rebecca Bartolomeo Revocable Trust. The property owners were represented by surveyor Jacques Belanger. Board members looked at copies of a revised plat and asked questions. A previous list of requested changes was reviewed and it was determined that several stipulations remain outstanding. Belanger presented an overview of the project and said it was a simple breaking off of the existing farmhouse, which contains three rental units, onto a six-acre parcel. He said the town health officer witnessed the two test pits that were dug, and also said wetlands are present but were not completely delineated as there is no impact from this subdivision. He indicated the present owners have no intention of doing anything further at this time, but might sell the house if an offer came along. There was a question about location of the septic system for the house; Belanger indicated it was not specifically known, and Kullgren said he believes he worked on it years ago and it is located right behind the house.

Marty Connolly asked if the six-acre parcel could be further subdivided. The preliminary plan had shown a five plus acre lot, which was changed to six plus acres at the board's request.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

April 6, 2011  
FINAL MINUTES OF PUBLIC MEETING

Pickman explained the board's previous discussions regarding the three rental units in the house, resulting in the board's decision to request at least two acres per existing unit and to allow no further subdivision unless one rental unit was gone. Kullgren noted this was a rather arbitrary decision with no legal basis, and said the owner could push the issue if so desired. Kieley quoted part of the 3/2/11 PB minutes that detailed the board's discussion and resulting recommendations regarding this issue. Abutter Ken Sullivan said he had spoken by phone with the property owner and intent to sell the house was indicated. Sullivan also asked if perhaps the board was making the question of future subdivision worse by not leaving the lot at roughly five acres, which would not be subdividable.

Connolly then asked if the board could clarify the septic location. He stated it was an old system with previous failures, and questioned whether the size was adequate for three dwelling units with an unknown number of occupants. Belanger said there was no way of knowing and the system would have to be exposed to examine it, and this would not need to be done unless the system was in failure. He reiterated that test pits had been dug on both lots. Kieley stated this issue should not have any bearing on the subdivision plan. Belanger also noted that if the property were to be sold a home inspection would address this issue.

Sullivan advised the board that the property owner had told him the larger back parcel could support four house lots. Sullivan said he was concerned about future development there, and did not want to look at houses from his abutting property. He said he felt he did not have all available information as an abutter and referenced discussion within previous in PB minutes. Pickman stated the owner has rights to develop his land that the board cannot deny. He continued that the board cannot base their decision on any possible future plans, but must consider the plan that is before them. Belanger stated any plan to develop the back acreage would be more complicated, as it would involve a road, drainage, wetlands and water crossings, etc. Kullgren spoke up and said the board must address only the plan before them. Kieley noted if a PRD development were to be proposed in the future that abutter impact would be taken into consideration as part of that process. Sullivan asked the board why the town bothers with a Master Plan or Open Space Plan if not best utilizing them. Kullgren responded that the board must follow the law and cannot make things up as they go along.

Connolly brought up seasonal wetlands and vernal pools and wondered if they should be considered and delineated. Lowry explained the town of Peterborough is currently dealing with a similar issue, and acknowledged they could impact development. Connolly urged the board to look into this and possibly consult with a water expert to develop more clear definitions.

Kieley reviewed a list of changes needing to be made on the plat, to consist of: 1) remove line for "Town of Bow/Merrimack County" and replace with "Town of Temple/Hillsborough County"; 2) get signature of Town Health Officer; 3) revise signature block to show Chairman, Secretary and date; 4) indicate map and lot number 9-22 on original (farmhouse) lot; 5) indicate map and lot number 9-22-2 on new (back) lot; 6) show bounds set; 7) eliminate 'floating' symbols on plat; 8) check setback for Redding/McDonald house and show on plat if within 100' of boundary line; and 9) include statement precluding further subdivision of the six acre (farmhouse) lot. At this point Connolly again brought up the vernal pools/wetlands issue and asked that these types of areas be delineated on the plat. He suggested a consultation with local hydrologist Gerry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

April 6, 2011

## FINAL MINUTES OF PUBLIC MEETING

Rosenberg. Pickman said he was reluctant to stipulate this, as the present plan is only subdividing an existing house off and does not include development at this time. Kieley said a Building Permit application at some point would open up the wetlands issue. Belanger then asked if the board would consider a conditional approval of the plan at this meeting. Kieley moved to approve the subdivision, conditional upon the list of requested changes, with a second by Kullgren, and voted in the unanimous affirmative. Connolly repeated his opinion that wetlands definitions and related issues need to be looked at. Sullivan reiterated that he is aware from personal contact that the property owner does wish to subdivide in the future. Sullivan said he would prefer to keep the area of north Temple in its current state. The public hearing was closed at 8:58 p.m.

Move to adjourn by Kieley, 2<sup>nd</sup> by Lowry, so voted at 9:00 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

March 2, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Randy Martin, John Kieley, Mary Beth Ayvazian, Allan Pickman, Richard Whitcomb, Rose Lowry

Call to order by Pickman at 7:30 p.m.

Review of minutes: Motion by Kieley to accept the minutes of February 16, 2011 as written, second by Pickman, and so voted.

Bartolomeo subdivision: A revised plat was reviewed that showed the board's previously requested changes were incorporated, including having the existing house/barn on a minimum of 6-acres, and ensuring a minimum of 300' of frontage for the larger lot. The addition of two septic test pits locations were noted, and after brief discussion it was decided a formal report is not needed as the town health officer's signature on the plat will be sufficient. The subdivision application and checklist were also reviewed, with the following items determined to need to be added: statement of responsibility & liability, name of subdivision (trust), name and address of owner (trust), subdivisions and buildings within 100 feet (McDonald/Redding house?), lot dimensions, areas & numbering (new lot s/b 9-22-1), monument locations (set bound at new lot line), and a couple of typo corrections. Also, the application should have the signature of Rebecca Bartolomeo as a co-trustee of the trust. Kieley questioned the possibility of future subdivision of the 6-acre lot. The main concern was that the existing house/barn already has three dwelling units (2 acres per each dwelling). It was thought there would be a lack of room to further divide the lot and create placement for two 250' squares, and also difficulty in placing two sets of septic systems and wells due to lot configuration and wet areas. Kieley and Martin suggested having a note put on the plat referencing a limit to any further subdivision of this lot, i.e. "Lot 9-22 cannot be further subdivided so long as 3 dwelling units exist on the 6 acres". Board members were unanimous in recommending this. All information will be relayed to the surveyor, and timing will try to be arranged to hold a public hearing at the first PB meeting in April.

Miscellaneous: Random discussion about the need to find a good candidate for the position of town moderator, with several names being mentioned, including Martin and Lowry.

Move to adjourn by Kieley, 2<sup>nd</sup> by all, so voted at 8:22 p.m.

Minutes submitted by Betsy Perry



# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

March 16, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Richard Whitcomb, Rose Lowry, Mary Beth Ayvazian, Allan Pickman,

Call to order by Pickman at 7:45 p.m.

Review of minutes: Motion by Ayvazian to accept the minutes of March 2, 2011 as written, second by Whitcomb, and so voted.

Election of officers: Motion by Lowry to keep the slate of officers the same as the previous year, with Pickman as Chairman, Martin as Vice Chairman, and Lowry as Secretary. Both Pickman and Lowry said they would accept these nominations; Martin was not available to comment. The motion was seconded by Whitcomb, and so voted unanimously. This was followed by discussion concerning the lack of attendance by one board member due to a lengthy illness; the term involved will end in 2012. Lowry stated a town resident has expressed interest in joining the board. Pickman said if a resignation was to be offered, the Board of Selectmen could appoint an interim member until the next town elections. Use of an alternate was brought up, and Pickman said historically the PB has never used alternates. It was noted that occasionally a PB member must recuse themselves from a vote, and at some point a tie-breaker vote might be needed. The board decided to take no action on the issue for now.

Goals and objectives for year: Discussion of what topics to address during the upcoming year. Lowry read the work list created in March of 2010: changes to Village District zoning, review of Subdivision Regulations and Site Plan Review Regulations, begin update of the Master Plan, review of Commercial zoning, and review/update of Workforce Housing ordinance. Lowry recommended board members establish a list of subjects and work to follow through. She also wondered what had happened to the proposed zoning amendments that were to be offered earlier this year. Pickman replied that the required public hearing had been scheduled in January, but only two board members were present and without a quorum the amendments could not be brought forward. Ayvazian expressed interest in attracting more small businesses in town. Pickman noted that the lack of small local businesses is probably not because zoning restricts them, but possibly could be due to a lack of a sufficient customer base to support them. He went on to suggest the board revisit expansion of uses within the Village District. Lowry said in addition to retail that professional services and elderly housing would also seem feasible. Whitcomb told the board about a resident who is actively exploring the possibility of getting elderly housing built near the center of town. Pickman said that would first require a zoning change to accomplish. Possible uses of the old brick school were also talked about.

Bartolomeo subdivision: General update to include the surveyor being informed of the board's questions and comments from the previous meeting, and anticipating everything is on track to hold the public hearing in April.

Move to adjourn by Ayvazian, second by Whitcomb, and so voted at 8:25 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

May 18, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Richard Whitcomb, Allan Pickman, Mary Beth Ayvazian, Rose Lowry

Call to order by Pickman at 7:44 p.m.

New Ipswich subdivision: Tim Fiske, road agent for Temple, briefly reviewed the plat for the proposed 48-lot subdivision on Stowell Road in New Ipswich. He commented about the project design and questioned the advisability of using Moran Road in Temple. He said most residents he had spoken with who live along that portion of Moran Road were not in favor of undergoing an upgrade. The major concern was seen as an increase in traffic, with no benefit to the town of Temple. He indicated any upgrade could be quite costly, as it would involve significant wetlands and drainage issues. Fiske also related history of a nearby Temple parcel that was previously considered for development. He said there could be a possible future concern if the Temple landowner were to team up with the New Ipswich developer, and then utilize an improved Moran Road to promote development of the Temple land. Fiske also questioned how state law might address a situation where a road passes through two towns and one town wants to discontinue their portion.

Pickman stated that recently three members of the Temple Planning Board had visited both Moran Road and Stowell Road to better envision the current location and condition of the roads. He also had spoken with town counsel to get a general sense of what town board would have jurisdiction in this type of situation. The attorney indicated he knew of no reason the Board of Selectmen would be required to allow an upgrade of Moran Road. Ayvazian suggested several Planning Board members should attend the New Ipswich meeting on June 1<sup>st</sup>. Fiske asked the board to inform New Ipswich that Temple has no interest in an upgrade of that portion of Moran Road, and would resist any attempt at forcing the issue by going to court.

Review of minutes: Motion by Lowry to accept the minutes of May 4, 2011 as written, second by Whitcomb, and so voted.

Bartolomeo subdivision status: No further updates; still waiting for the surveyor to provide a revised plat for review and a vote on final approval.

Lempster wind farm: Pickman said he had called the chairman of the Lempster Planning Board and left a message, but had yet not received a response. More research on wind farm effects will be done, including raptor migration issues, to help in developing a town ordinance to regulate wind farms.

Village District survey: Lowry and Ayvazian presented the latest draft of the survey form. Board members were enthusiastic about the content and format, and discussed a timeframe and cost for mailing and returns of the surveys. Lowry will also create an on-line version for the town website. It is hoped the surveys will go out within 7-10 days, and be returned within 14 days.

Move to adjourn by Ayvazian, second by Pickman, so voted at 8:43 p.m.

Minutes submitted by Betsy Perry

TOWN OF TEMPLE, NEW HAMPSHIRE  
PLANNING BOARD

June 1, 2011  
FINAL MINUTES OF PUBLIC MEETING

No meeting was held on this date. Instead, the evening was left open for board members to attend a meeting of the New Ipswich Planning Board regarding a subdivision with potential regional impact for the Town of Temple.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JUNE 15, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Mary Beth Ayvazian, Allan Pickman, John Kieley, Richard Whitcomb, Rose Lowry

Call to order by Pickman at 7:38 p.m.

Review of minutes: Motion by Ayvazian to accept the minutes of May 18, 2011 as written, second by Whitcomb, and so voted. A short statement to explain the cancellation of the regularly scheduled meeting of June 1, 2011 was also approved.

Village District Survey: There is currently \$300 left in the PB budget for the year. This will allow the expense of mailing out the Village District survey to be covered, as it is estimated the bulk mailing will cost approximately \$120-150. After brief discussion, it was decided to postpone dealing with the survey until September.

Summer schedule: Board members talked about taking the months of July and August off, as has been done in previous years. It was decided to hold a meeting on July 20<sup>th</sup> to hear a presentation from a company that is exploring a possible wind turbine installation in the town (details below). Additional meetings may be called as needed if any new PB business should be brought forth.

Wind farm proposition: Pickman read a letter from a member of the Temple Economical Energy Committee (TEEC). It was explained that a Boston representative of a Texas energy company would like to set up a meeting with the Planning Board. This company is in the process of moving forward with a plan to install 10 wind turbines in the neighboring town of New Ipswich. Further, at least two Temple landowners have been contacted about the possibility of leasing land to allow 3 additional turbines to be erected on Kidder Mountain. The PB clerk will set up a meeting with the company representative (tentative date of July 20<sup>th</sup>) for the board to hear an introductory presentation. Kieley stated that commercial wind turbines are likely to be a sensitive issue, and urged the board to get the word out to the community once the meeting date and time are established. Board members also agreed to try to arrange a field trip to Lempster to view the existing wind turbines in that town. Ayvazian will contact Lempster town officials for information prior to the visit.

New Ipswich subdivision: Pickman told the board he had attended the June 1<sup>st</sup> meeting in New Ipswich regarding the proposed subdivision off Stowell Road. There had been a concern that Moran Road in Temple might be affected by an upgrade to accommodate traffic from future property development. Pickman explained the applicant's engineer did not show up, and because of a pattern of missed meetings and incomplete paperwork the New Ipswich Planning Board declined to grant a continuance. The developer may decide to submit a new application and start the process again at some point, and the town of New Ipswich agreed to keep the town of Temple informed.

Bartolomeo subdivision status: The board reviewed the revised plat and determined the list of conditional approval items had been met. Kieley moved to grant final approval, seconded by Ayvazian, and so voted. Pickman will take a Mylar to HCRD in Nashua to be recorded.

Move to adjourn by Whitcomb, second by Ayvazian, so voted at 8:08 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JULY 13, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Richard Whitcomb, Randy Martin, Allan Pickman, John Kieley, Mary Beth Ayvazian, Rose Lowry

Call to order by Pickman at 7:31 p.m.

Wind turbine presentation: Adam Cohen, representing Pioneer Green Energy, addressed the board to explain a proposal for a wind turbine installation. The majority of the turbines would be erected in New Ipswich, with an additional two to four turbines sited on Kidder Mountain in Temple. Cohen provided background information on the company's history and experience with wind energy systems. He indicated testing is being done in both towns to develop data, with one meteorological tower in New Ipswich collecting data since November of 2010, and a request for a second met tower pending site plan approval. He continued that the wind data is being correlated with Jaffrey airport. Ayvazian asked about raptor migration, and Cohen responded that data for the spring migration has been collected and fall data will be forthcoming. He also stated that recent information from wind farm data located in the town of Lempster showed zero migratory kills. Cohen presented copies of topo maps showing the location of the proposed towers in both New Ipswich and Temple. One map displayed an overlay of Temple land parcels, and Cohen indicated his company was already leasing land from the Bradler family. He said there are no existing nearby Temple residences, with the closest over 2,000 feet away, and all setbacks could be met. Kieley asked about visibility of the towers. Cohen replied they would not be visible from the downtown area but would be apparent from certain areas in town. Kieley then asked about additional power lines, and Cohen said there would be no new high voltage lines, with lines between towers being buried, and one connection to an existing line in New Ipswich.

Cohen spoke of new technology for wind towers, with larger machines translating to fewer turbines and greater efficiency. He mentioned the circa 1970's Altamont Pass wind farm in California and explained how its closely spaced smaller size turbines proved to be less efficient, and also how their design contributed to notable bird kills. Kieley asked about conservation easements on land in New Ipswich. Cohen said this type of wind farm would contribute to keeping land open and protect from sprawl. He explained the footprint of a turbine is small, with low impact to wildlife. He stated it is a passive use of land, involving no town services and increasing tax revenues. Lowry asked about land leases, and was told they are for a 30-year period, after which they are either renewed, or the turbines are removed and the land restored to its previous state.

Cohen said the construction process has two phases, and the company may upgrade necessary town road and bridge infrastructure if deemed necessary. He said the turbine blades are 160 feet long and comprise one solid piece, so an adequate turn radius is necessary and some roads may need to be widened. Kieley told Cohen, "There are 200-year old trees alongside roads in Temple, and it could be a huge issue, not in your favor". Martin suggested an approach from New Ipswich that might prove to be of less impact. Ayvazian brought up tax implications and asked about a tax study in Lempster. Cohen supplied a chart that showed an immediate tax benefit to Temple up front, which lessened as property assessment valuation catches up. Pickman commented that under the school district equalized valuation system the town would end up paying more for education. Estimated tax amortization provided by Cohen showed declining value and taxes paid as the towers depreciated over a 25-year timeframe. Cohen stated with wind energy systems the upfront cost is in the turbines, there are no fuel costs, and the biggest ongoing cost is taxes. He said the company profit curve goes up over time, as depreciation kicks in and tax payments drop. He said wind energy is immediately competitive with other forms of power generation. Lowry said she recently had occasion to visit the Harvest Wind Farm in Michigan, which consists of thirty-two 400' high towers that she found "beautiful", and she feels there is a lot of misinformation out there. She asked if there was any value to homeowners who are not leasing their land, and Cohen answered that studies show no huge impact to land values. He also stated the company would work with non-participating landowners to keep people happy.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JULY 13, 2011  
FINAL MINUTES OF PUBLIC MEETING

Pickman asked about wind speeds, and Cohen said the towers turn on at 3 meters or 9-10 miles per hour, and turn off at 50 miles per hour. Kieley asked about lights and was told there would be lights at the perimeter and every third turbine. Lowry asked what happens if the wind farm should fail. Cohen said there would be bond money in the bank for removal as a condition of landowner leases. He also said when decommissioned the salvage value is high. He stated abandonment issues are usually handled within a town zoning ordinance, such as Temple's Small Wind Energy System ordinance.

Cohen told the board that a dialogue had been started at this meeting, and his company would like to begin serious planning in the fall. There was brief discussion of ongoing issues with the Antrim wind farm, different brands of turbines, existing transmission lines, use of underground lines, location of substations, and job creation. At that point Pickman suggested Temple work on developing a Large Wind Energy System ordinance, with requisite public hearing and vote of approval by town residents in March. Cohen said the company would be seeking a state permit and hoped to have that in place by November 1<sup>st</sup>. Board members felt proceeding without an ordinance in place would not be wise, and trying to expedite the project through a special exception or special town meeting would be too rushed. Whitcomb asked if the project would proceed if Temple should vote "no", and Cohen said it would proceed in New Ipswich. Cohen said the power created by the turbines would be sold to PSNH. He said he would make himself available to talk to people and answer questions, would hold a site walk, and make all studies and data available. He told the board, "We need power in the U.S. – how do you want it? Wind is renewable energy." He also stated "transmission is more important than wind" and reiterated his company's desire to work with the town.

New Ipswich meeting: Pickman read a notice from the New Ipswich Planning Board advising of a July 20th meeting with possible regional impact. A hearing is scheduled to consider an application from Pioneer Green Energy to erect a 198' meteorological tower. Pickman noted that as this request is a precursor to a possible wind farm installation in Temple, one or more planning board members may want to attend.

Review of minutes: Motion by Ayvazian to accept the minutes of June 15, 2011 as written, second by Whitcomb, and so voted.

Bartolomeo subdivision: Pickman informed the board he had attempted to record the Mylar and it was rejected by the registry. The issue involves compromised legibility of some figures on the plat, plus dissatisfaction with a red ink stamp used by the health officer. The surveyor will be contacted and asked to revise the plat; the health officer will be asked to utilize a black ink stamp.

Kullgren subdivision: Pickman told the board the town had received a notice from the state DOT regarding a revised driveway permit for Map 2 Lot 55. The application indicated Bruce Kullgren and Ben Fisk were requesting a 2-entrance permit for a "sugar house and small retail store" on an existing three lot subdivision located on Route 101. Pickman then read a letter of response from the Temple Board of Selectmen. Several issues were brought up, including lack of a town building permit, lack of an application for a special exemption to run a commercial business, lack of a DES permit for bridge construction to access the lots, concern for motorist safety on that stretch of the highway, and lack of an application to the town for a second driveway entrance. Kieley told the board Kullgren had made an appointment to discuss the situation with the BOS but failed to attend the meeting. The board reviewed the approved plat and noted it was for residential lots and had one approved driveway entrance. Pickman said the planning board could take no action at this time as there was no plan presented.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JULY 13, 2011  
FINAL MINUTES OF PUBLIC MEETING

Summer meeting schedule: Pickman asked the board to consider holding one or more meetings in August to deal with the wind turbine proposal. A trip to visit the existing wind farm in Lempster was again brought up. Lowry said the PB needs to do some homework, and highlighted the following action items: Lowry will contact a friend who has done wind turbine installations to come in and talk to the board; contact the Audubon Society regarding information on raptor migration; Kieley will contact the Harris Center and a bird expert in Peterborough regarding raptor migration; Ayvazian will contact the wind farm company and the landowner in Lempster to arrange a visit; board members to schedule a date to hike the area on Kidder Mountain; review the New Ipswich Large Wind Energy Systems ordinance and contact SWRPC to determine if they have any relevant information; prepare website and newsletter announcements for town residents once information gathering and further discussion has occurred. Kieley mentioned an upcoming town forum in August to discuss driveway plowing, and there was some thought of addressing the wind farm proposal at that time. The board decided to schedule a meeting on August 17<sup>th</sup>, and plan on a field trip to Lempster as another meeting earlier in the month.

Move to adjourn by Ayvazian, second by Kieley, and so voted. Meeting adjourned at 9:36 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

AUGUST 17, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Richard Whitcomb, Allan Pickman, Randy Martin, Mary Beth Ayvazian, Rose Lowry

Call to order by Pickman at 7:30 p.m.

Review of minutes: Motion by Ayvazian to accept the minutes of 7/13/11 as written, second by Whitcomb, and so voted.

Blood farm lot line re-adjustment: Heather White presented an application for a lot line adjustment between Map 2 Lot 80-1 owned by Donna Desmarais and Robert Caney, and Map 5 Lot 10 owned by Heather White. White explained the change would reverse a 2010 lot line adjustment involving the same two lots, and the 77 acres would now revert back as part of the original Blood farm. She said the request was to accommodate an impending sale of real estate involving the farm. White said there are no differences or changes, just reversion. The land involved has no frontage and has never been a separate lot. Board members reviewed the plat and compared it to the original lot line adjustment done in 2010. They agreed on a suggestion that the new lot line demarcation be more clearly indicated. There was brief discussion of the timeframe needed to send out abutter notification letters. Ayvazian moved to accept the application and meet again on August 31<sup>st</sup> at 7:30 p.m. to consider approval, seconded by Lowry, and voted in the unanimous affirmative. White will have the surveyor revise the plat.

Wind farm: Bev Edwards, a member of TEEC, said she had visited the Lempster wind farm, and she indicated the Lempster administrative assistant felt the overall wind farm experience for the town has been positive. Edwards provided observations, notes and data, including ongoing bird research near wind turbine installations. There was discussion about raptor migration and bird kill statistics. Other topics brought up included state involvement vs. town control, tax revenue, road improvements, and wildlife impact. Board members also discussed in general how to best move forward in exploring the Pioneer Green Energy proposal, as well as craft a large wind energy ordinance to protect the town. Some board members still wish to visit Lempster as well as hike Kidder Mountain. Also discussed was how to present this issue to the public. Lowry will draft information for the town newsletter as well as create a poster about exploring wind energy in Temple. Martin asked for a straw poll of how board members felt about wind turbines, with most expressing an interest in learning more but having some concerns about environmental and wildlife impact.

Bartolomeo plat: Pickman and Lowry signed the revised Bartolomeo Mylar, and Pickman will take it to HCRD next week to be recorded.

Village District survey: It was agreed to move forward with the survey in the month of September.

Move to adjourn by Ayvazian, second by Whitcomb, so voted at 8:40 p.m.

Minutes submitted by Betsy Perry



# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

AUGUST 31, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Richard Whitcomb, John Kieley, Mary Beth Ayvazian, Rose Lowry, and Allan Pickman

Call to order by Lowry at 7:37 p.m.

Blood farm lot line re-adjustment: A revised plat was provided by Heather White, and board members confirmed the requested change had been made. There was brief discussion about the timing involved in getting the plat recorded. Matt Cabana indicated the attorney involved in the real estate transaction would like the plat recorded prior to the closing, which was scheduled for the following Wednesday, September 7<sup>th</sup>. Whitcomb moved to approve the lot line adjustment as shown, second by Ayvazian, and so voted unanimously, with Kieley recusing himself as an abutter. Pickman took one Mylar and two checks to cover fees, and will relay the plan number to all parties when recording is complete.

Review of minutes: Motion by Ayvazian to accept the minutes of 8/17/11 as written, second by Whitcomb, and so voted.

Wind turbines: Kieley mentioned a recent newspaper article regarding the Antrim wind farm project, and said there had been a 6-hour meeting in that town to consider a draft ordinance to regulate wind farms. Kieley suggested obtaining a copy of Antrim's draft ordinance for review. This generated discussion about related topics such as tower height, setback requirements, placement in zoning districts, wind generation, location of transmission access, road widening, blade design, met tower data, abutter compensation, and potential impact on assessment of property values. Board members decided to schedule a trip to view the Lempster wind farm on Saturday, September 3<sup>rd</sup>. Lowry mentioned an op-ed piece in another local newspaper that made some good observations and valid points about wind power and overall energy production. Audience member Honey Hastings stated she hopes the planning board will work to develop a strong wind farm ordinance for the town. There was speculation about the proposed Pioneer Green Energy wind farm in New Ipswich and Temple, and Adam Cohen will be contacted to determine current status of the project.

Village District survey: It was agreed to move forward with the survey in the month of September, and plans were finalized to have copies go out soon via bulk mail.

Move to adjourn by Kieley, second by Ayvazian, so voted at 8:25 p.m.

Minutes submitted by Betsy Perry

TOWN OF TEMPLE, NEW HAMPSHIRE  
PLANNING BOARD

SEPTEMBER 7, 2011  
MINUTES OF PUBLIC MEETING

Board members present: Bruce Kullgren, Allan Pickman, Richard Whitcomb

No quorum, no meeting.

Next regularly scheduled meeting will be September 21, 2011.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

SEPTEMBER 21, 2011  
DRAFT MINUTES OF PUBLIC MEETING

Board members present: Randy Martin, Richard Whitcomb, Allan Pickman, Rose Lowry

Call to order by Pickman at 7:38 p.m.

Approval of minutes: Move by Whitcomb to approve the minutes of 8/31/11 as written, second by Lowry, and so voted.

Village District Survey: Survey forms were mailed out to all Temple households on September 15<sup>th</sup>. Completed surveys received to date were reviewed. Comments, suggestions, and response trends were noted. Once the September 30<sup>th</sup> deadline is met, survey data will be extrapolated and summarized. Copies of the forms will also be made available at the Harvest Festival on September 25<sup>th</sup>. A public forum to will be scheduled for November 16<sup>th</sup>.

Wind turbines: General discussion about scheduling a hike up Kidder Mountain in the near future, trying again to arrange a trip to Lempster to visit the existing wind turbines there, seeking more information on raptor migratory routes in the region (perhaps through Audubon), and follow-up on the status of the proposed wind energy ordinance in the town of Antrim. It was decided to schedule a town forum on wind turbines for November 2<sup>nd</sup>, with the expectation that a draft wind farm ordinance will be ready by December. Notices will be placed in the town newsletter and on the town website. Lowry offered to create informational posters for both November forums.

Move to adjourn by Martin, second by Whitcomb, and so voted at 8:24 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

OCTOBER 5, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Richard Whitcomb, John Kieley, Rose Lowry, Mary Beth Ayvazian, Allan Pickman

With a quorum present, call to order by Lowry at 7:42 p.m. Pickman arrived several minutes into the meeting and took over as chair.

Approval of minutes: Move by Kieley to accept the minutes of 9/21/11 as written, second by Ayvazian, and so voted.

Kidder Mountain: Pickman said he and Martin had completed a hike up Kidder Mountain from the New Ipswich side. He said there was not much of a road present, and they went up a hiking trail to power lines and eventually onto a "Jeep road". Lowry asked about the perceived degree of difficulty in cutting a road up the mountain to allow wind tower access. Pickman stated the terrain was not really steep, but dealing with private landowners along the route might be an issue. He said he and Martin had encountered a resident mowing a private ski area. Ayvazian asked how specific a large wind energy zoning ordinance could be. This brought up discussion of how town boards would participate in a wind farm application process. The Planning Board would be the primary contact, the Board of Selectmen would deal with permits and assessing matters, and the ZBA could be involved if a special exception process was deemed necessary or there was an appeal by abutters. Pickman noted a determination of regional impact could involve surrounding towns. He also said impact fees could come into play. Ayvazian referenced revenue figures from the town of Lempster, which indicated "windfalls" for the town from taxes were not exactly realistic. Kieley stated that accurate financial impact needs to be determined up front. Lowry said comments from people at the Harvest Festival ranged from "need green energy" to "don't like the looks". Lowry and Kieley brought up the recently completed hawk watch on Pack Monadnock and hope to obtain data and information regarding local raptor migration. Board members decided to obtain and review copies of wind energy ordinances from both New Ipswich and Antrim to serve as a starting point for a Temple draft.

Lempster field trip: Ayvazian said she has spoken to the resident in Lempster who owns the land where a large wind farm is sited. He feels strongly it is a positive thing for the town, and indicated that concern about bird kill is "poppycock". He is agreeable to having board members come for a visit, and Ayvazian will call to see if a date near the end of October is workable.

Village District Survey: Lowry had conversations with several people about the survey form while manning a table at the Harvest Festival. She said some were suspicious and questioned the "real" purpose of the survey. Lowry tried to explain the board's reasoning and point out how existing buildings in the district could benefit from mixed use development. All returned survey forms were given to Lowry to review and summarize responses. She said it may turn out that residents are not in favor of any changes. Kieley referred to the public forum scheduled for November 16<sup>th</sup> and hoped the public would attend and speak on the issue.

Move to adjourn by Ayvazian, second by Kieley, and so voted at 8:32 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

OCTOBER 19, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Randy Martin, Richard Whitcomb, Allan Pickman, Rose Lowry

Call to order by Pickman at 7:36 p.m.

Approval of minutes: Move by Kieley to accept the minutes of 10/5/11 as written, second by Whitcomb, and so voted.

Zoning ordinance for large wind energy systems: Kieley said he had checked several towns and cities across the state to see if they had "wind farm" zoning in place, and found none of them did. Kieley and Martin both referenced their review of the Antrim draft ordinance and thought it comprehensive and well written. Kieley had questions regarding certain technical issues, and noted some areas of the ordinance were specific only to Antrim. Martin stated that a Temple ordinance must be crafted to deal with not just the project currently under consideration, but also any future wind farm proposal. Lowry said she would like to bring a friend who is familiar with tower installation in to speak to the board. There was discussion about the immense amount of site work necessary for wind tower installation. It was acknowledged that in Temple a certain amount of ledge would be encountered. Pickman noted there is currently a lack of ANSI standards for the relatively new technology of wind towers. The board decided to hold a wind turbine forum on November 16<sup>th</sup> and discussed how to present information. They also noted recent newspaper publicity about the proposed Pioneer Green project. Lowry mentioned that one article indicated New Ipswich is in the process of making changes to their existing ordinance. Kieley offered to rework the language of the Antrim ordinance to frame a draft ordinance for Temple, and then forward it to Martin for his input. Kieley also suggested holding an extra meeting before the forum, but Pickman stated the forum is not an actual public hearing on the ordinance, just information sharing and listening to people's comments. The board then discussed the visibility of the existing meteorological tower. Pickman stated he had checked different areas in town and made note of any impact on views; he offered to return and document with photos. They then discussed the gathering of data from the met tower, and Lowry suggested establishing a connection with the New Ipswich land board to keep abreast of any changes before information appears in the local newspaper. There was concern that if Temple should turn down the current proposal for wind towers on Kidder Mountain, residents would still be impacted but without gaining any tax benefits. Lowry stated any ordinance would need to protect residents.

Lempster field trip: Ayvazian will be contacted to see if there has been any further conversation with the land owner in Lempster to help establish when a visit by the board might be scheduled.

Village District Survey results: Lowry presented preliminary data from survey respondents. She noted an overall message of "don't make any changes", and said there were many interesting written comments. She said the point of the survey was to make people think, and the board discussed the upcoming presentation on November 2<sup>nd</sup> and how to promote attendance.

Move to adjourn by Kieley, second by Martin, and so voted at 8:46 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

NOVEMBER 2, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Randy Martin, Richard Whitcomb, Allan Pickman, John Kieley, Mary Beth Ayvazian, and Rose Lowry

Call to order by Pickman at 7:35 p.m.

Approval of minutes: Move by Kieley to accept the minutes of 10/1911 as written, second by Pickman, and so voted.

Zoning ordinance for large wind energy systems: Kieley provided a draft document for review, based on language in a proposed ordinance for the town of Antrim. He noted Antrim would be voting on their ordinance soon and said the local press has featured many articles and pro/con letters on the issue. He mentioned a firm in Peterborough that served as a consultant to Antrim's development of an ordinance. It was decided Martin and Kieley will contact the consulting firm to obtain further information. Board members discussed several topics to be addressed within an ordinance, such as setbacks, tower height, shadowing and flicker, noise generation and limits, determination of decibels, and baseline noise standards. In a comparison of Londonderry noise vs. Temple noise, Pickman said the baseline in Temple might be considered "crows and chickadees", which would vary greatly from one in Londonderry that might be defined as "highway and airport". Kieley and Martin agreed to work on further refining the draft ordinance with changes that are specific to Temple.

Lempster field trip: Ayvazian informed the board that a visit to the site of the Lempster wind farm has been arranged for the upcoming Sunday at 11 a.m., and the landowner will provide a tour. Several members expressed interest in attending and plan to take notes and photos.

Public forum on Village District: At 8 p.m. Pickman opened the public forum on the Village District. Lowry gave an overall review of data obtained from the results of the Village District survey. She said there had been an overall response rate of over 10 percent. She explained the board's reasoning for seeking the opinions and how suggestions of current residents may be helpful in determining how to be adaptive to future needs. She described the survey as obtaining the "untainted feelings of townspeople". Lowry indicated the overwhelming response from survey results was that no changes to the village area were wanted or needed. She displayed bar graphs that detailed responses to individual survey questions. She said one overall positive response was support for a coffee shop/bakery, as well as some support for walking or hiking trails. Lowry said the results show that the majority strongly wishes to keep the quietness and rural character of Temple village intact, and they "do not want "busy". Other topics included the future of the old brick school, learning from the Smart Growth process, the availability of the variance process for small businesses, whether senior housing should be considered, and potential uses of Skladany property. Lowry stated once again that survey data could be summarized as "no to everything". Kieley made a motion that the Planning Board would not put forth any Village District zoning changes this year, seconded by Ayvazian, and voted in the unanimous affirmative. Pickman asked Lowry to finalize the charts and data and post on the town web site, as well as place in the town newsletter.

Wind turbine forum: Board members discussed how to present information to residents. Kieley suggested using the big area of the Town Hall and utilizing a computer presentation, which

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

NOVEMBER 2, 2011  
FINAL MINUTES OF PUBLIC MEETING

Ayvazian and Lowry agreed to create. Pickman read a letter from the town of New Ipswich with information about a Planning board meeting to be held Wednesday, November 16<sup>th</sup>. Of interest is presentation of a design review application for a large scale wind energy project being proposed by Pioneer Green Energy. After brief discussion it was decided to change the date of the next Temple Planning Board meeting to Thursday, November 17<sup>th</sup>. This would allow Temple board members to attend the New Ipswich meeting, and then allow Adam Cohen of Pioneer Green to attend the Temple wind forum.

Move to adjourn by Martin, second by Ayvazian, and so voted at 9:03 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

NOVEMBER 17, 2011  
DRAFT MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Mary Beth Ayvazian, Randy Martin, Rose Lowry, Allan Pickman, and Richard Whitcomb

Call to order by Pickman at 7:02 p.m.

As the projector needed for the wind energy forum had not yet arrived at the Town Hall, Pickman suggested the board deal with other items on the agenda until its arrival.

Whiting property deed discrepancy: Pickman read a portion of a deed for property in Temple that contained a restrictive clause referencing the town of Warner. He explained that a written release to counteract the erroneous language had been prepared by attorney Richard Peppe, and the Temple Planning Board was being asked to sign the release. Pickman said he had discussed the document with Dwight Sowerby, town counsel for the town of Temple, and that Sowerby had also spoken to Peppe. A revised document was created which Sowerby indicated he was comfortable having the board sign. Kieley moved to approve the board signing the release document, second by Ayvazian, and so voted unanimously. Two copies were signed by the individual board members in attendance. Attorney Peppe thanked the board for its courtesy.

Approval of minutes: Move by Kieley to accept the minutes of 11/02/11 as written, second by Lowry, and so voted.

Public forum on Large Wind Energy Systems: At 7:10 p.m. Pickman opened the public forum, and Lowry and Ayvazian provided a PowerPoint presentation with verbal commentary. Approximately 30 audience members were in attendance. Adam Cohen, a representative of Pioneer Green Energy, was available to address questions and concerns. Lowry explained the catalyst for holding the forum was a proposal for a wind farm project in the neighboring town of New Ipswich. There is a possibility the project might be extended into Temple in the region of Kidder Mountain. Lowry stated the town now needs to determine the best way to approach large scale wind energy. She said the Planning Board is currently working to draft a zoning ordinance to regulate commercial wind farms, and residents would have a chance to vote on accepting the ordinance in March. Pickman told the audience the board itself is still in the learning and information gathering stages. It was also noted that several board members had recently visited a wind farm in Lempster.

As the presentation continued, many questions were raised and dialogue ensued between board members and residents. Topics included the following:

Town of Antrim – current situation with a wind farm proposal and attempt to develop a zoning ordinance; Town of Lempster – details of board members trip to visit the existing wind farm and personal impressions; Town of New Ipswich – location of proposed towers and visual impact in Temple; importance of existing electrical transmission line; protection of rural character, property values, public health and safety, and environment; turbine size, height, blade speed, and noise generation; disruption during construction phase; tax implications for towns; sale and distribution of power; impact on raptor migration and wildlife; road access and maintenance; model ordinance components; state and/or federal regulations and involvement; current status of Pioneer Green plan.



# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

NOVEMBER 17, 2011  
DRAFT MINUTES OF PUBLIC MEETING

Various questions posed by audience members included:

- impact on Temple roads
- exact location of proposed towers in Temple
- when can state step in
- size of setbacks
- possible 'view tax' repercussions
- use of underground power lines
- would access road be private or open
- affect in area of Wapack trail
- history of Pioneer Green Energy
- need for building or substation
- types of turbines
- noise issues
- involvement of Public Utilities Commission
- increased revenue for town
- rebate or discount on power
- age (longevity) of project
- need for regional impact study
- Conservation Commission participation
- option for town to refuse

With the presentation being concluded, Lowry indicated the board's next step is to research other town's ordinances, and draft an ordinance that is tailored to Temple's needs. She urged residents to attend Planning Board meetings to provide input and ask questions. She advised there would be two public hearings scheduled to introduce and discuss the proposed ordinance. Lowry then asked for a quick show of hands in response to 1) being anti- zoning ordinance, 2) placing restrictions on Temple towers, and 3) encouraging alternative energy in town. She thanked the audience for attending and participating.

The wind energy forum ended at 8:45 p.m.

Meeting adjourned at 8:45 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

NOVEMBER 30, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Randy Martin, Bruce Kullgren, Allan Pickman, Richard Whitcomb, and Rose Lowry

Call to order by Pickman at 7:20 p.m. after a slight delay in setting up the PowerPoint presentation.

Public forum on Large Wind Energy Systems: Lowry welcomed the audience of approximately 60 people and gave an overview of the meeting format. She asked that questions be held until after the initial presentation. Lowry then provided commentary to a PowerPoint display. She explained that Pioneer Green Energy has proposed a multi-tower wind farm project in the neighboring town of New Ipswich, and is also considering placement of 1 to 3 towers in Temple in the area of Kidder Mountain. She indicated planning is still in the preliminary stages. She said Temple is considered an abutter to the New Ipswich project due to regional impact. Even if no turbines are installed in Temple, all New Ipswich towers would be visible in Temple. Lowry stated New Ipswich already has a large wind energy zoning ordinance in place to regulate commercial wind, and now Temple is considering creation of such an ordinance. This would help maintain local control, protect the character of the town, safeguard public health and safety, preserve property values, and protect wildlife and the environment. She also said without any local control the state Site Evaluation Committee (SEC) could become involved, as well as the local Zoning Board of Adjustment (ZBA). Lowry next discussed turbine size and the amount of energy created. She then discussed tax implications for the town, including tax revenue, assessed value, depreciation, and cost of local services. She commented that the Planning Board (PB) does not yet have a firm grasp on actual numbers and is working to research and establish reliable figures. The next topic was bird kill numbers, and local concerns over raptor migration in the Wapack range area. Lowry then listed many of the components of a large wind energy system ordinance, saying while some were technical in nature, others would be specific to Temple. She stated the Planning Board's next steps include obtaining feedback from the townspeople, then working to draft an ordinance with the intent to establish some control and protect the town. The board would then hold two public hearings, and in March residents would be able to vote on accepting the ordinance.

The audience then was encouraged to offer comments and/or ask questions, including the following:

*Q - Can the town of Temple offer any input on the New Ipswich project?*

A - Pickman said the New Ipswich project is in the preliminary design stage, and no formal application has been made to the town. Kieley offered further information, saying in 2010 New Ipswich passed an ordinance for Large Wind Energy Systems (LWES), and the Pioneer Green project being proposed is grandfathered under that ordinance. So far Pioneer Green has erected a meteorological tower to obtain data. However, the town of New Ipswich is now considering changes to their LWES ordinance, specifically addressing noise issues. As abutters, Temple can make a statement on local impact, as part of perceived regional impact.

*Q - Is the Planning Board aware of a documentary on the impact of wind energy on a small town in the state of New York?*

A - No PB members have seen such a documentary.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

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FINAL MINUTES OF PUBLIC MEETING

*Q – Is the site of the proposed project near the Wapack trail?*

A – Lowry reviewed the location of the preliminary tower placement in relation to the trail as illustrated on one of the presentation maps.

*Q – Will the ordinance be ready in time for the town to vote in March?*

A – Lowry said that Pioneer Green is willing to wait for Temple to produce an ordinance. Gathering of ongoing information from Antrim and New Ipswich will be helpful in this process. Kieley explained the state Site Evaluation Committee (SEC) can become involved in any project of 30 megawatts or greater. He also said Antrim is voluntarily utilizing the SEC, and has thereby lost some local control. However, state requirements include consideration of any local ordinance. Kieley continued that the PB feels with a local ordinance in place, the state will pay more attention to local interests. He also said Pioneer Green may consider going directly to the state rather than having to deal with two towns with two different ordinances.

*Q – How to determine sound levels and size of setbacks?*

A – Lowry described her impression of a visit to the Lempster wind farm, and how temperature, wind and distance variables can alter noise. Setbacks typically range from 1000-2000 feet. Kieley mentioned decibel levels, and protection of involved property owners and non-participating (abutting) property owners. There can also be negotiations with surrounding property owners that may involve financial compensation.

*Q – Statement from resident who owns property as part of Wildcat Partnership. He has talked with Pioneer Green and also visited Lempster site; mention of "siren sound" as blades cut through fog, disturbed at screeching noise and thought too loud; not impressed by site of wind farm there.*

A – Lowry discussed the access roads at the Lempster site and stated work sites need to be recovered.

*Q – Efficiency of wind energy, history of Pioneer Green Energy, and contact with New Ipswich?*

A – Lowry explained that wind is considered one alternative source of energy and an emerging technology. Pioneer Green is the project developer, and when ready they will shop the project around and sell to a new owner. This is their first wind energy project. The Temple PB is already talking to the New Ipswich PB and attending meetings/hearings in that town. Kieley stated while the focus now is on Pioneer Green, an ordinance will apply to any/all other projects that may be proposed in the future.

*Q – Comment about understanding the need for Temple to have a LWES ordinance in place to give the town some control.*

A – Agreement from board members.

*Q – Why should Temple allow this type of project; how does it improve the town?*

A – Lowry answered there are mixed feelings, but embracing alternative energy is positive, and there would be some income for the town. Kieley stated energy companies are being subsidized by government funding and are encouraged to promote alternative energy projects. He agreed that "green" energy and local tax revenue are the main reasons for consideration.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

NOVEMBER 30, 2011  
FINAL MINUTES OF PUBLIC MEETING

*Q – Can Temple say “no” and keep commercial wind turbines out?*

A – Pickman said the town could pass an ordinance saying they are not allowed. However, state involvement might override this, and a court case could be brought forward. Pickman and Lowry agreed a definitive answer to this question is still unknown. There was a brief discussion of the town's rights vs. state intervention, and how an extremely restrictive town ordinance might actually encourage the state to step in. Kieley said the town has its “hand on a dial” with regard to how restrictive a LWES ordinance should be.

*Q – How is PSNH involved?*

A – Lowry said PSNH owns the existing transmission line, and could purchase and then sell the power generated by a wind farm. There would be no break on power costs to town residents.

*Q – If the project in New Ipswich should fail to go through, how would this affect Temple?*

A – Kieley said it is possible if Temple has a weak ordinance, the entire project could shift here. It was also noted that if there is no immediate need for power, the project itself might not be needed. Lowry said this situation has occurred in other states.

*Q – Where is Planning Board going with developing an ordinance?*

A – Kieley said he has searched other towns in New Hampshire for LWES ordinances and found few currently exist. Portions of those are being scavenged to create a draft for Temple. He noted there is no zoning in the town of Lempster and therefore no ordinance. The PB would like a completed draft ordinance for the town to consider by January. If not, the board would like to step back, take more time and have the town vote at a later date. Pioneer Green will not be ready until May of 2012 to come before the board with a solid proposal. They do not yet have approval to push power onto the existing transmission line, which will buy Temple some time. The ordinance draft has been started – there are tricky issues to debate and decide.

*Q – How can public stay informed and involved?*

A – Planning board meeting minutes are available on the town's website; emails can be sent to the PB clerk at [TempleAssist@comcast.net](mailto:TempleAssist@comcast.net); letters can be sent to the PB at the town offices; ongoing PB meetings are open to the public. Pickman stated the next few meetings will be work sessions to discuss and construct the ordinance; the public is welcome to attend.

*Q – Why not encourage small wind energy projects rather than large?*

A – The town already has a Small Wind Energy System ordinance in place. However, it can be an expensive proposition at this time for a homeowner to do this.

*Q – Comment to encourage the board to check out the New York wind documentary previously mentioned and do further research.*

A – Board members agreed.

*Q – Is other wildlife affected besides birds?*

A – Lowry suggested some data indicate bats may be affected.

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*Q – Could the PB check into wind regulations in the state of Vermont, where there are many existing turbines?*

A – Kieley said he believes there may be a statewide ordinance, instead of various local ones; he will investigate.

*Q – Are the slides from tonight's presentation available?*

A – Some images will be posted on the town website, but come to meetings to stay informed.

*Q – Will personal input be accepted at PB meetings?*

A – All are welcome to come and listen but not talk unless invited to do so, as work sessions are necessary to get the ordinance developed in time to meet deadlines.

Planning Board member Bruce Kullgren then asked to speak. He said he believes the prospect of a commercial wind farm in this area is "an atrocity", the energy is not needed, and the project is just an example of "corporate greed". He made reference to a few years back when the Planning Board was considering a large subdivision located on a mountain, and said the town was in an uproar then due to concerns about the view shed. He indicated consideration now of a mountain covered with turbines is "appalling". He stated any PB ordinance would be a "set-up" for a developer – "you do A, B, C, D – you got it". He suggested the town tell them "no" and "stick to it". He stated this development would be destructive, with massive cuts of trees, massive roads, and huge graveled tower sites. He urged "do not destroy the hillsides" and said he finds the whole proposal is "beyond comprehension".

Selectmen Tedd Petro then spoke, saying he was "not crazy about them", but the PB should ask the town what they want. He suggested contacting a lawyer to see if the town can say "no".

An audience member then said he feels Temple "has a powerful voice" and its input may have an impact and even reduce the New Ipswich project,

At this point Lowry asked for a straw poll with a show of hands in response to three questions: 1) in favor of commercial wind? – a few; 2) against? – approximately half the audience; undecided? – approximately half the audience. Lowry encouraged residents to research this subject on their own. Pickman said the Planning Board will be working hard to create an ordinance specific to Temple and have it ready to go into the public hearing process. Lowry thanked the audience for their interest and participation. The forum ended at 8:55 p.m.

Meeting adjourned at 8:55 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

DECEMBER 7, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Mary Beth Ayvazian, John Kieley, Richard Whitcomb, Allan Pickman, and Rose Lowry

Call to order by Pickman at 7:37 p.m.

Approval of minutes: Move by Kieley to accept the minutes of 11/17/11 as amended, second by Pickman, and so voted unanimously.

Large Wind Energy System (LWES) ordinance: The board engaged in discussion on the development a draft ordinance. Kieley presented a list of several questions he wished the board to consider:

1. Should we have a large wind ordinance?
2. When does it need to be ready?
3. Is it advantageous to parallel New Ipswich? – pros and cons
4. Should we seek professional help? – who, and \$\$
5. How best to keep residents informed?
6. What should be covered? – view shed, noise, flicker, setbacks, birds

Lowry referred to question #1 and said she believes towns without an ordinance seem to have a tougher time. She made reference to wind towers in Gardner, MA, and a related website (<http://mwcc.edu/renewable/WindEnergy.html>). Information available there includes the history, costs, funding, and timelines of two wind turbines that were activated this year on the campus of Wachusett Mountain Community College. She noted many pre-project studies had been performed, and the avian (bird) study alone was 107 pages long. She also noted funding for the nine million dollar project consisted mainly of federal or state grants and bonds. *After further discussion, Kieley made a motion that the Planning Board agrees that Temple needs an ordinance to properly protect the town in regard to wind towers, second by Ayvazian, and so voted unanimously.*

Kieley referred to question #2 and brought up discussion of timelines. He said according to Adam Cohen, spokesman for Pioneer Green Energy, the company won't have a concrete proposal ready to present to Temple until at least May of 2012. One issue is that an agreement with PSNH to access the transmission lines is not yet in place. Kieley suggested the town get something on the books as early as possible to define process and requirements; this could be refined at a later date. Otherwise Pioneer Green could go directly to the Zoning Board of Adjustment (ZBA) or the state Site Evaluation Committee (SEC). Pickman told the board about a hike he had recently completed on Kidder Mountain, which brought up discussion of tower height and impact of visibility on area towns. Board members were in agreement that sooner is better in terms of having an initial LWES ordinance. They discussed the general format and content of ordinances created by Antrim and New Ipswich, and decided to use the revised New Ipswich ordinance as a starting point.

Next there was discussion about whether to use setbacks or decibel levels to help control sound issues with wind towers. The Antrim ordinance utilizes setbacks, while the New Ipswich ordinance uses decibel limits. Pickman noted decibel levels vary, and can depend on equipment or weather variances. He wondered what might happen if a wind farm is built but

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then does not meet ordinance specifications, and what remedy could be undertaken at that point. Kieley suggested Temple may benefit from obtaining some engineering advice. He stated the town has to be in a position, when the state becomes involved, to defend what the Planning Board has done. He said for a few thousand dollars the board could get a review of the draft ordinance plus some technical advice, and suggested using the consulting firm in Peterborough with whom he has had previous contact. Kieley suggested Pickman email the selectmen's office with a proposal to pay up to \$5,000 for consultation services, although this amount is not in the town's budget for this year. Kieley said the Selectmen must manage the prudential affairs of the town and find the money; putting the amount in next year's budget is an option. *Ayvazian moved to approach the Board of Selectmen to ask for up to \$5,000 to obtain an engineering consultation, second by Lowry, and so voted unanimously.*

Audience member Bev Edwards spoke of several concerns, including the need to have bird studies done, plus consideration of health and noise issues. She said the bird issue is "huge". Lowry stated the local hawk watch group and Audubon Society do not have firm information on this type of impact. Board members indicated the ordinance should specify a bird study be done, by a consultant chosen by the town and paid for by the applicant. Edwards suggested the study be one year long to cover two migratory cycles. Ayvazian wondered if the same consulting firm could perform a storm water runoff study, but Pickman suggested a different NH engineering firm be utilized to analyze water runoff issues. Edwards said she feels wind turbines could create an entire disruption of a previously undisturbed state of environment. Possible impact on other wildlife was brought up, including a substantial moose population roaming the area near the proposed site of the wind farm. Kieley said there is language in the New Ipswich ordinance with specific penalties to deal with health problems. There was further discussion on whether to include decibel levels or setbacks, or both, with regard to regulating noise levels. Pickman stated if the board wants to encourage wind turbines, the developer must be able to meet requirements stated in the ordinance. If the town wants to discourage them, different language would be indicated. Ayvazian worried that if the ordinance is too restrictive, developers would go around the PB through the ZBA or SEC. Pickman said the board must properly craft definitions, and board members agreed that numbers and language in the ordinance must be specific. Audience member Connie Kieley urged the board to work to protect the town and the habitat.

Next the board discussed the possibility of 1) more or all of Pioneer Green's wind turbines in Temple and none in New Ipswich, and 2) other locations in town that might be considered for a wind farm, i.e. Fisk Hill. Lowry said the board must "set the bar high". It was decided that Ayvazian will contact the Attorney General's office to gather general information, and find out if the developer goes the SEC route, will the SEC listen to the town regarding specifications in a local ordinance. Lowry then proposed the board send out another mailer to town residents to keep them informed and gather their feedback. She suggested advertising the first public hearing, and said she hoped to encourage people to vote "yes" on adopting the ordinance. The board agreed to meet again on December 14<sup>th</sup> to as another work session. Pickman stated the first draft should be ready by the end of the year, to be finalized at the first meeting in January. Kieley will draft a "Temple-ized" version of the New Ipswich ordinance, and Lowry will proof-read.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

DECEMBER 7, 2011  
FINAL MINUTES OF PUBLIC MEETING

Lowry then asked board members for their personal feelings about wind turbines. Ayvazian said she was conflicted, indicating a problem with NIMBY (not in my back yard) thinking, as it would preclude alternative energy and "oil is ugly, but I respect objections to the project and follow the will of the people". Lowry said she could picture turbines if they are state-of-art and whisper quiet, and reach a "high bar", although this cannot be guaranteed. Her research has clarified what should be in the ordinance. She summarized that Temple residents deeply care about issue of wind turbines in town, while the developers are doing it for the money, including grants and loans, and not "to be green". Kieley said he can visualize the towers, and reminded the board a lot of people have fought for Temple's mountains. He said a part of the Wapack trail was re-routed due to a cell tower; he does not want to hike and see a wind tower. He said he hopes that a wilderness experience for kids should remain the same in the future as it is now. Pickman said he has personally seen polluted air from the Bow plant that heads north toward the lakes and White Mountain National Forest, and would appreciate an alternative energy source. Whitcomb said he had only seen the Lempster wind farm, and was okay with the looks but unsure about noise issues.

The board then discussed how to keep abreast of what is taking place with Pioneer Green at meetings in New Ipswich. They agreed to designate Pickman as the email contact person for Adam Cohen, to minimize the possibility of scattered emails or phone conversations. They also agreed Cohen is welcome at all public meetings. They then summarized what needs to be done to move forward with creating the ordinance, obtaining an engineering consultation, and mandating related studies. Pickman said regarding impact on wells that hydro-fracking of ledge done for this type of project should not impact wells at a distance. Kieley stated that depreciation, assessing and taxes were outside the purview of the PB, but said payments-in-lieu-of-taxes (PILOT's) are allowed by law and must be considered. They also briefly discussed regional impact and notification of abutters, including impact on views from surrounding municipalities. Mention was made of a letter received from the local Historical Society proposing 2000 foot setbacks. Pickman said that would negate using 95% of the area being proposed by Pioneer Green for a wind farm. Kieley reiterated his feelings about being able to hike and see old cellar holes and the site of the glass factory without encountering wind towers.

Move to adjourn by Ayvazian, second by Lowry, and so voted.

Meeting adjourned at 9:33 p.m.

Minutes submitted by Betsy Perry



# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

DECEMBER 14, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Allan Pickman, Mary Beth Ayvazian, Richard Whitcomb, John Kieley, Randy Martin, and Rose Lowry

Call to order by Pickman at 7:32 p.m.

Approval of minutes: Move by Kieley to accept the minutes of 11/30/11 as written, second by Whitcomb, and so voted unanimously.

Move by Ayvazian to accept the minutes of 12/7/11 as amended, second by Kieley, and so voted unanimously.

Reconsideration of 11/30/11 minutes at the request of Lowry, move by Kieley to accept as amended, second by Pickman, and so voted unanimously.

Large Wind Energy System (LWES) ordinance: The board began working to create a draft ordinance for the town of Temple. Ayvazian asked about ice throw off turbine blades, and Pickman said ice throw is addressed in the revised version of the New Ipswich ordinance. Ayvazian mentioned an upcoming NHPR radio program being promoted as a discussion on wind energy in New Hampshire. Ayvazian then read a letter she had received suggesting the town should demand shares of stock from a wind farm developer so the project would be profitable to the town. This led to a brief discussion of the situation in Antrim where a PILOT (payment in lieu of taxes) has been proposed by a wind farm developer, and how this may actually work against the town's best interests. Lowry mentioned a movie entitled "Windfall" that documents a wind farm project in upstate New York, and said the trailer indicates the project created problems, including division within the community. Whitcomb brought up blade flicker and how the impact might change due to distances and time of year. He commented that the landowner of the Lempster project has his residence located only 500 feet away from one of the turbines.

Kieley explained how he created an initial draft by using portions of both the New Ipswich and Antrim ordinances. The board then reviewed the text one paragraph at a time, making revisions to the language as they went along. Portions covered were: Purpose, Definitions, and Requirements (through paragraph #5), with agreed upon changes to be incorporated.

Kieley talked about attending a Planning Board meeting in New Ipswich the previous evening. He summarized that board's reaction to Epsilon reports submitted by Pioneer Green Energy, and said New Ipswich is waiting for their expert to review and respond to the documentation. Kieley continued that the Temple Board of Selectmen has talked about hiring consultants to help the Planning Board with the LWES ordinance process. He stated at least \$2,000 was available to use now for this purpose, and more money could be forthcoming in 2012. He also said he has been advised to consider utilizing the consultants who have been working with New Ipswich. There was brief discussion about how to find the right consultants to help the town.

Move to adjourn by Ayvazian, second by Lowry, and so voted unanimously at 9:05 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

DECEMBER 21, 2011  
FINAL MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Allan Pickman, Richard Whitcomb, and Rose Lowry

Call to order by Pickman at 7:49 p.m.

Approval of minutes: Move by Kieley to accept the minutes of 12/14/11 as written, second by Whitcomb, and voted three in favor with Lowry abstaining.

Large Wind Energy System (LWES) ordinance: The board continued their work on a draft ordinance. There was discussion about hearing ranges, background noise, and a new study on infrasound and low frequency noise produced by wind turbines with indications of related adverse health effects. It was decided to require the developer obtain noise studies, at their expense, showing comfort levels are being met. The board finished their review of the entire document, with suggested changes being discussed and revisions made as determined to be needed. The final draft will be refined at the next meeting, and a printed copy will be made available in the town offices before the first public hearing schedule for 01/18/12.

Kieley brought up the status of hiring a consultant. He noted three current scenarios: 1) utilizing the firm in Peterborough that has already been contacted and provided a quote for services, 2) hire the group who wrote the New Ipswich consultation report, 3) use another consultant for whom New Ipswich has provided contact information. Kieley offered to contact the consultants in option #3 to ask questions and hopefully help determine who to hire. Pickman also suggested the ordinance be reviewed by town counsel.

Lowry mentioned the issue of taxes vs. PILOT (payment-in-lieu-of-taxes). It was decided this would not be a Planning Board issue, but should be handled by the town assessor through the Board of Selectmen.

Move to adjourn by Kieley, second by Pickman, and so voted unanimously at 9:52 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JANUARY 4, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Randy Martin, John Kieley, Mary Beth Ayvazian, Allan Pickman, and Rose Lowry

Call to order by Pickman at 7:34 p.m.

Pickman asked for a moment of silence in memory of Richard Whitcomb.

Approval of minutes: Move by Kieley to accept the minutes of 12/21/11 as written, second by Lowry, and voted four in favor with Ayvazian abstaining.

Large Wind Energy System (LWES) ordinance: The board continued refining the language of the draft ordinance. Kieley mentioned ongoing changes the Town of New Ipswich was making to their wind energy ordinance. This included no longer using the term "ambient" and substituting the term "background noise" instead. Another change was removing the height allowance for towers. This was followed by discussion of whether to continue to use 33dB as a maximum acceptable noise level, and how to define background noise values. Pickman offered to contact one of the consultants used by New Ipswich to seek further information. Connie Kieley urged the board not to create an ordinance that was less stringent than that of New Ipswich, saying it might have unintended consequences. Martin suggested the board consider how the town could work to obtain shares and actually profit from the project. One response was that should this occur and then a lawsuit be filed, the company could file bankruptcy and leave the town as sole defendant. The board also discussed wind rights, issuing of permits, status of Antrim's large wind energy ordinance, and determination of application fees.

Kieley said he had made contact with a sound consultant firm, and they were available to review the ordinance document at a cost of \$750. Kieley said if a consultant needed to come to a meeting the cost would be an additional \$500. Board members agreed this sounded reasonable and decided to have Kieley hire the consulting firm.

Pickman stated the board should vote to accept the current ordinance draft as amended to present at the first public hearing. Kieley so moved, seconded by Ayvazian, and voted in the unanimous affirmative. A printed copy of the document will be available in the town offices and an online version on the town website.

Home business zoning changes: Board members agreed to again consider the "housekeeping" issues that were proposed last year but did not receive follow through due to time constraints. These will be posted for the second public hearing to be held on February 1, 2012.

PB quorum – Martin asked the board whether a new member or an alternate should be appointed to make sure a quorum can be obtained for meetings. No action taken. It was noted the upcoming dates for candidates to file for elected office are January 25<sup>th</sup> through February 3<sup>rd</sup>.

Move to adjourn by Ayvazian, second by Kieley, and so voted unanimously at 8:49 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JANUARY 16, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Randy Martin, Allan Pickman, Mary Beth Ayvazian, and Rose Lowry

Call to order by Pickman at 6:38 p.m.

Large Wind Energy System (LWES) ordinance: Kieley and Lowry provided a recap of their attendance at a recent New Ipswich Planning Board meeting. This was the final public hearing on modifications to the existing New Ipswich LWES ordinance. After discussion, the vote of the New Ipswich Planning Board was unanimous in support of the changes to the ordinance. A written summary of notes taken at the New Ipswich meeting by Lowry and Kieley was provided to Temple Planning Board members (copy attached). Board members reviewed the notes and discussed the following:

- Top priority is protection of residents' health and property values
- Example of Lempster and how a wind farm as a commercial use is taxed
- How to determine and mandate an acceptable level of audible vs. inaudible (infrasound) noise
- Specific controls within an LWES ordinance does not mean a wind farm cannot be constructed, just that it must meet certain levels

The board briefly discussed management of shadow flicker; agreed to keep the 33dBa limit in the ordinance; timing of the first and second public hearings on the LWES ordinance; format of the PowerPoint presentation for the first hearing; how to get people to understand that an LWES ordinance is needed to protect the town; and sending out a mailer before the second hearing. Protection of historical areas was brought up. Pickman responded that they would need to be mapped and quantified. Kieley suggested adding language that historical resources are very important to Temple, and must be protected during construction and after. Pickman cautioned that some of these historical areas are located on property of participating landowners, and if the ordinance is too stringent it could be considered a 'taking'. Kieley suggested the possibility of requesting setbacks. Also brought up was the need to minimize the impact of construction on stone walls. Kieley volunteered to draft the new language for protecting historical resources.

The ongoing situation in the town of Antrim was discussed with regard to taxation of wind farms providing revenue to the town. Kieley stated that it seems Antrim was given misinformation, and is now struggling with how to discern true tax implications. It was noted there is a generalized misconception that the town will receive a financial windfall. A suggestion was made to get the Temple Board of Selectmen involved with this aspect now rather than later. There was brief discussion of the need to develop a new LWES application form and discern an application fee structure.

Move to adjourn by Kieley, second by Ayvazian, and so voted unanimously at 7:29:56 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JANUARY 18, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Allan Pickman, Mary Beth Ayvazian, and Rose Lowry

Call to order by Pickman at 7:04 p.m.

PUBLIC HEARING - Large Wind Energy System (LWES) ordinance: At 7:04 p.m. Pickman opened the hearing to present the LWES ordinance to the public. Approximately 15-20 people were in the audience. Kieley provided a commentary as Lowry displayed a PowerPoint presentation that highlighted:

1. background behind large wind energy coming to Temple
2. drafting the ordinance itself – research, content, consultations, multiple revisions, and first public hearing
3. obtaining audience input – comments and questions
4. the next steps in the zoning amendment process – final draft of ordinance, second public hearing, and vote in March

Background – A Texas company called Pioneer Green Energy (PGE) has approached the towns of New Ipswich and Temple with plans to erect large wind turbines in the area of Kidder Mountain. PGE is a relatively new organization, never has done this type of project, does not build the towers themselves, leases land and arranges all permits, then sells project to developer/builder. The Temple Planning Board (PB) has done extensive research, and there are not many precedents in the state of New Hampshire with regard to available LWES ordinances. New Ipswich does have such an ordinance in place (2010) and will be voting on modifications in 2012, and Antrim is trying for a second time to establish an LWES ordinance in their town. The State of New Hampshire has mandated that by the year 2025 at least 25% of energy shall be produced from renewable sources. The State has also formed a Site Evaluation Committee (SEC) to expedite these types of projects. By law, towns cannot unduly restrict or limit development of renewable energy sites, or the State could step in and override the town.

Ordinance development involved a compilation of the best aspects found in other LWES ordinances, plus language specific to the features and needs of the town of Temple. [When an audience member asked about checking with other states, Kieley responded that the board must work with NH rules and regulations.] There have been multiple revisions, plus contact with the SEC, and consultation with a sound engineer and town counsel. Two town forums have been held to provide information to the community and seek their input. Several PB members visited the town of Lempster, where a large wind farm exists, to obtain information and impressions. [One audience member commented that it seems residents there are pleased with the wind farm. Kieley responded that easements and financial compensation can be offered by the developer to residents, after which complaints become minimized.]

The top priority is to protect public health, and a key element to this is limiting noise levels. There was mention of a recent study in Falmouth, MA which showed severe impact on health from nearby turbine placement. The ordinance bases noise controls on an EPA/WHO study of effects on public health, and utilizes both setbacks and limits on decibel levels to offer protection. Ayvazian pointed out that setting up the ordinance in this manner will not preclude future development. Lowry commented that the town attorney stated the town cannot set up the ordinance for future technology, but must address limits as relevant now. [An audience member

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asked about the size of the turbines and impact on wildlife. Another person suggested there may be impacts to pets and livestock as well.] Kieley said the town is trying to provide alternative energy while balancing protection for humans, wildlife, livestock, and pets.

Ordinance specifics: Maximum tower height is limited to 450' high structures on monopoles, and limits on lighting, color, wiring, and peripheral operating equipment or structures are addressed. There are controls on blasting, construction and operation. Minimum setbacks are 2000' from adjacent property lines, (except if a Participating Landowner waives their rights.) Siting and engineering cannot interfere with other communication types, such as television, phone, satellite, etc. Noise levels cannot exceed 33 decibels (dBA) at any time on a Non-Participating Landowner's property. It is expected this limit will result in sporadic to no complaints. At a higher decibel level of 45dBA sound becomes rhythmic, and both audible noise and inaudible noise (infrasound) may impact health. Shadow flicker, tower shadow, and glint are defined and addressed to reduce visual impact. Project construction shall not affect public infrastructure. PGE indicated they might improve certain roads (i.e. cut trees and widen) to accommodate movement of equipment, but this is seen as a negative for the town of Temple. Project access may be through the town of New Ipswich, but this has not yet been established. Due to the need to create massive inward roads for such a project on Participating Landowner's property, water issues such as runoff and erosion must be negated. Also, blasting of ledge could have impact on water sources and wells. These issues are addressed, with limitations and protections provided. Safety factors include concerns with tower design and operation, and fire and hazard protection. Emergency plans and on site signage are called for to afford protection. Environmental safeguards are mandated, specifically to avoid any sensitive areas, require spill protection levels, and produce an impact study at least every three years. Although these studies will be paid for by the developer, it is expected there will be some tracking and follow-up that are not reimbursable and will result in some increased expenses to the town. Impact on wildlife or habitat must be controlled, and studies will be required. It was noted that a National Wildlife Refuge is in the area, as is an Audubon raptor migration site. Lowry noted the Wapack range is specifically known as a "leading line" for migrating raptors, and is a unique geographic structure. Kieley mentioned this particular part of the ordinance might need to be upgraded, as Miller State Park (on Pack Monadnock) could be sold or otherwise utilized by the State. The project must be designed with specific requirements for protection of wildlife, birds, raptors, and bats. Historical Site protection is called for, which requires the Applicant to inventory and map historic sites within 2,000 feet of the proposed LWES project. A plan must be submitted to minimize impact during construction and operation, and the Planning Board may require setbacks or other action to protect these sites. Kieley commented that this would be a good example of trying to balance the ordinance and prioritize the most important aspects, i.e. aesthetics, history, health, and wildlife. Lowry stated the board cannot create restrictive setbacks that obliterate land options for the project, saying "In Temple it would be hard to get 2,000 feet away from a stone wall". Visual aspects must be considered, with tower design and location needing to avoid adverse visual impact, including dominating the landscape. There was mention of the trip to Lempster and the huge visual impact along the ridge there. A photo-simulation of the project is a requirement, and there are limitations to tower lighting. Decommissioning of the LWES project will be required when no longer operational, including restoration of the project area close to preconstruction status. Kieley noted that current federal subsidies will expire at the end of 2012, and these types of projects will lose some monetary

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incentives. The town does not want to have to deal with an abandoned wind tower project. A bond will be required by the town to ensure removal and restoration. It is expected the town may incur some expenses in dealing with a LWES project, i.e. consultation with biologists, engineers, and lawyers. The ordinance currently states the developer must maintain a \$25,000 fund with the town. There is some question if this might be considered prohibitive, and may not be legally permissible. Regarding enforcement, if there are problems with a project, the town can shut down the project or direct the operator to the Zoning Board of Adjustment (ZBA). A system for resident complaints must be established, and if conditions of the operating permit are determined to have been violated, they must be rectified or the project can be shut down.

Comments and questions: At 7:55 p.m. the audience was invited to express comments or ask questions, as below: [Q for Question, C for Comment, A for Answer]

Q. Maximum size of a wind turbine?

A. Height of 450' to tip of turbine blade.

C. Best water in town comes down off the mountain, and is an asset to the town; concerned about an impact study only every three years.

A. For the life of the project, the town would have a right to evaluate and correct the impact of the project on water, at the developer's expense. Also, this ordinance would apply to any LWES project in town.

Q. This project would have regional impact to other surrounding towns – what recourse would they have?

A. Other towns will have standing and can comment on the project.

Q. Alternative types of turbines – i.e. drum type – are available – could they be used in this project?

A. Those types of turbines are not in commercial use right now.

Q. There are no state incentives for energy benefits. Of what benefit is this project?

A. There is some tax money that comes to the town. Development companies promote high dollar amounts as a benefit to the town; after researching this, realize not so much monetary benefit. There is also some measure of pride in contributing to alternative energy – a small net gain – and meeting State requirements.

Q. Could the town negotiate with the developer for money?

A. At present the town either provides a tax bill for the assessed value, which eventually depreciation will affect, or accepts a "payment-in-lieu-of-taxes" (P.I.L.O.T.). Any income to the town gets shared (school, county, state). Also, the project is built on private property, not town owned land, so there is a financial gain for the landowners.

Q. Regarding the Glassworks owned by the Historical Society – would fall under the 2,000 foot setback?

A. As a Non-Participating Landowner, would have that setback protection. But, a cellar hole located on a Participating Landowner's property would not fall under this. Right now, historical

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sites are not defined. If the 2,000 foot setback is used for everything, it would preclude a viable project site, and the State would likely not allow this as it would be deemed too restrictive.

Q. Is there no way to stop this project from happening?

A. Actually, research indicates the bird option may be important here, especially the leading line feature of the Wapack. Description of the terrain in the area of Todd Road and the ridge, and mention of the need for balance.

Q. At the previous town forum, a number of attendees seem opposed to this. If there is no ordinance, what happens?

A. The State has the SEC in place for energy projects, and they can impose their own set of standards. If Temple has no ordinance in place, the town's ability to specify requests or preferences is diminished. If these are in place, the State cannot ignore. It is unclear about the actual SEC involvement. Where two towns are involved with the PGE project, the State could step in.

Q. Regarding the huge roads created for the project – when are these remediated?

A. At decommissioning. The roads are necessary for the duration of the project, in case of equipment replacement or new technology. The space is needed for awhile. Of note, the roads in the Lempster project are about seven miles long and lined with ugly rip-rap.

C. Congratulations to the Planning Board, for their work done on this ordinance is excellent, and it seems due diligence has been done.

Q. This seems inevitable, so the town must do the work so the State cannot "cram down our throats". The project will have impact on the town (highways, fire, and police) - training and equipment will be needed, and there is a cost to maintain. Can we get help to maintain from the developer?

A. This will be explored and possibly written into the ordinance.

Q. Are the project roads private?

A. Yes, but if town roads are used or changed, the town must still maintain them.

Q. Setbacks are measured how?

A. From the base of the wind tower to the Non-Participating Landowner property line.

Q. What if a Participating Landowner has tenants?

A. Those tenants' rights would be gone as well.

Q. Regarding raptor migration – is New Ipswich equally concerned?

A. They do require a bird study in their ordinance. Temple's ordinance has stronger language; the unique Wapack feature needs protection.

Q. Regarding revenues and covering municipal costs – perhaps could consider a reduction in the view tax?



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- A. This is outside the purview of the Planning Board, but the Board of Selectmen may entertain this. The issue may arise, and the Selectmen would need to defend the view tax or abate it. This could result in a loss of revenue to the town. The turbines would bring in some revenue and balance out, but the numbers are not really known.
- C. The Planning Board did a great job working on this ordinance. The town will have the ordinance and a vote, but lacks strategy for dealing with this situation. Get the ordinance voted in – then what? Need to allow the town to decide what happens here. Need a strategy; need to anticipate politicking. Need counter measure to inform people and reduce effect on town. Suggests surrounding area towns should band together. It will be harder for the State to roll over multiple towns.
- A. The Planning Board has been focused on getting the document done. Need to develop a communication plan to inform Temple voters.
- C. Regarding the decommissioning fund, the town attorney has indicated we may not have the right to do.
- A. Maine has state statutes for decommissioning, New Hampshire does not. Small town democracy has huge say. Calling legislators was suggested.
- C. Pickman read comments from letters/emails received on subject, both pro and con. Also, mention of a recent health study from Massachusetts.
- C. The impact to everyone in the town is dollars and cents.
- A. Cautioned to not get too dramatic one way or another, as the real numbers are not known yet.
- C. As a commercial project, should be no financial impact to town.
- A. There is not enough money for the town to give up health and way of life here.
- Q. What is the financial strength of PGE?
- A. It took some doing, but they finally admitted they just go through the permitting process, sell off the project, and then banks are involved.
- C. Suggested the ordinance state that the town will deal only with businesses with sufficient finances to cover the project and expenses of maintaining.
- C. The SEC hearings force companies to prove financial stability. Why can't the town?
- A. The ordinance can and should protect town interests. Any company wanting to invest would make sure the project was viable. However, there is always some risk.
- C. Mention of Solyndra, a renewable energy company that went bust. Investors must be educated.
- A. Discussion of PGE, finances, sale to investors.
- C. The ordinance should allow the town to fight the SEC.

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A. "Low hanging fruit" principle from New Ipswich. Developers like towns with no zoning or ordinance. Towns want best companies and best technology.

C. "Green" projects seem to get fast-tracked.

A. Discussion of informing residents on ordinance and getting them to vote.

C. Any way to stop this project?

A. 1) perhaps raptor migration issue, 2) town should become "high hanging fruit", 3) if goes to SEC, town can protest. It can be hard/tricky to stop the developer. The Planning Board will send out a mailer to inform residents that a vote for the ordinance encourages protection for the town. [End Q&A]

Lowry stated the town attorney feels this ordinance could be construed as too restrictive. She asked the audience for their opinion on priorities, which is where the ordinance language should be the strongest. There was a brief discussion about aspects affecting health. After a show of hands for each of seven categories, the results were: 1) health, 2) wildlife and birds, and 3) town finances.

Kieley related the next steps in the ordinance process. He stated the board will incorporate suggestions from the sound consultant and the lawyer. A new draft version will become available on Friday, January 20, 2012, and will be posted on the town's website and also available in print at the municipal offices. There will be a second hearing on February 1<sup>st</sup>, 2012, after which only small refinements (such as grammar and punctuation) can be made to produce the final version. This will go to a vote of the townspeople in March.

The board extended their thanks to the audience for attending and participating, and the hearing closed at 9:08 p.m.

The meeting continued and board members discussed the comments and suggestions of the audience. The ordinance was reviewed and further changes were made. They agreed to meet the following evening to clean up the draft and finalize changes.

Meeting will be posted for Thursday, January 19, 2012 at 7:00 p.m.

Move to adjourn by Pickman, second by Kieley, and so voted unanimously at 10:17 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

JANUARY 19, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Allan Pickman, John Kieley, Rose Lowry, and Mary Beth Ayvazian (by telephone)

Call to order by Pickman at 7:23 p.m.

Large Wind Energy System (LWES) ordinance: The board worked to finalize the draft of the LWES ordinance. Among the revisions were changes that had been suggested by town counsel. The list of ordinance definitions was also reviewed and updated. The content of Section C. "System Requirements" and Section D. "Application Procedures" were compared for consistency. There was discussion about the requirements in Section H. "Administration and Associated Costs", including the condition that a \$25,000 bond must be held in escrow to help defray any town costs associated with the project. After noting pros and cons, it was decided to delete Section H. entirely. Other topics that were brought up and briefly reviewed included referencing financial conditions in both sections C and D, making sure everything reads in chronological order, defining setback size, and timing of determination of technical aspects of towers and engineering specifications. Also considered was the possibility of a project being proposed, going through approval process, and then having the acquired permits transferred to a different developer. It was noted that Pioneer Green is currently involved in another large scale project in Maryland. This led to a discussion of financial stability of companies who propose these types of projects, and whether the town's Board of Selectmen have authority to review a company's credit and resources. Kieley wondered if the Public Utilities Commission (PUC) or Office of Energy and Planning (OEP) could get involved with this type of sale, where the original contractor wants to sell the project 10 years down the road. Pickman said no matter who is involved there is no guarantee against bankruptcy. Honey Hastings suggested putting language in the ordinance to require notice to the town if development rights are being passed on, as well as advising of any change in name or contact information during the life of the project. Kieley noted the ordinance might require changes through the years due to evolving technology. The topic of raptor migration was brought up, including the significance of the 22 mile long "leading line" through the Wapack ridges. Kieley said further documentation can be presented to project applicants to explain the migration route significance and to "put a stake in the ground relative to preserving this resource". Board members then gave some thought to the need to create a new application form and determine a fee schedule for this type of project.

At the conclusion of their work, Kieley made a motion to accept the draft ordinance #10 as amended, to be posted for the second public hearing. This was seconded by Pickman, and so voted in the unanimous affirmative, by three members present and Ayvazian voting via telephone. A copy of the ordinance will be posted on the town website, and a printed copy made available at the town offices.

Move to adjourn by Kieley, second by Pickman, and so voted unanimously at 8:58 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

FEBRUARY 1, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Mary Beth Ayvazian, Allan Pickman, Rose Lowry, and Randy Martin

Call to order by Pickman at 7:05 p.m.

Pickman explained this meeting would serve as the second hearing and final review of the newly drafted wind farm ordinance, as well as provide a chance to consider "housekeeping" changes to language in the Home Business ordinance. He said residents will be able to vote on these zoning amendments in March.

Public Hearing for Large Wind Energy System (LWES) ordinance: Pickman opened the hearing and turned the presentation over to Lowry and Ayvazian. Lowry thanked the audience of about 40 people for attending, and she and Ayvazian provided a commentary to a PowerPoint display. Lowry gave the history of Pioneer Green Energy (PGE) approaching the town with a wind farm proposal. She said extensive research has been done by the Planning Board to develop a comprehensive LWES ordinance. Lowry said New Ipswich has had a LWES ordinance since 2010, and revisions are being considered this year. In response to a question from the audience, Lowry answered that although one project is under consideration, there may be others coming in the future. Ayvazian explained the need for an ordinance to protect the town. She said there is a state mandate for renewable energy, and the town's ordinance cannot be too restrictive or the state Site Evaluation Committee (SEC) could step in.

Lowry went over some of the key points contained in the ordinance. Sound limit is an important factor. She told the audience that currently New Ipswich and PGE are in disagreement over this limit. The number cited as acceptable by the town for a rural setting is 33dBa, with an urban setting coming in at 45dBa. She explained the different frequencies and qualities of sound, and said some have the potential for making people ill. The purpose of the low sound limitation is to protect people. Ayvazian said that setbacks from the structures are also being utilized to limit the effects of sound. Lowry stated that developers are well aware of issues with noise and other aspects such as shadow flicker. Ayvazian brought up the issue of possible impact from construction. She said historical sites and structures must be protected, and the town may require setbacks for protection. As there is currently no official documentation of these sites, the developer will be required to produce an inventory and mapping of such sites. Lowry then discussed the raptor migration route over the Wapack range, and how the ridge creates an important "leading line" that hawks and other migratory birds all use. She said this is a unique geographical structure, and language has been added into the ordinance to strongly advocate for protection of this important area. The developer will be required to conduct migration impact studies. Ayvazian talked about visual impact, saying the 450 foot high towers would be able to be seen from many points in town, and also in surrounding towns. An audience member asked about the wind towers "ruining the view". Lowry explained about aspects of "dominating landscape", and said this can be a problematic issue, as at heights of 450 feet the towers cannot be hidden. She continued that the two primary factors considered in determining the location of towers are 1) wind, and 2) transmission lines to access the power grid. There was another audience question on photo simulation of the towers, and Lowry said a picture of this is available on the Temple town website. Another person asked why the developer could not put up just one tower to serve as a bellwether and see how it functioned. Lowry answered that this

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would not be financially feasible, and studies would help resolve expected or known problems. She stressed the need for universal language to cover any and all wind farm projects. Lowry also said decommissioning of the wind towers is a big issue, with a need for financial liability by the developer. When the towers are no longer functional, they need to be taken down and the land restored. The town would like to limit any risk that the towers could be abandoned.

Ayvazian addressed the input obtained from the audience at the first hearing. She said a show of hands had indicated the three top issues were 1) health and safety, 2) environment and birds, and 3) town finances. This prompted an extended discussion about tax issues, with Lowry saying while more money would come in to the town in the form of taxes, more would have to be paid out to the state, county, and school. She stated there would be some income, but no "windfall". She continued that the town would like fair compensation, while the developer wants to pay as little as possible. She also said the board cannot seem to get information from other towns regarding actual tax benefits. Payments that start large up front gradually get reduced due to depreciation. An official of the town of Lempster, which has an operational wind farm, did offer a word of advice – when the town gets the large up-front payment – do something with it other than a temporary reduction in the tax rate. Ayvazian mentioned this would not be under the purview of the Planning Board. Kieley stated that PGE had provided a figure of \$400,000 of tax income to the town, and dangled some large dollar amounts. He continued that in New Hampshire there are not a lot of towns to look at in regard to dealing with wind farms. In the case of Lempster, the town had no zoning and the developer was able to just come in and do the project. He indicated the people of Lempster had paid a visual price for 12 towers, and said the town has already gone to court with the developer. He also said that the tax rate in Lempster is actually higher now. Kieley said a proposed wind farm in the town of Antrim had provided an expectation of several hundred thousand dollars coming in, and then a payment-in-lieu-of-taxes (PILOT) was suggested with an agreed amount. Antrim is working to establish a LWES ordinance, and could make money, break even, or lose money. Kieley stated it is "not a pot of gold". He said the Planning Board is trying to structure an ordinance to allow wind farms in but protect the town. He said there would be additional costs to the town (i.e. fire, safety, administration), and that the developer must prove to the town that no harm is being done.

The audience then was invited to make comments or ask questions about the proposed project and ordinance:

Q: What roads would be used for the building of towers?

A: Currently the route indicated would utilize roads located in New Ipswich.

Q: How would a tower fire be accessed?

A: Off West Road, where there is an old road up to the Glass Factory site; this road would need to be maintained by the developer. Temple may get other project applications, and there is language for infrastructure impact protection within the ordinance.

Q: Size of trucks transporting tower components, and where coming from?

A: The trucks can be 200 feet in length; the point of origination would depend on what types of towers were chosen for the project. Kieley commented that the Lempster towers came in from Pennsylvania.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

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Q: Clarification sought regarding exclusions and Participating Landowners?

A: Lowry defined Participating Landowners, and then explained how the developer can make arrangements (financial agreement) with nearby landowners to give up certain rights in return for payment. There is language in the ordinance to protect people who don't wish to do this.

Q: Clarification about sound – how to quantify, especially at distances?

A: The ordinance states sound cannot exceed 33dBa at anyone's property line, and the tower cannot be closer than 2,000 feet from anyone's property line. There is the possibility of obtaining a waiver, which would be recorded at Hillsborough County Registry of Deeds. Research shows at 45dBa a tower located even 2,000 feet away can still make people sick (reference Falmouth, MA study). Setbacks alone aren't enough to control; also need to utilize decibel level.

Q: How is distance measured?

A: The ordinance has the added protection of using a decibel level to allow for terrain and sound variances. As part of the permit process, the developer must prove that the tower/blade and site will meet the requirements. Then, a second study is done within two months to measure again at property lines, and if the standards cannot be met, the developer must fix.

Q: Reputable companies can still have failed projects. The town seems to have little control over a viable technical project as far as financial and environmental aspects, as the ordinance cannot be unfairly restrictive. How to protect the town from an abandoned project?

A: The Planning Board has sought the opinion of town counsel. While there is no specific RSA allowing decommissioning funds to be required, we have included this in our ordinance as a reasonable thing to do to protect the town.

Q: How does this ordinance fit in with the rest of Temple's zoning ordinance?

A: This ordinance is more complex to deal with large scale business; our zoning is currently geared to smaller businesses.

Q: The choice here is to say "yes" to the ordinance, or risk the state coming in without considering the specifics of the town?

A: Without the ordinance, the SEC could come in with its own guidelines and measures. Even with a town ordinance, a developer can go directly to the state level. With a town ordinance in place, there is more ground to protect residents, as "the will of the people matters." The town voters cannot vote 'yes' or 'no' on a wind project, but they can vote 'yes' or 'no' on an ordinance.

Q: As far as stating conditions, could Temple unify with the town of New Ipswich?

A: Temple is in solidarity with New Ipswich. There are few towns in New Hampshire that are regulating wind. Maine has a state ordinance with state laws. Temple has been working to develop this ordinance since June. If the project is built in New Ipswich and not Temple, there is still impact in Temple (visual, noise, etc.).

Q: What does the Temple Fire Department think of all this?

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

FEBRUARY 1, 2012  
FINAL MINUTES OF PUBLIC MEETING

A: They are nervous about the implications. It is clear the developer must pay for Fire Department training and equipment, but we cannot expect our volunteer firefighters to go 350 feet in the air to extinguish a fire.

Q: Does PGE feel the town is zoning them out?

A: Yes, although PGE does not actually build the project. They go through the process to obtain permits, and then sell them to the actual developer. PGE would prefer the ordinance be as wide open as possible, as the more restrictive it is, the less the project transfer is worth. PGE has indicated they cannot build with certain restrictions, but that is not felt to be true. Meeting these restrictions would reduce the value of the actual permits. The town wants to be sure any project that is permitted will not adversely impact residents.

Q: Has the town had any contact with the SEC?

A: They were contacted but not willing to work with us at this point. The SEC deals not just with wind, but also with many other types of energy projects.

Q: What types of health issues are involved?

A: Various types of complaints have been described such as headache, dizziness, nausea, lethargy, sleeplessness, etc. Also mentioned was a study in Falmouth, MA where study researchers investigating these types of complaints became ill themselves.

Q: How are complaints handled?

A: There is a specific section within the ordinance to address this, and both the Applicant and the Board of Selectmen would become involved. If not reasonably resolved, there are penalties that may be assessed. There will always be some level of impact to residents, but it must be controlled. Brief mention of noise conditions noted at the wind farm in Lempster.

Q: What are the changes being made to the New Ipswich ordinance?

A: New Ipswich is considering amendments that are closely in-line with Temple's proposed ordinance, and would "set the bar higher". PGE would prefer a more loosely designed ordinance.

Q: If residents have concerns about the ordinance, should they vote 'yes' or 'no'?

A: The Planning Board would like to see an ordinance in place; it can be amended later. The bottom line is to vote 'yes' to protect citizens, and voting will be on Tuesday, March 13<sup>th</sup>.

Thanks and applause were offered from the audience to the Planning Board for all their hard work. Pickman closed the hearing at 8:28 p.m., and the board took a short break.

Public Hearing for amendments to Home Business ordinance: At 8:35 p.m. Pickman opened the hearing. He identified the changes as "housekeeping" in nature, and explained they would make the language more consistent. The three sentences were read aloud. Kieley made a motion to approve the modifications to the Home Business ordinance, seconded by Ayvazian, and voted all in favor (four members voted, with Martin having left the meeting earlier). The hearing was closed at 8:40 p.m.

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

FEBRUARY 1, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members then discussed the timeframe for final edits to the LWES ordinance. The entire document will be proofread by an experienced volunteer to review grammar and punctuation. Pickman noted at this point the intent of the language in the document cannot be modified. The board agreed to hold a meeting on Monday, February 6<sup>th</sup> to approve the final version. It was also decided to send out a postcard mailing before the March vote to advocate support for the LWES ordinance.

Move to adjourn by Kieley, second by Pickman, and so voted unanimously at 9:00 p.m.

Minutes submitted by Betsy Perry



# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

FEBRUARY 6, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Randy Martin, Mary Beth Ayvazian, John Kieley, Allan Pickman

Call to order by Pickman at 7:37 p.m.

Blood Road: Road Agent Tim Fiske came in to talk to the board about possible changes in the status of Blood Road. He explained that Jim Houck would like to ask the town to give up the last portion of the road, which would then become his driveway. Houck has ownership of the Blood Farm, which is currently comprised of three lots that abut both sides of the road. He would like to consolidate down to two lots, and intends to build a new home somewhere on the property. Fiske asked the board if the town would allow this road change, and if so, the best way to get it accomplished. A copy of a 2009 subdivision plat for the Blood Farm property was reviewed. This was followed by discussion about differing lot sizes and necessary road frontages, and the merits of a line adjustment vs. a lot line merger. Kieley said if a lot line adjustment was to be done, a new survey showing the resulting change in lot lines along with acceptable road frontages would be necessary. Pickman said another option to be considered would be for Houck to merge all three lots, have the town give up some of the road while retaining enough frontage, and then subdivide later. Pickman stated there are two main issues: 1) the need for Houck to do a lot line adjustment or a merger, and 2) a town vote to give up a specified number of feet of town road. It was noted a lot line merger is not a complicated process, and could be done before town meeting in March. Pickman said if Houck decides to go ahead with a lot line merger, the Planning Board would need a letter of request, which could be considered at the next regularly scheduled meeting. Then the request to release road footage could be brought forth to the voters as a warrant article. Pickman suggested the warrant article language reference the plat by recorded plan number, and indicate a specific number of feet of Blood Road to be given up. There was further discussion of figuring footages for road frontages, including an existing 50' turnaround area, and consideration of varying road widths. Fiske said he would contact Houck to discuss options.

Large Wind Energy System (LWES) ordinance: The board worked to finalize the draft of the LWES ordinance. It was noted only very minor changes were possible at this point. A copy that had been painstakingly proofread by a resident was reviewed, with punctuation and grammatical changes noted. Ayvazian moved to accept the document as amended, seconded by Kieley, and so voted unanimously. The final version of the ordinance will be emailed to all board members, as well as having a copy printed out for the town offices and made available on the town web site.

There was mention of several recent newspaper articles regarding wind energy. Martin also brought up the need to create an application, and suggested a hefty application fee be considered. Kieley reminded the board that Lowry would be creating a postcard for mailing to all town residents to ask for support for the LWES ordinance.

Move to adjourn by Ayvazian, second by Martin, and so voted unanimously at 9:00 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

FEBRUARY 15, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: Mary Beth Ayvazian, Randy Martin, John Kieley, Allan Pickman

Call to order by Pickman at 7:35 p.m.

Approval of Minutes: Move by Kieley to accept the minutes of 01/04/12 as written, second by Ayvazian, and so voted unanimously. Move by Kieley to accept the minutes of 01/16/12 as written, second by Ayvazian, and so voted unanimously. Move by Kieley to accept the minutes of 01/18/12 as amended, second by Ayvazian, and so voted unanimously. Move by Kieley to accept the minutes of 01/19/12 as written, second by Ayvazian, and so voted unanimously. Move by Kieley to accept the minutes of 02/01/12 as amended, second by Ayvazian, and so voted unanimously. Move by Ayvazian to accept the minutes of 02/06/12 as amended, second by Pickman, and so voted unanimously.

Large Wind Energy System (LWES) ordinance: The board discussed sending out an informational postcard to extend an outreach into the community to encourage voting for the ordinance. It was decided the postcard format would benefit from having a recognition factor, with language similar to the actual ballot. Postcards will be mailed out one week before voting. It was also decided Ayvazian will write up information to be published in the next town newsletter. Connie Kieley urged use of the town's web site to offer the full text of the ordinance.

The board also talked about reviewing the actual language on the ballot before going to print. One suggestion was to look at the ballot language relating to the town's cell tower ordinance, as the wording might be found useful. Ayvazian said several residents have commented that they feel the Planning Board has been very clear regarding the ordinance, and they appreciate all the work that has been done. Honey Hastings reminded the board that absentee ballots could be utilized by voters if they would be unable to attend on voting day. John Kieley remarked that one nearby town was inundated with propaganda from outside interests before the vote on their ordinance, and he urged board members to be alert for similar activity going on in Temple.

Annual Report: Board members agreed the text of the edited report seemed fine.

Move to adjourn by Ayvazian, second by Martin, and so voted unanimously at 8:10 p.m.

Minutes submitted by Betsy Perry

# TOWN OF TEMPLE, NEW HAMPSHIRE PLANNING BOARD

MARCH 7, 2012  
FINAL MINUTES OF PUBLIC MEETING

Board members present: John Kieley, Allan Pickman, Mary Beth Ayvazian, and Randy Martin

Call to order by Pickman at 7:36 p.m.

Approval of Minutes: Move by Ayvazian to accept the minutes of 02/15/12 as written, second by Martin, and so voted unanimously.

Candidate's Night: Pickman reminded everyone that Candidate's night would be held the following evening. He suggested someone from the Planning Board offer a short commentary on the Large Wind Energy System (LWES) ordinance. Kieley said the town moderator is in charge of the meeting, and recommended contact be made beforehand to arrange for this type of dialogue. Pickman volunteered to present the information and indicate why the board feels voting in favor of the zoning amendment is important to protect the town. Pickman will contact moderator Steve Cullinan to set this up.

Discussion of Language Discrepancy: Pickman mentioned a recent issue with determining legal status of a residential apartment in town, and said it was really a Board of Selectmen matter. The question involved whether the homeowner should be referred to the Planning Board for site plan review. Pickman stated the Planning Board has no authority to require site plan review for an auxiliary apartment. The involved home was built in 1981, and Pickman said zoning at that time allowed up to two extra units in existing dwellings. He stated this was an attempt to allow owners of large older homes or farmhouses to make use of rather sizeable buildings. However, this question revealed an inconsistency between the definition of "multiple dwelling" in the town's zoning ordinance and the term "multi-family" in state RSA 674:43. Pickman suggested rectifying this situation by including the applicable state language into the zoning ordinance definitions. Kieley suggested the board work to determine and clean up these types of discrepancies in the zoning ordinance. It was agreed to tackle this project after March elections when new board members were seated.

Broadband Internet Service: Kieley told the board that the neighboring town of Sharon has two zoning ordinance changes proposed this year, and one includes regulation of repeater towers to control wireless internet. Martin mentioned that Southwest Regional Planning Commission (SWRPC) has been working on this issue to get broadband internet out into all rural areas, and he suggested the board contact them. Pickman questioned if Temple's cell tower ordinance might already address this, or if perhaps language regarding wireless frequencies could be added. Kieley said he will obtain a copy of Sharon's proposed ordinance. Several areas in Temple that are still without access were named. Pickman mentioned that Fairpoint is bringing broadband into parts of Temple. Ayvazian commented that all of the town should have wireless internet available, as it can be important for jobs or home businesses, especially in the current economy.

Move to adjourn by Ayvazian, second by Kieley, and so voted unanimously at 7:55 p.m.

Minutes submitted by Betsy Perry

# **ATTACHMENT 6**

## **LEDGER-TRANSCRIPT ARTICLES**

## WIND DEBATE

Antrim residents tour Lempster wind farm seeking answers; Eolian Renewable Energy's Jack Kenworthy discusses the proposed Antrim wind project.  
Stories, Page 11

VIEWPOINTS:  
TACKLING THE  
ECONOMY

Page 8

MONADNOCK

## Ledger-Transcript

Peterborough, N.H.

Tuesday, July 26, 2011

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Latest  
News

Peterborough's  
TIFs in review

Proposed changes to the  
town's Tax Increment  
Financing districts are  
gaining interest.

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Elect town's  
road agent?

The Mason Select Board is  
considering the pros and  
cons of a plan that would  
change hiring practice.

Page 3

## Sports

McBrien takes  
5K race easily

Dublin's Terry Dwyer  
Memorial 5K race brought  
local athletes out.

Page 13

## Business

Local company  
recognized

The Peterboro Basket  
Company joins the Made in  
the USA Hall of Fame.

Page 15

## Coming Thursday

A look at Andy's  
production of  
"The Lost World"



## 23-megawatt wind project proposed

Pioneer Green Energy tests two locations in New Ipswich where zoning allows for wind turbines

By EMARI TRAFFIE  
Monadnock Ledger-Transcript

NEW IPSWICH — Pioneer Green Energy, a Texas-based wind energy company, is testing two locations to determine the feasibility of installing up to 11 wind turbines.

Wind testing through meteorological towers began last November and Adrian Cohen, of Austin-based Pioneer Green Energy, presented recent maps and data for the construction of several wind energy conversion systems, which turn wind energy into electricity using wind turbine generators, to the Select Board

last Tuesday.

"Pioneer wanted to be in a town that wanted them and New Ipswich voted in favor of wind turbines and has zoning in place for this project," said Cohen to the board Tuesday.

Sixty-four percent of the town elected in 2010 "to allow and regulate the installation and operation of large wind energy systems, having a capacity of more than 100 kilowatts but less than 30 megawatts, in the residential areas known as the Rural District" in such a manner as to preserve and protect the public health, safety and welfare, and the character of the Town," as stated in Article 3 of the 2010 Town Warrant.

The town must, according to the article, "limit the visual impact of wind turbines; preserve the quality and integrity of the environment; and insure the financial security necessary for the removal of these systems when they cease operation."

Cohen said Pioneer Green Energy plans to install no more than 11 turbines producing a total of 23 megawatts. Each megawatt powers an estimated 300 homes, said Cohen. There is not enough data to determine the amount and size of the machines, but Cohen said he expects to build between eight to 10 on proper-

Turn to WIND .....Page 6

## DUBLIN DAY: Summer fun attracts residents from near and far



Above: Daniel Albert, left, of Dublin Recreation staff looks on as Annie Bamford, 9, of Milford, hits the target on the dunk tank and Hailey Albert, 11, of Dublin waits to be dunked. Below: Emma Carpenter, 6, of Dublin is crowned Miss Dublin.

STAFF PHOTOS BY CAROLE ALLEN

A PLACE  
IN THE  
SUN

More photos, Page 22



## PETERBOROUGH

Hunting  
accident  
victim  
recovers

Hunter talks about  
fateful incident

By DAVE ANDERSON  
Monadnock Ledger-Transcript

PETERBOROUGH — The gunshot wound that sent his friend Matthew Sundquist to Dartmouth-Hitchcock Medical Center last week was "a complete accident" according to 16-year-old Cody Boutwell of Peterborough.

"It was a ricochet, it hit a rock," Boutwell said Monday, referring to the bullet he fired that struck Sundquist, who is also 16, at about 8:30 p.m. on July 19. The two teens were hunting coyotes on land Boutwell said his family is leasing off Old Dublin Road in Peterborough.

Boutwell said the bullet hit Sundquist in the shoulder. He said he made a 911 call on his cell phone and was able to put pressure on the wound to stop the bleeding. Boutwell and Sundquist then walked back to Boutwell's home, where they met rescue personnel, he said.

"It was rough. It was one of the scariest moments of my life," Boutwell said as he recalled the incident.

Sundquist was taken first to Monadnock Community Hospital, according to the N.H. Fish and Game Department, and then airlifted to Dartmouth-Hitchcock Medical Center in Lebanon. He was initially reported to be in serious condition, but he was released from the hospital on Thursday, according to Dartmouth-Hitchcock officials.

"He's doing all right, except for a few restrictions like no swimming," Boutwell said. "I'm doing all right. We're still best friends. It was an accident."

Turn to HUNTING.....Page 6

## RINDGE

## FPU braces for impending layoffs

Construction plans proceed in spite of shrinking student body

By ALYSSA DANDREA  
Monadnock Ledger-Transcript

RINDGE — Despite efforts over the past two years to preserve full-time jobs, benefits and salaries, the university will be laying off staff in the next two weeks and immediately suspending contributions to staff pensions, Franklin Pierce University President James Birge announced Thursday. The university's faculty and staff are calling for more talks before layoffs become official.

The financial difficulties will not stall plans for a new Health Science and Athletic Training Center, as the project is being funded in part by a \$1.1 million gift to the school from a private donor, according to FPU.

Turn to FPU.....Page 6



COURTESY IMAGE

Franklin Pierce University will begin construction this fall on a two-story, 9,000 square foot health science and athletic training center at its Rindge campus.

Review of police detail  
ordinance is ongoing

By ALYSSA DANDREA  
Monadnock Ledger-Transcript

RINDGE — A comprehensive review of the Police Detail Ordinance continues as the Select Board seeks to provide answers to taxpayers about how police details are conducted, why they are used in specific situations and not others, and whether proposed detail rates would cover their associated costs.

A summary of police details from 2010 and 2011 to date was reviewed by the Select Board and Police Department last Wednesday, as the town works to update the 2006 ordinance. The scrutiny on police details policy, according to town officials, is part of a town-wide policy review. While earlier this year an investigation by the Department of Labor revealed 127 alleged violations by the

Turn to DETAILS .....Page 5

# FPU bracing for layoffs; building proceeds Victim is recovering

FPU .....(from page 1)

ing to a statement the university sent to the Ledger-Transcript Monday.

Due to lower enrollments on the Rindge campus and stalled enrollment at the College of Graduate and Professional Studies, Birge told staff and faculty Thursday during a meeting addressing the university held in Pierce Hall that the university must cut its staff to correspond with a shrinking student body. He did not specify how many positions or which positions would be cut.

Staff are administrators and those who work outside teaching or are full-time librarians, according to DeLey, vice president of the Rindge Faculty Federation, a faculty union.

The size of the incoming class has been declining since the fall of 2006, when the total number of entering students at the undergraduate level was 729, according to information FPU reported to the U.S. Department's National Center for Education Statistics. The size of the incoming class dropped to 551 students in the fall of 2007 and to 458 students in the fall of 2009. Additionally, the retention rate from freshman to sophomore year, which reached its peak at 70 percent in the fall of 2006, fell to 60 percent by the fall of 2009.

When asked to provide the Ledger-Transcript with enrollment or retention data from the past few years, the university declined to do so on June 29 and July 10. During Thursday's meeting, Birge told faculty and staff that the overall retention rate is more than 60 percent but less than 70 percent and that the size of the 2011-2012 incoming class is projected to be more than 400 students.

After spending three years at Franklin Pierce, some members of the class of 2012 say that a decrease in enrollment and retention has been visible during their time on the Rindge campus. Students said that as a whole the university could do more to attract prospective students and that despite a freeze in the cost of tuition, the 2010-2011 academic year, affordability might be a reason for low enrollment in the current economy.

Changes at the university have also been noticed by the Rindge Police Department, which has seen improvements over the past two years as activity requiring police response is down. While Police Chief Michael Selicki said in an interview in mid-June that enrollment could be a factor, he also credited the new administration.

A statement Patricia Garrity, director of marketing and communications at FPU, sent to the Ledger-Transcript on Monday, reads, "Given the realities of our enrollment — in order to remain financially stable — we must align our staffing structure with the anticipated lower enrollment without impacting the educational experience of our students."

Although the university faces difficult decisions in the days ahead, the statement continues, "We vow to maintain the distinctions that set Franklin Pierce apart. Our students will continue to benefit from our quality academic programs, small classes, superior teaching and a dedication to individual success. Like many other institutions in the region, our enrollment patterns are still in a downward trend despite a slight increase in new students last year."

While the university has reached out to prospective students in new ways, including social media, overnight programs, off-site receptions and video tours, FPU's statement indicates that these efforts — which have resulted in a high number of inquiries, applications and acceptances — take time to impact enrollments.

**Rindge Faculty respond**

As a result of the university announcing cuts in staff, the Rindge Faculty Federation, the university's faculty union, has put in a request to the administration to invoke an Institutional Resources Committee, or IRC, in the hopes of identifying other opportunities for cutting costs besides staff cuts.

According to Article 16 of the Collective Bargaining Agreement, a contract between the union and the university, if Franklin Pierce is experiencing or believes that it will experience "financial exigency," the president must constitute such a committee, or IRC, in the hopes of identifying other opportunities for cutting costs besides staff cuts.

Richard Roth, president of the union and professor of mass communication at the school, said on Friday, "After the president's talk yesterday, I emailed him and pointed out that our contract requires him to form an IRC in fact the university feels the financial situation is serious enough to require layoffs."

While the Collective Bargaining Agreement refers to both faculty and staff, Roth said that the union is concerned because a pattern has developed over the past couple of years with the administration trying to separate the two. In April 2010, the university announced cuts in health care benefits and monthly pension contributions of all non-union employees, at which time the IRC was also not invoked, according to Roth.

The union sent an email to all staff at the end of last week stating that it would be pursuing the formation of an IRC in accordance with the Collective Bargaining Agreement, Roth said. Because the IRC is a strictly a recommending body, however, he said that it can only go so far in addressing the financial challenges currently being faced by the university.

"We're not optimistic about the outcome, but it is important to fight the fight because it is the right thing to do," Roth said.

said.

**Students respond**

Members of the class of 2012 told the Ledger-Transcript in mid-June that they have noticed a decrease in enrollment and retention, which have resulted both positive and negative effects on student life.

Senior Michael T. Brown, a community assistant for the Department of Residential Life, said that lower enrollment on campus easier, but that overall it has not affected student life much.

"Personally, I feel like enrollment and retention are down because of the cost of tuition," Brown said. "In fact, at one point after my freshman year it seemed like I would have to leave Franklin Pierce because of tuition cost."

During the 2010-2011 academic year, the university froze tuition at \$27,700. Most recently, it increased tuition for the 2011-2012 academic year by two percent to \$28,350.

During these challenging economic times, the university has made every effort possible to remain affordable for students and their families, Garrity said in an interview with the Ledger on June 29. Garrity added that on average student enrolling this fall will receive financial aid awards of over \$24,000, with average scholarship awards totaling over \$14,000 for incoming students.

Despite these financial aid packages, Senior Michael Davies said that there has always been a decline in the number of students, but that it hasn't always produced negative effects. "If anything, it makes classes more enjoyable because there are less students in the class. This makes the class more personal to have a connection with the professor," Davies said.

While Davies said that he would rather see students leave than complain about not liking the university, he added that he hasn't seen a lot of effort by Franklin Pierce to improve the low numbers. "They should actually find a way to persuade more students to come here," Davies said.

Senior Alicia Baldino said that the retention rate has affected a lot of things on campus over the past three years, during which time she has noticed a lot of people leaving. "Most of them left after freshman year. I would say 80 percent of my group of friends left," Baldino said. "However, I do notice that some people end up coming back after transferring out."

While the university may do a lot to attract and retain students, she said that they don't publicize their efforts nearly enough.

"I absolutely think Pierce can do more to help students want to stay," Baldino said. "I think they should have a better system of listening to student needs."

**Rindge Police respond**

While enrollment may be down, Selicki said in an interview with the Ledger-Transcript in mid-June that he has noticed positive changes at the university in the past couple of years. Although enrollment may be part of the reason, Selicki said that the actively acquiring police response is down in large part to the new administration.

"Our sense is that this year things have definitely quieted down up there," Selicki said. "I think the administration is dealing with a lot more issues on campus than they had in the past."

Because more action is being taken on campus, Selicki said that more time has been freed up for the Police Department to use in addressing issues that may arise in the town.

"However, in the past, that wasn't the case," he said. Selicki added that by sending a positive message to the students at the beginning of the year, the administration has effectively carried that message through to the spring.

**Building on campus**

During his address to faculty and staff on Thursday, Birge said that the university continues to be engaged in ongoing efforts to attract future students and retain current ones. Part of those efforts include improvements on campus.

Franklin Pierce announced Thursday that it has received a \$1.1 million gift — the largest ever from a private donor — to support the construction of a new Health Science and Athletic Training Center that will house health programs on the Rindge campus. Construction for the new \$2 million facility, which will be built adjacent to the existing Fitness Center, will begin this fall. The two-story building will include 4,500 square feet for an athletic training and rehabilitation center on the first floor. The second floor will provide 4,500 square feet of academic space to prepare students for graduate studies and careers in the health profession, according to a press release from the university.

"These health science programs will prepare students for workforce labor that is in high demand," said Garrity on Monday. This exceptional facility will enable us to better recruit and care for our student athletes."

The Vice President of Institutional Advancement, the Grant Writer and the development staff are working with individual donors, foundations and corporations to fund the remaining \$900,000, Patricia Garrity, director of marketing and communications at FPU, said Monday.

Other campus improvements include the completion of the second phase of a three phase renovation project to the Rindge dining hall, in addition to new and extended space at the career planning office, Birge said during Thursday's meeting. First-year residence halls will also start to have wireless capabilities in the coming months, something that will extend to all residence on campus, Birge said.

HUNTING .....(from page 1)

Boutwell's mother, Sandra Boutwell, said her son reacted well to the situation.

"He did everything absolutely right," she said.

Sandquist's mother, when contacted by telephone on Monday, declined to comment on the incident.

Fish and Game officials were offering few additional details Monday.

"It's a hunting-related shooting incident that's still under investigation," Fish and Game Lt. Craig Morrocco said.

Morrocco said charges of hunting without a license will most likely be filed against both hunters. Those charges, he said, would be prosecuted by the Fish and Game Department.

Under the state's hunting laws, Morrocco said, "Once you turn 16, you can be charged with a violation as an adult."

Morrocco said Fish and Game officials are working with the N.H. Attorney General's office to determine if any other charges will be brought forward.

"Hunting coyotes is legal year round, but a hunting license is required."

Boutwell said he had been under the impression that a license wasn't required to hunt on one's own property. Sandquist had gone through a hunter-safety course but had not gotten a hunting license, he said. Boutwell said he had not completed a hunter-safety program, although he has been hunting "since I could walk."

## Testing for wind plan

WIND .....(from page 1)

turbine is 60 decibels, said Cohen, which is equal to the sound of an air conditioner at 20 feet.

The nearest non-participating landowner must be at least 1,000 feet away and at that distance the ambient noise will be less than 45 decibels, comparable to the sound of light rain.

Cohen said the New Ipswich project coincides with the state's 25 x 25 Renewable Energy initiative in proposed by Governor John Lynch in August 2006. The goal of 25 x 25 for N.H. to obtain 25 percent of its energy from clean, renewable sources by the year 2025, according to the N.H. Energy and Planning website.

Cohen expects the turbine construction to create 50 to 100 construction jobs while the turbines are being installed and plans to use local contractors.

"It's a lot cheaper and more effective to use local," said Cohen. "We are already using a local engineer through New Ipswich for the planning." He said the turbines, if approved, would take four to six months to construct, depending on ground conditions and permits.

The projects are financed using the wind data to develop a power purchase agreement, a legal contract between the electricity generator, Pioneer Green Energy and the power purchaser, ideally Public Service of N.H., said Cohen.

Taxes are paid to the town on a four percent per year depreciation value rate of the wind turbines, according to the industry standard. With a conservative estimate of 20-megawatt project, the first year estimated tax payment would be \$716,000, which would be revenue to the town. The 24-year rate would be \$28,640 and year 25 would be zero. Total revenue to the town would be an estimated \$9,208,000, said Cohen.

Cohen said the projected costs, impacts and timelines are based on the Mountain Wind Farm in Lemper, a small town in the northern part of the state.

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## Push for wind has broader catalyst

BY JESSICA CAMILLE AGUIRRE

Monadnock region preparing for growth

Monadnock Ledger-Transcript

The recent slew of local wind energy development projects that has rankled some rural conservationists and divided alternative fuels proponents is part of a wider push for renewable energy that has escalated across New England spurred by both government engineering and market signals.

Eolian Renewable Energy's 10-turbine facility plan for Antrim and Pioneer Green Energy's proposal for a wind farm in New Ipswich and Temple are only two of what has become a wave of projects slated for development across New Hampshire and the northeast.

A 99-kilowatt facility set to

Turn to **WIND** ..... Page 7

### Article Continued Below

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See WIND on Page 07

### Local wind push part of northeastern energy portfolio shift

**WIND** .....( from page 1)

be built in Coos County in the northern part of the state received a loan guarantee for nearly \$170 million from the U.S. Department of Energy in October. Another proposal in Coos County, led by New Hampshire-based Wagner Forest Management, aims to build a wind farm to generate up to 180,000 kilowatts.

Of New Hampshire's eight wind farms, more recent proposals that are often still in the permitting process denote a marked shift from small- and medium-sized clusters of turbines to gargantuan projects that aim to occupy a pronounced position in the state's future energy portfolio.

In contrast, the wind farms proposed for Antrim and the New Ipswich and Temple area are relatively modest, though they have incited firestorms of debate in those communities over the value of untouched remoteness and the perceived urgency of building sustainable, but cumbersome, energy sources.

The developers whose proposals have set off the flurry of debate — Portsmouth-based Eolian and Austin, Texas-based Pioneer — say that renewable energy is a vital part of securing independence from oil markets in politically volatile regions and fostering longterm protection of the natural environment and personal health.

But they're also motivated by an array of more tangible considerations, including an incentivized energy market and ambitious renewable fuel standards policies. In 2007, the state Legislature passed a bill requiring 16 percent of New Hampshire energy portfolio to be supplied by renewable or alternative sources by 2025, and Gov. John Lynch committed to reaching 25 percent by the same year in August of 2006.

According to Sue Blothenburg of Public Service of New Hampshire, or PSNH, the legislation has fueled interest in renewable energy sources as a viable investment with a guaranteed market. Energy pricing, she said in a phone interview Monday, is a formula with consistently shifting variables, but input from wind turbines could help stabilize prices.

"We have a good mix of fossil fuel and renewable fuel in our own fleet of plants," Blothenburg said in reference to the facilities that PSNH owns and operates. "But we don't produce enough electricity to cover our peak loads, and so we go out to independent retailers for product and we'll set up contracts with them. If we can contract to get product on market, that's more cost effective."

PSNH-owned facilities, which overwhelmingly produce energy at a coal-powered plant in Bow, can emit approximately half of the electricity consumed in the state during peak hours, according to data from PSNH and the Independent System Operator of New England. But energy demand in New Hampshire, particularly in the southern part of the state, is expected to outstrip the pace of demand in New England, which is already increasing.

While wind energy only accounts for 1.37 percent of wind energy in the state currently, compared to coal's 61 percent, developers hope they can take advantage of what many see as an opportune moment of political support for renewable fuels. The basis for their operation decisions has more to do with those considerations, and ease of market delivery, than with simpler concerns like windiness.

"Surprisingly, it's not always about wind," Pioneer Green Energy's Adam Cohen said recently, explaining why sites with strong wind resources aren't always the best to develop. "It's also about the transmission. It may be windier [up north], but there's not as much power consumption and you have to go much further to transport the power. So even though there's wind there, there's no opportunity to bring it to market. In southern New Hampshire there's a lot of energy demand and there's a need for energy. But you have to be able to get the power to market and actually sell it."

Wind resources in southern New Hampshire, for example, are paltry in comparison to mountaintop sites in northern counties, according to map of wind resources produced by the U.S. Department of Energy. But energy can't be stored, and transporting power to where it's consumed is often one of the most fraught hurdles developers face (as in the case of the Northern Pass Project, which aims to supply Canadian-produced hydropower to the area by constructing a controversial transmission line.) But John Soininen, cofounder of Eolian, says wind resources along Tuttle Hill and Willard Mountain in Antrim are strong, and one of the major reasons the company chose the site for development.

"You need good strong wind, but you also need a bunch of willing and interested property owners," Soininen said recently, explaining that the Eolian had scoured the state before leasing the Antrim property in order to find the best spot. "You also need proximity to transmission lines. So those are the three biggest needs in wind development."

Whether the energy shift will be permanent, and the extent that consumers will feel the price impact of the change, is still unclear. Soininen points out that consumer price impacts will stem from the legislation requiring renewable energy, which will fine energy producers that don't include enough alternative fuels in their portfolios, and not the wind developers, who compete between them. Still, the development cost of emerging technologies alone means that alternative fuels remain more expensive than traditional fuel sources.

Developers say the shortterm price difference shouldn't matter, though, given one of the most attractive longterm benefits of their energy source: that it will never run out.

Surprisingly, it's not always about wind... In southern New Hampshire, there's a lot of energy demand and there's a need for energy.



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Monadnock Ledger-Transcript

But you have to be able to get the power to market and actually sell it.

Adam Cohen Pioneer Green Energy

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**WIND DEBATE:** Developer warns protections are overzealous

## **Proposed revisions to wind regulations receive sparse reaction**

### **THE BEST LAID PLANS**

**BY ANGELA JANE EVANCIE**

Monadnock Ledger-Transcript

NEW IPSWICH — Ordinance revisions intended to set stricter regulations on wind energy, discussed at a Planning Board hearing Monday, raised concerns from the town's only wind developer, who says the measures are too stringent for turbine construction.

Sixteen residents gathered in the Mascenic Regional High School auditorium to discuss the zoning amendments put forward by board members in order increase protections for New Ipswich residents in the face of a proposal from Austin, Texas-based Pioneer Green Energy to erect up to eight industrial turbines on Kidder Mountain.

"We as a board are not opposed to wind farms — we are opposed to negative impacts on our community," Dekker said.

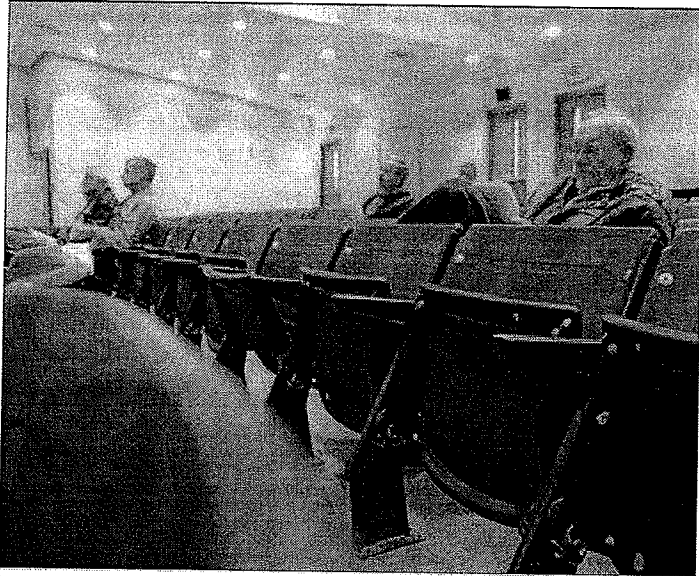
He explained that learning about negative impacts in other communities — widespread complaints, plummeting property values and, in rare cases, residents abandoning their homes altogether — prompted the board to seek out stronger zoning. Dekker did not cite specific towns as examples.

But wind energy developers say the proposal is too restrictive. Pioneer's Adam Cohen said Tuesday that the revised ordinance "effectively zones wind out."

Turn to **ORDINANCE** ..... Page 12

"We as a board are not opposed to wind farms — we are opposed to negative impacts on our community.

Ed Dekker Planning Board Chair



Turnout for a Planning Board public hearing in New Ipswich Monday was smaller than board members expected. The hearing was the first of several scheduled to solicit feedback for an amendment to the town's zoning ordinance for large wind energy systems.

**STAFF PHOTO BY ANGELA JANE EVANCIE**

**Article Continued Below**

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See ORDINANCE on Page 12

#### **Revisions under scrutiny by few**

#### **ORDINANCE ..( from page 1)**

Cohen cited significant changes to the ordinance section titled "Noise Level Limits and Measurement," which states that noise levels from wind turbines shall not exceed 33 decibels "anywhere at any time on a Non-Participating Landowner's property."

The 33-dB cap is too low for wind turbines, according to Cohen, who added that the board's estimate of New Ipswich background noise — 20 dB or less — may also be too low.

"A truck driving down the street is 50 to 60 decibels," said Cohen. "For us to meet the standard they're imposing, you couldn't be within four miles of a turbine. In a town that's six miles wide, that's a ban." Pioneer Green is also eyeing Temple for development.

The intent of the 25-page proposal, according to Dekker, is to protect the residents, buildings, animals and natural environs of New Ipswich if wind energy does come to town.

The board hopes to do this by proactively establishing guidelines so potential applicants have a clear a sense of what the town will accept. The original ordinance passed in 2010 by a vote of 797 to 454.

"We want potential applicants to know exactly what our standards and regulations are," stressed Dekker.

The proposed amendment also prohibits wind energy systems from inciting more than "sporadic complaints" from the greater community. The benchmark is derived from a 1974 Environmental Protection Agency document that

gauges the relationship between wind turbine noise levels and community response. Cohen expressed concern that the board was referencing such a dated document.

Cohen said that he sent a letter to the Planning Board on Oct. 26 that outlined his concerns, but said the board did not give him an opportunity to speak at their working meetings.

He added that the board's proposal is "problematic and troubling," but holds out hope that the New Ipswich residents will come forth with their support for wind. "I think what's important is that the community will have another chance to vote on it," said Cohen. "It's very consistent with what the town is trying to do, which is to grow economically and add jobs."

The new 33-dB limit will also determine the setback of the turbines; specific numbers regarding setback distances from roads and homes are not included in the proposed ordinance. Rather, the burden of proof would be on the applicant, owner or operator of the wind systems to demonstrate to the Planning Board that proposed sites will be "sufficient to protect people, domestic and farm animals, public and private property, and utilities from Debris Hazard."

The proposed ordinance limits the height of wind turbines to 450 feet. It also attempts to establish more stringent guidelines for assessing visual impact.

Board member Liz Freeman acknowledged that reactions to wind energy — especially its aesthetic — are inherently subjective.

"Some people say, 'Oh, turbines are so graceful.' Others say they're ugly," Freeman said, adding that the board made every effort to build more objective measurements of visual impact into the proposal.

Many of the measurements are relative: it's not how far away the turbine is; it's how far away it appears to be, or for how long it's actually in view from, say, a moving car.

But the language regarding visual impact does not contain specific numbers or distances.

Among the residents in attendance at the hearing was Temple Select Board Chair and Planning Board representative John Kieley, who said he came to express his gratitude to the New Ipswich Planning Board.

"Unlike New Ipswich, Temple doesn't have an ordinance [concerning large wind energy systems], so we've been scrambling with that," Kieley said, adding, "We appreciate the board's work."

Cohen had brought a machine to the hearing that emits varying decibel levels, in the hope that attendees would be able to "sample" different noise levels, as well as a sound expert, but the board declined to hear from either. Dekker requested that Cohen's representative submit his comments to the board, which would pass them onto their own audio experts.

Butch Maki, a landowner on Kidder Mountain who hopes to lease property to Pioneer, expressed concern that the ordinance requires that the full terms of leases or easements be recorded with the Registry of Deeds.

After the hearing, Maki said, "It's a private contract. You shouldn't have to disclose that to the town. Unless it's for tax purposes."

Freeman responded that beneficiaries of the development should be transparent about their gains.

After the meeting, Dekker expressed disappointment at the size of the crowd. "I had expected a bigger turnout," Dekker said. "No matter what your feelings are on the issue, it's something that's going to have a big impact on the town."

New Ipswich residents will have an opportunity to make their opinions heard at the four upcoming hearings scheduled before the proposal goes up for a vote in March. The next hearing is on Dec. 7 at 7 p.m. at the New Ipswich Town Offices.

When asked if he expected better attendance at subsequent meetings, Dekker responded, "I'll wait to be pleasantly surprised."

"I think what's important is that the community will have another chance to vote on it. It's very consistent with what the town is trying to do, which is to grow economically and add jobs.

Adam Cohen Pioneer Green Energy

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## Preparing for turbines

### Temple looks to regulate proposed wind farm

BY ANGELA JANE EVANCIE

Monadnock Ledger-Transcript

TEMPLE — This town has joined a growing list of others grappling with the option and implications of wind development.

More than 60 people — enough to fill the Town Hall — came out for a Planning Board hearing last Wednesday to discuss a proposed wind farm and a zoning ordinance in its nascent stage.

Planning Board members decided to write an ordinance after Pioneer Green, a Texas-based renewable venture company, approached the town about building a 20-megawatt wind farm earlier this year.

The farm, which would stretch across Kidder Mountain into neighboring New Ipswich, would include one to three turbines in Temple and six to 11 turbines in New Ipswich, according to Board member Rose Lowry.

Turbines in both towns would be in Temple's view.

The board is hoping to draft an ordinance by January to leave time for public hearings leading up to a vote in March.

Lowry opened the hearing by showing photographs that simulated the view of the proposed turbines from different points in Temple, and explained that an ordinance would give the town an opportunity to protect its historic sites, view shed, sound levels, and properties.

The purpose of the hearing, board members repeatedly stressed, was not to approve or reject Pioneer Green's proposal, but to gauge how strict an ordinance residents wanted the board to write.

"Whether we are for wind or totally against it, we need an ordinance. The question is how restrictive it should be," said ex-officio member John Kieley. Kieley explained that the state has the final decision regarding wind development proposals.

"We've got our finger on the dial with this," Kieley said, "but if we turn it too far, we might put ourselves in the difficult position of having the state come in and overrule us."

Kieley said that wind farms above 30-megawatts can fast track their permitting process by going directly to the state, and said that Pioneer Green had told him they were considering that option.

"We could certainly pass an ordinance that says commercial wind development is not permitted in Temple," Planning Board Chair Allan Pickman added. "Whether that would hold up in court is uncertain. The state can supercede us on this issue."

Board members heard concerns from several residents about turbines in New Ipswich; as abutters to the New Ipswich project, Temple residents may speak at that town's hearings.

Kieley suggested that an ordinance might allow the town to set—or at least influence—development regulations. "Our thinking is that if we have an ordinance in place, that the state will pay more attention to local interests than if we don't have an ordinance."

The Planning Board usually references ordinances written by other towns before drafting their own, according to Kieley. In the case of wind, however, there are few local precedents. "Towns like Hanover and Exeter that are usually really helpful just haven't had to deal with this sort of thing," said Kieley. "But we have help from Antrim and New Ipswich in this."

A record number of voters in Antrim rejected an ordinance designed to regulate wind development in early November, and New Ipswich has drafted an amendment to its existing ordinance that will go up for a vote in March.

But the Temple Planning Board has its work cut out. "We're 5 percent there," said Keiley, who said after the meeting that he is considering working with independent consultants. "We need to sit down and get to work," echoed Pickman. The Board encouraged residents to share their feedback and ideas in the coming months.

Comments from the audience ranged from supportive of wind to adamantly opposed. Amy Cabana said she was "proud to be part of a town that's taking such forward steps to do what's right in the world."

Other residents expressed concern about the sound and view of commercial turbines. Board member Bruce Kullgren's comments against wind solicited a round of applause.

When a request came from the audience that board members share their personal feelings on wind development, Lowry and Kieley responded.

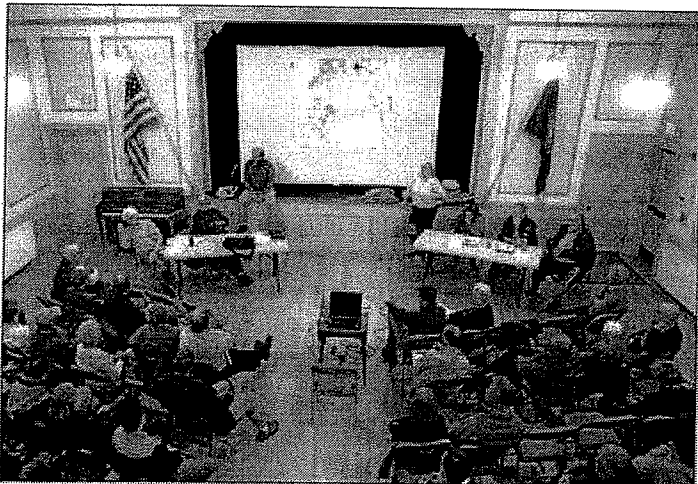
"I have very mixed feelings about it," said Lowry, "but I think embracing alternative energy is the most compelling reason [to favor wind]."

Kieley agreed, saying that the "green aspect" was what compelled him to support wind. "The state also motivates this. Companies are being subsidized by the federal government," he said. Lowry closed the hearing by gauging the audience's receptiveness to wind development with a straw vote.

Few hands went up in favor; the majority was split between opposed and undecided.

Kieley reminded residents that the ordinance would apply to whatever proposed wind farms the future might bring.

"[Pioneer Green's] isn't the only project we might see," Kieley said. "Temple has a lot of hills."



More than 60 Temple residents turned out for a Planning Board hearing at the Town Hall last Wednesday. The

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board held the hearing to solicit feedback for a commercial wind zoning ordinance it is currently drafting.

**STAFF PHOTO BY ANGELA JANE EVANCIE**

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## NEW IPSWICH

### Board reacts to wind criticism

#### Defends amendment as protective

BY ANGELA JANE EVANCIE

Monadnock Ledger-Transcript

NEW IPSWICH — Planning Board members reacted to developer Pioneer Green Energy's concerns about over-regulating wind energy development this week, saying that a proposed ordinance amendment to restrict sound levels would protect town residents.

In response to Pioneer representative Adam Cohen's concern that the amendment would effectively be a "ban on wind," Planning Board Chair Ed Dekker said Tuesday that the amendment's cornerstone regulation - a 33-decibel noise level limit "anywhere at any time on a Non-Participating Landowner's property" - is not a ban so much as an assurance that developers will take responsibility for their turbines. Dekker pointed out that developers would be able to purchase easements surrounding their turbines to guarantee that noise above the 33-dB limit would be contained within participating property.

Dekker also noted that Pioneer Green's proposal will be evaluated under the original zoning ordinance that voters passed in 2010 - the original regulations do not contain the 33-dB limit.

Nevertheless, Dekker said that Cohen has raised concerns about the 33-dB limit in written statements to the board throughout the planning process.

"This is the same conflict one is always going to have between a regulator and a regulatee," Dekker said. "There's a natural desire to have things work out better on your side."

Board member Liz Freeman questioned Cohen's suggestion that a 33-dB cap would demand a four-mile turbine setback. "The Board's research suggested it could be anywhere from under a mile to one-and-a-half miles and, in rare cases, two miles," Freeman wrote in an e-mail to the Ledger-Transcript Monday.

The 33-dB limit, Freeman said in a phone interview Wednesday, is derived from a 1974 Environmental Protection Agency study that measured community response to new noise emitters like airports and superhighways. The board believes 33 decibels will solicit no more than "sporadic complaints" from the community, Freeman explained. "What I don't believe we should approve is something that leads to widespread complaints from the community," Freeman said.

The Planning Board has taken some of Pioneer Green's concerns into account, according to Dekker. Cohen submitted input regarding turbine lighting compliant with Federal Aviation Administration regulation that the board worked into its recent proposal.

But the board is acting in a way consistent with its Master Plan, Dekker said, and putting its residents first.

"My own view is that the developer should pay the costs of the side effects of the project and not impose them on his neighbors," Dekker said.

Freeman stressed that the board's responsibility to the town supersedes all. "It's not a pro-wind or an antiwind issue," Freeman said. "I have no reason to oppose wind. I have every reason, as a member of the Planning Board, to protect the members of the town of New Ipswich."

When asked about the possibility that the 33-dB limit really may be prohibitive to wind, Dekker held his ground.

"If the technology doesn't permit a turbine to be built that is compliant with noise regulations with today's technology," he said, "Well, maybe it will have to be with tomorrow's."

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## NEW IPSWICH

### Wind development still a quandary

Debate continues about potential impacts, including noise, on abutters

BY ANGELA JANE EVANCIE

Monadnock Ledger-Transcript

NEW IPSWICH — The year 2012 will dawn on a town still uncertain about the prospect of wind development. After nearly two years of planning, study and debate, officials and developers continue to butt heads over the intricacies of town policy.

Since Texas-based renewable venture Pioneer Green Energy approached town officials in 2009 about erecting an 11-turbine, 23-megawatt wind farm on Wapack Ridge, officials and company representatives have been taking steps to gauge public interest and project viability.

Town officials, for their part, drafted a zoning ordinance in 2010 that would permit wind development in New Ipswich. Town voters passed that ordinance with 64 percent approval.

Pioneer Green, meanwhile, was granted permission to erect two meteorological towers to conduct wind testing — one, on a land tract owned by Green Crow Corporation on Binney Hill Road, went up in November 2010; the other, on Kidder Mountain off Appleton Road, went up this September. Company representatives have been meeting with landowners and recently approached neighboring Temple about extending the New Ipswich wind farm onto the far side of Kidder Mountain.

But the Ledger-Transcript reported in November that the Planning Board's proposed zoning ordinance amendment, slated to go up for a town vote in March, drew sharp criticism from Pioneer Green and its sound consultants at Epsilon Associates, Inc., who insist that its noise level limits effectively prohibit wind development.

The ongoing debate has played out against the backdrop of a renewable energy movement that is gaining momentum across the state. Wind turbines may be on the horizon for Antrim and are slated for construction in Coos County. Lempster already has an industrial wind facility. Developers are making good on an incentivized energy market — Gov. John Lynch committed in 2006 to reaching an energy portfolio with 25 percent renewable or alternative energy by 2025 — and residents opposed to carbon-based fuels are championing wind as a clean and necessary alternative.

The keystone regulation in the Planning Board's amendment, a 33-decibel limit "anywhere and at anytime on a non-participating landowner's property" is "effectively a band on wind," Pioneer Green Vice President Adam Cohen told the Ledger-Transcript in December.

In comments submitted to the Planning Board in December, Epsilon Principal Robert O'Neal stated that the 33-dB limit would necessitate a 4-mile buffer around each turbine. With these constraints, O'Neal wrote, "It is unlikely that any wind developer would be able to design a project in New Ipswich." O'Neal also called into question the board's estimate, included in a handout at the first public hearing in November, that existing natural noise in New Ipswich is no higher than 20 db. "It is our experience that while it is possible to have brief periods at selected locations measure background sound levels of 20 dB or less, this is rare, even in New Hampshire," O'Neal wrote, and cited data from an Epsilon sound survey from Groton, where three hours out of 2,000 measured had sound levels less than 20 dB.

The same New Ipswich residents who passed the 2010 ordinance have remained quiet on this issue — public

hearings to discuss the ordinance have been poorly attended. Planning Board members, meanwhile, have refused to give credence to Pioneer Green's concerns.

Freeman insisted that the board is not trying to ban wind. "It's not a pro-wind or anti-wind issue," she said. "It's what are the impacts of turbines? I have no reason to be opposed to wind energy — I drive a Prius. But I have every reason, as a member of the Planning Board, to protect the members of the town of New Ipswich."

Planning Board Chair Ed Dekker also pointed out that if Pioneer Green submits its proposal within one year of the design review held in November, it would be exempt from the amended ordinance even if voters pass it.

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## **New Ipswich wind ordinance: Smart regulation or outright ban?**

### **We want wind farms to be good neighbors**

**BY ED DEKKER**

Can commercial wind farms be good neighbors? Yes, under the right circumstances. However, under other circumstances they are certainly not good neighbors. To understand those circumstances, it is necessary to understand something about wind farm noise and how it may affect people living nearby, as well as a few other issues.

You may have heard someone you know say they visited a wind farm, and when they stood at the foot of the turbine, all they heard was a slight "whooshing" sound. On the other hand, you may have heard that many people who live a halfmile, or even more, from a wind farm complain that the turbines keep them awake at night and make them sick. It is hard to make sense of these contradictory experiences, especially since both observations are true. The explanation for this apparent contradiction has to do with the peculiar characteristics of wind turbine noise.

Turbine blades create turbulence; and the noise originates high overhead, resulting in noise that is very different from more familiar noise sources, such as a truck passing by on a road. The noise you hear from a wind farm will depend on when and where you hear it.

There are a number of ways in which wind farm noise differs from our typical experience with noise. Noise from turbines is usually louder some distance from the turbine base than it is at the base. The loudness of the noise changes with weather conditions and time of day.

Also, modulations in the sound from wind turbines are very similar to the modulations in the human voice, making it extremely difficult to ignore. Our brains are hardwired to pay attention to this modulation.

In addition, the noise is frequently louder at night, when people are trying to sleep. There are two reasons for this.

The first is because noise follows cold air. Typically, during the day the cooler air is aloft. The sun warms the earth and the earth in turn warms the air closer to the ground. Usually, at night, the cooler air is at ground level and the turbine noise, following the cold air, bends towards the ground where it is noticeable to people.

The second is that at nighttime the winds may be much stronger at the top of the turbines than at ground level. Therefore there is little wind noise at ground level to "mask" the noise of the stronger winds turning the turbine blades.

People complaining about wind farms say they create objectionable noise often described as sounding like "a jet engine," a "helicopter" or "sneakers in a clothes dryer." Those living nearby have reported being unable to sleep and having a strong desire to leave the area when it is windy. They say that intruding noise deprives them of their sense of peace, tranquility and well being. Some people report feeling dizzy and nauseous, which new evidence suggests may be caused when inaudible infrasound generated by the turbines stimulates the inner ear.

The fact is there are many communities with wind farms located nearby that do not experience complaints or a significant change in property values. However, it is also a fact that there are a multitude of communities in the U.S., Europe, U.K.

and Australia with widespread complaints about wind farms. Many communities have seen large reductions in property values. Many communities are even organizing against wind farms and asking them to be shut down or decommissioned. This has all been widely reported. The explanation for these disparate experiences is that, due to inappropriate siting (insufficient separation for the particular site), the complaining communities are experiencing more noise from wind farms than the non-complaining communities.

Upon learning of these widespread complaints, the New Ipswich Planning Board has conducted a review of our existing regulation of wind farms and concluded that some changes are needed to ensure that any wind farm is a good neighbor.

First and foremost is the need to change our current noise level limits, which are the same levels as those permitted in many of the complaining communities. The Planning Board has learned that these standards were designed for urban areas, not for quiet rural communities such as ours. The proposed new noise level standards are designed to prevent widespread complaints.

The proposed 33-decibel noise standard can be met with sufficient separation between wind turbines and places where people live. The amount of separation needed will depend on how noisy the particular turbines are, the design of the site, the number of turbines, the terrain, and prevailing wind direction, among other factors.

The Planning Board's investigation suggests that a distance of between onehalf a mile and two miles should be sufficient to meet the proposed noise standard. As turbine technology advances and wind turbines become less noisy, the board expects this distance to drop.

In addition to noise, people have complained about flickering shadows and glinting light caused by the blades, and about ice, debris and fireballs being hurled long distances when there have been catastrophic equipment failures or ice accumulation on the blades. As it turns out, these additional potential problems are also resolved by the separation needed to comply with the noise standard.

Finally, many communities have been frustrated by the time it takes to resolve complaints and enforce violations. The Planning Board is proposing adding sections to the current ordinance to provide clear procedures for timely resolution of complaints and violations.

The Planning Board asks you to consider what makes a Good Neighbor.

Good neighbors do not keep you awake at night; they do not disrupt your sense of well-being; they do not throw things at you; do not reduce your property values; they do not ignore your concerns.

The Planning Board is convinced that the existing ordinance regulating Large Wind Energy Systems (LWES) does not sufficiently protect the people of New Ipswich. In other words, it does not ensure that commercial wind farms will be good neighbors. We ask the voters of New Ipswich to vote "yes" on Article 2 in order to protect health, safety, welfare and property values in New Ipswich.

The Planning Board has scheduled opportunities for New Ipswich voters to learn more about the proposed amendment.

We will make a brief presentation to the Select Board on Feb. 21 and Feb. 28.

On March 3 we will hold a "drop in and ask" session from 10 a.m. to 4 p.m. at the town office. Members of the Planning Board will be available to talk with any interested voter and explain the amendment.

On March 7 at 7 p.m. we will have an information meeting at the town offices to explain the amendment. Additional information will be available at the town office and on the town website.

Will New Ipswich require wind farms be good neighbors? The answer is up to the voters of New Ipswich on March 13.

*Ed Dekker is the chairman of the New Ipswich Planning Board.*

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## Changes are designed to keep wind out

**BY ADAM COHEN**

For the last two years, Pioneer Green Energy has been working closely with the Town of New Ipswich and the larger community to bring a wind energy project to the area. We have greatly enjoyed participating in this effort to foster clean energy and a new tax base for the town.

Most residents have rightly recognized the project as a new source of economic growth that also will preserve the unique character of the community.

Many also share our enthusiasm for helping our nation move away from imported fossil fuels toward clean, domestic energy sources of energy.

A key reason we came to New Ipswich was that the town had been proactive in attracting this kind of investment. In late 2008, the town began developing its own tailored approach to zoning and regulating responsible wind energy development. This effort culminated in the 2010 town warrant in which 64 percent of residents voted in favor of the wind ordinance that now exists.

This wind ordinance is a comprehensive measure that will enable responsible wind energy projects to proceed while protecting the community from any adverse effects. Our company has relied on the existing wind ordinance as a guide in all our planning for the project.

Working together in this way, the town's leaders and Pioneer Green are poised to bring positive change to the community. New Ipswich currently is grappling with possible cuts to its police force, roads in need of repair and the need to raise taxes once again.

Through our project, Pioneer Green stands ready to invest nearly \$40 million in the community. In addition, the project would create roughly 100 high-quality construction jobs at a time when they are badly needed.

This collaboration is at risk, however, from an unwise proposal to effectively convert the exiting wind ordinance into a wind ban. Under new leadership, the town's Planning Board has decided to reopen the subject of wind energy zoning only one year after the current approach was overwhelmingly approved by their fellow residents.

Although the new proposal is couched in terms of protecting public health, the existing wind ordinance amply protects public health. In effect, the new proposal amounts to a prohibition on responsible wind energy development and the residents of New Ipswich should reject this ill-advised measure.

In an effort to reverse the residents' expressed will, many statements have been made by the new board that raise more questions than they answer. For example, the "Wind Turbines — Frequently Asked Questions" handout from the Dec.

28 meeting of the new board states that it has "not found a single town with wind turbines where electricity rates went down." The New York State Electric Power System, however, found that the addition of wind power to that system projected a savings of more than \$300 million in one year.

The handout also states that only "a handful of temporary jobs" will be created by Pioneer's project. But the similarly sized wind project in Lempster created 120 construction jobs, which is hardly a "handful," and none of which are unimportant to those who need them.

Unsubstantiated claims have been made that surrounding property values will decrease. The 2009 study published by U.S. Department of Energy's Lawrence Berkeley National Laboratory, however, found no evidence of widespread impacts on property values from wind energy development.



Most troubling, the new board seeks to reduce the maximum sound that can be created by a wind energy facility without acknowledging the true purpose and effect of this unprecedented requirement.

Consistent with practices across the country, the existing wind ordinance provides that the most sound that can be created by a wind energy facility, measured at occupied homes and buildings, is 45 decibels.

This translates into a setback of roughly 1,500 feet, which is the length of five football fields placed end-to-end. The proposal would reduce this to 33 decibels, which translates into a setback of roughly two miles. If this standard were applied to all activities, it would make any truck noise and typical construction activity a violation of the law.

The proposed sound level limit is a thinly veiled attempt to ban responsible wind energy development in the name of a public health standard. We have identified no scientific basis for such a low sound requirement. The limit disregards non-partisan published reports by the World Health Organization, the U.S. Environmental Protection Agency, the Sierra Club and the State of New Hampshire, all of which endorse a 45-decibel limit from a reasonable distance.

Although the new board claims the lower level and longer distance are needed to protect health, a January 2012 report by a panel of independent scientists and doctors funded by the Massachusetts Department of Environmental Protection has concluded that there is no evidence of any such health effects from wind energy regulated as under the existing wind ordinance.

The proposed changes to the wind ordinance will prohibit all wind energy development in New Ipswich. They will also put at risk a \$40 million investment in the community, a significant number of new jobs and another step towards clean energy and away from fossil fuels.

If you believe in a larger tax base, more jobs, clean energy and a positive future for New Ipswich, Vote "no" to the proposed zoning amendments. Instead, work with our company and your neighbors to bring a great new project to town.

*Adam Cohen is a vice president with Texas-based Pioneer Green Energy.*

## Letters to the Editor

### Trouble on the airwaves

#### To the editor:

I have been having difficulties with reception of public radio stations since the new station 89.9 in Dublin came on. I have called Congressman Charlie Bass's office and reported this to him. They said they would look into it.

If you are having problems, I would encourage you to contact Congressman Bass. Perhaps something can be done if enough of us alert him to the problem.

**Eileen Elliott Hancock**

### Ridge no place for wind farms

#### To the editor:

I am very disappointed that the paper's wide coverage of large wind energy systems has overlooked a central issue: the Wapack Range Migration Route. As a member of the Temple Planning Board, I have done extensive research on the issue, and I have found that the migration route is a critical and unique natural element deserving full protection.

The Wapack Range, situated along the western edge of Temple, is the centerpiece of a crucial migration route recognized by the federal government. The ridge is approximately 22 miles long, and is part of a unique geological formation known as a "leading line," which creates a long, reliable updraft which birds intentionally travel along to assist in their migration.

There is not another "leading line" formation for hundreds of miles. Well-documented records indicate that more than 5,000 migrating raptors have been known to travel through this precise corridor in the course of just one day.

Well over 13,000 migrating raptors are counted each fall migration season. Therefore, we take particular care in protecting this critical flyway and the natural environment that supports it.

As a hearty proponent of alternative energy, I understand that reducing reliance on coal and other polluting energy sources is at the heart of preserving wildlife of all kinds, but we cannot overlook the effects of putting a lethal obstacle directly along this very rare and heavily traveled migration route.

We would be irresponsible if we did not establish stringent guidelines for protection. The goal of the Temple Planning Board is to protect the health, safety, and property of Temple residents.

We are also charged with protecting our natural treasures. We ask Temple residents to support the new wind ordinance, which includes safeguards against development that would cause harm.

**Rose Lowry Temple**

### Energy giants don't play fair

#### To the editor:

Here in New Hampshire, we claim to take democracy seriously. We appreciate the opportunity to meet political candidates in town hall meetings, shake their hands, and are bombarded with phone calls during election season.

We educate ourselves, as best we can about issues, and vote accordingly. Yet, somehow there is a disconnect between the kind of democracy we value and the reality of corporate influence on our politics. It can be depressing, and seem impossible to change or address this system, but I want to share a story that gives me hope.

It is a story about a growing movement for fair play, led by [350.org](http://350.org), which was started by Bill McKibben. Dressed in referee shirts, and blowing whistles, thousands of people gathered around the White House and in many state capitals (including Concord) on Jan. 24. Together, they called a "foul" on Congress for accepting gifts of \$93 million from dirty energy corporations, and then directing tens of billions of dollars from the federal budget into subsidies for big oil, coal, natural gas and nuclear power.

These subsidies retard the necessary transition to safer, less polluting renewable energies. I was disappointed to find out, at [DirtyEnergy-Money.com](http://DirtyEnergy-Money.com), that our own representatives have taken money from fossil fuel industries too.

Sen. Jeanne Shaheen accepted \$51,625; Sen. Kelly Ayotte accepted \$169,523; and Rep. Charlie Bass accepted \$202,510. This leads to unacceptable conflicts of interest.

Climate change is happening faster than scientists had predicted. The earth is now an average one degree warmer, and we're seeing year after year of recordbreaking unpredictable weather, and an increasingly acidic ocean.

It is time to hold our representatives accountable for their actions, and to demand they represent our wishes, rather than those of dirty energy corporations, who do not need our help. As voters in a democracy, we have the right to demand fair play now.

**Michelle Russell Hancock**

**Use best ideas of both parties**

**To the editor:**

Our next president should possess two important traits: enormous compassion for people and a strong willingness to compromise with political opponents. Compassion is necessary because not all Americans are fortunate throughout their entire lives. Many Americans were not born into loving, caring families or live in one now. The majority of students, during my teaching career, were not raised by two parents. Many did not know who their fathers were. Many lived in settlement houses.

Many veterans have not returned to wonderful families or to jobs. Veterans who have suffered both physically and emotionally deserve the best possible care, free of charge, from our government.

Athletic, vigorous, self-reliant people in the prime of life can be struck down by terrible illnesses and drained of all their financial resources. Hard-working business people possessing intelligence and ambition, due to circumstances out of their control, may lose their companies. Unemployment can strike responsible individuals who have worked for decades.

I do not accept the Social Darwinian view that poverty is the fault of the poor. Many are not blessed in their lifetimes through no fault of their own.

A willingness to compromise would help alleviate many national economic problems. Republicans are correct in wanting to lower corporate tax rates to encourage growth and Democrats are correct in wanting individuals making over \$250,000 a year to pay more than 15 percent on dividend and capital gains income in order to reduce annual deficits and have a fairer tax system.

Government should help people and the best ideas of both political parties should be used. Our problems are solvable.

**Rick Sirvint Rindge**

## **A scholarship success story**

### **To the editor:**

The ConVal Community Scholarship Foundation Dollars for Scholars (CVCSF) chapter began in 2006, its mission to inspire hope and confidence to help more students in the ConVal region achieve their potential. As a founder and first president of CVCSF, I write this letter to report on the extraordinary achievement of one of our first scholarship award winners, Priscilla Coffill.

To graduates in the Con-Val classes of 2007 through 2011, postsecondary tuition scholarship awards of up to \$6,500 have been granted to 27 graduates based on unusual challenges they faced and evident potential for success. Their motto has been "Face challenges, aim higher and achieve."

I, Priscilla's assigned mentor and advocate, other CVCSF founders and directors and our many supporters have cause to be proud of Priscilla's achievements and those of many of our other award winners.

Priscilla graduated from the N.H. Technical Institute

Turn to **LETTERS** ..... Page 8

## **Article Continued Below**

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See **LETTERS** on Page 08

### **Letters to the Editor**

#### **LETTERS** .....( from page 7)

in Concord as an R.N. in May 2009. On July 13 of that year, she was hired as a nurse at Monadnock Community Hospital (where she was born) and which had matched her CVCSF scholarship financial support. Priscilla is currently a full time R.N. at MCH, works to mentor ConVal students interested in nursing careers, and teaches an orthopedic joint replacement class for community members.

In January Priscilla was elected to become a director of the ConVal Community Scholarship Foundation, where she now participates in inspiring future challenged ConVal graduates facing tough challenges to aim higher and achieve.

What greater wish can the founders of a charitable organization have than to see one of those it chose to help, grow to become a director of the organization and start giving back to future beneficiaries?

**John F. Vance Peterborough**

### **Why allow guns on campus?**

#### **To the editor:**

Bills that are moving through the state Legislature to permit guns on college campuses, to permit convicted felons to carry weapons, and to permit unlimited firing of guns in residential neighborhoods, leave me astounded and terrified.

From 1970 until 1981, I worked in student affairs administration at a state university campus in New York state. As you may recall, those were troubled times on college campuses nationwide, and we had our fair share of disturbances.

One of my tasks as assistant to the vice president of student affairs was to "prosecute" student violators of campus regulations before the disciplinary hearing committee. In the midst of one hearing, an unknown student pushed a pie in my face. If that student had been carrying a gun, I might not be alive now.

On another occasion, when I was acting vice president for student affairs, I had to shut down a loud and raucous outdoor concert that was going on far longer than had been permitted and neighbors were phoning complaints.

I had to walk up to the stage, seize the microphone and announce that the concert was over and everyone should disperse. Although my heart was pounding, there was no incident and the crowd did disperse.

But what if even one disgruntled student with too much alcohol or other drug had been carrying a gun? Again I might well not be alive today. Mixing guns with adolescent hubris and immaturity, alcohol, drugs and high emotion is a deadly cocktail. Lawmakers should take into account the consequences of the proliferation of guns that these bills would cause, and should consult students, faculty and administrators at New Hampshire colleges before permitting guns on campuses.

**John Van Ness Jaffrey**

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## Worries surface over wind ordinance

While residents rewrote several elements of the town warrant at a Deliberative Session on Tuesday night, many expressed skepticism with an article on the warrant that could not be changed: A proposed amendment to the town's wind energy ordinance.

The amendment, which revamps a wind ordinance that voters passed in 2010, has touched off sustained debate between the Planning Board and Pioneer Green Energy, a renewable venture that hopes to build a 20-megawatt wind farm on Wapack Ridge. Representatives from Pioneer Green have asserted that the ordinance amendment's key-stone 33-decibel noise level limit constitutes a "ban" on wind.

Prior to the session, Planning Board members distributed fliers and information with a heavily cautionary slant — one packet included six newspaper articles from around the country and world that documented wind farms plaguing residents with "misery" and sleepless nights.

Select Board Chair Bentti Hoiska, who began his presentation of the ordinance amendment by likening wind farms to a series of 45-story garages that sound like jet engines, was interrupted repeatedly concerned with his bias.

But residents' jabs subsided when Jim Parison, State Representative and resident, took the microphone.

"One of the turbines would dominate the landscape behind my house," Parison began, "but I don't stand to profit from a wind farm." Parison said that as an engineer with 25 years of experience at the Bose Corporation, and as a government official familiar with the intricacies of the Site Evaluation Committee, or SEC, which governs the permitting process for wind farms greater than 30 megawatts, he didn't find the new ordinance to be scientifically sound.

"I think the older ordinance is based on more science than the new one," Parison said, and added that the World Health Organization recommends a noise level limit of 44 decibels, not 33 decibels.

Planning Board Chair Ed Dekker responded to Parison's comments by saying that the WHO document often cited for its 45-dB limit actually calls for, in the appendix, a lower level in rural places.

The Planning Board will hold discussions at Select Board meetings on Feb. 21 and 28, and will be at the Town Offices on March 3 between 10 a.m. and 4 p.m. to speak with residents about the ordinance. The board will also hold an information session on March 7 at 7 p.m. at the Town Offices.

—by Angela Jane Evancie

**TEMPLE****Discussing, and regulating, wind energy****Planning Board looks at drafted ordinance one town over to draw up rules****BY ANGELA JANE EVANCIE**

Monadnock Ledger-Transcript

TEMPLE — Residents interested in contributing to the town's first wind ordinance will have their last chance on Wednesday night, when the Planning Board holds its final public hearing on the ordinance.

Board members have been scrambling to finalize an ordinance for voter approval — Temple residents will vote in March — in light of a proposed wind farm on the Wapack Ridge that stretches between Temple and New Ipswich. The developer, Texas-based Pioneer Green Energy, has proposed a 20-megawatt farm comprised of eight to ten turbines.

At a public hearing at the Town Hall in mid-January, board members shared the ninth working draft with a small crowd of residents and solicited feedback on the ordinance.

The draft featured several components influenced by or lifted directly from an ordinance amendment recently approved by the New Ipswich Planning Board for wind development in that town. Chief among these is a noise level limit of 33 decibels "anywhere and at any time on a Non-Participating Landowner's Property," a limit that derives from a 1974 Environmental Protection Agency document that measures community response to large noise emitters.

Temple's ordinance also includes a provision limiting turbine height to 450 feet and, unlike that of New Ipswich, calls for a setback distance of 2,000 feet from a non-participating property line.

In New Ipswich, the 33-dB noise level limit drew sharp criticism from Pioneer Green, whose representatives said the noise cap constituted a "ban" on wind development.

In Temple, however, Pioneer Green has remained quiet as the Planning Board works through its drafting process.

"We've actually remarked on how absent Pioneer Green has been," Planning Board member Rose Lowry said on Jan. 19. Lowry said that Pioneer representative Adam Cohen had been more involved at the beginning of the Planning Board's drafting process, but has made fewer and fewer appearances in recent weeks. "Maybe [Cohen] was...getting the gist that we were starting to tighten our regulations and starting to listen to New Ipswich," Lowry said.

"We want to partner with New Ipswich with this," Lowry continued. "By coordinating our tight restrictions, there's more strength in them both."

Cohen responded to the proposed regulation on Jan. 19. "I think Temple knows what they're doing," he told the Ledger-Transcript. "I think [a] 33 [decibel limit] is zoning wind out. At that point, it's for the town to vote if they want to be part of a green energy economy."

*(See viewpoint on page 9)*

Like members of the New Ipswich Planning Board, Temple Planning Board members do not consider their ordinance as a regulation that will be prohibitive to wind development, but one that will protect town residents and properties.

"If we pass an ordinance that the state deems prohibitive to wind, it can overrule us," Lowry said at the hearing. Lowry requested input from the audience on what in Temple is most deserving of protection. After the hearing, she reported that health, wildlife and birds, and town finances had emerged as three areas worthy of protection; fire and safety, historical sites and aesthetics garnered less support.

Planning Board Chair Allen Pickman, speaking after the hearing, reiterated what he had told residents at the hearing on Jan. 18.

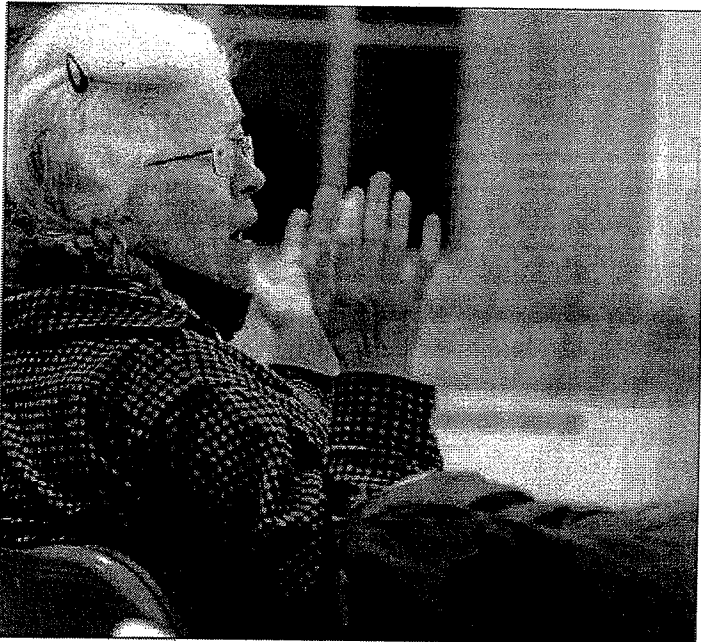
"I think everybody understands that we're much better off with an ordinance than without it," Pickman said. "Because then [without an ordinance] regulation would fall back on the state."

Of the amiable crowd, Lowry said she had not encountered strong opposition — or support — for wind among Temple residents.

"What we had at the meeting last night seemed to be nobody who was in disagreement with the board," Lowry said. "It certainly makes for a pleasant meeting, but we're wondering if there are people who disagree. We don't know. ... I think that if there are people against an ordinance, it's not an active group." The Planning Board will hold its second and final hearing on the ordinance on Wednesday at 7 p.m. at the Town Hall.

"At that point, it's for the town to vote if they want to be part of a green energy economy.

Adam Cohen Pioneer Green Energy



Temple resident and Zoning Board of Appeals member Honey Hastings makes a comment about wind energy at a Planning Board hearing last Wednesday.

**STAFF PHOTO BY ANGELA JANE EVANCIE**





Ex-officio Planning Board member John Kieley discusses Temple's first wind ordinance, currently in its ninth draft, at a public hearing at the Town Hall on Wednesday.

**STAFF PHOTO BY ANGELA JANE EVANCIE**

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## NEW IPSWICH

### Web policy under fire

BY ANGELA JANE EVANCIE

Monadnock Ledger-Transcript

NEW IPSWICH — Town officials played tug-of-war with the town website last week, vying for control of a primary tool for disseminating information on increasingly controversial wind energy development.

The information appeared on — and then disappeared from — a page on the town website that provides resources on large wind energy systems. The page serves to inform voters who will decide whether or not to approve an amendment to the town's wind ordinance, put forth by the Planning Board, at the polls next month.

The amendment has come under continual fire from wind developers and, more recently, residents at the deliberative session, for effectively banning wind development.

According to Bob Boynton, the chair of the Conservation Commission who has also served as webmaster since the creation of the site more than ten years ago, the Planning Board asked him to upload information that he considered biased against wind energy.

"They gave me links to put up, from England, mostly, about complaints regarding noise. Thirteen of them. I found it hard to believe that [while] researching they wouldn't come across a few positive ones," said Boynton, who says he helped the Planning Board with preliminary wind research last summer.

On Wednesday, Boynton added more links and information that he said he felt provided a more balanced perspective; on Wednesday night, he said that Town Administrator Marie Knowlton sent an email requesting he remove them.

That night, Boynton moved the information to the Conservation Commission website and linked to it from the town website. On Thursday, he said Knowlton asked him to remove the link.

"I was told I was not authorized to put the information up," Boynton said. "I was frustrated...I just felt like, Jesus, if the people are going to be voting on a warrant article, the more information they have, the better."

"I truly believe that more information means better government," Boynton continued.

Planning Board Chair Ed Dekker said Monday that Boynton could not put information on the town website while acting as an individual.

"The webmaster only puts things up as directed by Town Administrator Marie Knowlton," Dekker said "[Boynton's actions] came through to me as a slap to the Planning Board."

But according to Select Board member Michael Conlin, the town does not have an official web policy. Conlin said on Monday that the Select Board will likely begin developing a policy after the local elections in March.

"There should be a web policy, but we've never had a problem," Boynton said. "Usually you don't create a policy until you have a problem."

Conlin said the town does have a policy that the Planning Board, not Boynton, may have violated — one that prohibits campaigning on town property. He said the board has been providing fliers in the Town Offices that say

"Vote Yes" on the wind ordinance, which he considers to be campaigning.

"They're the ones doing the work, so obviously they're going to be in favor of it," Conlin said of the board, "but I just had a problem with the fact that it said 'Vote Yes' instead of just 'Vote.'" Conlin said the Select Board will discuss the Planning Board's fliers at its meeting this evening; the Planning Board will also give a presentation on the ordinance at the meeting.

The Select Board is scheduled to meet at the Town Offices tonight at 6:30 p.m.

*Angela Jane Evancie can be reached at 924-7172 ext. 232 or [aevancie@ledgertranscript.com](mailto:aevancie@ledgertranscript.com). She's on Twitter at [@AJEvancie](https://twitter.com/AJEvancie).*

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**5**  
THINGS TO DO  
Full calendar, Page 45

**YOUNG, ARTFUL**  
A provocative exhibit opening this weekend is aimed at showcasing the work of artists under 30 years old.

**POETIC**  
Feeling neighborly? Sharon Arts hosts another in their Good Neighbor series with a poetry reading from three writers.

**CIRCUS TIME**  
Hilltop Circus will perform at Pine Hill Waldorf School on Saturday in a farewell act for longtime circus director Jackie Davis.

**TAKING A HIKE**  
The Harris Center leads a hike into the Lovers Mill Cedar Swamp on Saturday, showing otter and bobcat tracks.

**BLUEGRASS JAM**  
Get your dancin' shoes on for a jam fest of bluegrass music at Harlow's tonight, open to all bearing instruments and going late.

MONADNOCK

# Ledger-Transcript

Peterborough, N.H.

Thursday, February 23, 2012

50¢

## The Latest

### News

#### Officials budget for wage hikes

Employees slated to receive 3.5% wage hike in merit pool approval from Peterborough Select Board.  
Page 2

#### Wind rules up for vote again

Antrim residents to consider local large-scale wind ordinance again during March meeting.  
Page 3

### Sports



#### Rewriting the books

FPU men's basketball team will be the No. 1 seed in NE-10 tournament after win over Merrimack on Tuesday.  
Page 19

#### Coming Tuesday

**The next phase: Business after retirement**

### 2011

NEW ENGLAND AWARD FOR OUTSTANDING JOURNALISM

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## Student's body found on mountain

Theater major and senior at Keene State allegedly used firearm to commit suicide near Mt. Monadnock summit

By ALYSSA DANDREA  
Monadnock Ledger-Transcript

**JAFFREY** — The body of a 21-year-old Keene State College student was found by state and local officials near the summit of Mount Monadnock on Tuesday, after law enforcement closed the state park to search for

him. Authorities discovered the body of Jacob Messersmith, 21, of Alexandria at approximately 1 p.m. He had allegedly used a firearm to commit suicide, according to a press release issued by the N.H. Fish and Game Department and college officials. The daylong search for Messersmith, a senior at KSC studying theater arts, was prompted by concerns that he was reportedly "armed and dangerous," his vehicle had also been left at the foot of the mountain overnight Monday.

According to N.H. Fish and Game Lt. Craig Morrocco, Assistant Park Manager Sue Tirrell saw Messersmith enter the park on Monday afternoon around 4:30 p.m. "He was hiking alone and appeared to be unprepared," Morrocco wrote. When Tirrell returned to the park Tuesday morning, she found Messersmith's car still in the parking lot.

Turn to STUDENT.....Page 5

## Web of conflict

Tensions flare in New Ipswich over online information policy



STAFF PHOTOS BY ANGELA JANE EVANCIE

Webmaster and Conservation Commission Chair Bob Boynton stands to make a point in a contentious debate about the New Ipswich web policy at a meeting on Tuesday evening while Pioneer Green's Adam Cohen, seated, listens. Town officials clashed over the dissemination of information about wind energy in the final weeks before a vote on the town's wind ordinance.



Planning Board Chair Ed Dekker voices a rebuttal during a tense dispute over the town's web policy — and the implications for sharing information about wind energy on the town website — on Tuesday night.

#### Debate over wind rules rages

By ANGELA JANE EVANCIE  
Monadnock Ledger-Transcript

**NEW IPSWICH** — A dispute in the Town Offices last week over the provisions of a nonexistent web policy fanned the flames of an already raging debate surrounding the town's wind ordinance, leading to an impassioned shouting match between officials at a Select Board meeting on Tuesday evening.

Turn to WEB.....Page 6

## RINDGE Man held on rape charge

Arranged on Facebook to meet with 14-year-old after school

By ALYSSA DANDREA  
Monadnock Ledger-Transcript

A Rindge man was arrested earlier this month and charged with one count of felonious sexual assault in connection with an incident involving a minor at a Winchester community center.



Trevor Sands

Rindge Police arrested Trevor Sands, 19, of Annett Road in Rindge in early February; he is charged with the sexual assault of a 14-year-old high school student, according to police.

Turn to SANDS.....Page 5

## PETERBOROUGH Fatal plane crash info released

By DAVE ANDERSON  
Monadnock Ledger-Transcript

**PETERBOROUGH** — Pilot Paul Schlieben notified the Lebanon Municipal Airport control tower that he "had to turn back" minutes before his Cessna T182T single-engine plane crashed about 700 feet from the airport runway on Feb. 9, according to a preliminary report from the National Transportation Safety Board released Wednesday.

Turn to CRASH.....Page 5

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# Tensions spark over wind ordinance, web information policies

WEB .....(from page 1)

The meeting's primary purpose was for board members and the handful of residents in attendance to hear the first of two presentations by the Planning Board about proposed amendments to the town's 2010 wind ordinance, which will go up for a vote in March.

After the presentation, however, Conservation Commission chair and town webmaster Bob Boynton stood up to seek closure to a chain of events that the Ledger-Transcript reported on Monday: While uploading wind-related information to the town website on behalf of the Planning Board last Wednesday, Boynton decided to add several links that he had collected while researching — some of it independently, some of it while partnered with Planning Board members.

Later that day Town Administrator Marie Knowlton requested Boynton remove the information, according to Boynton, Knowlton told



Staff Photo By ANGELA JANE EVANCIE  
Planning Board member Liz Freeman makes a point during Tuesday's Select Board meeting.

him he was not authorized to post the information. When he moved the information to the Conservation Commission website and linked to it from the town website,

“Filling people up with too much information — that's the problem. I'm afraid of them saying 'That's too much,' and voting no to everything.”

Ed Dekker  
Planning Board Chair

Knowlton also asked him to remove the link.

On Tuesday, Boynton asked the board to rescind the decision. “I'm asking you publicly,” he said, “to permit a link from the town website to the Conservation Commission website.”

Currently, the town has no official web policy. Select Board member Michael Conlin told the Ledger-Transcript on Monday that the board will work to institute one post-elections.

“Censorship isn't a web policy,” Boynton said on Tuesday, aiming his criticism at what he sees as an attempt by town officials to clamp down on the free flow of information.

But several officials said that Boynton, who has acted as the webmaster for ten years, overstepped his responsibility as Conservation Commission chair when he uploaded the wind resources without permission from his board. That the information in question regarded an already controversial issue, Marie Knowlton said at the meeting, was purely circumstantial.

“It has nothing to do with opinion (on wind),” Knowlton said. “It was because no one asked me permission.” “It was inappropriate for you to act as an individual,” Planning Board Chair Ed Dekker told Boynton during the meeting. “No board member can act without approval from other members.”

Select Board member George Lawrence seconded Dekker's sentiment: “You, as one member of the Conservation Commission, shouldn't have acted alone,” he told Boynton.

But Boynton, championing more information over less, defended his position.

“It's pure and simple,” he said. “It's the public's right to know.”

“I don't think everybody should have to go out and find everything on their own,” Boynton continued. “Civilization is built on collaboration. I don't know what's going on, but I feel the public is getting the short end of the stick... My only intent was to inform the public.”

The conversation culminated in a series of accusations and denials about bias and motivation: Dekker said Boynton did not come to Planning Board hearings, while Boynton said Dekker did not attend Conservation Commission meetings.

Dekker also countered Boynton's claim that his supplemental information was neutral by pointing out that Boynton had included a press release from Pioneer Green Energy, the developer currently eyeing Wapack Ridge for a 20-megawatt wind farm.

Pioneer Green's Adam Cohen, who made several comments during the Planning Board's presentation, did not contribute to the debate about the town's web policy.

Dekker, who initially argued that Boynton could not act without approval from the Conservation Commission, landed on a final point that suggested a different concern.

“Filling people up with too much information — that's the problem,” Dekker said. “I'm afraid of them saying, ‘That's too much,’ and voting no to everything.”

Becky Doyle, who is running for a seat on the Select Board to fill a vacancy left by Chairman Benti Hoiska, called Dekker's reasoning into question.

“What is the Planning Board so afraid of? It's just information,” she said during the meeting. “People can choose what they want to read.”

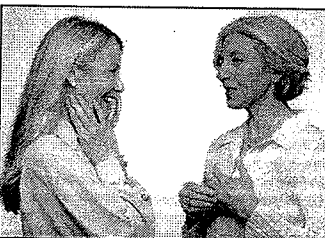
The Select Board voted to approve publication of the information if Boynton receives approval from the Conservation Commission. Upon approval, Boynton will be able to link from the town website to wind resources on the Conservation Commission website.

“As long as the Conservation Commission votes to approve information germane to conservation,” Hoiska said, “(the link) can go up on the website.”

Angela Jane Evancie can be reached at 924-7112 ext. 232 or [aevacie@ledger-transcript.com](mailto:aevacie@ledger-transcript.com). She's on Twitter at @AJEvancie.

“Civilization is built on collaboration. I don't know what's going on, but I feel the public is getting the short end of the stick... My only intent was to inform the public.”

Bob Boynton  
Conservation Commission Chair and webmaster



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# Town Meeting 2012

## Wind ordinance puts priority on local welfare

By NED NICHOLS

As many residents are aware, the New Ipswich Planning Board has updated the existing ordinance relating to Large Wind Energy Systems (LWES). Residents will have an opportunity to vote on the revised ordinance in March.

The board is aware that some of the changes are controversial within the town and that the board has been accused of being "anti-wind." As a new board member, I want to share my experience in the development of the revised ordinance and to encourage a public debate on the issues through the editorial so that residents will more fully understand the issues related to LWES.

The debate over wind energy in Antrim coupled with our knowledge that New Ipswich is likely to have an application for a LWES project within the next year or so, convinced the board that we needed to review our ordinance to ensure that it reflects the most current experience with commercial wind farms. It should be noted that five of seven present board members served on the board that wrote the existing ordinance two years ago.

We started our review in August of this year and met at least once a week for four hours through November in addition to our regularly scheduled meetings. Between six and eight members or alternates were present at each meeting.

Between the meetings, we all individually researched wind energy over the Internet and shared the information for discussion at our

meetings. We read hundreds of pages of information on the subject. In addition we met with experts on sound and wild life. Board members worked hard during this process and every idea was publicly discussed during the meetings. The resulting changes were arrived at by consensus.

Our most important concern was for the physical safety of New Ipswich residents. Wind turbines present a risk of debris throw. This debris can be the release of ice built up on the blades, the blades themselves, or parts of the generator assembly.

The distance that debris of significant size can be thrown is related to the height of the windmill and the speed at which the blades are turning. Some wind turbines can throw debris more than 2,000 feet.

There are several different manufacturers of wind turbines and they each offer several sizes of wind turbines. The existing ordinance set a fixed setback that would not be adequate to protect residents from all sizes of wind turbines. The revision takes this into account and sets the limits according to the actual turbine that is being proposed.

The second most important concern was for the general welfare of New Ipswich residents. The most critical issue in this category is sound. Through our research and discussions with sound experts, we became convinced that sound limitations in our existing ordinance were inadequate to protect New Ipswich residents.

However, we soon realized that sound is so technically complex that

it would be beyond our ability to rewrite the ordinance by ourselves. Most importantly we learned that sound studies can easily be presented to show one truth while masking another truth.

For these reasons, we decided to hire one of the sound experts that we interviewed to completely rewrite the sound portion of the ordinance.

The result is an ordinance that is fairly simple to understand and is based on the latest experience in commercial wind farm development, citizen complaints regarding noise from commercial wind farms, and reported adverse health effects from commercial wind farm sound energy which is not always audible.

We have heard the statements from potential developers and their experts that the sound portion of our revised ordinance would make New Ipswich undevelopable for LWES. No one has stated whether this is because the standards are technically impossible to achieve or if the new standards make it too costly, or too uncertain for a developer to proceed with a project in New Ipswich.

Regardless, we can assume the developers' statements may be true. On the other hand, we board members sincerely believe that the sound standards we have adopted, are necessary to protect New Ipswich citizens. We did not set out with a goal to eliminate LWES from the town of New Ipswich, and we are not convinced that the developers' claims are true, but if there is a conflict between commercial wind development and the general welfare

of New Ipswich residents, we are obligated to err on the side of the general welfare.

As a result of our meetings a number of other changes were made to the existing ordinance, but most of them involve making clarifications, replacing subjective requirements with more objective requirements, and administrative changes which we did not believe were controversial.

We have however learned that several of these changes have caused concern with some residents.

The first of these is the requirement that developers comply with the Vision Chapter of the Master Plan. This addition to the ordinance is to alert the developer to address this requirement in its initial application.

The board can apply this criteria without specifically stating it in the actual ordinance. If the developer is aware of the requirement up front, he can prepare for it and save time in the application process.

The second desire is the elimination of the board's waiver authority. This is really a cleanup of the existing ordinance which seems to give Planning Board authority to waive requirements of the ordinance. This was a mistake and was included when the board initially developed the existing ordinance two years ago. Actually, state law does not permit Planning Boards to waive zoning ordinances.

Finally, we added a requirement that all leases and easements related to a commercial wind farm be made public. Some landowners

have expressed opposition to this requirement. Ironically, one of the factors that motivated the board to include this requirement was to protect landowners. In our research we learned that developers negotiate the best deal they can with each landowner separately and the signed agreements actually prohibit landowners from discussing the terms of their agreement with anyone.

The landowners have no idea what the market value of the lease or easement might be. By forcing developers to disclose this information, offers to landowners are more likely to be uniform and fair. As a point of reference, we read articles that claimed the value of a lease at between \$3,000-\$8,000 per megawatt per year. That means that the siting of one large wind turbine of 3 megawatts would be worth between \$9,000-\$24,000 per year to the landowner.

I have explained the board's logic with respect to all of the changes which the board has learned may be controversial, but the real issue that (in my opinion) will determine if the revised ordinance passes or fails is the clarification of the noise level limits and measurements.

This is a very important issue to New Ipswich and I encourage all residents to do some research on their own. There is a large body of reference material available on the Internet. In addition, all of the documents that the board reviewed are available at the town office.

Ned Nichols is a member of the New Ipswich Planning Board.

## ConVal gym bond deserves support

By JON HALL

I write today in support of the proposed bond to renovate portions of ConVal High School. This issue goes well beyond improvements to our sports facility. While we certainly need improvements to our gym, this bond is much more about being in compliance with Federal Law, NEASC accreditation and common decency.

There are many events that take place at the gym end of the building outside of athletics — concerts, craft fairs, district meetings, award assemblies, recreation programs and school fundraisers to name a few. For all of these, the ADA (American's with Disabilities Act) presents a challenge. A specific example of this lack of compliance is that there is not a bathroom at that end of the building that is handicap accessible for anyone attending any of these events.

In March 2010, the proposed bond was narrowly defeated. We are now closing in on March of 2012 and our needs have not changed. The accessibility has not improved; we are two years closer to our re-accreditation and have been warned about non-compliance by NEASC; and we are still not meeting Title IX requirements.

Two years have passed and we have still not met our obligations as a school and community to comply with federal law and do what is right.

Opponents of the bond will say they agree with "doing what's right," but that we've gone too far and it costs too much. They will pick out obscure verbiage in the architect's report and distort the facts. You will hear about the athletic director getting a 1,200-square-foot office or "suite" and that excessive space is being added.

While it is true that on one drawing the

architect labeled an area of the blue print a "suite," it is not true that the athletic director would have a 1,200-square-foot office. That square footage includes a classroom, a hallway, an elevator, a conference room, a storage closet and an area for the athletic director's administrative assistant.

In point of fact, the actual office would be 194-square-foot or smaller than the space I currently occupy. Attempts to portray this project as excessive are not accurate. I have worked on this project for almost six years. We have gone through revision after revision to be as responsible, both financially and from an educational need standpoint.

Yes, we are adding square footage, but not because it would be impossible to create accessibility within our current footprint. There isn't enough square footage to widen hallways, add handicapped bathrooms and create the needed accessibility. We have studied it and are offering the best plan from our committee, architects, business manager, administrative team and engineers. This group has spent countless hours to bring voters the right plan. It is not frivolous or haphazard but rather well thought out and researched.

ConVal High School's gym end of the building is more than 40 years old. It was built for 750 students and we are still in excess of that number. It has major deficiencies in accessibility and functionality. It is time to fix what doesn't work and right what has been wrong for 40 years.

Please support the bond in Article 1 on the school district ballot and help us bring ConVal High School up to date and compliant with federal law, and a building we can all be proud of.

Jon Hall is athletic director for ConVal High School.

## Opponents of building fixes abused deliberative session

By GEORGE SYLMAN JR.

At the New Ipswich Deliberative Session last week, two strange and costly things happened which voters who didn't attend may live to regret. The first was a motion to increase the town budget by more than \$12,000 to \$2.5 million.

The increase was requested to improve the baseball and soccer fields and to give town employees even higher pay increases than the original budget called for.

The second was a motion to reduce to zero the warrant article for \$130,000 needed to complete the final stages of Building No. 2, which would house the Fire Department offices, Emergency Management and the Police Department, leaving some undesirable space for future growth.

Situation No. 1 is easily corrected by the townspeople by simply voting "no" on Article 4, if they so choose, which would force the town to go to the "default budget."

Situation No. 2 is another story. Reducing that article to zero was supported by only 37 voters of the approximately 70 present. Such poor attendance at such important meetings is one of the shortcomings of SB2 ballot voting, which replaces the Town Meeting.

The changes made at the Deliberative Session became the final articles that appear on the ballot, leaving out any possibility for change or correction. This is another

example of the minority deciding for the majority, if we allow it.

Imagine, just 37 votes. The Building No. 2 committee had more than 37 people volunteering and helping to get the project completed. The visionaries are those townspeople who have seen the benefits that this building will bring to the town when it is finally brought "online" — benefits like not having to continue to pay almost \$20,000 a year in rent to private property owners or not having to purchase and move one of the temporary classrooms at Appleton for between \$60,000 and \$90,000 to house the offices for the Fire Department, which has been discussed at a recent selectmen's meeting as an alternative.

So when does a win become a loss? When 35 people decide for the 2,000 voters that they know better than the rest of the town and the people directly involved. The town already has an investment and to walk away now, in the final stages, would be wasteful and foolish.

Is that the end of the story for Building No. 2? Not really. Reducing the article to zero doesn't undo any of the progress that has been made. However, it does delay completion of the project until the selectmen and the other projects' supporters can come up with another method of financing it.

George Sylman Jr. is a resident of New Ipswich.

## Consolidating middle schools is best idea for ConVal District

By DEB MCGRATH

For several years there has been much conversation both within and outside of the ConVal SAU conference room about the declining enrollment in our school district and the resulting "small school" dilemma. There have been at least two official subcommittee studies of the School Board studying this issue since it has become blatantly obvious that declining enrollment is not a one- or two-year anomaly.

During this same time period there were multiple public School Board meetings and media coverage explaining the ConVal District's Articles of Agreement, along with the process necessary to change the articles prior to any school closures. It was decided over a year ago to table this discussion. But due to the continuing decline in enrollment, restructuring options are now on the table — and as a result are the articles of agreement being studied.

The district's Model Study Committee has proposed five restructuring models, along with the pros and cons of each. These have been in the Monadnock Ledger-Transcript and are also on the ConVal District website. Of the five options on the table, three would require a change in the articles of agreement because they include closing one or more district schools.

If some of our district are unaware of the declining enrollment in our public schools and the five models proposed to address the declining enrollment, it is not only not due to a lack of information provided by both the media and our School Board representatives, I find it difficult to understand how George Kidd, chair of the District Model Committee, can suggest that petitioned Warrant Article 7 being on the March ballot "usurps the public's right to know," given the extensive media coverage of both the declining enrollment and the models his committee has proposed as possible solutions for this problem.

Article 7 reads as follows: Shall the Contoocook Valley School District maintain all current elementary schools; educate Grades K-5 in those existing schools and Grades 6-8 in one middle school for the District?

After careful review of the five restructuring models proposed, it is my opinion that two of these models shouldn't even be under consideration. Model 4, known as Status Quo plus Enhancements, not only fails to address the issue of declining enrollment, but it also requests an additional \$500,000 expenditure for new staff to enhance educational opportunities.

At a time when it is common knowledge that we need less staff due to the declining enrollment, why would the committee present a model which asks for more?

Model 2 sends the fifth graders back to the elementary schools, maintains both middle schools, but does virtually nothing to address the issue of declining enrollment. In essence it does nothing more than shuffle students around.

Model 1, which will be presented as Warrant Article 7 on the March ballot, would move all fifth graders back to their town's elementary schools, close Great Brook Middle School and educate all students in Grades 6-8 at South Meadow Middle School.

Unlike Models 3 and 5, Model 1 proposes to keep our towns' individual elementary schools viable; keeping all current elementary schools open has the unanimous support of the Selectmen's Advisory Committee.

If passed, this model ensures that our younger students will not be traveling on a bus for extended periods of time because Grades K-5 will be educated in their home town elementary schools. According to the superintendent of schools, this model will also "increase enrollment in the elementary schools, some of which are not at all close to capacity, for more existence with just a single middle school program, and have an increased opportunity for middle/high school collaboration due to the proximity of South Meadow and ConVal High School." (Ledger-Transcript, Dec. 1.)

Our enrollment has been declining for more than a decade and according to the projections from NESDEC it is expected to continue for several more. Why wait another year before putting this model on the ballot to get a sense of what the voters think? And besides, what's not to like about a restructuring option which will continue to provide each of our students with a quality education while saving the district more than \$1.5 million each year?

The necessary data to put forward an earnest and reasonable proposal has been gathered, studied, discussed and made public. Those who have been paying attention for the past five years have no need for another year of meetings before deciding which of the five models is going to be endorsed by the board's best.

Model 1, or Warrant Article 7, provides us with an option that substantially trims the district's fixed annual budget while continuing to provide students with a quality education. Hopefully those who cast their ballots in March will agree and vote "yes" on Warrant Article 7 so that we may set the wheels in motion, sooner rather than later, for positive and constructive change in the ConVal School District.

The time has come for good sense to prevail and to dispel the myths that being fiscally responsible and teaching our children well, are not, nor have they ever been, mutually exclusive.

Deb McGrath is a resident of Franconstown.

# Viewpoints

## Editorial

### Web censoring in New Ipswich

The dispute in New Ipswich over who has the right to post information on the town's websites raises an issue that other towns may want to deal with — the need for a policy that prevents town officials from acting arbitrarily, especially when it comes to disseminating information prior to an important election.

Absent a policy or some form of precedent, the actions of the New Ipswich town administrator in ordering material removed from the official town and conservation commission websites amount to censorship. The information at issue was not posted by some random third party, or renegade official. It was posted by the same person who has served as webmaster since the creation of the site more than 10 years ago — Conservation Commission Chairman Bob Boynton.

Give Boynton credit. When the town Planning Board asked him to post a page designed to inform voters on a controversial ordinance to regulate large wind energy systems, he did just that. There was only one problem. He tried to inform voters on both sides of the issue, when the Planning Board wanted to exclusively promote its own point of view.

Supporters of the ordinance see it as necessary to protect the quality of life in New Ipswich, especially for those in proximity to potential wind farms. Opponents say it is far too restrictive and essentially amounts to a town-wide ban on wind energy at a time when New Ipswich could use the tax revenue and all of us could benefit from alternative energy development. There are points to be argued on both sides, but as of this writing, only one side is represented on the New Ipswich websites. That's a disservice to New Ipswich voters and a sign of poor judgment on the part of town officials, whose heavy-handed approach is likely to rub a lot of people the wrong way, even those sympathetic to the Planning Board point of view.

As we previously reported, Boynton was asked by the Planning Board to upload information that he considered biased against wind energy. He added some links and information that he felt provided a more balanced perspective. Town Administrator Marie Knowlton sent an email requesting he remove them. He moved the information to the Conservation Commission website and linked to it from the town website. On Thursday he was asked to remove the link. It looks like some officials in New Ipswich are trying to prevent voters from getting the information they need to make an informed decision.

Planning Board Chair Ed Dekker explained that the webmaster is not free to post information at his discretion, and can only act at the direction of the town administrator. Rather than see Boynton's actions as an effort to create balance, Dekker says the Planning Board saw it as a slap in the face.

We're sure Boynton meant no disrespect. The notion that content can only be on the town website at the direction of the town administrator seems to have been invented to explain away this embarrassing situation. Select Board member Michael Conlin told us the town does not have an official web policy, but is likely to begin work on one after the local elections in March.

Such a policy should allow for diversity of voices on controversial issues so as to inform the electorate, not one-sided presentations designed to persuade.

## The way we were ...



MONADNOCK LEDGER-TRANSCRIPT FILE PHOTO

Jaffrey's Town Meeting in March 1981 was one of the longest ever, up to that point. Helping to carry voters through the day was the Community League buffet in the lobby of the Pratt Auditorium. Member Stella Bussiere hands a cup of coffee to an eager voter. Please check the Photo Finder section on [www.ledgertranscript.com](http://www.ledgertranscript.com) to see past photos from The Way We Were; this online album is updated frequently.

## Letters to the Editor

### Energy savings just make sense

To the editor:

A recent professional energy audit in Rindge, paid for by grants, has found that the town is spending more on energy use than it needs to.

The report found that some relatively simple repairs in air-sealing, insulation, lighting wiring and fixtures could pay for themselves, in many cases in only two or three years.

Translated, that means that three years from now we could be looking at a town budget which has fully-paid its investment through utility bill savings and pays lower bills in the future. Alternatively, three years from now we could have spent the same amount in higher bills and still be facing those higher future utility costs.

It is that clear choice that led both the Energy Commission and the Capital Improvements Committee to recommend that we set aside some money this year to start on the quickest return projects, as reflected in Article 11 on the town warrant.

We have found over the past year that some grant

money is also available to support these projects, but there is generally not much lead time involved. Whenever possible the town money would be leveraged to take advantage of these grants.

Anyone interested in trimming the budget in Rindge should take a good look at Article 11 and vote "yes." It's a clear winner by any analysis.

Dwight Schenk  
Rindge

**Editor's Note:** Dwight Schenk is a member of the Rindge Energy Commission and the CIP Committee.

### Some advice for ConVal board

To the editor:

As a member of ConVal's Selections Advisory Committee and frequent critic of the SAU's budget process, I am delighted to hear new voices questioning the SAU's administrative structure and costs. While declining enrollment has shone a bright light on administrative costs, it is the case of the problem.

I was particularly dismayed by the recent state-

ment of a School Board member that the budget process was the responsibility of the administration and that the Board should not be involved. For me that statement synthesized the problem.

The SAU needs an independent assessment of its administrative functions to uncover opportunities to improve efficiencies and lower cost. It would reduce taxpayer burden and help to relieve cost pressure on academic areas. This would only work if the board was willing to make tough decisions.

While the current board has shied away from significant cost saving opportunities in administrative areas, the new board must take them head on. Without that commitment, initiatives like the health care committee that I serve on will continue to be a waste of time.

When the school resource officer first came up, I was opposed. Having now learned more from parents, students and teachers about the problems in the high school, I have changed my mind — but with one condition. In early budget discussions the SAU said that with an SRO they would not need to fill a guidance position. That would save

\$111,000, more than offsetting the \$67,000 SRO cost.

I urge voters to encourage their School Board representatives to take the lead role in the budget process, conduct an independent assessment of non-academic areas, make the tough decisions to lower non-academic costs, leave the guidance position open and work with the SRO (if approved) to rid our schools of impediments to education.

John Kieley  
Temple

### Enough of this radical agenda

To the editor:

I would like to thank John Ranta, Marjorie Porter and Jennifer Daler for their excellent Viewpoints on "No Child Left Behind." They spelled out the issues very clearly and their comments made a lot of sense.

Then we have the comments of one of our legislators, Jim Farison. Did you notice that he made no comment about where the replacement funding would come from (\$61 million) if we followed his think-

ing and opted out? That's because it would be shifted to our towns.

This guy could care less about Greenville and the tax issues the town faces. Already having one of the highest tax rates in the state, this would just add to our burdens, most often from citizens.

We voted him into office and now we need to vote him out.

He doesn't represent us. He is only interested in his agenda and doesn't care if our tax rate goes sky high. Enough of his radical agenda.

Rick Miller  
Greenville

### Setting a good example

To the editor:

Kudos to the administration and staff of our wonderful local Monadnock Community Hospital for their sacrifice in wages, while managing to keep quality services in place. The ConVal School Board should pay attention to their example, please.

Jim Orr  
Peterborough

### Voting rights on town warrant

To the editor:

This is an open letter to Jaffrey citizens. There will be an informational meeting about a proposed Town Meeting voting rights warrant article on March 3, from 11 a.m. to noon, at the Jaffrey Library (down-

stairs meeting room).

A Select Board representative and state Rep. Frank Sterling have been invited to attend to answer questions about the two state-approved methods of vote counting.

We'll start by asking the question that has popped up most often from citizens: "Why don't we just make sure there is some reasonable check on the accuracy of the machine and continue to use it?"

Please take time before the meeting to review information in the "Voting Rights Info for Jaffrey and New Hampshire" folder (particularly the proposal rejected by the Select Board on pages 30-31), Nancy Tobin's book "Hands on Elections," and view at least one of the available DVDs. Come with your questions. If we don't have the answers yet, I'll try to find them before Town Meeting.

People should also know that I was fired as a ballot clerk in 2010 for a letter that appeared in a newspaper that same day. The offensive paragraph said: "As a ballot clerk since Nov. 2003, I've taken the oath all New Hampshire election workers take, to uphold the laws and Constitution of our state and nation. I could not, in good conscience, take that oath knowing what I know about our voting machine."

The answer to "Who fired you?" is "The system." I believed then that the state Constitution and ballot clerk oath of office meant what they said. I still do. Hope to see you on March 3.

Deborah Sumner  
Jaffrey

### Deadline for endorsement or election letters is 5 p.m., Feb. 25

The Ledger-Transcript will print one letter from each candidate for public office submitted by or before Feb. 24. All candidate letters, endorsements or other election-related letters must be received by that date to be considered for publication. No election-related letters will be published after Tuesday, March 6.

MONADNOCK

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# Vote will send a signal

**T**oday, New Ipswich residents will likely vote to halt development of wind farms by passing warrant article 2, which expands a recently adopted ordinance regulating large wind energy systems (LWES). In a recent mailing residents were instructed by the local Planning Board to support the proposed changes and vote "yes" for stricter regulation. This will effectively be a "no" vote for development and lower taxes.

The original ordinance was passed ostensibly for the purpose of promoting development by providing a "framework of regulation" with "reasonable restrictions" so everyone could coexist as good neighbors. The existing rules were based on fairly objective criteria, balancing public health, safety and welfare with the need to support business and free enterprise.

Then a developer came along who agreed to play by all the rules. It appears that was when the Planning Board discovered they had failed to zone wind power out and went to work writing a new set of rules. While they are to be commended for all the hard work, the pros-and-cons reported out to the public leave out the pro altogether. This, apparently solves the "problem" we read about where folks might be given "too much information."

The new regulations proposed in Article 2 offer a myriad of restrictions to stop a wind project cold. There is the entirely subjective requirement that the developer prove his project meets a bullet list of environment goals cited from the Vision Chapter of the New Ipswich Master Plan.

The bullet list in the ordinance includes from the Master Plan things like a "country environ-

ment free of pollution, characterized by shaded curving roads lined with mature trees, habitat for wildlife," etc. The Master Plan balances these goals with the promotion of industry and business while the bullet list in the revised ordinance leaves those considerations out. We also find in the new ordinance a restriction on visual impacts where the burden of proof again falls on the developer to comply with yet another list of subjective criteria.

There are also objective restrictions. For example, the new regulations specify a proprietary lighting system, limit noise to new levels that are nearly impossible to measure and specify wind speeds below which the generators must shut down. The developer would also be required to fill and refill indefinitely a \$25,000 slush fund to finance unspecified expenses borne by the town, related to the wind project, including legal fees. It doesn't take much imagination to see

how that could be abused. These bizarre restrictions have been sold to the public as necessary to avoid a plethora of wind-related problems from health impacts to declining property values, without a hint of redeeming value in wind energy. People know they are only getting one side of the story, but they will probably vote "yes" anyway, effectively zoning wind out.

Why? The new ordinance will likely pass because of a most misleading assertion that the project will cause taxes to increase. We are told by the chairman of the Planning Board that Lempster taxes are now higher than before the wind farm came to town, so it follows that New Ipswich will be subsidizing a wind farm with high-

er taxes.

The flaw in this reasoning should be obvious. The wind farm will pay either taxes or a payment in lieu of taxes (PILOT); total revenues will go up and individual taxes will go down. For example, the wind farm proposed in a site plan meeting before the Planning Board showed 10 turbines each rated at two megawatts and valued at \$2 million per megawatt, for a total property valuation of roughly \$40 million.

The tax rate in New Ipswich is \$20.26 per thousand, making the first-year income from the project more than \$800,000. The total tax burden is about \$8 million, so this amounts to an increase in revenue of about 10 percent. The average taxpayer in New Ipswich and Greenville would see a proportionate reduction in property taxes. Because the school apportionment would change, Greenville would likely benefit more. Even so, with more revenue sources, everyone else pays less.

Rather than charge a tax based on a 3 percent depreciated valuation, New Ipswich could follow the lead of Groton and negotiate a PILOT that would increase revenues each year for the life of the project. The stability of a growing PILOT would help budgeting folks on both sides.

Such a negotiation would require a conversation. Instead, the current hostile climate could push the developer to the state Site Evaluation Committee where they could also get approval, effectively making an end run around our neighborly Planning Board.

*Republican State Rep. Jim Parison represents Hillsborough Dist. 3, which includes Greenville, New Ipswich, Peterborough and Sharon. He serves on the Science, Technology and Energy Committee.*

## REPORT FROM CONCORD



Jim Parison