

**GROTON PLANNING BOARD
FEBRUARY 19, 2009
MINUTES**

Chairman Perkins called the meeting to order at 7:30 PM in the Town Hall

Members present: Perkins, Burke, Giger, and Wilson

Member absent: Barringer, Capes and Hess

PUBLIC HEARING – PROPOSED ZONING AMENDMENT

In accordance with the provisions of Chapter 40A, § 5, M. G. L., the Groton Planning Board held a public hearing to consider the following proposed zoning amendment:

Wind Energy Conversion Facilities

To see if the Town will vote to amend Chapter 218, Zoning, of the Code of the Town of Groton, by amending Sections 218-4 Definitions, 218-13 Schedule of Use Regulations, and 218-25 Site Plan Review, and by adding a new section 218-25.2 entitled, "Wind Energy Conversion Facilities," as detailed in the Planning Board report entitled, "Wind Energy Conversion Facilities," on file in the Office of the Town Clerk, or take any action thereon.

Chairman Perkins called the public hearing to order. Clerk Burke read the public hearing notice posted with the Town Clerk on January 28, 2009 and published in the *Groton Herald* on January 30 and February 6, 2009.

Member John Giger presented a power-point slide show detailing the proposed zoning amendment to allow by-right construction of small scale wind energy generating facilities (65 ft and under) subject to the provisions of the by-law. Construction of large-scale wind energy conversion facilities would be subject to the grant of a special permit by the Planning Board.

Chairman Perkins read a letter dated February 13, 2009 from Steven Webber stating his concern with the proposed setback requirement equal to 1.5 times the overall height of the facility. He recommended that the Board propose a setback equal to the overall height of the facility.

Connie Sartini expressed concern about noise and asked who would measure sound levels.

Member Burke responded that the Department of Environmental Protection (DEP) noise regulations govern all noise issues in Town. The DEP or a consultant would measure noise levels to determine compliance with the regulations.

Member Giger added that the applicant is required to submit measurements and predictions of the anticipated noise levels.

Ted Martland asked about the Board's ability to waive provisions in Subsections 3b, 3.c or 3.d including height and setback requirements.

Member Burke responded that the small-scale facilities must comply with all the requirements of the by-law unless a special permit is granted by the Board to waive such requirements. However, the Board cannot waive the height requirements of a small scale facility. The Board does have the ability to grant a waiver of certain requirements for large scale facilities as stated in the proposed zoning amendment. The grant of a waiver is subject to Planning Board review and the grant of a special permit. An abutter has the right to appeal a special permit to Court.

Bob Pine said he did not believe the Board has the right to grant a waiver of the height requirements unless it is explicitly stated in the by-law. Member Giger said Section 3d (6) states:

(6) Waivers of Standards

In considering an application for a special permit for a large scale wind energy conversion facility, the Planning Board may waive any of the standards in the foregoing Subsections 3b, 3.c or 3.d, provided that it finds that such waiver is in the public interest and does not derogate from the intent of this Section. (*Note: Subsection 3b includes height and setbacks.*)

Mr. Pine said he is disturbed by the height proposal. He said 200 ft, as stated in the previous version of the proposed amendment, seems reasonable. The Zoning By-law should not be based upon economic feasibility. The Federal Aviation Administration (FAA) requires lights on structures greater than 200 ft. Wind turbines greater than 200 ft would be too high in Groton's landscape.

Member Burke said the dynamics of wind energy determine the height of the tower. Higher towers have better wind velocity. Towers are generally in excess of 200 ft.

Mr. Pine said he supports the by-law in general, but a 200 ft tower would be above the tree line and too visible in Groton. Mr. Pine submitted his letter dated February 19, 2009.

Michael Roberts of the Sustainability Commission asked what constitutes a "nuisance" and how is it enforced. Member Burke said there is language in many sections of the Zoning By-law and general by-laws that deals with nuisances. The Town would have to review complaints on a case by case basis. An aggrieved party may also appeal to Court.

Mr. Pine said the by-law should include a statement that there shall be no adverse impact on abutters.

Richard Hewitt of the Sustainability Commission expressed concerns about the height of the towers and the nuisance provisions. He said the language, "detrimental or injurious to the public" does not include aesthetic or visual impact.

Member Burke said the issuance of a special permit is discretionary. The Courts would consider an appeal on such matters as subjective. Mr. Hewitt said the aesthetic consideration may be vague, but the height is not. He suggested that the Board include a definition of nuisance in the proposed by-law. He asked how many towers would be allowed per site.

Member Burke said the small scale section includes a limit of two towers per site. There is no limit in the large scale section. However, only very limited areas would be able to justify the expense of constructing such towers. The Planning Board would have discretion on the number of towers when it grants a special permit.

Mr. Hewitt reiterated that he believes the height and number of towers should be defined in the by-law.

Connie Sartini asked if there is a minimum lot size for the small scale towers. Member Giger said, "no," but the setback of 1.5 times the height of the tower would govern the size of the lot.

Connie Sartini asked if a public hearing is required for the small scale facilities. Member Burke said, "no," as long as it meets all the requirements of the by-law. Issuance of a building permit is appealable to the Zoning Board of Appeals. The Board would like to promote alternative forms of energy. He noted that solar panels can be installed by-right. The small scale wind energy facilities should be encouraged without too many hurdles in the permitting process.

Selectman Josh Degen thanked the Board for its work on the proposed by-law since there are no provisions in place at the time. He said he supports setback of the 1.5 times the height of the facility. He said he also agrees with limiting the height unless the applicant proves a greater height is necessary. However, the height should not be based upon economic feasibility. He asked about the DEP noise regulations and stated that the burden of proof should be on the applicant, not the abutter. He asked about sonic vibrations that could cause sleep disturbances.

Member Giger said a continuous tone cannot be created under the DEP Noise Regulations.

Gary Hoglund of the working group said the setback of 1.5 times the height of the facility is based upon the State's model by-law. However, no community in Massachusetts has adopted such a setback. Most by-laws include a setback equal to the height of the facility. He said the wind resources in Groton are limited so a height of 400 ft is more realistic. If the by-law limits the height to 200 ft, it will prohibit large scale wind devices in Groton. The number may change over time as the technology improves.

Groton Electric Light Commissioner Chris Christie asked about the abandonment and decommissioning provisions. He said 150 days is not enough time for negotiations between owners. He suggested that this time period be extended. Member Giger said the Board does not have the authority to waive that section of the by-law as written.

Mr. Christie said most wind towers have a height of 300 to 400 ft depending upon where they are located.

The Board voted unanimously to continue the public hearing on February 26, 2009 at 8:30 PM.

LOST LAKE SEWER COMMITTEE

The Board met with Lost Lake Sewer Committee members Tom Doyle, Carol Quinn, Jean Wright, and Angela Garger to discuss the possibility of funding a waste water treatment system for the Lost Lake area. Ms. Quinn described the Committee's work to date to complete Phase I of the project. She said the Committee would like to go forward with Phases II & III.

Mr. Doyle said the Committee has been working with engineers Woodard and Curran on Phase I, but funding will be needed for the two additional phases as required by the EPA and DEP. The Committee is requesting an appropriation of \$300,000 at the Spring Town Meeting.

Ms. Garger said the problems with failing septic systems, variances, tight tanks and nutrient loading have been well documented. The problem is not going away – a long term solution is required.

Member Giger noted that Knops Pond and Lost Lake flow into Whitney Pond where the public drinking water wells are located.

Member Burke asked if the \$300,000 will determine the suitability of the sites to be used for waste water treatment. Mr. Doyle said, "yes," the sites will be located and tested.

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Member Burke asked what percentage of sewage disposal systems are failing. Ms. Quinn said about 70% are on tight tanks. Member Burke asked if the DEP issued a Consent Decree. Mr. Doyle said, "no."

Member Burke said the town values its public drinking water supply and lakes as important resources. He said when sewers are extended, more land becomes buildable. He said the Town should examine the rules that are in place. Mr. Doyle said the capacity of the sewer system will be limited.

Ms. Quinn asked the Planning Board to support the article for funding at the Spring Town Meeting.

Member Wilson asked if the Committee identified potential sites for waste water treatment. Ms. Quinn said the sites include Grotonwood, the area near Lone Lane and the Mountain Lakes Club property near the Lost Lake Fire Station.

The motion was made by Wilson, seconded by Burke, to support the article for funding submitted by the Lost Lake Sewer Committee. ***The motion passed unanimously.***

Meeting adjourned at 9:30 PM

Respectfully submitted,

Michelle Collette
Town Planner