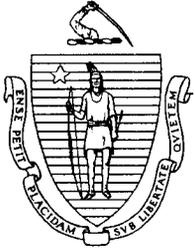


Form 7-PBN



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

MUNICIPAL LAW UNIT
1350 MAIN STREET, 4TH FLOOR
SPRINGFIELD, MASSACHUSETTS 01103-1629

Notice of Planning Board Hearing

Relative to Proposed Zoning By-Law Amendments Pursuant to M.G.L. c. 40A, § 5

The Planning Board of the Town of Eastham will hold a public hearing to discuss proposed amendments to the town's zoning by-laws. The public hearing will be held as follows:

Place: Earle Mountain Hearing Room, Town Hall, 2500 State Highway
Date: February 18, 2009
Time: 5:00 PM

The subject matter of the proposed amendments is/are as indicated below (*attach additional sheets if necessary*). The complete text and maps relative to the proposed amendments are available for inspection during regular business hours at the following place(s):

Place: Planning Department
Place: Town Clerk
Place: _____

Article Number **Subject Matter of Proposed Amendments Sufficient for Identification**

Article ##: To see if the Town will vote to amend the Eastham Zoning By-law by adding Section XX – Wind Facilities (WFs)

SEE ATTACHED TEXT

Article ##: To see if the Town will vote to amend the Eastham Zoning By-law by adding Section XXI – Municipal Wind Facilities (MWFs)

SEE ATTACHED TEXT

* **Note:** The above information is *strictly required* by M.G.L. c. 40A, § 5.



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642-2544
All departments 508 240-5900 Fax 508 240-1291
www.eastham-ma.gov

LEGAL NOTICE

Pursuant to the provisions of MGL 40A §5, the Eastham Planning Board will hold a public hearing on February 18, 2009 at 5:00 pm in the Earle Mountain Hearing Room, Eastham Town Hall, 2500 State Highway, Eastham, MA. The purpose of the hearing is to accept public comments on the following proposed amendments to the Zoning By-laws. All proposed text may be inspected at the Eastham Town Clerk's Office or the Eastham Planning Department at the above address, during regular business hours Monday-Friday 8:00 AM – 4:00 PM.

Article ##: To see if the Town will vote to amend the Eastham Zoning By-law by adding Section XX – Wind Facilities (WFs) as follows:

Section XX – Wind Facilities (WFs)

- A. Purpose and Intent.** It is the express purpose of this section to accommodate Wind Facilities (WFs) in appropriate land-based locations, while protecting public health, safety, welfare, the character of neighborhoods, property values, preservation of environmental, historical and scenic resources and minimizing adverse impacts of WF's. All WF's shall require issuance of a special permit by the Planning Board, acting as the Special Permit Granting Authority (SPGA) under Section XIII of the Eastham Zoning By-law. This section is intended to be used in conjunction with other regulations adopted by the Town, including, but not limited to, historic district, special permit, conservation and other applicable by-laws and regulations designed to encourage appropriate land use and environmental protection. Further, it is the express intent of this section that any special permit hereunder granted runs with the land and that any subsequent owner of said land be bound by the terms and conditions of said special permit.
- B. Use Regulations.** WF's shall require a building permit. The construction of any WF may be permitted in all zoning districts, subject to issuance of a special permit by the Planning Board and provided the proposed use complies with provisions of this section and any other applicable provisions of this chapter. Any subsequent change or modification of a WF shall be subject to Planning Board approval of a modification to the original special permit.
- C. Dimensional Requirements**
1. Type: Tilt-up towers, fixed-guyed towers, free standing towers, building mounted turbines or other designs may be considered for approval.
 2. Setback: The base of any WF shall be set back from any property line or road layout line by not less than one-hundred percent (100%) of the proposed height of the WF. Guy wires or any WF-

related construction not wholly below grade, as may be required by the proposed design, shall be set back at least twenty (20) feet from property lines, and thirty (30) feet from road layout lines.

3. Height: No WF may exceed seventy-five (75) feet in height, except in District C where they may not exceed one-hundred (100) feet.

District	A	B	C	D	E	F	G	H
Height	75'	75'	100'	75'	75'	75'	75'	75'

D. General Requirements

1. Proposed WFs shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.
2. Maintenance Plan – Appearance and Operation. A written maintenance plan shall be submitted with the application for a special permit for review and approval by the SPGA and shall be made a condition of said special permit. The maintenance plan shall include:
 - a. Planned shutdowns. All planned shutdowns for more than three (3) months shall be outlined in the maintenance plan. The WF will not be considered abandoned during these planned shutdown periods.
 - b. General maintenance. The general maintenance of the WF as recommended by the manufacturer shall be included in the maintenance plan.
 - c. Maintenance of appearance of exterior of the WF.
3. Complaints. Upon written notification of a complaint detailing non-compliance with the terms of the special permit or the requirements of this chapter, the Building Inspector or his designee shall record the filing of such complaint and shall promptly investigate the complaint. If the Building Inspector determines that the WF is not in compliance, the owner of the property shall be notified in writing to correct the violation. If the violation is not remedied within thirty (30) days from the date of notification, the Building Inspector may require the WF be rendered inactive and shall remain so until such time as the Building Inspector determines the WF is in compliance.

If, upon investigation of said complaint, the Building Inspector determines that the WF is operating in compliance with the special permit and the requirements of this chapter, notice in writing shall be provided to the person who has filed such complaint and to the owner of the property stating that no further action is required, all within thirty (30) days of the receipt of the written notification of complaint. Any person aggrieved by the Building Inspector’s decision may appeal such decision to the SPGA.

4. Professional consulting fees. The SPGA may retain a technical expert / consultant to review and verify information submitted by the applicant. The cost for such a technical expert /

consultant shall be at the expense of the applicant pursuant to Section XII.G of the Eastham Zoning By-laws.

5. All building mounted turbine applications shall be accompanied by a written certification by a licensed structural engineer that states that the structure to which the turbine is to be fastened is sound and safely able to withstand the installation and continued operation of the turbine.

E. Design Standards

1. Visual Impact. The applicant shall demonstrate through project siting, facility design and proposed mitigation that the WF minimizes any impact on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering and lighting. All electrical conduits shall be underground.
2. Color. WFs shall be of non-reflective muted colors that blend with the sky, without graphics or other decoration. A single color shall be used on the blades and a single color on the tower.
3. Equipment Shelters. All equipment necessary for monitoring and operation of the WF shall be contained within the turbine tower. If this is infeasible, at the discretion of the SPGA, ancillary equipment may be located outside the tower provided it is either contained within an underground vault or enclosed within a structure or behind a year-round landscape or vegetated buffer.
4. Lighting and Signage.
 - a. Wind turbines shall be lighted only if required by the Federal Aviation Administration (FAA). The applicant shall provide a copy of the FAA's determination to establish the required markings and/or lights for the structure.
 - b. Lighting of equipment, structures and any other facilities on site (including lighting required by the FAA, if possible) shall be shielded from abutting properties.
 - c. No signage except as allowed by the SPGA.
5. Guy Wires. Guy wires utilized in the construction of any tower shall be left totally unadorned. Nothing shall be hung from or attached to said wires, except that, in order to prevent unintended contact by persons who may be on the site, they may be wrapped with a colored sleeve only, which shall extend to a height not greater than ten (10) feet above grade.

F. Environmental Standards

1. Sound. The WF and associated equipment shall not generate sound in excess of ten (10) decibels (DB) above ambient sound level at the property line. In order to demonstrate compliance with these sound standards, the applicant shall provide to the SPGA, as part of the special permit application, an analysis which is consistent with Massachusetts Department of Environmental Protection guidance for sound measurement (310 CMR 7.10).

2. Shadow/Flicker Impact. WFs shall be sited in a manner that does not result in significant shadowing or flicker impact. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses either through shadow/flicker modeling and/or siting and/or landscaping mitigation.

G. Safety Standards

1. No hazardous materials or waste shall be discharged on the site of any WF. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste. The provisions of this by-law regarding Groundwater Protection Districts shall apply.
2. Climbing access to any tower shall be limited by placing climbing apparatus no lower than ten (10) feet from the ground.
3. A Clear Area, being the distance from the lowest point of the blade tip to the ground, shall not be less than fifteen (15) feet.
4. The wind turbine shall conform to FAA Safety Standards, as amended.
5. Building mounted turbines may require a safety fence as determined by the SPGA

H. Condemnation

1. Upon a finding by the Building Inspector that the WF has been abandoned or has been left in disrepair or has not been maintained in accordance with the approved maintenance plan, the owner of said WF shall be notified in writing by certified mail that the WF shall be brought up to standard. If required repairs or maintenance are not accomplished within forty-five (45) days of the date of said notification, the WF shall be deemed condemned and shall be removed from the site within ninety (90) days thereafter. The aforementioned periods of time may be extended at the request of the owner and at the discretion of the Building Inspector. "Removed from site" shall mean:
 - a. Removal of the wind turbine and tower, all machinery, equipment, equipment shelters, security barriers and all appurtenant structures from the subject property;
 - b. Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations and
 - c. Restoration of the location of the wind energy conversion facility to its natural condition, except that landscaping and grading may remain in the after-condition at the discretion of the SPGA.
2. If an applicant fails to remove a WF in accordance with the provisions of this section, the Town shall have the authority to enter the subject property and physically remove and dispose of the facility. As a condition of the special permit, the SPGA may require the applicant to provide a cash escrow account or bond at the time of construction to cover the costs of removal from the

site, as specified in Subsection 1 above, in the event said removal must be done by the Town. The amount of such escrow or bond shall be equal to one-hundred and fifty percent (150%) of the cost of removal and disposal of the WF and restoration of the site. The applicant shall submit a fully inclusive estimate of said costs as part of the special permit application. The escrow account shall be maintained by the Town until the WF is removed by the applicant to the satisfaction of the Building Inspector or until, after due notice to the applicant pursuant to this by-law, the SPGA determines that the applicant has failed to take appropriate measures to remove and dispose of the WF, whereupon the Town may utilize the sums in said escrow account for the purpose of removing and disposing of the WF and restoring the site by such means as it deems appropriate. Any unexpended balance of the escrow account remaining after the Town has completed dismantling / removal of the WF shall be returned to the applicant or the successor(s) in interest.

or take any other action relating thereto.

Submitted by the Planning Board

Summary:

The purpose of this by-law is to regulate the development and use of wind facilities. This by-law will allow wind energy facilities while minimizing the adverse impacts on the character of the neighborhoods, property values, scenic, historic and environmental resources of the Town of Eastham.

Article ##: To see if the Town will vote to amend the Eastham Zoning By-laws by adding Section XXI – Municipal Wind Facilities (MWFs) as follows:

Section XXI – Municipal Wind Facilities (MWFs)

- A. Purpose and Intent.** It is the express purpose of this section to accommodate Municipal Wind Facilities (MWFs) in appropriate land-based locations owned by the Town of Eastham, while protecting public health, safety, welfare, the character of neighborhoods, property values, preservation of environmental, historical and scenic resources and minimizing adverse impacts of MWFs. All MWFs shall require issuance of a special permit by the Planning Board, acting as the Special Permit Granting Authority (SPGA) under Section XIII of the Eastham Zoning By-laws. This section is intended to be used in conjunction with other regulations adopted by the Town, including, but not limited to, historic district, special permit, conservation and other applicable by-laws and regulations designed to encourage appropriate land use and environmental protection. Further, it is the express intent of this section that any special permit hereunder granted runs with the land and that any subsequent owner of said land be bound by the terms and conditions of said special permit.
- B. Use Regulations.** MWFs shall require a building permit. The construction of any MWF may be permitted in zoning districts B, C, and H subject to issuance of a special permit by the Planning Board and provided the proposed use complies with provisions of this section and any other applicable provisions of this chapter. Any subsequent change or modification of a MWF shall be subject to Planning Board approval of a modification to the original special permit.

C. Dimensional Requirements

1. Type: Tilt-up towers, fixed-guyed towers, free standing towers, building mounted turbines or other designs may be considered for approval.
2. Setback: The base of any MWF shall be set back from any property line or road layout line by not less than one-hundred fifty percent (150%) of the proposed height of the MWF. Guy wires or any MWF-related construction not wholly below grade, as may be required by the proposed design, shall be set back at least twenty (20) feet from property lines, and thirty (30) feet from road layout lines.
3. Height: No MWF may exceed two hundred fifty (250) feet in height.

D. General Requirements

1. Proposed MWFs shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.
2. Maintenance Plan – Appearance and Operation. A written maintenance plan shall be submitted with the application for a special permit for review and approval by the SPGA and shall be made a condition of said special permit. The maintenance plan shall include:
 - a. Planned shutdowns. All planned shutdowns for more than three (3) months shall be outlined in the maintenance plan. The MWF will not be considered abandoned during these planned shutdown periods.
 - b. General maintenance. The general maintenance of the MWF as recommended by the manufacturer shall be included in the maintenance plan.
 - c. Maintenance of appearance of exterior of the MWF.
3. Complaints. Upon written notification of a complaint detailing non-compliance with the terms of the special permit or the requirements of this chapter, the Building Inspector or his designee shall record the filing of such complaint and shall promptly investigate the complaint. If the Building Inspector determines that the MWF is not in compliance, the owner of the property shall be notified in writing to correct the violation. If the violation is not remedied within thirty (30) days from the date of notification, the Building Inspector may require the MWF be rendered inactive and shall remain so until such time as the Building Inspector determines the MWF is in compliance.

If, upon investigation of said complaint, the Building Inspector determines that the MWF is operating in compliance with the special permit and the requirements of this chapter, notice in writing shall be provided to the person who has filed such complaint and to the owner of the property stating that no further action is required, all within thirty (30) days of the receipt of the written notification of complaint. Any person aggrieved by the Building Inspector's decision may appeal such decision to the SPGA.

4. Professional Consulting Fees. The SPGA may retain a technical expert / consultant to review and verify information submitted by the applicant and/or successor(s). The cost for such a technical expert / consultant shall be at the expense of the applicant pursuant to Section XII.G of the Eastham Zoning By-laws.
5. All turbine applications shall be accompanied by a written certification by a licensed structural engineer.

E. Design Standards

1. Visual Impact. The applicant shall demonstrate through project siting, facility design and proposed mitigation that the MWF minimizes any impact on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering and lighting. All electrical conduits shall be underground.
2. Color. MWFs shall be of non-reflective muted colors that blend with the sky, without graphics or other decoration. A single color shall be used on the blades and a single color on the tower.
3. Equipment Shelters. All equipment necessary for monitoring and operation of the MWF shall be contained within the turbine tower. If this is infeasible, at the discretion of the SPGA, ancillary equipment may be located outside the tower, provided it is either contained within an underground vault or enclosed within a structure or behind a year-round landscape or vegetated buffer.
4. Lighting and Signage.
 - a. Wind turbines shall be lighted only if required by the Federal Aviation Administration (FAA). The applicant shall provide a copy of the FAA's determination to establish the required markings and/or lights for the structure.
 - b. Lighting of equipment, structures and any other facilities on site (including lighting required by the FAA, if possible) shall be shielded from abutting properties.
 - c. No signage except as allowed by the SPGA.
5. Guy Wires. Guy wires utilized in the construction of any tower shall be left totally unadorned. Nothing shall be hung from or attached to said wires, except that, in order to prevent unintended contact by persons who may be on the site, they may be wrapped with a colored sleeve only, which shall extend to a height not greater than ten (10) feet above grade.

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special permit application, an analysis which is consistent with Massachusetts Department of Environmental Protection guidance for sound measurement (310 CMR 7.10).

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1. No hazardous materials or waste shall be discharged on the site of any MWF. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such material or waste. The provisions of this by-law regarding Groundwater Protection Districts shall apply.
2. Climbing access to any tower shall be limited by placing climbing apparatus no lower than ten (10) feet from the ground.
3. A Clear Area, being the distance from the lowest point of the blade tip to the ground, shall not be less than fifteen (15) feet.
4. The wind turbine shall conform to FAA Safety Standards, as amended.
5. Building mounted turbines may require a safety fence as determined by the SPGA

or take any other action relating thereto.

Submitted by the Planning Board

Summary:

This proposed by-law seeks to allow wind facilities on Town-owned property for the benefit of the community.

**Leslie-Ann Morse, Chairman
Eastham Planning Board
The public is invited to attend and be heard**

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- POST AT TOWN HALL – JANUARY 12, 2009
 - SENT CERTIFIED/RRR TO TOWNS OF WELLFLEET & ORLEANS, CAPE COD COMMISSION & DHCD – JANUARY 12, 2009
 - PUBLISH IN THE CAPE CODDER LEGAL ADS ON FRIDAY – January 30, 2009 and FRIDAY – February 6, 2009 and FRIDAY – February 13, 2009