

Mr. Rod Jané, President
New England Expansion Strategies
17 Piccadilly Way
Westborough, MA 01581

June 29, 2010

**RE: Proposed Webster Road Wind Farm
Site Plan Review Application**

Dear Mr. Jané:

I am submitting comments regarding the proposed Wind Farm Site Plan Review application, which was submitted on June 15, 2010.

I have listed all of the requirements under Site Plan Review Sections 9.4.3 (preparation of plans), 9.4.4 (Contents of Plan) & 9.4.7 (Approval) along with both ZBA decisions (2009-04 & 2010-01).

I broke my comments down into a check box format, which should help in tracking the requirements that have been completed under those sections.

Since there has not been a final plan submitted most of the sections of the review will be incomplete until the final site plan has been submitted.

9.4 SITE PLAN REVIEW

9.4.3 Preparation of Plans

Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the Board. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=40'.

Comment: no plan has been submitted

9.4.4 Contents of Plan

The contents of the site plan are as follows:

1. Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the Planning Board. The plans are as follows:

A. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Board.

Comment: no plan has been submitted

B. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.

Comment: no plan has been submitted

C. Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.

Comment: no plan Has been submitted

D. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.

Comment: no plan has been submitted

E. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures. The planting and maintenance of trees and shrubs shall be performed in accordance with the Rules, Guidelines and Regulations of the Planning Board.

Comment: no plan has been submitted

2. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

Comment: A written narrative, project schedule and various reports and studies have been submitted with the initial application. However, some of the reports will need to be revised when the final locations of the towers are known.

3. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this by-law.

4. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town of Douglas subdivision regulations.

Comment: no plan has been submitted

5. The Planning Board may require narrative assessments of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental factors. The Board may require that such narrative assessments be prepared by qualified experts.

Comment: no plan has been submitted

6. Certification of compliance with the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board, if applicable.

9.4.7 Approval

Site Plan approval shall be granted upon determination by the Planning Board that new building construction or other site alteration, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, satisfies all of the following objectives

Comment: The Planning Board needs to review and make a determination on the following items.

1. Maximize pedestrian and vehicular safety both on the site and egressing from it;

- 2. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;
- 3. Minimize obstruction of scenic views from publicly accessible locations;
- 4. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
- 5. Minimize glare from headlights and lighting intrusion and light overspill into the night sky;
- 6. Provide adequate access to each structure for fire and other emergency service equipment;
- 7. Provide adequate stormwater management consistent with the functional design standards in the Planning Board's Subdivision Rules and Regulations;
- 8. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.
- 9. Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;
- 10. Ensure compliance with the provisions of this Zoning By-Law and other laws, including parking, loading, sign, and landscaping requirements.

ZBA Decision APW 2009-04

The following comments are based on the approved ZBA decision case no. 2009-04 American Pro Wind, LLC.

APPROVAL AND CONDITIONS:

Approval is hereby granted, three members being present and voting at a duly called meeting held on May 6, 2009, by vote of three (3) in favor to none (0) against, for a use variance and a height variance for thirteen (13) permanent wind turbines to generate electrical power, not to exceed 525 feet in height from the base of the tower to the tip of the blade, together with all necessary electric infrastructure required for the Facility, together with adequate access and parking, all substantially in the manner and in the approximate location shown on the Documents and Plans submitted by the Applicant, but subject to the following conditions:

Subject to Site Plan Review

1. The Facility shall be constructed in substantial conformance with the Application and with the terms and conditions hereof, subject to site plan review by the ZBA, pursuant to Section 9.4 of the By-law. The Applicant shall comply with such reasonable conditions as may be imposed by the ZBA in its decisions thereon. In no event shall more than 13 turbines ever be constructed on the Locus.

Comment: no site plan has submitted

Meteorological tower

2. The meteorological tower authorized by the ZBA's Decision dated February 25, 2009, Case No. 2009-04, shall be permitted on a temporary basis only, not to exceed fifteen (15) months from the date of installation thereof, as per the terms of said Decision.

Comment: The Meteorological Tower has been constructed and operational for almost 12 months.

Approved for 13- free standing monopole

3. The thirteen (13) wind turbines shall be freestanding monopole towers. Upon submission of the application for the building permit, the Applicant shall provide to the Building Inspector a certification from the structural engineer for the project, who shall be licensed in the Commonwealth of Massachusetts as a structural engineer, stating that the integrated tower and turbine structure(s) do not exceed the maximum height specifications of the manufacturers and are structurally sound and safe, as per industry standards

Comment: no site plan has been submitted

Set back one thousand (1,000) feet or more

4. The wind turbines shall be set back one thousand (1,000) feet, or more, at the Applicant's discretion, from any present residential structure existing as of May 6, 2009. Except as specifically set forth herein, all other setbacks shall comply with the Dimensional Regulations (Appendix B) of the Douglas Zoning By-Law for property in the Industrial Zone.

Comment: no site plan has been submitted

Site Plan

Comment: A final site plan has not been submitted to review the conditions below.

5. As part of the site plan review process, the Applicant has suggested, and the ZBA agrees, that the Applicant shall submit for the ZBA's approval detailed information and/or plans concerning the following:
 - a. Final placement of the thirteen (13) wind turbines, provided the same shall be in substantial conformance with the terms and conditions hereof and the siting as set forth in the Application. But in any event the setbacks of the wind turbines shall not be less than the following:
 - i. No turbine shall be located closer than 150 feet to any property line. Except that the one turbine located on parcel 205-3 as shown on a plan dated January 30, 2009, "Meteorological Tower", by Atlantic Design Engineers LLC and consisting of one sheet, shall be permitted to have no less than a fifty (50) foot set back from the easterly property line.
 - ii. All wind turbines shall be set back one thousand (1,000) feet, or more at the Applicant's discretion, from any residential structure existing as of May 6, 2009.
 - iii. No structures shall be permitted to be built or permitted to exist within the area around the base of the tower which shall be equal to the circumference around the tower, where the radius is equal to the length of the rotor blade measured from the center of the hub. This prohibition shall not apply to transformers or other electrical equipment and infrastructure that are necessary for the operation of the turbines.
 - iv. All wind turbines shall be set back a distance equal to the height of the tower plus the length of the rotor blade measured from the center of the hub from any Habitable Structures (this term shall mean those structures intended for uses which include overnight accommodations of persons) whether existing or to be built. This prohibition shall not apply to any Habitable Structure which is not located within the property boundaries of the Locus.
 - v. Although the Site Plan Review decision may dictate more extensive setbacks, in no event shall such decision decrease the number of turbines below 13 or decrease the aggregate wind efficiency of the project as presented by the Applicant and analyzed by the Board during the Site Plan Review process.
 - b. Design plans prepared and signed by a Registered Professional Structural Engineer for all structures, including support towers, and schedules for the construction and operation of the Facility.
 - c. Color and finish of the wind turbines, which shall be neutral, low-contrasting and non-reflective so as to minimize any adverse visual impact on the surrounding area. Color and finish shall comply with all safety requirements of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission (MAC).
 - d. Lighting and signage. Wind turbines shall be lighted only if required by the Federal Aviation Administration (FAA) and/or the Massachusetts Aeronautics Commission (MAC). Lighting of all other structures and equipment shall be limited to that required for safety and operational purposes and shall be shielded to the extent feasible. Signage shall be determined by site plan review and shall be in conformance with the Town's General By-laws.
 - e. Location of utility connections. All utility connections shall be shown on the site plan.

- f. Location and control of access roads. The Applicant shall be responsible for the cost of maintaining all access roads internal to the locus, unless accepted as public ways, including the cost of repairing any damage thereto resulting from operation of the Facility. The turbines and electrical apparatus shall be designed and located so as to prevent unauthorized access, provided, however, that site access shall be maintained at a level acceptable to the Police Chief and Fire Chief.
- g. Any site plan review submission shall include the location of the control building, the substations, any and all other structures, roads and improvements.

53G review fees

- 6. During the site plan review process, the Applicant has suggested, and the ZBA agrees, that the ZBA may retain the services of the Town staff and/or outside consultants if it determines that any issues before it require such expertise, at the expense of the Applicant. The use and payment for such consultants shall be governed by G.L. c. 44, §53G, the rules and regulations of the Town.

Comment: review fees have been submitted

Shadowing and flicker

- 7. During the site plan review process, the Applicant shall present mitigation of shadowing or flicker impacts as follows: As to any residential location existing as of May 6, 2009, where estimated shadowing/flicker exceeds thirty (30) Experienced Hours per year, the Applicant shall provide to the Board with copies to the affected property owners, a Flicker Mitigation Plan for the Board’s review and approval, prior to the submission of the building permit application. Said Mitigation Plan shall either: (i) provide for mitigation where shadowing/flicker is reduced to thirty (30) Experienced Hours or below per year; or (ii) set forth such other acceptable resolution that may be approved as part of the Mitigation Plan. (“Experienced hours” are defined as hours a residence is in use and the occupants are awake.)

Comment: Final report needs to be submitted for review.

Operation

- 8. Operation of the Facility shall conform with the Department of Environmental Protection’s (DEP) Division of Air Quality Noise Regulations, found at 310 CMR 7.10.

Comment: Final report needs to be submitted

Operation and maintenance plan

- 9. Prior to the issuance of any building permit for the control building or wind turbines, the Applicant shall submit to the ZBA, for its review and approval, a plan for the operation and maintenance of the Facility, including the temporary meteorological tower, the wind turbines, any associated structures or equipment and access roadways. Said plan shall include the provision for repair, upgrade and replacement in a manner consistent with this decision of the towers for both during and after their useful life of the initial turbines such that the facility may be operated in an ongoing and consistent manner consistent with industry standards. Copies of same shall be provided to the Police Department and the Fire Department, together with a project summary, electrical schematic for and plan of the Facility. The Applicant shall cooperate with said Departments in developing an emergency response plan. Approval of the operating and maintenance plan by the ZBA shall not be unreasonably withheld.

Comment: A list of all the required operation and maintenance plans should be submitted along with who will be responsible for overseeing each plan. For example, will there be a need for a separate

- **Roadway O&M**
- **Turbine O&M**
- **Hazardous Material O&M**
- **Clearing O&M**

Operation

10. At all times, the individual(s) responsible for the operation and maintenance of the Facility shall be properly trained and familiar with wind energy conversion facilities and approved and/or certified, as appropriate, by industry standards.

Comment: A list of all the required operation and maintenance plans should be submitted along with who will be responsible for overseeing each plan.

Maintenance

11. The Applicant shall maintain the Facility in good condition. Maintenance shall include, but not be limited to, painting, structural repair of the foundations and the wind turbines themselves, upkeep of all landscaped and buffer areas and testing of security measures.

Comment: A list of all the required operation and maintenance plans should be submitted along with who will be responsible for overseeing each plan.

Hazardous Material

12. In the event that hazardous materials or wastes are used or stored on the Locus, provision shall be made to conform to all local, state and federal laws regarding the handling and containment of such materials or wastes.

Comment: Any information regarding hazardous material with the project along with a recommendations from the Fire Chief should be submitted to the Board.

Liability Insurance

13. Prior to the first inspection for construction of a wind tower following the construction of the foundation, the Applicant shall provide evidence to the ZBA of the availability of liability insurance in an amount reasonably sufficient and consistent with industry standards to cover any loss or damage to persons and/or structures occasioned by the construction, use or failure of the Facility. The Applicant, its successors and assigns shall be required to maintain such insurance so long as the Facility is being constructed or is in operation, and until such time as it is physically removed.

Comment: Final document needs to be submitted and should be approved by Town Counsel and the Town.

Indemnify

14. The Applicant shall indemnify and hold the Town harmless from and against all debts, liabilities and costs associated with any municipal emergency response to incidents at the Facility. Prior to the issuance of building permits, the Applicant shall execute an indemnification agreement that is consistent with this paragraph. Such agreement is subject to the prior approval of the Board of Selectmen, in consultation with Town or Special Counsel, such approval not to be unreasonably withheld.

Comment: Final document needs to be submitted and should be approved by Town Counsel and the Town.

Local, state and federal requirements

15. The construction and operation of the wind turbines shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

Comment: A list of all permits need for the project along with a copy of all approved permits acquired along with permits still outstanding should be submitted to the Planning Board.

Roadway Damage

16. Damage to any public or private way within the Town occasioned by the transport of the wind turbines or any associated structures or equipment, or any component thereof, shall be promptly repaired by the Applicant at its sole cost and expense. The Applicant shall, prior to construction of any further tower from the date the damage occurs, either cause said repairs to be made to a condition approved by the Highway Department of the Town of Douglas or in the alternative provide to the Town of Douglas an amount of money sufficient, as determined by the Highway Department, to make said repairs.

Comment: A roadway damage protocol should be developed and approved by the Planning Board.

Abandoned or Discontinued

17. Once eighty percent (80%) or more of the Facility has been discontinued or abandoned, said portion of the Facility shall be promptly removed by the Applicant, its successors or assigns, or replaced pursuant to Condition 9 contained herein. Notice thereof shall be provided to the Town by U.S. mail, certified. The Facility or a portion exceeding eighty percent (80%) thereof shall be deemed discontinued or abandoned if inoperable for twenty-four (24) months or more. Removal of the Facility shall require (a) removal of the abandoned wind turbines, blades, and towers and all structures and equipment appurtenant thereto, and (b) proper disposal of all solid and/or hazardous materials and wastes from the Locus in accordance with the law and (c) restoration of the Locus to its natural condition, to the extent feasible and practicable, as may be further addressed during the Site Plan Review process. In the event that the Applicant fails to remove the specific portions of the Facility deemed discontinued and abandoned, the Town may enter the Locus and remove same. As part of the site plan review and approval, the Applicant shall provide to the ZBA a form of surety or assurance acceptable to the ZBA in order to secure conformance with this provision. Said surety or assurances shall be delivered to the Town upon application for a building permit. The Applicant shall provide a form of surety or assurances to the Town, in an amount equal to the cost of removal of any abandoned wind turbine(s), as herein defined, and/or of the Facility as a whole, to allow for same. The form of the required surety or assurance is subject to the prior approval by the Selectmen who may consult with Town's Counsel or Special Counsel, the fees for whom shall be borne by the Applicant pursuant to G.L. c. 44, §53G.

Comment: Final document needs to be submitted and should be approved by Town Counsel and the Town.

School information

- 18 The Applicant shall make reasonable efforts to cooperate and coordinate with the School Department to provide information for inclusion in the school curriculum related to the science, economics and policy surrounding wind energy. To the extent feasible, and consistent with safety, legal, and insurance requirements, the Applicant will allow the Facility

to be occasionally used for educational presentations and tours for school personnel and students.

Comment: Has any information been given to the school?

Taxes

19. The Applicant has offered and the Town accepts that the Applicant will in good faith negotiate with the Town concerning a payment in lieu of taxes for both real estate and personal property taxes on the incremental value of the project and/or tax increment financing for the Facility.

Comment: There are outstanding back taxes that need to be paid on the subject parcels.

ANR Plan recorded

20. The Applicant shall submit with its application for a Building Permit, a recorded plan pursuant to G.L. c. 41, §§81X or 81P, as may be determined by the Applicant, whereby the several parcels referenced in herein are combined to create a single parcel with one (1) street address having its frontage on Webster Road.

Comment: The applicant should update the Planning Board when an ANR plan will be filed.

21. Upon the Applicant's written request, the ZBA may grant an additional six (6) months to the one year period as set forth in G.L. c. 40A, §10, for the exercise of the rights authorized by this variance decision. An aggregate of actions by the Applicant that demonstrates both deliberate and expeditious pursuit of the wind turbine facility and compliance with the terms hereof shall be considered by the Board to be an exercise of this variance. For example, actions including, but not limited to, the recording of the plan, construction of the foundation of the control building and construction of 1000 feet of the proposed access road, when viewed in combination, shall be considered by the Board to be an exercise of this variance.

Comment: none

22. Any person aggrieved by this decision may appeal to the Worcester Superior Court or other Court of competent jurisdiction within 20 days of the date the decision is filed with the Douglas Town Clerk. This variance shall not take effect until it has been filed in the Worcester County Registry of Deeds with certification from the Town Clerk that 20 days have elapsed since the decision was filed with the Town Clerk and that no appeal has been filed or if such appeal has been filed, it has been dismissed or denied

Comment: none

ZBA Decision APW 2010-01

The following comments are based on the approved ZBA decision case no. 2010-01 American Pro Wind, LLC

Approval is hereby granted, three (3) members being present and voting at a duly called meeting held on April 7, 2010, by vote of three (3) in favor to zero (0) against, for a use variance and a height variance for one (1) wind turbine to generate electrical power, not to exceed 525 feet in height to the tip of the blade, together with all necessary electric infrastructure required for the Facility, together with adequate access and parking, all substantially in the manner and in the approximate location

shown on the Documents and Plans submitted by the Applicant, but subject to the following conditions:

1. The Facility shall be constructed in substantial conformance with the terms and conditions hereof, subject to site plan review by the ZBA, pursuant to Section 9.4 of the Bylaw. The Applicant shall comply with such reasonable conditions as may be imposed by the ZBA in its decision thereon. This variance is valid for one turbine only and in the event that the Applicant may seek one additional turbine on the Locus in the future, then the Applicant shall apply for a separate variance for the additional turbine, provided however that the total number of turbines shall not exceed 13 on the Locus and the immediately adjacent parcel for which a use and height variance was previously approved on May 6, 2009.

Comment: A total eleven (11) turbine instead of 13 for the entire project has been proposed. The plan should reference which turbines are under which ZBA decision.

2. No meteorological tower shall be permitted on the Locus, as the ZBA's Decision Case No. 2009-04 dated February 25, 2009 as referenced in its Decision Case No. 2009-04 dated May 13, 2009, authorizes such a temporary tower on the adjacent site for which the Board approved a use variance and a height variance for the construction of up to thirteen (13) wind turbines by the Applicant.

Comment: The Meteorological Tower has been constructed and operational for almost 12 months under ZBA decision 2009-04.

3. The wind turbine shall be a freestanding monopole tower. Upon submission of the application for the building permit, the Applicant shall provide to the Building Inspector a certification from the structural engineer for the project, who shall be licensed in the Commonwealth of Massachusetts as a structural engineer, stating that the integrated tower and turbine structure does not exceed the maximum height specifications of the manufacturer and is structurally sound and safe, as per industry standards.

Comment: no site plan has been submitted

4. The wind turbine shall be set back at least one thousand (1,000) feet, or more at the Applicant's discretion, from any residential structure existing as of April 7, 2010. Except as specifically set forth herein, all other setbacks shall comply with the Dimensional Regulations (Appendix B) of the Bylaw for property in the Industry "I" Zoning District.

Comment: no site plan has been submitted

5. As part of the site plan review process, the Applicant has suggested, and the ZBA agrees, that the Applicant shall submit for the ZBA's approval detailed information and/or plans concerning the following:

Comment: A final site plan has not been submitted to review the conditions below.

- a. Final placement of the wind turbine, provided the same shall be in substantial conformance with the terms and conditions hereof and with the siting set forth in the Application. In any event, the setbacks of the wind turbine shall not be less than the following:
 - i. The turbine shall not be located closer than 150 feet to any property line, except that no setback is required by this Decision from the property line shared

with the adjacent site for which the Board previously approved a use variance and a height variance for the construction of up to thirteen (13) wind turbines.

- ii. The wind turbine shall be set back at least one thousand (1,000) feet, or more at the Applicant's discretion, from any residential structure existing as of April 7, 2010.
 - iii. No structures shall be permitted to be built or permitted to exist within the area around the base of the tower which shall be equal to the circumference around the tower, where the radius is equal to the length of the rotor blade measured from the center of the hub. This prohibition shall not apply to transformers or other electrical equipment and infrastructure that are necessary for the operation of the turbine.
 - iv. The wind turbine shall be set back a distance equal to the height of the tower plus the length of the rotor blade measured from the center of the hub from any Habitable Structures (this term shall mean those structures intended for uses which include overnight accommodations of persons) whether existing or to be built. This prohibition shall not apply to any Habitable Structure which is not located within the property boundaries of the Locus.
 - v. Although the Site Plan Review decision may dictate more extensive setbacks, in no event shall such decision prescribe setbacks that amount to a virtual prohibition on the construction of a turbine on the Locus or that significantly decrease wind efficiency of the Project as presented by the Applicant and analyzed by the Board during the site plan review process.
- b. Design plans prepared and signed by a Registered Professional Structural Engineer for all structures, including the support tower, and schedules for the construction and operation of the Facility.
 - c. Color and finish of the wind turbine, which shall be neutral, low-contrasting and non-reflective so as to minimize any adverse visual impact on the surrounding area. Color and finish shall comply with all safety requirements of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission (MAC).
 - d. Lighting and signage. The wind turbine shall be lighted only if required by the Federal Aviation Administration (FAA) and/or the Massachusetts Aeronautics Commission (MAC). Lighting of all other structures and equipment shall be limited to that required for safety and operational purposes and shall be shielded to the extent feasible. Signage shall be determined by site plan review and shall be in conformance with the Town's General Bylaw.
 - e. Location of utility connections. All utility connections shall be shown on the site plan.
 - f. Location and control of access roads. The Applicant shall be responsible for the cost of maintaining all access roads internal to the Locus or on adjacent private property and providing access from the Locus to a public way, unless said access roads are themselves accepted as public ways, including the cost of repairing any damage thereto resulting from operation of the Facility. The turbine and electrical apparatus shall be designed and located so as to prevent unauthorized access; provided, however, that site access shall be maintained at a level acceptable to the Police Chief and Fire Chief.

- g. Any site plan review submission shall include the location of the control building, the substation and any and all other structures, roads and improvements.

The ZBA acknowledges that site plan review of the wind turbine authorized herein may be combined with site plan review of the up-to-thirteen-(13)-wind-turbine project on the immediately adjacent site.

6. During the site plan review process, the Applicant has suggested, and the ZBA agrees, that the ZBA may retain the services of the Town staff and/or outside consultants if it determines that any issues before it require such expertise, at the expense of the Applicant. The use and payment for such consultants shall be governed by G.L. c. 44, § 53G, and the rules and regulations of the Town.

Comment: review fees have been submitted

7. During the site plan review process, the Applicant shall present mitigation of shadowing or flicker impacts as follows: As to any residential location existing as of April 7, 2010 where estimated shadowing/flicker exceeds thirty (30) Experienced Hours per year, resulting from the wind turbine authorized herein or from said turbine in conjunction with the up to thirteen (13) turbines proposed for the immediately adjacent site, the Applicant shall provide to the ZBA, with copies to the affected property owner(s), a Flicker Mitigation Plan for the ZBA's review and approval, prior to the submission of the building permit application. Said Flicker Mitigation Plan shall either: (a) provide for mitigation where shadowing/flicker is reduced to thirty (30) Experienced Hours or below per year; or (b) set forth such other acceptable resolution that may be approved as part of the Flicker Mitigation Plan. "Experienced Hours" are defined as hours a residence is in use and the occupants are awake.

Comment: Final report needs to be submitted for review.

8. Operation of the Facility shall conform with the Department of Environmental Protection's (DEP) Division of Air Quality Noise Regulations, found at 310 CMR 7.10.

Comment: Final report needs to be submitted

9. Prior to the issuance of a building permit for the wind turbine, the Applicant shall submit to the ZBA, for its review and approval, a plan for the operation and maintenance of the Facility, including the wind turbine, any associated structures or equipment and access roadways. Where the wind turbine authorized herein is to be developed in conjunction with the up to thirteen (13) turbines proposed for the immediately adjacent site, one (1) plan shall be submitted for both projects. Said plan shall include the provision for repair, upgrade and replacement of the tower(s), in a manner consistent with this Decision, both during and after the useful life of the initial turbine(s) such that the Facility, or both Facilities if developed together, may be operated in an ongoing and consistent manner as per industry standards. Copies of same shall be provided to the Police Department and the Fire Department, together with a Project summary and an electrical schematic for and plan of the Facility or Facilities. The Applicant shall cooperate with said Departments in developing an emergency response plan. Approval of the operating and maintenance plan by the ZBA shall not be unreasonably withheld.

Comment: A list of all the required operation and maintenance plans should be submitted along with who will be responsible for overseeing each plan. For example, will there be a need for a separate

- **Roadway O&M**
- **Turbine O&M**
- **Hazardous Material O&M**
- **Clearing O&M**

10. At all times, the individual(s) responsible for the operation and maintenance of the Facility or Facilities shall be properly trained and familiar with wind energy conversion facilities and approved and/or certified, as appropriate, by industry standards.

Comment: A list of all the required operation and maintenance plans should be submitted along with who will be responsible for overseeing each plan.

11. The Applicant shall maintain the Facility in good condition. Maintenance shall include, but not be limited to, painting, structural repair of the foundation and the wind turbine itself, upkeep of all landscaped and buffer areas and testing of security measures.

Comment: A list of all the required operation and maintenance plans should be submitted along with who will be responsible for overseeing each plan.

12. In the event that hazardous materials or wastes are used or stored on the Locus, provision shall be made to conform to all local, state and federal laws regarding the handling and containment of such materials or wastes.

Comment: Any information regarding hazardous material with the project along with a recommendations from the Fire Chief should be submitted to the Board.

13. Prior to the first inspection for construction of the wind tower following construction of the foundation, or, if the wind turbine authorized herein is to be developed in conjunction with the up to thirteen (13) turbines proposed for the immediately adjacent site, prior to the first inspection for construction of any wind tower, the Applicant shall provide evidence to the ZBA of the availability of liability insurance in an amount reasonably sufficient and consistent with industry standards to cover any loss or damage to persons and/or structures occasioned by the construction, use or failure of the Facility or Facilities. The Applicant, its successors and assigns shall be required to maintain such insurance so long as the Facility or Facilities is/are being constructed or is/are in operation, and until such time as the same is/are physically removed.

Comment: Final document needs to be submitted and should be approved by Town Counsel and the Town.

14. The Applicant shall indemnify and hold the Town harmless from and against all debts, liabilities and costs associated with any municipal emergency response to incidents at the Facility. Prior to the issuance of a building permit for the Facility, or, if the wind turbine authorized herein is to be developed in conjunction with the up to thirteen (13) turbines proposed for the immediately adjacent site, prior to the issuance of a building permit for either Facility, the Applicant shall execute an indemnification agreement that is consistent with this paragraph. Such agreement is subject to the prior approval of the Board of Selectmen, in consultation with Town or Special Counsel, such approval not to be unreasonably withheld.

Comment: Final document needs to be submitted and should be approved by Town Counsel and the Town.

15. The construction and operation of the wind turbine shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

Comment: A list of all permits need for the project along with a copy of all approved permits acquired along with permits still outstanding should be submitted to the Planning Board.

16. Damage to any public or private way within the Town occasioned by the transport of the wind turbine or any associated structures or equipment, or any component thereof, shall be

promptly repaired by the Applicant at its sole cost and expense. The Applicant shall, immediately upon the occurrence of such damage, either cause said repairs to be made to a condition approved by the Highway Department of the Town of Douglas or, in the alternative, provide to the Town of Douglas an amount of money sufficient, as determined by the Highway Department, to make said repairs.

Comment: A roadway damage protocol should be developed and approved by the Planning Board.

17. Upon discontinuance or abandonment of the Facility, the same shall be promptly removed by the Applicant, its successors or assigns, or replaced pursuant to Condition 9 contained herein. Notice thereof shall be provided to the Town by U.S. mail, certified. If developed as a single wind turbine, with any associated structures or equipment, the Facility shall be deemed discontinued or abandoned if inoperable for twenty-four (24) months or more. If developed in conjunction with the up to thirteen (13) turbines proposed for the immediately adjacent site, the combined Facilities shall be deemed discontinued or abandoned in accordance with Condition No. 17 of Decision Case No. 2009-04. Removal of the Facility or Facilities shall require (a) removal of the abandoned wind turbine, blades and tower, and all structures and equipment appurtenant thereto, (b) proper disposal of all solid and/or hazardous materials and wastes from the Locus in accordance with the law and (c) restoration of the Locus and, if applicable, the adjacent property, to its/their natural condition, to the extent feasible and practicable, as may be further addressed during the Site Plan Review process. In the event that the Applicant fails to remove the Facility once discontinued or abandoned, the Town may enter the Locus or adjacent property and remove same. As part of the site plan review and approval, the Applicant shall provide to the ZBA a form of surety or assurance acceptable to the ZBA in order to secure conformance with this provision. Said surety or assurances shall be delivered to the Town upon application for a building permit. The Applicant shall provide a form of surety or assurances to the Town, in an amount equal to the cost of removal of the wind turbine(s) to allow for same. The form of the required surety or assurance is subject to the prior approval by the Selectmen who may consult with Town's Counsel or Special Counsel, the fees for whom shall be borne by the Applicant pursuant to G.L. c. 44, § 53G.

Comment: Final document needs to be submitted and should be approved by Town Counsel and the Town.

18. The Applicant shall make reasonable efforts to cooperate and coordinate efforts with the School Department to provide information for inclusion in the school curriculum related to the science, economics and policy surrounding wind energy. To the extent feasible, and consistent with safety, legal and insurance requirements, the Applicant will allow the Facility to be occasionally used for educational presentations and tours for school personnel and students.

Comment: Has any information been given to the school?

19. The Applicant has offered and the Town accepts that the Applicant will in good faith negotiate with the Town concerning a payment in lieu of taxes for both real estate and personal property taxes on the incremental value of the project and/or tax increment financing for the Facility.

Comment: There are outstanding back taxes that need to be paid on the subject parcels.

20. Upon the Applicant's written request, the ZBA may grant an additional six (6) months to the one (1) year period as set forth in G.L. c. 40A, § 10, for the exercise of the rights authorized by this variance decision. An aggregate of actions by the Applicant that demonstrates both deliberate and expeditious pursuit of the Facility and compliance with the terms hereof shall be considered by the Board to be an exercise of this variance.

Comment: none

21. Any person aggrieved by this decision may appeal to the Worcester Superior Court or other court of competent jurisdiction within twenty (20) days of the date the decision is filed with the Douglas Town Clerk. This variance shall not take effect until it has been filed in the Worcester County Registry of Deeds with certification from the Town Clerk that twenty (20) days have elapsed since the Decision was filed with the Town Clerk and that no appeal has been filed or, if such appeal has been filed, it has been dismissed or denied.

Comment: none

Very Truly Yours,
Community Development Department

Stephen D. Zisk
Planning/Conservation Agent

cc: Planning Board