

## William Cundiff

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**From:** Steve Zisk [Szisk@douglasma.org]  
**Sent:** Friday, October 29, 2010 11:38 AM  
**To:** neexpansion@aol.com  
**Cc:** Bill Cundiff  
**Attachments:** Douglas Woods Wind Farm Planning Agents Review 10-1-2010 revised on 10-29-2010 to include 2010 zba decsion comments.doc

Rod,

As discussed at the October 27, 2010 meeting, that almost all of the 2010 and 2009 ZBA variance decision items are the same and redundant. I have added the 2010 ZBA variance decision comments to my review letter in order to keep the cohesiveness of the chain of responses in order.

Thanks,

**Stephen D. Zisk**

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October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

### **Comments from Town of Douglas Planning Conservation Agent – Stephen D. Zisk**

## **9.4 SITE PLAN REVIEW**

### **9.4.2 Procedures**

1. Section 9.4.2

- Part of section 9.4.2 states;

“within (3) days thereafter shall also submit a copy of the site plan to the Sewer Commission, Applicable water district, Board of Health, Highway Department, Police Chief, Fire Chief, the Building Inspector, Zoning Board of Appeals, and the Conservation Commission for their advisory review and comments. Failure of such board of official to respond within thirty-five days of submittal shall be deemed a lack of opposition thereto.”

### **SDZ Response -10-1-2010**

Comment: Have any of the Board given comments to the applicant regarding the proposed project?

### **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'.

### **VHB Response – 07/21/10**

*Site Plans are on schedule to be submitted early to mid August.*

*American Pro Wind (APW), VHB, and the Town Engineer had discussions prior to the submittal of the Site Plan Review application and agreed to a Phased Approach to the Site Plan Review during our conference call of 5/24/2010. Phase One would consist of the presentation of the Turbine Location Plan (not a final Site Plan) and all the reports, studies, and approvals pertaining to the impact of the turbines on the surrounding environment. Phase Two would consist of the Site Plan and all required Civil Engineering and Permit Drawings as well as the establishment of Permit Conditions. A Meeting/Presentation Schedule was presented to the Planning Board at the meeting of 6/29/2010. This Meeting/Presentation Schedule showed Phase One to occur at the meetings of 6/29, 7/13, and 7/27 and Phase Two to occur at the meetings of 8/10 and 8/24. The Planning Board's feedback was that they would likely need at least three meetings once the Site Plan had been submitted and, therefore, the Site Plan Review would likely take until at least 9/7/2010. APW agreed with this schedule.*

### **APW Response – 08/17/10**

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

*A progress printout of the Site plan was presented to the Planning Board at the Site Plan Review meeting of 8/10/10. The plan is substantially complete but not 100% complete pending the completion of the boundary survey in which a few areas still need to be tied down. This survey was delayed a few weeks by vandalism, which was reported to the Douglas Police. VHB presented an overview of the plan and Rich Gross (Interconnection Consultant) presented an overview of the on-site electrical infrastructure. The Site Plan and Civil Engineering Drawings are now approximately 90% complete and will be presented to the Planning Board on 8/24/2010. It is expected that the 100% complete, stamped plan, civil engineering drawings, and Storm Water Management Plan will be presented at the meeting of 9/7/10.*

**APW Response – 9/23/2010**

*The complete Stamped Site Plan, Civil Engineering Drawings, and Storm Water Management Plan were submitted to the Town of Douglas on 9/23/2010. Resolved*

**SDZ Response -10-1-2010**

- Site plans prepared by a Registered Professional Engineer and Registered Land Surveyor have been submitted.
- Vanasse Hangen Brustlin, Inc (VHB) are the professional Engineers and Landscape Architect for the project.
- Atlantic design engineers, LLC are the Registered Land Surveyors for the proposed project.

**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.

**APW Response – 9/23/2010**

*The complete stamped Site Plan was submitted on 9/23/2010 including items required by 1.A. Resolved.*

**SDZ Response -10-1-2010**

- Is it possible to get the property survey on one sheet.
- B. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA variance decision comments are mostly the same and may be redundant.

**APW Response – 9/23/2010**

*The complete stamped Site Plan was submitted on 9/23/2010 including items required by 1.B.*

**Resolved.**

**SDZ Response -10-1-2010**

- Stormwater is being reviewed.

- 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.

**APW Response – 9/23/2010**

*The complete stamped Site Plan was submitted on 9/23/2010 including items required by 1.C..*

**Resolved.**

**SDZ Response -10-1-2010**

- Has the Board of Health approved the proposed septic plan and well location?
- Is it possible to get a legend table on every sheet but only show the symbols that are used on that particular sheet?
- Would it be useful to have match lines on the plan sheets?
- Are there any proposed open space areas associated with the project?

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

**APW Response – 9/23/2010**

*The complete stamped Site Plan was submitted on 9/23/2010. The architectural plans for the pre-fabricated controls and maintenance building will be submitted during Site Plan Review. Dimensional Drawings for the Nordex 100/2500 along with technical information on the lighting, color/finish, and fire sensing and suppression equipment was submitted by 9/23/2010. **To be Submitted.***

**SDZ Response -10-1-2010**

- Plans still need to be 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.

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA variance decision comments are mostly the same and may be redundant.

**VHB Response - 07/21/10**

*Site plans are scheduled to be submitted early to mid August and will be designed and prepared in accordance with 1.A-E. See VHB Response to 9.4.3 above.*

**APW Response - 8/17/10**

*See response to 9.4.3 above.*

**APW Response – 9/23/2010**

*The complete stamped Site Plan was submitted on 9/23/2010 including items required by 1.E.*

**Resolved.**

**SDZ Response -10-1-2010**

- A planting plan for the entrance of the property has been submitted. However, what is being proposed to reclaim the existing areas that were cleared but are not being utilized as part of the proposed project? Will there be a planting plan to restore all the trees that were removed for the met tower and other cleared areas?

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.**

**APW Response - 07/23/10**

*The reports/ studies that are required to be revised or amended are the Acoustic Study, the Shadow Flicker Study, and the Photosimulation Study. APW has provided the revised/amended studies as follows:*

- *APW submitted to the Planning Board the week of 7/19/2010 a revised, complete, stamped Acoustic Study conducted by Atlantic Design Engineers in June/July 2010 based on the proposed final turbine locations. The results of this Study were presented to the Planning Board at the 7/13/2010 Site Plan Review meeting.*
- *APW submitted to the Planning Board the week of 7/19/2010 a revised, complete, stamped Shadow Flicker Study conducted by Atlantic Design Engineers in June/July 2010 based on the proposed final turbine locations. The results of this Study were presented to the Planning Board at the 7/13/2010 Site Plan Review meeting.*
- *The Planning Board requested that the Photosimulation Study be amended to include a graphic depiction of the entire turbine for a few specific Photosimulations that previously had cut off the top portion of the turbine because of the horizontal positioning of the camera. These graphic depictions were presented to the Planning Board at the Site Plan Review meeting of*

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*7/13/2010. The electronic files of these graphic depictions were provided to the Town Engineer the week of 7/19/2010.*

#### **APW Response - 08/17/2010**

*A detailed project cost estimate was submitted to the Planning Board on 8/4/2010, so both the project schedule and cost estimate required by this item have been provided by APW. Therefore, this item is **Resolved**.*

#### **SDZ Response -10-1-2010**

- Will a construction protocol be submitted detailing how the project will be constructed along with time frames for every aspect of the construction project?
  - The Planning Board should discuss how inspection will be performed, along with how often the Board will want to have project updates. (weekly, monthly etc.)
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.

#### **APW Response -07/23/10**

*At the present time, there are no future contemplated projects. Therefore, this item is **Resolved**.*

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.

#### **VHB Response - 07/21/10**

*Site Plans and stormwater report are on schedule to be submitted early to mid August. The stormwater approach has been outlined and discussed with Bill Cundiff. VHB is working towards getting a clarification from DEP regarding TSS removal requirements specific to the gravel roads and turbine work areas.*

#### **APW Response – 9/23/2010**

*The complete stamped Site Plan and Storm Water Management Plan (including drainage calculations) were submitted by VHB on 9/23/2010. **Resolved**.*

#### **SDZ Response -10-1-2010**

- Stormwater is being reviewed.
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**

October 1, 2010-Oct 8,2010

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### **APW Response - 07/23/10**

*A written Project Narrative was submitted, as part of the Site Plan Review application, that addressed the on-site and off-site impacts of the proposed project, including noise, visual impact, shadow flicker, wetlands, endangered species, historical resources, airspace, traffic, and lighting. In addition to the Narrative, the following studies, reports, permits, and approvals that pertain to on-site and off-site impacts were included in the Site Plan Review application book or have been submitted to the Planning Board since the application submission:*

1. *Acoustic Study (original and revised)*
2. *Shadow Ficker Study (original and revised)*
3. *Photosimulation Study (original and amended graphic depictions)*
4. *UMass Peer Review of Acoustic, Shadow flicker, and Photosimulation Studies*
5. *21E Environmental Site Assessment Report*
6. *Wetkands: Order of Resource Area Delineation*
7. *Letter from Division of Fisheries and Wildlife - No Priority or Estimated Habitat*
8. *Letter from Division of Fisheries and Wildlife- No Bat or Bird Studies Required*
9. *Project Notification Form to MA Historical Commission and MHC Response Letter*
10. *Visual Effects Studies Submitted to MA Historical Commission*
11. *Letter from Douglas Historical Commission regarding Visual Effects*
12. *Archaeological Survey Final Report*
13. *Federal Aviation Administration - Determinations of No Hazard*
14. *MA Aeronautical Commission - Airspace Review Approval*
15. *Local Transportation Study for Turbine Equipment conducted by VHB*
16. *FAA Obstruction, Marking, and Lighting Requirements*

*Per the Town Engineer's request of 7/8/2010, APW has agreed to conduct a Traffic Study and has authorized VHB to conduct the study.*

### **APW Response - 8/17/10**

*The Traffic Study will be presented as part of the final, stamped Site Plan and is expected to be completed and presented at the 9/7/10 Site Plan Review Meeting.*

### **APW Response – 9/23/2010**

*The complete stamped Site Plan was submitted by VHB on 9/23/2010 along with the Storm Water Management Plan and Traffic Plan.*

### **SDZ Response -10-1-2010**

- **The Planning Board needs to discuss and an make a determination on the reports which have been submitted and listed above.**

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

### **APW Response - 8/17/10**

*The Site Plan will comply with the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board, if applicable. VHB will certify this as part of the final Site Plan.*

October 1, 2010-Oct 8,2010

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**APW Response – 9/23/2010**

*The complete stamped Site Plan and Certification of Compliance with the Americans with Disabilities Act and the Massachusetts Barriers Board were submitted by VHB on 9/23/2010.*

**SDZ Response -10-1-2010**

- The Planning Board may want to get input from the Building Department regarding this section of the Bylaw.

**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:

**SDZ Response -10-1-2010**

- As stated in the above section 9.4.7. The following items should be discussed by the Planning Board.
1. Maximize pedestrian and vehicular safety both on the site and egressing from it;
    - Will there be any construction signs posted along rt. #16 during the construction and installation phases of the project?
  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;
    - The applicant's engineer has stated that the project is designed to minimize the amount of cuts and fills associated with the construction of the project. Has a quantitative number been submitted on the amount of cuts and fills being proposed for the project?
    - Board needs to determine if they need to know the number of tree being removed that are 6" caliper or larger.
    - Are any stone walls being removed?
    - Has any wetland vegetation been displaced or will be displaced with the proposed project?
    - Stormwater design has been submitted and is being reviewed.
    - Are erosion controls being proposed throughout the site or only in specific areas?

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- Threat of air and water pollution needs to be discuss with the Planning Board.
3. Minimize obstruction of scenic views from publicly accessible locations;
    - Planning Board needs to discuss.
  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;
    - Planning Board needs to discuss.
  5. Minimize glare from headlights and lighting intrusion and light overspill into the night sky;
    - Planning Board needs to discuss.
  6. Provide adequate access to each structure for fire and other emergency service equipment;
    - Planning Board needs to discuss
    - The applicant may want to get input from the safety committee.
  7. Provide adequate stormwater management consistent with the functional design standards in the Planning Board's Subdivision Rules and Regulations;
    - Stormwater is being reviewed.
  8. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.
    - Planning Board needs to discuss.
  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;
    - Has the Board of Health approved the proposed septic system and well location?
    - Planning Board needs to discuss any other operations associated with the project that involves 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.

**VHB Response - 07/21/10**

*Response Text: Items 1-10 will be accounted for in the site plans & accompanying reports, to be submitted in early to mid August.*

**APW Response - 8/17/10**

*Items 1-10 will be accounted for in the site plans & accompanying documents. See response to 9.4.3 above.*

**APW Response – 9/23/2010**

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

*The complete stamped Site Plan, Civil Engineering drawings, Storm Water Management Plan, and Traffic Study wee submitted by VHB on 9/23/2010. The above 10 items are addressed in the plan. **Resolved.***

### **SDZ Response -10-1-2010**

- As stated in the above section 9.4.7. The above 10 items should be discussed by the Planning Board to make sure all of the items have been satisfied by the Board.

### **Zoning Board of Appeals 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 arid 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 been submitted**

#### **VHB Response - 07/21/10**

*Site Plans to be submitted in early to mid August.*

*American Pro Wind (APW), VHB, and the Town Engineer had discussions prior to the submittal of the Site Plan Review application and agreed to a Phased Approach to the Site Plan Review during our conference call of 5/24/2010. Phase One would consist of the presentation of the Turbine Location Plan (not a final Site Plan) and all the reports, studies, and approvals pertaining to the impactof the turbines on the surrounding environment. Phase Two would consist of the Site Plan and all required Civil Engineering and Permit Drawings as well as the establishment of Permit Conditions. A Meeting/Presentation Schedule was presented to the Planning Board at the meeting of 6/29/2010. This Meeting/Presentation Schedule showed Phase One to occur at the*

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA variance decision comments are mostly the same and may be redundant.

*meetings of 6/29, 7/13, and 7/27 and Phase Two to occur at the meetings of 8/10 and 8/24. The Planning Board's feedback was that they would likely need at least three meetings once the Site Plan had been submitted and, therefore, the Site Plan Review would likely take until at least 9/7/2010. APW agreed with this schedule.*

**APW Response - 8/17/10**

*See response to 9.4.3 above.*

**APW Response – 9/23/2010**

*The complete stamped Site Plan, Civil Engineering Drawings, and Storm Water Management Plan were submitted on 9/23/2010. The Site Plan calls for the construction of 11 turbines and conforms to the conditions established by ZBA Decisions 2009-04 and 2010-01. **Resolved.***

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.**

**APW Response - 07/23/10**

*The Meteorological Tower has been constructed and operational for more than 13 months (6/8/2009). APW has committed to remove the Meteorological Tower no more than 15 months after its installation (9/8/2010) per the Variance Agreement Conditions.*

**APW Response - 8/17/10**

*The Meteorological Tower was taken down and removed from the project site the week of 8/19/2010 in compliance with the above condition. Therefore, this item is **Resolved.***

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**

**VHB Response 07/21/10**

*Site Plans to be submitted in early to mid August. See Response to Item 1. above.*

**APW Response - 07/23/10**

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

*At the 6/29/2010 Site Plan Review Meeting APW submitted to the Planning Board a Technical Certification from Nordex that the Nordex 100-2500 Turbine to be used for the Douglas Woods project is certified at 100 meter height and does not exceed the height specifications of the manufacturer. Upon submission of the Building Permit Application, APW will submit 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.*

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted by VHB on 9/23/2010. Above described certification will be submitted with the Building permit application. **To be 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**

**VHB Response - 07/21/10**

*Site Plans to be submitted in early to mid August. See Response to Item 1. above.*

*Final survey plan to be completed in early August, setbacks will be greater than 1000 feet in accordance with the above. The Turbine Location Plan submitted with the Site Plan Review application, which shows the proposed locations of the turbines, shows that the closest turbines to residences (#1 and #4) both exceed the 1,000 ft. setback requirement.*

**APW Response - 8/17/10**

*See response to 9.4.3 above. A topographical survey was completed by Atlantic Design Engineers to provide a precise measure of the setbacks to the nearest residences. This will be submitted as part of the Site Plan.*

**APW Response – 9/23/2010**

*The final, stamped Site Plan was submitted by VHB on 9/23/2010. The plan conforms to all the setback requirements of ZBA Decisions 2009-04 and 2010-01 including the 1,000 feet setback to any residential buildings existing as of 5/6/2009. **Resolved.***

**Site Plan**

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.**

**VHB Response - 07/21/10**

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

*Site Plans to be submitted in early to mid August. See Response to Item 1. above.*

**APW Response - 8/17/10**

*See response to 9.4.3. The final stamped Site Plan shall conform to all items (a-g) below.*

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted 9/23/2010 and conforms to all the setback requirements described below. Resolved.*

- 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 easterJy property line.

**SDZ comment:**

Some of the turbine locations are close to the 150-foot turbine setback to the property line dimension, and the plans only show a circle for the turbine locations. The Building Commissioner should verify that the setbacks have been met.

- 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.

**SDZ comment:**

Turbine #4 is 1010-feet from to the nearest dwelling and turbine # 1 is 1055-feet to the nearest dwelling. The Building Commissioner should verify that the setbacks have been met.

- 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.

**SDZ comment:**

- Should this be noted on the site plans?
- Should this setback be shown on the plans?

- iv. All wind turbines shall be set back a distance equal to the height of the tower plus (lie length of the rotor blade measured from the center of (lie 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.

**SDZ comment:**

- Should this be noted on the site plans?

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- Should this setback be shown on the plans?

- 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.

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted 9/23/2010 and conforms to all setback requirements in item a. Resolved*

**SDZ comment:**

- Planning Board needs to discuss

- 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.

**APW Response – 9/23/2010**

*Design and specifications of the Nordex Turbines Model 100/2500 have been submitted. Design plans for controls and maintenance building to be submitted. To be submitted*

**SDZ comment:**

Has a construction plan and schedule been submitted?

- 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).

**APW Response – 9/23/2010**

*A document entitled Nordex 100/2500 Turbine Information was submitted on 9/23/2010. It provides detailed information regarding the color and finish of the turbines. The color will be RAL 7035 (light grey) which is Nordex's standard "off-white color." As such, it is neutral and non-reflective. The document also includes the FAA required color guidelines. Resolved.*

**SDZ comment:**

- No Comment at this time.
- Planning Board needs to discuss

- 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 safely 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.

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA variance decision comments are mostly the same and may be redundant.

**APW Response – 9/23/2010**

*A document entitled Nordex 100/2500 Turbine Information was submitted 9/23/2010 and provides detailed information on how the turbines will be lighted and the relevant FAA guidelines that dictate how the turbines will be lighted. Resolved.*

**SDZ comment:**

- No Comment at this time.
- Planning Board needs to discuss

- e. Location of utility connections. All utility connections shall be shown on the site plan.

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted 9/23/2010 and shows the location of utilities including the septic tank and electrical transmission wires. There are no connections to town water, sewed, or gas. Resolved*

**SDZ comment:**

- Will any improvements to the utility infrastructure need to have site plan approval?

- 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.

**APW Response – 9/23/2010**

*The stamped Site Plan was submitted 9/23/2010 and shows restricted access to the facility including gated access and use of security cards. In addition, the electrical transformers will be located in metal cabinets and the electrical switchyard will be fenced to prevent unauthorized access. Resolved.*

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

**APW Response – 9/23/2010**

*The stamped Site Plan was submitted 9/23/2010 and shows the location of the controls building, electrical equipment, parking, and roadways. Resolved.*

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.

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

**Comment: review fees have been submitted**

**APW Response - 07/23/10**

*APW has fully provided the funding requested by the Town Engineer for both Town Staff and outside consultants.*

**APW Response – 9/23/2010**

*APW is up to date and has fully provided the funding requested by the Town Engineer for both Town Staff and outside consultants. Ongoing.*

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.**

**APW Response - 07/23/10**

*Atlantic Design Engineers submitted to the Town Engineer and Planning Board the week of 7/19/2010 a revised, complete, and stamped Shadow Flicker Study including a Flicker Mitigation Plan. We are awaiting Planning Board approval of the Flicker Mitigation Plan.*

**APW Response - 8/17/10**

*Camp Dresser McKee (CDM) is presently conducting a Peer Review of the Shadow Flicker Study on behalf of the Planning Board. We expect that ongoing discussions and clarifications between Atlantic Design Engineers and CDM will be wrapped up and the final, stamped Shadow Flicker Study submitted for the Planning Board meeting of 8/24/10.*

**APW Response – 9/23/2010**

*A revised, stamped, Peer Reviewed Shadow Flicker Study was submitted 9/23/2010. The study identified 17 specific residential locations that will receive more than 30 Experienced Hours/Year of Shadow Flicker and, therefore, will require mitigation. A Flicker Mitigation Plan was to be submitted to the Town for Peer Review by CDM on 9/24/2010. The plan provides for mitigation by using the Nordex Shadow Impact Module and Light Sensor to automatically shut off the affecting turbines when flicker conditions exist and the maximum limits of 30 Experienced Hours/Year or 30 Experienced Minutes/day have been reached. Once the Flicker Mitigation Plan is Peer Reviewed, it will be submitted to the Planning Board with copies to the 17 affected property owners. Resolved.*

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

**SDZ comment:**

**Town consultants are reviewing the reports.**

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**

**APW Response - 07/23/10**

*Atlantic Design Engineers submitted to the Town Engineer and the Planning Board the week of 7/19/2010 a revised, complete, stamped Acoustic Study. The results of the study conclude that the 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.*

**APW Response - 8/17/10**

*CDM conducted a Peer Review of the Acoustic Study. The requested clarification of certain items and consolidation of the addendum into the main report. At the Site Plan Review meeting of 8/10/10, CDM concurred with the Study methods and inputs used by Atlantic Design Engineers and stated that the Study would be as good a predictor of the Noise Impact as one could have prior to construction of the turbines. Therefore, this item is Resolved.*

**SDZ comment:**

- **Planning Board needs to discuss**

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 a 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**

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA variance decision comments are mostly the same and may be redundant.

- **Clearing O&M**

**APW Response - 07/23/10**

*APW will submit the required O&M Plans along with who will be responsible for overseeing each plan as required for issuance of the Building Permit.*

**APW Response - 8/17/10**

*APW will submit the O&M plans as described above to the ZBA for approval in advance of the issuance of a Building permit and agrees to make this a Permit Condition. Therefore, this item is Resolved.*

**SDZ comment:**

**The Planning Board needs to discuss:**

### 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.**

**APW Response - 07/23/10**

*The individuals responsible for the operation and maintenance of the Facility shall be properly trained(including training by the turbine equipment manufacturer) and certified based upon manufacturer and industry standards. APW will submit the required O&M Plans along with who will be responsible for overseeing each plan as required for issuance of the Building Permit.*

**APW Response - 8/17/10**

*APW will submit the required O&M Plans along with who will be responsible for overseeing each plan as required for issuance of the Building Permit. APW agrees to this as a permit Condition. Therefore, this item is Resolved.*

### 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.**

**APW Response - 07/23/10**

*APW will submit the required O&M Plans along with who will be responsible for overseeing each plan as required for issuance of the Building Permit.*

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

**APW Response - 8/17/10**

*See Response to condition #10 above. APW agrees to this condition as a Permit Condition. **Resolved.***

**SDZ comment:**

The Planning Board needs to discuss:

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 for the Fire Chief should be submitted to the Board.**

**APW Response - 07/23/10**

*As part of the Site Plan Review process, Nordex will provide information to the Planning Board about any and all hazardous materials to be used at the Facility and their plans for handling and storing the materials.*

**APW Response - 8/4/10**

*APW submitted to the Planning Board and to the Chiefs of Police and Fire Departments a list of all hazardous materials used in the turbine facility as well as Material Safety Data Sheets for each material. APW shall conform to all local, state and federal laws regarding the handling and containment of such materials or wastes. This item is **Resolved.***

**SDZ comment:**

- Planning Board needs to discuss

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.**

**APW Response - 8/17/10**

*APW will shall provide evidence of insurance as required and described above in item 13. APW is willing to agree to this as a Permit Condition. Therefore, this item is **Resolved.***

**SDZ comment:**

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

- **Planning Board needs to discuss**

### 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.**

#### **APW Response - 07/23/10**

*APW shall execute an indemnification agreement that is consistent with the paragraph above in item 14 prior to the issuance of a Building Permit.*

#### **APW Response - 8/17/10**

*APW shall draft an indemnity agreement for approval by the Board of Selectmen and execute such agreement in advance of the issuance of Building Permits. APW agrees to make this a Permit Condition. Therefore, this item is **Resolved**.*

### **SDZ comment:**

- **Planning Board needs to discuss**

### 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 with permits still outstanding should be submitted to the Planning Board.**

#### **APW Response - 07/23/10**

*A list of all permits needed for the project along with copies of all permits acquired to date and permits outstanding shall be submitted to the Planning Board during Site Plan Review.*

#### **APW Response - 8/17/10**

*A list of all permits required for the project (local, state, and federal) - both those already acquired and those still outstanding, as well as copies of all acquired permits, were submitted to the Planning Board on 8/4/10. Therefore, this item is **Resolved**.*

### **SDZ comment:**

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Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

I don't recall a list be submitted on 8-4-10. Please resubmit the list along with which permits are still outstanding.

### 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.**

**APW Response - 07/23/10**

*A roadway damage protocol will be submitted by VHB to the Planning Board as part of the Site Plan Review.*

**APW Response - 9/23/2010**

*The final stamped Site plan was submitted 9/23/2010. VHB also submitted a Traffic study on 9/23/2010, which included a Roadway Damage Protocol. **Resolved.***

**SDZ comment:**

**The Planning Board needs to discuss:**

### 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.

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

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

**APW Response - 07/23/10**

*During the site plan review and approval, APW shall provide to the Planning Board a form of surety or assurance acceptable to the Planning Board in order to secure conformance with this provision. Said surety or assurances shall be delivered to the Town upon application for a building permit.*

**APW Response - 8/17/10**

*In addition to the APW Response immediately above, APW will obtain approval of the form of surety or assurances from the Board of Selectmen prior to delivering said surety or assurances to the Town. To be submitted.*

**SDZ comment:**

- **Planning Board needs to discuss**

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?**

**APW Response - 07/23/10**

*Once the Facility has reached the Commercial Operation date, APW will meet with the school superintendent to develop a program to fulfill the commitment described in item 18 above. This has also been made a condition of the Tax Increment Financing Agreement. Therefore, this item is Resolved.*

Taxes

19. The Applicant has offered and the Town accepts that the Applicant will in good faith negotiate with the Town concerning a payment hi lieu of taxes for both real estate and personal property taxes 011 the incremental value of the project and/or tax increment financing for the Facility.

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

**APW Response - 07/23/10**

*A Tax Increment Financing (TIF) Agreement with the Town of Douglas has been negotiated, signed, and approved by the Town (Town Meeting) and the State (Economic Assistance Coordinating Council). The TIF Agreement with Certified Approvals has been submitted to the Planning Board as part of the Site Plan Review Application booklet.*

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Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

**APW Response 8/17/10**

*All back taxes for the project parcels have been paid by APW as of 7/27/2010 and the taxes are now current. Additionally, as stated above, a Tax Increment Financing Agreement has been executed by APW and the Town and has been approved by both the Town and State. Therefore, this item is **Resolved**.*

**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.**

**APW Response - 07/23/10**

*APW will submit and record an 81X Plan prior to applying for a Building Permit.*

**APW Response - 8/17/10**

*The condition calls for an 81X Plan or 81P Plan to be submitted along with the application for a Building Permit. APW has initiated work on the preliminary plan. This is not part of the Site Plan Review process. **Resolved**.*

**SDZ comment:**

- **Planning Board needs to discuss**

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**

**APW Response - 7/23/10**

*APW requested and the ZBA approved a six-month extension to the Variance extending the time to exercise the Variance from 5/13/2010 to 11/13/2010. **Resolved**.*

**APW Response - 8/17/10**

*The Commonwealth of Massachusetts legislature recently passed and the Governor signed a new law (Chapter 240 of the Acts of 2010) entitled the Permit Extension Act that extends the expiration period of all local permits, including zoning and variances,*

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA variance decision comments are mostly the same and may be redundant.

*for two years. The new law is effective immediately. The law effectively extends the variances - ZBA Decisions 2009-04 and 2010-01 - by two years. Therefore, the expiration date of the exercise period for this variance (ZBA Decision 2009-04) will be extended from 11/13/2010 to 11/13/2012.*

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**

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

### **Zoning Board of Appeals 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 of eleven (11) turbine instead of 13 for the entire project has been proposed. The plan should reference which turbines are under which ZBA decision.**

#### **APW Response – 07/23/10**

*Ten (10) of the eleven (11) turbines are under the ZBA Decision 2009-04. One (1) turbine, Turbine #10 located on Parcel 207-5 on the Turbine Location Plan submitted as part of the Site Plan Review, is under ZBA Decision 2010-01.*

#### **APW Response - 8/17/10**

*The Site Plan has only one turbine on this parcel as required. The Site Plan will reference the applicable variance for each turbine as described in the immediately preceding response. This item is **Resolved**.*

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.**

#### **APW Response – 07/23/10**

*The Meteorological Tower has been constructed and operational for more than 13 months under ZBA decision 2009-04.*

#### **APW Response - 8/17/10**

*There are no Meteorological Towers located or planned to be located on parcel 207-5. The Meteorological Tower referenced under ZBA decision 2009-04 has been taken down and removed from the project site. Therefore, this item is **Resolved**.*

October 1, 2010-Oct 8,2010

Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

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**

**VHB Response – 07/21/10**

*Site Plans are on schedule to be submitted early to mid August.*

*American Pro Wind (APW), VHB, and the Town Engineer had discussions prior to the submittal of the Site Plan Review application and agreed to a Phased Approach to the Site Plan Review during our conference call of 5/24/2010. Phase One would consist of the presentation of the Turbine Location Plan (not a final Site Plan) and all the reports, studies, and approvals pertaining to the impact of the turbines on the surrounding environment. Phase Two would consist of the Site Plan and all required Civil Engineering and Permit Drawings as well as the establishment of Permit Conditions. A Meeting/Presentation Schedule was presented to the Planning Board at the meeting of 6/29/2010. This Meeting/Presentation Schedule showed Phase One to occur at the meetings of 6/29, 7/13, and 7/27 and Phase Two to occur at the meetings of 8/10 and 8/24. The Planning Board's feedback was that they would likely need at least three meetings once the Site Plan had been submitted and, therefore, the Site Plan Review would likely take until at least 9/7/2010. APW agreed with this schedule.*

**APW Response - 8/17/10**

*Please see response to 9.4.2 above and response to condition #3 of the ZBA Decision 2009-04 above.*

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted by VHB on 9/23/2010. Above described certification will be submitted with the Building permit application. **To be 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**

**VHB Response – 07/21/10**

*Site Plans to be submitted in early to mid August. See Response to Item 3. above.*

**APW Response - 8/17/10**

*See response to 9.4.3 above. The one turbine located on Parcel 207-5 conforms to the 1,000 setback to the nearest residence and to all other setback requirements of the variance.*

**APW Response – 9/23/2010**

*The final, stamped Site Plan was submitted by VHB on 9/23/2010. The plan conforms to all the setback requirements of ZBA Decisions 2009-04 and 2010-01 including the 1,000 feet setback to any residential buildings existing as of 5/6/2009. **Resolved.***

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Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA varraince decision comments are mostly the same and may be redundant.

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**

**VHB Response – 07/21/10**

*Response Text: Site plans will be submitted in early to mid August and will be in accordance with the review conditions below. See Response to Item 3. above.*

**APW Response - 8/17/10**

*Please see response to 9.4.3 above. The Site Plan will be in conformance with the following conditions:*

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted 9/23/2010 and conforms to all the setback requirements described below. Resolved.*

- 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.

**SDZ comment:**

Some of the turbine locations are close to the 150-foot turbine setback to the property line dimension, and the plans only show a circle for the turbine locations. The Building Commissioner should verify that the setbacks have been met.

- 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.

**SDZ comment:**

Turbine #4 is 1010-feet from to the nearest dwelling and turbine # 1 is 1055-feet to the nearest dwelling. The Building Commissioner should verify that the setbacks have been met.

- 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.

**SDZ comment:**

- Should this be noted on the site plans?
- Should this setback be shown on the plans?

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Revised October 29, 2010 to include comments pertaining to the 2010 ZBA variance decision.

Note: the 2009 & 2010 ZBA variance decision comments are mostly the same and may be redundant.

- 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.

**SDZ comment:**

- Should this be noted on the site plans?
- Should this setback be shown on the plans?

- 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.

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted 9/23/2010 and conforms to all setback requirements in item a. **Resolved***

**SDZ comment:**

- Planning Board needs to discuss

- 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.

**APW Response – 9/23/2010**

*Design and specifications of the Nordex Turbines Model 100/2500 have been submitted. Design plans for controls and maintenance building to be submitted. **To be submitted***

**SDZ comment:**

**Has a construction plan and schedule been submitted?**

- 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).

**APW Response – 9/23/2010**

*A document entitled Nordex 100/2500 Turbine Information was submitted on 9/23/2010. It provides detailed information regarding the color and finish of the Nordex 100/2500 turbines. The color will be RAL 7035 (light grey) which is Nordex's standard "off-white color." As such, it is neutral and non-reflective. The document also includes the FAA required color guidelines. **Resolved.***

**SDZ comment:**

- No Comment at this time.
- Planning Board needs to discuss

- 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 oilier structures and equipment shall be limited to that required for safety and operational

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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.

**APW Response – 9/23/2010**

*A document entitled Nordex 100/2500 Turbine Information was submitted 9/23/2010 and provides detailed information on how the turbines will be lighted and the relevant FAA guidelines that dictate how the turbines will be lighted. **Resolved.***

**SDZ comment:**

- No Comment at this time.
- Planning Board needs to discuss

- e. Location of utility connections. All utility connections shall be shown on the site plan.

**APW Response – 9/23/2010**

*The final stamped Site Plan was submitted 9/23/2010 and shows the location of utilities including the septic tank and electrical transmission wires. There are no connections to town water, sewed, or gas. **Resolved***

**SDZ comment:**

- Will any improvements to the utility infrastructure need to have site plan approval?

- 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.

**APW Response – 9/23/2010**

*The stamped Site Plan was submitted 9/23/2010 and shows restricted access to the facility including gated access and use of security cards. In addition, the electrical transformers will be located in metal cabinets and the electrical switchyard will be fenced to prevent unauthorized access. **Resolved.***

- 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.

**APW Response – 9/23/2010**

*The stamped Site Plan was submitted 9/23/2010 and shows the location of the controls building, electrical equipment, parking, and roadways. **Resolved.***

6. During the site plan review process, the Applicant has suggested, and the ZBA agrees, that the ZBA may retain the services of (lie 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**

**APW Response – 07/23/10**

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*APW has fully provided the funding requested by the Town Engineer for both Town Staff and outside consultants .*

**APW Response – 9/23/2010**

*APW is up to date and has fully provided the funding requested by the Town Engineer for both Town Staff and outside consultants. Ongoing.*

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**

**APW Response – 07/23/10**

*APW submitted to the Town Engineer and Planning Board the week of 7/19/2010 a revised, complete, stamped Shadow Flicker Study including a Flicker Mitigation Plan. We are awaiting Planning Board approval of the Flicker Mitigation Plan. A copy of the Flicker Mitigation Plan will be distributed to the affected property owners during Site Plan Review.*

**APW Response - 8/17/10**

*See response to item 7 under ZBA Decision 2009-04 above.*

**APW Response – 9/23/2010**

*A revised, stamped, Peer Reviewed Shadow Flicker Study was submitted 9/23/2010. The study identified 17 specific residential locations that will receive more than 30 Experienced Hours/Year of Shadow Flicker and, therefore, will require mitigation. A Flicker Mitigation Plan was to be submitted to the Town for Peer Review by CDM on 9/24/2010. The plan provides for mitigation by using the Nordex Shadow Impact Module and Light Sensor to automatically shut off the affecting turbines when flicker conditions exist and the maximum limits of 30 Experienced Hours/Year or 30 Experienced Minutes/day have been reached. Once the Flicker Mitigation Plan is Peer Reviewed, it will be submitted to the Planning Board with copies to the 17 affected property owners. Resolved.*

**SDZ comment:**

**Town consultants are reviewing the reports.**

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**

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**APW Response – 07/23/10**

*APW submitted to the Town Engineer and the Planning Board the week of 7/19/2010 a revised, complete, stamped Acoustic Study. The results of the study conclude that the 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.*

**APW Response - 8/17/10**

*See response to condition #8 from ZBA decision 2009-04 above. **Resolved.***

**SDZ comment:**

- **Planning Board needs to discuss**

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**

**APW Response – 07/23/10**

*APW will submit the required O&M Plans along with who will be responsible for overseeing each plan as required for issuance of the Building Permit.*

**APW Response - 8/17/10**

*See response to condition #9 of ZBA Decision 2009-04 above. **Resolved.***

**SDZ comment:**

- **Planning Board needs to discuss**

- 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.**

**APW Response – 07/23/10**

*The individuals responsible for the operation and maintenance of the Facility shall be properly trained(including training by the turbine equipment manufacturer)and certified based upon*

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*manufacturer and industry standards. APW will submit the required O&M Plans along with who will be responsible for overseeing each plan as required for issuance of the Building Permit.*

**APW Response - 8/17/10**

*See Response to condition #10 under ZBA Decision 2009-04 above. **Resolved.***

11. The Applicant shall maintain the Facility in good condition. Maintenance shall include, but not be limited to, painting, structural repair- of (be 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 responsible for overseeing each plan.**

**APW Response – 07/23/10**

*APW will submit the required O&M Plans along with who will be responsible for overseeing each plan as required for issuance of the Building Permit.*

**APW Response - 8/17/10**

*See Response to condition #11 of ZBA Decision 2009-04 above. **Resolved.***

**SDZ comment:**

**The Planning Board needs to discuss:**

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.**

**APW Response – 07/23/10**

*As part of the Site Plan Review process, Nordex will provide information to the Planning Board about any and all hazardous materials to be used at the Facility and their plans for handling and storing the materials.*

**APW Response - 8/17/10**

*See Response to condition #12 of ZBA Decision 2009-04 above. **Resolved.***

**SDZ comment:**

- **Planning Board needs to discuss**

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.

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

**APW Response – 07/23/10**

*APW will shall provide evidence of insurance as required and described above in item 13.*

**APW Response - 8/17/10**

*See Response to condition #13 of ZBA Decsision 2009-04 above. **Resolved.***

**SDZ comment:**

**Planning Board needs to discuss**

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.**

**APW Response – 07/23/10**

*APW shall execute an indemnification agreement that is consistent with the paragraph above in item 14 prior to the issuance of a Building Permit.*

**APW Response - 8/17/20**

*See Response to condition #14 of ZBA Decsision 2009-04 above. **Resolved.***

**SDZ comment:**

**Planning Board needs to discuss**

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.**

**APW Response – 07/23/10**

*A list of all permits needed for the project along with a copy of all approved permits acquired and permits still outstanding shall be submitted to the Planning Board as part of the Site Plan Review.*

**APW Response - 8/17/10**

*See Response to condition #15 of ZBA Decsision 2009-04 above. **Resolved.***

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 (hereof, 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

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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.**

**APW Response – 07/23/10**

*A roadway damage protocol will be submitted to the Planning Board as part of the Site Plan Review.*

**APW Response - 8/17/10**

*See Response to condition #16 of ZBA Decision 2009-04 above.*

**APW Response - 9/23/2010**

*The final stamped Site plan was submitted 9/23/2010. VHB also submitted a Traffic study on 9/23/2010, which included a Roadway Damage Protocol. **Resolved.***

**SDZ comment:**

**The Planning Board needs to discuss:**

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 hi 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 hi accordance with the Jaw 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 tlu's 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.**

**APW Response – 07/23/10**

*APW shall provide during the site plan review and approval, the Applicant shall provide to the Planning Board a form of surety or assurance acceptable to the Planning Board in order to secure conformance with this provision. Said surety or assurances shall be delivered to the Town upon application for a building permit.*

**APW Response - 8/17/10**

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*See Response to condition #17 of ZBA Decsision 2009-04 above.*

**SDZ comment:**

- **Planning Board needs to discuss**

18. The Applicant shall make reasonable efforts to cooperate and coordinate efforts with the School Department to provide information for inclusion hi 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?**

**APW Response – 07/23/10**

*Once the Facility has reached the Commercial Operation date, APW will meet with the school superintendent to develop a program to fulfill the commitment described in item 18 above.*

**APW Response - 8/17/10**

*See Response to condition #18 of ZBA Decsision 2009-04 above. **Resolved.***

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.**

**APW Response – 07/23/10**

*A Tax Increment Financing (TIF) Agreement with the Town of Douglas has been negotiated, signed, and approved by the Town (Town Meeting) and the State (Economic Assistance Coordinating Council). The TIF Agreement with Certified Approvals has been submitted to the Planning Board as part of the Site Plan Review application boolet.*

*APW received the information regarding the outstanding back taxes just prior to the Planning Board meeting of 6/29/2010. APW worked with the current landowners, who actually owe the taxes, and approximately \$14,120 of the \$33,153 in outstanding back taxes were paid by the landowners prior to the Planning Board meeting of 7/13/2010. At the meeting of 7/13/2010, APW committed to the Planning Board that it would pay the balance of the outstanding back taxes prior to the Planning Board meeting of 7/27/2010.*

**APW Response - 8/17/10**

*See Response to condition #19 of ZBA Decsision 2009-04 above. **Resolved.***

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.

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**Comment: none**

**APW Response - 8/17/10**

*The Commonwealth of Massachusetts legislature recently passed and the Governor signed a new law (Chapter 240 of the Acts of 2010) entitled the Permit Extension Act that extends the expiration period of all local permits, including zoning and variances, for two years. The new law is effective immediately. The law effectively extends the variances - ZBA Decisions 2009-04 and 2010-01 - by two years. Therefore, the expiration date of the exercise period for this variance (ZBA Decision 2010-01) will be extended from 4/7/2011 to 4/7/2013. **Resolved.***

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**