

FAIR WIND

Your newsletter on industrial wind development in Jackson ME

Kelly, Ludden attempt to negotiate vote on a single wind turbine ordinance *Work, Greeley won't commit*

In the past two months, our town's year-long attempt to develop a wind turbine ordinance has rapidly devolved into a messy, divisive battle between warring factions.

On one side sits a sizable group supporting the Planning Board ordinance; or at least, supporting the public process the Planning Board used to develop the ordinance.

On the other side sits another group supporting Selectmen Work and Greeley in developing a last minute alternative ordinance with less restrictive setbacks.

Both sides are convinced of their cause. Both sides submitted competing petitions to try to force their issues. In the middle sit many others, confused by all the anger, accusations, and counter charges flying back and forth. Everyone, we can probably agree, is bone tired of the fighting and tension.

The solution: Put the current Planning Board ordinance to a vote as legally required by a citizens' petition; then vote on amendments proposed by the Planning Board as a result of Bill Kelly's review.



Town Attorney Bill Kelly (l) & Selectman Cindy Ludden (r) as they listen to townspeople at the Dec. 29 meeting.

On December 29, 2009, at a packed Selectmen's meeting, town attorney Bill Kelly waded into this mess and tried to help Jackson mediate a fair political and legal solution out of our "war of the dueling ordinances".

At times dispensing legal opinions, at other times serving as a teacher and mediator, Kelly led the selectmen, planning board members, and citizens in attendance through a collective group negotiation to arrive at a fair and efficient method to conduct a town vote on a single wind turbine ordinance.

Selectman Ludden chaired the meeting, and her willingness to allow all sides of the issue to be heard contributed to her and Kelly's ability to negotiate a potential solution.

The solution: Put the current Planning Board ordinance to a vote as legally required by a citizens' petition; then vote on amendments proposed in advance by the Planning Board as a result of Bill Kelly's review.

But that may not be the end of it. Selectmen Work and Greeley, alone among those in the room, refused to commit to Ludden's and Kelly's proposal to a resolution that would minimize confusion.

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Dennison resigns as Planning Board Chair Vice-Chair Faulkner takes over

At the January 7, 2010 Jackson Planning Board meeting Chair Brenda Dennison surprised those in attendance with her resignation as Planning Board Chair. The resignation was tendered in writing to become effective immediately. Dennison cited her increased workload as the Town Clerk as the primary reason for giving up the chair. Dennison has served in a dual capacity as Town Clerk and Planning Board Chair for the past three years.

Although she is resigning as chair, Dennison will continue to serve as a Planning Board member.

The search for a new chair was quickly resolved. As current Vice-Chair, George Faulkner assumed the Chair, with the unanimous consent of the Planning Board.

Faulkner's succession left his Vice-Chair position open. Dennison accepted a formal nomination to serve as Vice-Chair and was elected by unanimous vote.

With his fine Yankee humor Faulkner quipped after the meeting in the parking lot, "Gee, I hope this doesn't mean the Planning Board's about to be sued!"

400-foot tall turbines? We ain't seen nothin' yet

Think you know how big the wind turbines will be that Mt Harris Wind LLC has planned for Jackson? Think they will be no bigger than the ones in Freedom?

Well, better think again.

Competitive Energy Inc., the parent company of Mt Harris Wind LLC, built three turbines in Freedom, Maine. These turbines are General Electric 1.5 megawatt turbines (GE 1.5 MW). The Federal Aviation Administration permit for these wind turbines lists their height at 400 feet.

Most of us have assumed that turbines here will look pretty much like the turbines in Freedom.

But we will not know until a permit application actually lands in the Planning Board's mailbox. Until then, all we can do is speculate about what Mt Harris Wind LLC really has in store for Jackson.

And there is plenty of reason for speculation, based on comments from Mt Harris Wind LLC and other wind development executives.

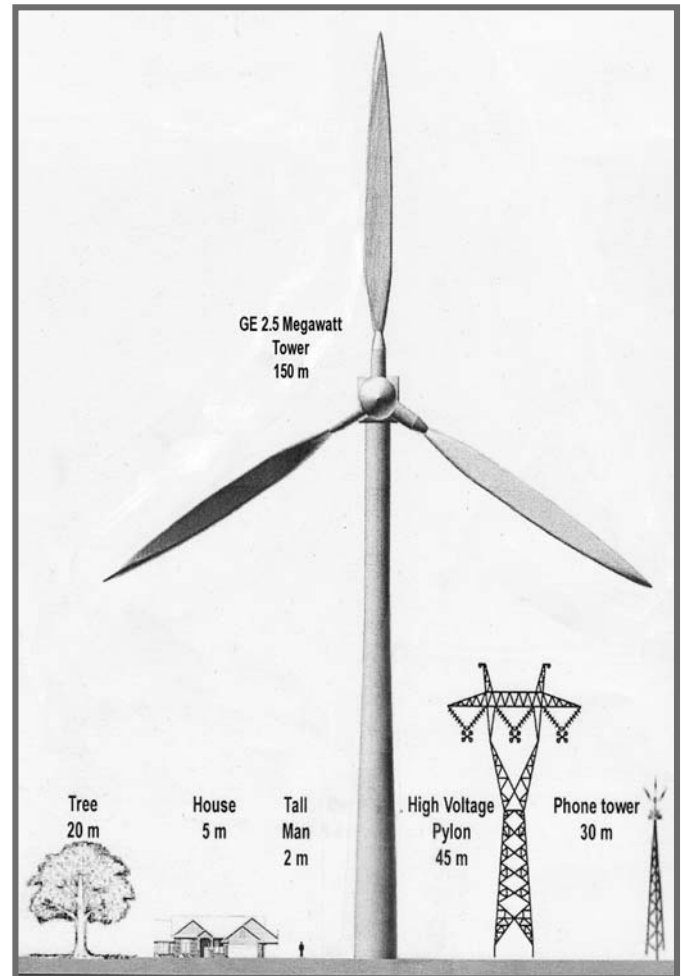
First, in a letter dated February 20, 2009 from Rich Silkman, Founding Partner of Competitive Energy Services (parent company of Mt Harris Wind LLC) addressed to William Kelly, Jackson town attorney and copied to Selectman John Work, Silkman comments on the first draft of Jackson's Wind Turbine Ordinance written by attorney Kelly. This draft included a section with a maximum turbine height.

In his letter, Silkman argues that any maximum turbine height should be greater than 400 feet; indeed it should be at least 460 feet. He states, "the current standard for wind turbine towers is 80 meters but 100 meters is now very common in Europe and will soon be common in the US. 37.5 meter blades are currently standard in the US for 1.5 MW turbines but 40 meter blades are becoming much more common. A 100 meter tower with a 40-meter blade would allow for the next generation of 1.5 MW wind turbines. 140 meters is 460 ft."

In other words, Silkman doesn't want height restrictions of less than 460 feet in order to accommodate the next generation of turbines.

Silkman's comments were made nearly a year ago. Now, the next generation of land based GE industrial wind turbines has arrived. They are 2.5 MW, 492 foot tall giants.

In a December 11, 2009 article from the Times Union in Albany, NY, GE vice president Vic Abate is quoted as saying the 2.5 MW turbines are ideal for locations like Europe because of land constraints found there.



Graphic adapted from Molonglo Landscape Guardians Inc, <http://www.mlg.org.au/visual.htm>

The article continues by stating that "in places like the Northwest and the Northeast [United States], the larger turbines could make better sense, reducing the size of wind farms."

GE's own web site states "GE's 2.5 MW wind turbine provides highly cost effective operations, especially at wind sites where space is limited". GE's new "industry standard" wind turbine stands 150 meters tall, or 492.12 feet!

Jackson doesn't have much space on its ridge, and we're pretty sure we're in the northeast United States.

So will industrial wind turbines in Jackson be 400 feet or 492 feet, or even higher? Only Mt Harris Wind LLC really knows.

If you think bigger things make bigger noises, it all sounds rather ominous, doesn't it?

All the more reason, we think, for a distance setback related to turbine height. The Planning Board ordinance has this: A setback of 13x turbine height from base to blade.

Selectmen Dec 29 meeting *continued from front page*



Jackson Selectmen's meeting, 29 Dec 2009

Photo: Tom Olds

Ludden asked Work and Greeley five times if they would delay the creation of a potential alternative ordinance to allow the Planning Board time to work with Kelly on his suggested amendments. Work and Greeley evaded a direct answer and finally flat out refused to commit. At that point Ludden went on record as saying she would wait and support the Planning Board in working with Kelly to improve its current ordinance.

On this issue we think Ludden got it exactly right.

FURTHER DETAILS OF THE DECEMBER 29 MEETING:

Selectmen Ludden opened the wind turbine issue by moving to pass another 180-day wind development moratorium. The motion passed unanimously without debate. The town now has the breathing room to resolve the problem of potentially dueling ordinances.

Ludden then turned the meeting over to Kelly to walk through his opinions on the competing petitions and potentially competing ordinances, and to respond to questions.

Kelly started by reviewing the "second" citizens' petition submitted on December 15, 2009 and signed by 33 residents. This petition asked the selectmen to create an alternative selectmen's ordinance and allow multiple ordinances to be voted on at the next town meeting. Kelly ruled that this petition was not legally valid and was written more as a political statement rather than a legal requirement. He said "I don't think the selectmen can act on the second petition, that's off the table".

Next Kelly gave his legal opinion on the "first" petition submitted on December 14, 2009, and signed by 130

residents. This petition requested a special town meeting to allow the town to vote yes or no on the Planning Board ordinance. Kelly's opinion was that this petition is legally binding and that the political process should be respected for this petition.

Kelly stated that if the selectmen refuse to honor the first petition and fail to call a special town meeting within 60 days, state law allows the petitioners to by-pass the selectmen and submit another petition to have a notary call a special town meeting run by citizens of the town instead of our selectmen. Twice during the meeting Selectmen Ludden appealed to those citizens in attendance not to go this route.

Kelly also discussed his review of the Planning Board ordinance, citing areas in which he felt the ordinance should be strengthened. For example, he cited the need to make certain definitions clearer and to further clarify enforcement provisions. He also stated that the mitigation waivers allowed by the ordinance may need to be less open-ended and subject to a minimal setback or other standards that are consistent with the health and safety purpose of the ordinance.

Kelly and the Planning Board agreed to work together in January to make recommended improvements to the Planning Board ordinance. Planning Board Secretary Ray St. Onge commented that he saw no reason why the Board and Kelly couldn't agree on changes within a month, well within the deadline for the special town meeting in 60 days.

Finally, Kelly reviewed the legal pitfalls of voting on competing ordinances at a town meeting, which Selectman Greeley had asked him to explore. In Kelly's words, this

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approach “presents a bit of a pickle”. He found no clear precedence for this in Maine’s legal history. Kelly’s bottom line: Voting on two competing ordinances is difficult and confusing at best and probably not good public policy.

As an alternative, Kelly suggested the town could vote on a single ordinance, which is later amended. Indeed, he pointed out the ordinance can be amended at the very same meeting at which it is passed, and can be continually amended over time.

The final recommendation that Kelly and Ludden attempted to negotiate combines all of these issues into a fairly simple process.

First, the selectmen honor the valid citizens’ petition and hold a special town meeting within the required time frame (by approximately February 12, 2010). At this meeting, the town votes yes or no on the Planning Board ordinance. If the ordinance is passed, the town can then vote on amendments to the ordinance that are placed as articles on the same warrant. These could include any amendments recommended by the Planning Board based on Kelly’s recommendations.

Kelly and Planning Board member George Faulkner summarized the solution with sailing analogies. Kelly said the ship has already sailed (meaning the petition requiring a vote on the Planning Board ordinance). Faulkner added, “It may have sailed, but we need to put some more cargo on.” (meaning the potential Planning Board amendments).

We think this solution is a fair way to untangle our town from the pickle we could be in from dueling ordinances. Hold a town meeting. Vote on the Planning Board’s ordinance. If it is passes, vote on any proposed Planning Board amendments.

If, after dozens of public meetings, Work and Greeley still don’t think they’ve had enough input into the process, they can still add their own amendments onto the warrant.

But the final word will be up to Jackson voters. And it looks like we might finally get the chance to vote in a simple, fair, straightforward way.

Our thanks to town attorney Kelly and Selectman Ludden for leading the town toward a fair and constructive solution.

Thanks, Bill and Kathleen

After almost a year of publication of Fair Wind, Bill and Kathleen Maseychik have decided to step down from the editorial board.

We will miss their contributions, humor, patience and, most of all, good company. Thanks, Bill and Kathleen!



Thank you also to a new anonymous donor this month. As the bad economic times continue, we appreciate the contributions we have received to help defray costs.

Fair Wind is produced by Heather Selin & David McDaniel.

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FAIR WIND

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