



**Town of Barnstable
Planning Board
Minutes
May 13, 2013**

Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Present
Patrick Princi - Clerk	Present
Felicia Penn	Present
Raymond Lang	Present
David Munsell	Present
Stephen Helman	Present

Also in attendance were Art Traczyk, Regulatory Review Planner, JoAnne Buntich, Director, Growth Management.

Approval Not Required Plans: – Gutowski - A plan entitled “Plan of Land in Barnstable Massachusetts prepared for Andrew Gutowski”, dated April 30, 2013, as drawn by Demarest Land Surveying has been submitted for endorsement as an Approval Not Required Plan. The subject property is addressed as 172 Millway, Barnstable MA. The plan proposes to re-divide the existing lot into two lots. Lot 1 is shown as a 2.18-acre lot containing the existing dwelling and garage. Lot 2 is shown as a 1.17-acre lot that is vacant. The property is accessed via an unnamed 12-foot wide right-of-way created by plan recorded in 1934. The subject property is in the RF-1 Zoning District.

John Demarest, surveyor, in attendance for the Applicant. He gives a history of the proposed ANR.

Ray Lang asks if the frontage is on Millway? He asks for an explanation of the sewer easement on lot 2 and frontage.

John Demarest answers that the frontage is on a 12 ft. wide right of way created in 1934. Lot 2 will have rights over the right of way.

Matt Teague points out/explains that the boundary of the right of way is indicated with a dashed line on the plan. The question of ownership is confused with the easement, maybe this should be a solid line on the plan to clarify.

John Demarest replies that he could make the line solid.

David Munsell asks if the boundaries are the same?

John Demarest refers to the plan (Exhibit A) to show the perimeter of the lots created and the before and after.

David Munsell directs to staff and asks if the wording for the right of way is correct? For certain people?

Art Traczyk answers yes, the right of way is there created in 1934 plan and on Assessors as a right of way. Created for lots C and D on the 1934 plan.

John Demarest states the right of way was created for these 2 lots. The Deed reads that the right of way was created for the two lots.

Matt Teague states we need a clean plan with a solid line (Exhibit A).

John Demarest replies that he will draw a solid line (in replacement of the dashed line) on the mylar plan in order for it to be recorded.

Paul Curley moves to endorse this ANR plan, seconded by Felicia Penn, so voted unanimously.

Zoning Amendments:

7:00 P.M. Public Hearing - Continued

Zoning Amendment - TC Item No. 2013-055 Medical Marijuana Treatment Centers

The Planning Board of the Town of Barnstable, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will continue the public hearing to take comment upon the following proposed amendment to the Code of the Town of Barnstable, Chapter 240, the Zoning Ordinance. Amendments to Chapter 240 include: Section 240-6 Zoning Map to include a Medical Marijuana Treatment Centers Overlay District; adding to reserved Section 240-30 Medical Marijuana Treatment Centers Overlay District Special Permit; and Section 240-128 Definition to add definitions pursuant to the Medical Marijuana Treatment Center Overlay District.

- *This hearing opened January 14, 2013, continued January 28, 2013, February 25, 2013, and to May 13, 2013, for further review and update on Mass. Department of Public Health regulations*
- *Final Mass Department of Public Health regulation has yet to be approved and issued.*
- *Given the circumstances, staff recommends that the Board continue this hearing to September 9 or 23, 2013, at 7:00 PM.*

Matt Teague entertains a motion to continue, so moved by Ray Lang to continue to September 23, 2013, at 7:00 p.m., seconded, so voted unanimously.

7:00 P.M. Public Hearing - New

Zoning Amendment – TC Item No. 2013-133 New Sign Code for Osterville Business B (correction to A) Districts

The Planning Board of the Town of Barnstable, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will open a public hearing on a proposed zoning amendment to create a new sign code for the Osterville Business B Districts. The amendment proposes to amend the Code of the Town of Barnstable, Chapter 240, The Zoning Ordinance, Article VII, Sign Regulations as follows:

Section 1 proposes to add a new Section 240-65.1 to be titled “Signs in the BA Districts”. The new section is intended to address the unique signage needs for business located in the Osterville Business Districts and to provide added flexibility in the types of signs allowed.

Section 2 proposes to amend Section 240-65, “Signs in B, BA, UB, HB, HO, S&D and SD-1 Districts” by removing the reference to the BA District from that section’s title.

Section 3 proposes to delete Provision “F” from Section 240-72, Trade Flags. Provision “F” now allows for the display of a trade flag by antique stores located in the Osterville Business B Zoning Districts.

Section 4 proposes to amend Section 240-60, Definitions by revising the definition of “Open/Close Sign” and provide a new definition for “Neon Sign”.

Matt Teague notes a correction (typo) in the entitlement of this proposed Zoning Amendment, it should read “New Sign Code for Osterville Business A Districts” not B Districts, as reflected on the Summary from Town Council (Exhibit B).

Matt Teague reads correspondence received into the record letter dated May 7, 2013, from John Crow, Vice President of Osterville Village Association (Exhibit C), whereby their association asks that the Barnstable Town Council move forward with the adoption of this amendment.

Matt Teague reads into the record letter dated May 9, 2013, from Gail Nightingale, Chairman Osterville Business & Professional Association, (Exhibit D) whereby their association is urging approval of this amendment.

Matt Teague entertains a motion to open the public hearing, moved by Paul Curley, seconded by Ray Lang, so voted unanimously to open the Public Hearing.

Gene Crowley, owner of 832 and 846 Main St., properties in Osterville in attendance. He is in favor of this.

Gail Nightingale, Chairman of OBPA (Osterville Business & Professional Association). There is a special permit section/provision so that if someone has problems they can apply for a special permit. There may be some instances for this. OBPA is in favor, would like this to move on to Town Council quickly to pass.

Felicia Penn asks about roof signs. The definition for these have not been discussed TC Summary (Exhibit B). There is a definition for roof signs in the Town’s code. Where would there be a roof sign in Osterville? Marina/Harbor?

Elizabeth Jenkins, Principal Planner, Growth Management Dept. in attendance, answers that this was copied from the existing sign code, business in the B district. Allowed for maximum flexibility, it was decided to leave this in.

Felicia Penn makes reference to Section 1, A, item (4) (d) (3) (c) “For properties that are located in the portion of the BA District south of Osterville West Barnstable Road and north of Pond Street, a freestanding sign shall not exceed twenty (20) square feet in area and twelve (12) feet in height”. Is this because it is a pedestrian, walking village? Is this written for a specific business?

JoAnne Buntich explains that the BA District is in the village center of Osterville, but there is also an auto oriented BA District that extends from Pond St. up to Osterville West Barnstable Rd., these are the only BA districts remaining in the Town of Barnstable. It was decided that this would be a way to handle these two orientations.

Felicia Penn asks for clarification that this would be a ladder sign of some sort? A free standing sign of some sort in the ground, not an A frame? She makes reference to Town Council Summary, Section 1, A, item (4) (d)[4] “When a lot is located on two or more public ways, the Building Commissioner may allow a second freestanding sign, provided the second freestanding sign also conforms to the requirements of subsection (4)(d)[3] above” (Exhibit B). Should this be reworded to say a Business?

Elizabeth Jenkins answers that this is how the wording is in the present, existing code. A business on a corner lot, where there may be two different access points, they have the option to have two different free standing signs.

Felicia Penn makes reference to Town Council Summary Section 1, A, item (4) (e) [2] “For the purposes of this Section, two awnings with signage on the same façade shall constitute one sign”. (Exhibit B) She does not think this is right. Reference is made to same document, pg. 47 of 50, B., Identification Signs. “Identification signs shall not count against the total number of signs allowed for a business establishment in Section 240-65.1(A).” Should this say “toward”?

JoAnne Buntich suggests maybe to modify the language to read “shall not be counted toward...”

Felicia Penn refers to same document, same pg. item C, Trade Signs and Temporary Signs. There is a typo here “All trade signs and temporary...” This should read “All trade signs and temporary signs” No change for the definition.

Felicia Penn refers to same document, pg. 48 of 50, (6) Trade Flags. “Trade flags are prohibited in the BA District”. She asks for an explanation/history about not wanting trade flags here.

Gene Crowley responds that they were not against it, they were advised that it was something they could not have. He thinks only antique allowed now?

Felicia Penn explains what is listed at present. Suggests not to put restriction if you don’t have to.

Ray Lang asks if special permits would be needed for signage for off premise signs on Main Street?

Elizabeth Jenkins answers that she thinks he is referring to hardship sign applications. She explains this would be for food service establishments only.

Matt Teague makes reference to TC Summary, pg. 49 of 50, Section 3 (Exhibit B), whereby clarifying that there will be no trade flags per this Provision. No open or closed flags during business hours as well.

Matt Teague entertains a motion to recommend approval to the Town Council for adoption of this proposed Zoning Amendment Item No. 2013-133, subject to minor spelling corrections in Paragraph C, Trade Signs and Temporary Signs, pg. 47 of 50, addition of the word “signs” after temporary, so moved by Ray Lang, seconded by Stephen Helman, so voted unanimously.

Special Permit:

7:00 PM Public Hearing- Continued

Special Permit Application No. 2012-03

Cotuit Solar/Peck Wind Energy Conversion Facilities

The petitioners, Cotuit Solar LLC, and John T. Peck, are seeking a special permit pursuant to Section 240-44.1 Land Based Wind Energy Conversion Facilities. The petitioners seek to reuse the existing 100-foot mono-pole and reinstall a new wind turbine upon it to generate electrical power for use on the property. The subject property is addressed 3800 Falmouth Road (Route 28), Marstons Mills, MA and commonly known as “Peck’s Boatyard”. The property is shown on Assessor’s Map 058 as parcel 001 and is zoned SD-1 Service and Distribution Zoning District. (Precinct 7, 12 & 5)

- *Opened April 23, 2012, continued, May 14, July 23, August 13, September 10, October 22, November 26, January 28, 2013, April 8, 201, and to May 13, 2013 – continued for review and finalizing of a decision.*

Matt Teague gives a brief history of the last hearing and that there was some clarification needed regarding accessory use definition, he makes reference to the Memorandum dated May 13, 2013, from Town Attorney’s

office (Exhibit E).

Ray Lang states that the sound data received is quite accurate to him.

Caroline Schmittiel, Esq. in attendance, she states that they do not have anything further to add at this time.

JoAnne Buntich states that she had a conversation with the Bldg. Commissioner, it has been found that there is another use on the property, an auto repair use on the premises. She gives/suggests recommendation to the board that an additional condition be added regarding this use and the issuing of the special permit. This issue has just come to light within the last few weeks.

Felicia Penn makes reference to the Draft Decision and Notice dated March 29, 2013, (Exhibit F), pg. 7, Conditions number 10 and 10a, "Prior to the issuance of a building permit reliant on this Special Permit the applicants shall: a. cause the property to be free of loose plastic, wood and debris that is capable of taking flight in a high wind. Etc. She thinks that this paragraph would indeed apply to any sub leasing of the property.

Ray Lang questions if any other entity is on the premises and the implications of having insurance for.

Matt Teague interjects that it may be necessary to make sure that the Findings of Fact lists only the two uses here, office and boat storage/maintenance. No other uses.

He refers to the Town Attorney's recommendation memorandum dated May 13, 2013, from Ruth Weil, (Exhibit E) and the issue of accessory use. He directs to Conrad Geyser and asks for clarification that the benefit obtained from the turbine is net metering on the site?

Conrad Geyser answers yes, that is correct.

Matt Teague makes reference to Draft Decision and Notice, pg. 7, Conditions, number 9, (Exhibit F) to be revised to state "The policy shall name the Town of Barnstable as the certificate holder and additional insured..."

Public comment.

Richard Lesniewicz in attendance. He asks for clarification for the sound data and wanted to make sure that the Board knows this is not the machine that the applicant will be using/installing.

Matt Teague replies that they are aware of this.

Stephen Helman reads the Draft Decision and Notice, The Application into record (Exhibit F):

In Application No. 2012-03, the Applicants sought a special permit pursuant to Section 240-44.1 of the Code of the Town of Barnstable, Land Based Wind Energy Conversion Facilities. The Application sought to allow the installation of a new wind turbine on an existing 100-foot monopole to generate electrical power for use on the property. The proposed turbine to be installed is an Endurance S-343 5.2 kW turbine manufactured by Endurance Wind Power. According to information submitted, the turbine is to produce 10,000 to 20,000 kWh per year. Much of the electric power generated is to be used on-site; however the excess (if any) is to be fed back into the power grid.

The locus for this Wind Energy Conversion Facility is the 3800 Falmouth Road property, shown on Assessor's Map 058 as Parcel 001. The property is zoned SD-1 – Service and Distribution 1. That district permits boat sales and storage as-of-right. The property is not within a designated Groundwater or Wellhead Protection Overlay District. Land Based Wind Energy Conversion Facilities are a permitted accessory use to a principal use in all zoning districts.

The Applicants are Cotuit Solar LLC, Conrad A. Geyser, Manager, with offices at 3800 Falmouth Road, Marstons Mills, MA 02648 and John T. Peck, owner of the Falmouth Road property, with a mailing address of P.O. Box 358, Cotuit, MA, 02635. John T. Peck is also President of "Peck's Boats Inc." a domestic for Profit Corporation dealing in boat storage, maintenance and sales from the Falmouth Road property. Peck's Boats Inc. has a mailing address of 3800 Falmouth Road, Marstons Mills, MA 02648. Cotuit Solar LLC operates from office space it rents from Mr. Peck.

Background:

The existing monopole was permitted by an earlier Land Based Wind Energy Conversion Facilities Special Permit No. 2007-011 issued, upon remand, to John T. Peck. The Remand Decision was filed with the Town Clerk on August 26, 2008 and on May 15, 2009 a building permit was issued reliant on the Special Permit for the installation of the monopole and a wind turbine. That turbine only operated briefly. In September of 2009, the turbine manufacturer notified the owner that a defect existed in the manufacturing of the blades. The owner stopped operating the turbine awaiting a solution from the manufacturer. However in March of 2010, a "catastrophic failure" of the turbine occurred during a wind event, damaging the turbine unit and sending one of the turbine blades to the ground. Damage to the turbine ~~was attributed to~~ resulted in a large piece of plastic debris that ~~apparently lifted from the boatyard and entangled itself on the blades. dangling from the device.~~

Matt Teague suggests the changes as noted above and to end here and skip to Findings of Facts.

Stephen Helman reads the Findings of Facts into record:

Findings of Facts:

At the meeting of May 13, 2013, a motion was duly made and seconded to make the following findings of fact with regard to Appeal Number 2012-003:

1. This application, as emended on July 23, 2012, is that of John T. Peck and Cotuit Solar LLC seeking a special permit pursuant to Section 240-44.1 Land Based Wind Energy Conversion Facilities. The applicants are seeking to install a wind turbine on an existing 100-foot monopole for the generation of electrical power to be used on the property. The subject property is addressed 3800 Falmouth Road (Route 28), Marstons Mills, MA and is owned by John T. Peck. Mr. Peck operates "Peck's Boats Inc." a boat repair, storage and sales business on the property. Cotuit Solar LLC also operates its business from the property, in rented office space from Mr. Peck. Cotuit Solar is a Massachusetts limited liability corporation. Conrad A. Geyser is the Corporation Manager. The property is shown on Assessor's Map 058 as Parcel 001. It is zoned SD-1, Service and Distribution 1. It is not within a designated Groundwater or Wellhead Protection Overlay Zoning District. JoAnne Buntich interjects to add/modify to. Matt Teague confirms to modify/add: Testimony received documents that the present uses on the property are that of offices and boat storage and maintenance.
2. The existing 100-foot monopole was erected as authorized by an earlier Land Based Wind Energy Conversion Facilities Special Permit No. 2007-011 issued, by this Board upon Remand, to John T. Peck on August 26, 2008. In March of 2010, a "catastrophic failure" occurred during a wind event damaging the turbine unit. Fearing more damage to the turbine, the Building Commissioner ordered the turbine removed from the monopole on March 16, 2010. The monopole has remained unused since the removal.

3. The proposal now before the Board is to extend the 100-foot monopole with an 11-foot extension and install thereon an Endurance S-343 5kW wind turbine that is reported to produce 10,000 to 20,000 kWh per year of electrical power. The power produced is to supplement the on-site operation of Pecks' Boats Inc. and therefore this wind energy facility is accessory to an existing on-site permitted principal use as required by Section 240-44.1.C(1)(a).
4. A site plan entitled; "Site Plan Showing Proposed Wind Turbine at 3800 Falmouth Road Barnstable (Marstons Mills) Mass" dated February 10, 2012, as prepared by CapeSurv and stamped by Richard R. L'Heureux, Registered Land Surveyor has been found approvable by the Site Plan Review Committee. An approval letter dated February 21, 2012 has issued. The site plan documents that the location of the monopole conforms to the required dimensional setbacks of Section 240-44.1.C(2).
5. Along with the application, the applicants have submitted a document dated March 28, 2012, titled "Supplemental Information to a Special Permit for a Land-based Wind Energy Conversion Facility". The supplemental Information addresses the criteria of Section 240-44.1 for the grant of a permit.
6. A cash flow analysis contained within the Supplemental Information predicts that over the 20-year life of the turbine, revenue from the sale of the electricity generated will pay all expenses of installation, maintenance and insurances and that by year 13 the project will have been paid-off. The document demonstrates that the proposed wind energy conversion facility is economically feasible and sustainable as required in Section 240-44.1.D(1)(a).

Patrick Princi reads into record Findings of Fact as follows:

7. Attachment No. 6 of the Supplemental Information includes a recommended maintenance plan as generated by the turbine manufacture Endurance Wind Power for it's 'S' line of wind turbines. The maintenance checklist includes the monopole and base equipment as well as the turbine. The applicant has testified that they will perform the inspections and maintenance items as outlined in the maintenance checklist submitted. The applicant has met the zoning requirements of Section 240-44.1.D(1)(b).
8. The existing monopole was erected in 2009 and once supported a wind turbine. No complaints had been registered with respect to that prior installation regarding its visual impact or color aspects. The turbine now being proposed is smaller and will be painted a non-reflective muted white color to blend with the sky. There will be a small, non-intrusive Endurance logo on the side of the turbine itself. The monopole will remain the dull gray coloration it now is. There will be no other graphics or decoration applied on the turbine or monopole. The visual impact will not be any more intrusive than that which has existed and the applicants have met the requirements of Section 240-44.1.D(2)(a) Visual Impact & (b) Color.
9. All cables are to be located within the monopole and none are attached to the exterior of the pole. There are no guy wires for this monopole. There is a small equipment shelter at the base of the pole that is screened from public view by one of the existing buildings on the site. Neither the Federal Aviation Administration (FAA) or the Massachusetts Department of Transportation (MassDOT) are requiring the tower have lighting. The Applicant has stated that they will not light the tower or install signage to it. Therefore, the Applicants have met the requirements of Section 240-44.1.D(2)(c), Equipment Shelter, (d) Lighting and Signage, and (e) Guy wires.
10. Regarding noise levels generated by this proposed wind turbine, the applicant has submitted information that they believe supports that this proposed turbine will conform to the noise standards to not exceed ten (10) decibels (DB) above ambient noise level measured at the property line. The data submitted summarizes the noise level estimated from the Endurance S-343 turbine operating at various wind speeds at select distances

ranging from 129 to 500 feet from the tower and compares that data to select sound levels that were measured at the property line along Route 28 due to passing vehicles (passenger car, small pick-up, dump truck). The report did not measure nor specifically address night time noise from the wind turbine and a decibel level measured at those residences located 500 feet from the installation. Noise complaints had been registered by some abutting residences with respect to the prior wind turbine. The Board finds that the Applicant has provided information to attempt to address Section 240-44.1.D(3)(a) regarding Noise. As the Ordinance provides for addressing a noise issue, this Board will be imposing a condition that will provide a mechanism to address any possible noise complaints should the noise from this turbine become an issue to abutting residences.

11. With respect to Section 240-44.1.D(3)(b) Shadowing/Flicker, this Board finds that the proposed installation is that of a small wind turbine. The nature of this type of a wind turbine, it's small blades, rapid rotation, and the height of the installation rarely give rise to shadowing and flickering issues.
12. With respect to Section 240-44.1.D(3)(c) Safety Standards, this Board finds that there are no hazardous materials or waste associated with this operation. The climbing apparatus is located above 10-feet from the base, and the turbine conforms to all FAA safety standards. In addition, the applicant has selected a wind turbine with a failsafe braking system to prevent the rotary from over spinning.
13. In accordance with MGL Chapter 44, Section 53G, the Applicants funded an independent consulting engineer who provided a peer review of the engineering information submitted to the Board. Paul A. Bergman, P.E. and President of Bergman & Associates Inc., was the selected consultant. The consultants' report was issued January 21, 2013 and concluded that the materials submitted on the tower and proposed installation to be acceptable and in compliance with appropriate codes. Mr. Bergman suggested that a copy of the turbine warranty by the manufacturer be required and the Applicant performs the regular inspection and maintenance programs for the tower and turbine as submitted in the application. His report also noted that the design life of this turbine is twenty (20) years.
14. Under the prior Land Based Wind Energy Conversion Facilities Special Permit No. 2007-011 issued to John T. Peck in 2008, the Applicant was required to post cash surety in the amount of \$1,500.00 with the Town of Barnstable. The surety was required per Section 240-44.1.D(4)(b) to assure the removal of the tower upon condemnation or should it not be used as permitted. This cash surety has been paid and is being held by the Town Treasurer in an escrow deposit account that totaled \$1,508.72 as of January 27, 2012.
15. The Building Commissioner has communicated that loose plastic had been a factor in the failure of the first turbine. He has recommended to this Board that conditions should be incorporated into this decision that would help to assure the property is free of loose plastic and debris vulnerable to taking flight in high winds.
16. The property fronts on Falmouth Road (Route 28) and is situated between the Marstons Mills Shopping Plaza at 3840 Falmouth Road and the John-Lawrence Funeral Home at 3778 Falmouth Road. It is common knowledge that at times, visitors to the funeral home park in the shopping plaza lot and walk to the funeral home passing by/through Peck's Boats. There is no sidewalk developed along route 28 as the right-of-way is too narrow to accommodate a pedestrian sidewalk. The existing pedestrian situation is unsafe and should be corrected.

Matt Teague suggests that item no. 16 should be deleted.

Patrick Princi comments that this would be a public benefit.

Felicia Penn interjects that this would not be a public benefit, it would be a private business's benefit, the funeral home.

JoAnne Buntich explains that this is a state highway layout and when the intersection improvements were first started there the easement was not fully developed. The state couldn't get an easement. Could not continue with the sidewalk here.

Matt Teague asks Conrad Geyser if there is any objection for granting an easement for a sidewalk?

Conrad Geyser answers. He states the Mr. Peck (the owner) is willing to allow but that he is concerned with drainage issues.

Matt Teague suggests that item no. 16 in the Findings of Fact be stricken.

Patrick Princi comments that maybe if an easement does come into play, this document would back it up?

Matt Teague states that it is irrelevant to this wind turbine matter. We can't force Mr. Peck to grant an easement.

Ray Lang comments that it should state something regarding a sidewalk and an easement.

Felicia Penn is in agreement, this has nothing to do with this issue.

Patrick Princi reads into record the final item no. 17 of the Findings of Fact as follows:

17. This application falls within a category specifically accepted in the ordinance for a grant of a special permit. Upon evaluation of all the evidence presented, this proposal will fulfill the spirit and intent of the zoning ordinance. Although the Board has heard many concerns from abutters in the area, the Board believes that with proper conditions and safeguards the installation of this wind turbine will not represent a substantial detriment to the public good or the neighborhood affected.

Matt Teague entertains a motion to adopt the Findings of Fact as modified/amended, moved by Paul Curley, seconded by Felicia Penn, Stephen Helman abstained.

Paul Curley reads the Conditions into record as follows:

Conditions:

Based on the Findings of Fact, a motion was duly made and seconded to grant a Special Permit pursuant to Section 240-44.1 for a Land Based Wind Energy Conversion Facilities to reuse a prior authorized 100-foot monopole and install thereon an 11-foot extension and an Endurance S-343 5kW Wind Turbine for the generation of electrical power to be used on-site subject to the following conditions and restrictions.

1. This permit is issued to Cotuit Solar LLC, Conrad A. Geyser, Manager, and John T. Peck, owner of 3800 Falmouth Road and President of "Peck's Boats Inc." As Section 240-44.1(A) provides for this special permit to run with the land and to subsequent owners, it is the applicants obligation to notify, in writing, the Planning Board Office of any change in ownership or change in the parties to whom this permit is issued within 30-days of that change or transfer. All successor parties are subject to and bound by all conditions and restriction of this decision.

2. The issuance of this permit supersedes and replaces the prior 2007 Special Permit No. 2007-011 issued, to John T. Peck. This new permit includes and now encompasses the monopole that was erected per that 2007 Permit and the cash surety being held in an escrow deposit account by the Town Treasurer for removal of the tower.
3. The turbine is to be installed as per the approved site plan entitled; "Site Plan Showing Proposed Wind Turbine at 3800 Falmouth Road Barnstable (Marstons Mills) Mass" dated February 10, 2012 as prepared by CapeSurv. The authorized action is to extend the existing 100-foot monopole with an 11-foot extension and install thereon an Endurance S-343 5kW Wind Turbine for the generation of electrical power to supplement the on-site operation of Pecks' Boats Inc. Excess power is to be sent back into the overall electric grid.
4. The monopole and turbine shall not be illuminated from any perspective and all lighting on the monopole is prohibited.

Matt Teague interjects that Condition No. 4 be modified at the end of the paragraph to read; "unless determined by the Building Commissioner to be required for public safety."

5. Except for those attachments authorized herein, there shall be no other attachments of any type on the monopole and no other use is permitted on the monopole without prior consent of this Board.

Felicia Penn interjects, Condition 6 is to be deleted per prior discussion.

~~6. To assure safe pedestrian access the Applicants shall provide a 5-foot pedestrian access easement to the Town of Barnstable abutting Falmouth Road (Route 28) for the entire length of the property. The easement is specifically to be used for the future development of a sidewalk/pathway fronting along Route 28. The Applicants shall draft the easement and submit it for review and approval to the Growth Management Department and the Town Attorney's Office. The 5-foot pedestrian access easement shall be signed and recorded prior to the issuance of the building permit reliant on this Special Permit.~~

7. 6. Regarding compliance with Section 240-44.1.D(4)(b), Condemnation, the prior \$1,500 cash surety posted in accordance with the Land Based Wind Energy Conversion Facilities Special Permit No. 2007-011 and retained in escrow by the Town Treasurer shall continue to be retained in escrow as the required surety for this Special Permit No. 2012-003. That escrow account is to be retained as surety should the Town be required to remove the facility. In five (5) years the Planning Board may revisit the amount of surety held to determine if a cost of living adjustment, which would require the posting of additional surety, is required.
8. 7. The Land Based Wind Energy Conversion Facility shall be maintained in accordance with the provisions of the maintenance plan submitted with this application and as may be amended by the turbine manufacturer.
9. 8. As long as the turbine and tower exists on the property, the Applicants shall maintain liability insurance in an amount not less than \$2,000,000 (two Million Dollars). Copies of the policy shall be submitted to the Planning Board file and Building Division file. The policy shall name the Town of Barnstable as the certificate holder and shall require the Town be notified not less than 30-days prior to any cancellation or non-renewal of the insurance.

Matt Teague interjects that Condition No. 8 should be modified to read; "the Town of Barnstable as the certificate holder and additional insured"

- ~~10.~~ 9. Prior to the issuance of a building permit reliant on this Special Permit the applicants shall:

- a. Cause the property to be free of loose plastic, wood and debris that is capable of taking flight in a high wind. The Building Commissioner shall review the site to assure it is free of loose plastic and debris and the property is in an orderly and tidy fashion prior to the issuance of the building permit. Thereafter it is the responsibility of the Applicant to assure the site is kept clean, orderly and free of loose materials. During the life of this permit, the Building Commissioner may inspect the site for compliance. Should a difference in opinion between the Applicants and the Building Commissioner arise concerning the conditions at the site, either party can request a discussion with this Board to resolve the issue.
- b. Submit a copy of the manufacturer's warranty for the Endurance S-343 5kW Wind Turbine to both the Building Division and to the Planning Board's office.
- ~~c. Submit a copy of the recorded 5 foot pedestrian access easement as required in Condition No. 5 above to the Building Division and to the Planning Board's office.~~

Matt Teague and Felicia Penn interject item c. is to be deleted.

- d. c. Submit a copy of the liability insurance in effect to the Building Division and to the Planning Board's office.
- ~~11.~~ 10. For as long as the Land Based Wind Energy Conversion Facilities remain in operation the Applicants shall submit to the Planning Board's Office an annual report, due January 31 of each year, detailing the output of the Facility, its impact on the source of electricity used on the site, and a description of operations including any time lost to maintenance, equipment failure or other condition preventing operation of the Land Based Wind Energy Conversion Facility.
- ~~12.~~ 11. This permit must be exercised by securing a building permit within 2-years from the date the Town Clerk certifies this decision. This permit shall expire 20 years from the date a building permit is issued reliant on this decision, or after three consecutive years of the turbine not being used to generate electricity, or upon the abandonment of the turbine use. Thereafter, the tower shall be removed and the grounds restored within 30-days, unless a new special permit is issued fully based upon governing regulation at that time.
- ~~13.~~ 12. At any time during the life of this permit, the Building Commissioner, upon written complaint from residents in the area of noise from the operation of the turbine, may take enforcement action as outlined in Section 240-44.1.D(3)(a) Environmental standards, Noise.

JoAnne Buntich confirms with the Chair that a new Condition is to be added as Condition No. 13 to read as follows.

13. All uses on the sight shall fully comply with all applicable zoning requirements at all times.

Ray Lang asks about Condition No. 11 and the timeline of abandonment of use?

Art Traczyk states that this type of wording is already in our zoning ordinance..after three years of abandonment you no longer have any right of use.

Matt Teague entertains a motion to adopt the Conditions as modified, moved by David Munsell, seconded, Stephen Helman abstained from the vote.

Matt Teague entertains a motion to close the public hearing, moved by Ray Lang, seconded by Paul Curley, so voted unanimously.

Regulatory Agreement:

7:00PM Public Hearing - Continued

Regulatory Agreement No. 2013- 03

Hyannis Harbor Suites Hotel, LLC or Nominee & Harborview Hotel Investors, LLC

Regulatory Agreement No. 2013-03 is the application of Hyannis Harbor Suites Hotel, LLC or Nominee & Harborview Hotel Investors, LLC, seeking to enter into an agreement with the Town of Barnstable to construct and operate at 213 Ocean Street, Hyannis, MA a new four (4) story year-round hotel with up to sixty-eight (68) rooms, each room containing its own kitchen facility. This proposed hotel building is in addition to the existing 136 room Hyannis Harbor Hotel situated on the 3.4 acre lot. The subject property is located in the HD-Harbor District of the Hyannis Village Zoning Districts and is shown on Assessor's Map 326 as Parcel 035.

The Regulatory Agreement seeks waivers from the Barnstable Zoning Ordinances, specifically:

Section 240-24.1.7.A – Harbor District, Permitted uses to allow hotel rooms with kitchens.

Section 240-24.1.7.C – Harbor District, Dimensional, bulk and other requirements, including maximum building height, to allow 4-stories where only a 2.5 story buildings are permitted, waivers of the 10-foot minimum side and rear setbacks, waiver of the 70% maximum lot coverage and waiver of the 10-foot front yard landscape setback.

Section 240-24.1.10 - Site Development Standards and Section 240-53 – Landscape Requirements for Parking Lots, including waivers from the following; the 6-foot minimum setback for parking lots, 10% interior parking lot landscaping, required minimum number of trees, dumpster setback from lot line and any other necessary relief.

Section 240-56 - Schedule of Off-Street Parking Requirements to allow a reduction in the required on-site parking.

In addition, the Regulatory Agreement seeks relief from the general ordinances of the Town, Chapter 112, Article III, Hyannis Main Street Waterfront Historic District seeking the Planning Board to act on behalf of the Hyannis Main Street Waterfront Historic District Commission.

Matt Teague states that this Agenda item is listed in error. This Regulatory Agreement matter will be heard on June 10, 2013, at 7:00 p.m.

Also there will be no special meeting of the Planning Board on May 20, 2013.

7:30pm Public Hearing - Continued

Regulatory Agreement No. 2013- 01

Cape Cod Distillery LLC

Regulatory Agreement No. 2013-01 is that of Cape Cod Distillery LLC seeking to enter into an Agreement with the Town of Barnstable to reuse the properties located at 411 Barnstable Road, Hyannis for a small scale distilling of alcoholic spirits and accessory retail sales of spirits distilled on-site. The property is zoned HG – Hyannis Gateway District and is shown on Assessor's Map 311, as Parcel 033.

The Regulatory Agreement seeks waivers from the Barnstable Zoning Ordinances, specifically: Section 240-24.1.8.A - Hyannis Gateway Permitted Principal Uses to allow a distillery, Section 240-24.1.8.C - Dimensional, bulk and other requirements, to allow the existing non-conforming setbacks for the proposed new use of the site, and additionally, applicant seeks any necessary relief from applicable parking requirements.

Matt Teague states that this Agenda item will be heard on June 10, 2013, at 7:00 p.m.

A five minute intermission is held.

Special Permit:

7:30 P.M. Public Hearing (New)

**Modification of PIAHD Special Permit Settler's Landing II -
Subdivision No. 812 - Martha M. Morin, Trustee of Settlers
Landing Realty Trust II**

The Planning Board acting under the General Laws of the Commonwealth of Massachusetts, Chapter 40A, Section 9, and all amendments thereto and the Town of Barnstable Zoning Ordinances will open a Public Hearing to consider an application for a fourth Modification for the Private Initiated Affordable Housing Development (PIAHD) Special Permit issued for Settlers Landing II - Subdivision No. 812. The Petitioner, Martha M. Morin, Trustee of Settlers Landing Realty Trust II, is seeking:

- To add two new house plans, identified as the "Dover Plan" containing approximately 2,051 square feet of living area and the "Chatham Plan" containing approximately 1,736 square feet of living area to the list of the 11 approved house design plans for the development and,
- To allow for up to five of the 29 dwellings to be built as four-bedroom homes provided the fourth bedroom is created within an approved house design plan.

The locus is the southern 7.75 acres of the subdivision commonly known as Settler's Landing located off Castlewood Circle in Hyannis, MA. The 29 parcels are shown on Assessor's Map 273 as Parcel 122, Lots 013 through 027 and Assessor's Map 272 as Parcels 212 to 225. The lots are addressed from 75 to 174 Settler's Landing, Hyannis, MA. The locus is Zoned Residential C-1.

Matt Teague entertains a motion to open the Public Hearing, moved by Ray Lang, seconded by Paul Curley, so voted unanimously.

Jacques Morin in attendance. He explains that he wants to add two additional home designs and a fourth bedroom to 5 of the homes in the development.

He is requesting the two new home designs in order to have more flexibility of placement on the lots and marketing. He refers to his renderings of the original 8 designs (Concord I and Concord 2, Nantucket I and Nantucket II, Lexington I and Lexington II, Cranbrook and the Vineyard)

He passes out copies to the Board and Staff of house designs from Cotuit Meadows (Exhibit G).

The two additional proposed designs are the Dover and the Chatham.

Jacques Morin explains that he has had three or four requests for four bedroom homes. He refers to the Staff Report/attachment documents referring to and including the information from the Housing Appeals Committee and Stipulation of Remand and the mediations done in conformance with these agreements (Exhibit H).

Matt Teague asks for any public comment. None.

Stephen Helman asks how will these new designs impact the affordable housing?

Jacques Morin answers that the Housing Committee thinks that the more designs will add diversity within the development and they will continue to build the designated designs for the affordable units as well.

David Munsell asks how many houses have been started/built?

Jacques Morin answers 10, and that states 4 have sold, including an affordable.

Felicia Penn asks for clarification that there will be a total of 13 designs/styles? There are 19 lots left of the 29? Ten are being built on? Will any old designs be eliminated?

Jacques Morin answers yes, 13 designs. Yes, 10 lots being built on now and 19 lots left. Some of the original designs aren't doing as well.

JoAnne Buntich directs to the second part of the request, asking the Board if they would like any clarification from the Town Attorney's Office, they concur with Staff's information.

Matt Teague states that according to the Town Attorney Office the Stipulation does apply to the lots in question. He thinks some minor clarification is needed from the legal dept.

Art Traczyk states that the Board can bifurcate the decision, i.e., make a ruling/vote on one, adding two new designs now and continue the second issue of the additional bedroom.

Matt Teague entertains a motion to approve the two new house plans/designs, the Dover and the Chatham, so moved by Paul Curley, seconded by Ray Lang, so voted unanimously.

Public comment: Robert Marshall of 18 Sunbeam Lane, Hyannis, abutter. He asks for clarification that there are 5 units that can have 4 bedrooms? Is this correct? Wasn't this already agreed to?

Matt Teague answers that this is what the applicant is asking for. That's what we are asking for not, is clarification for this, from out legal dept.

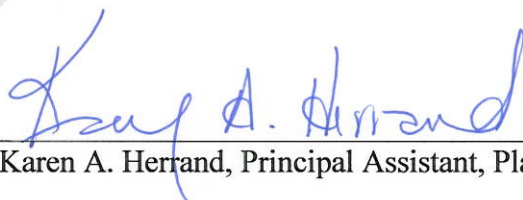
Matt Teague states in terms of bifurcating the issue he entertains a motion to continue the Public Hearing for the addition of a fourth bedroom to several units to June 24th, 2013, at 7:00 p.m., so moved by Paul Curley, seconded by Felicia Penn, so voted unanimously.

Future Meetings: Special Board Meeting, May 20, 2013 @ 7:00 PM has tentatively been scheduled.
Regularly Scheduled Board Meetings: June 10, 2013 and June 24, 2013, @ 7:00 PM.

Matt Teague reiterates that there will be no Special/Tentative Board Meeting held on May 20, 2013.

Matt Teague entertains a motion to adjourn, moved by Stephen Helman, seconded, so voted unanimously. The meeting adjourned at 9:00 p.m.

Respectfully Submitted


by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

September 23, 2013

Further detail may be obtained by viewing the video via Channel 18 on demand at
<http://www.town.barnstable.ma.us>

List of Exhibit Documents

- Exhibit A** – Plan of Land in Barnstable, Massachusetts prepared for: Andrew Gutowski, dated April 30, 2013 – File ANR for Map/Parcel 300-034, 172 Millway
- Exhibit B** – Town Council Summary. File Zoning Amendment for signs in Osterville Business A Zoning District, dated April 17, 2013, Item No. 2013-133
- Exhibit C** – Letter from John R. Crow, Vice President, Osterville Village Association, dated May 7, 2013 – File Zoning Amendment for signs in Osterville Business A Zoning District, dated April 17, 2013, Item No. 2013-133
- Exhibit D** – Letter from Gail C. Nightingale, Chairman, Osterville Business & Professional Association, dated May 9, 2013, File Zoning Amendment for signs in Osterville Business A Zoning District, dated April 17, 2013, Item No. 2013-133
- Exhibit E** – Memorandum from Town of Barnstable Attorney's Office, Ruth Weil, Esq., dated May 13, 2013, File Special Permit No. 2012-03, John T. Peck & Cotuit Solar LLC
- Exhibit F** – Draft Decision and Notice dated March 29, 2013, File Special Permit No. 2012-03, John T. Peck & Cotuit Solar LLC
- Exhibit G** – Print out of Cotuit Meadows home designs as handed out at meeting by Jacques Morin File PIAHD Special Permit Modification Request for Subdivision No. 812, Settlers Landing II
- Exhibit H** – Staff Report dated May 3, 2013, File PIAHD Special Permit Modification Request for Subdivision No. 812, Settlers Landing II