

OFFICE OF  
BOARD OF APPEALS

# TOWN OF NORWELL

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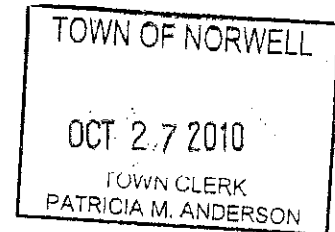
## Members

Lois S. Barbour, Chair  
Philip Y. Brown, Vice Chair  
David Lee Turner

## Associate Members

Michael E. Kiernan, Clerk  
Thomas P. Harrison

## FINDINGS AND DECISION of The Norwell Board of Appeals File No. 10-11



A **PUBLIC HEARING**, opened on August 11, 2010, was continued to September 22, 2010, October 6, 2010, October 13, 2010, and closed on October 20, 2010, by the Norwell Zoning Board of Appeals under Massachusetts General Laws, Chapter 40A, at the Norwell Town offices, 345 Main Street, Norwell, MA, to hear the application of:

**Bruce F. Meacham**  
**168 Vernon Road**  
**Scituate, MA 02066**

For a **Special Permit** under Sections 1400, 1420, as required under Height Restrictions of 34 feet in Sections 2460 and 2461 of the Norwell Zoning Bylaws to erect a temporary 200-foot guyed, tubular-steel tower to support cross arms to hold anemometers and wind vanes to measure wind speed and direction ("wind test tower") over the hill known as Mount Blue to be in place for a period of approximately one year on property located at **342 Mount Blue Street** in Residential District A, as shown on Assessor's Map 2D, Block 6, Lot 1 and recorded at Registry of Deeds Book 1946, Page 73. Total land area of the lot is 1,838,153 sq. ft. (~ 42 acres), which use is residential farmland.

The completed application was received and date stamped by the office of the Town Clerk on July 15, 2010. Public Notices of the Hearing were duly advertised in *The Norwell Mariner* on July 22, 2010, and July 29, 2010, and posted at Town Hall by the Town Clerk in accordance with the Open Meeting Law.

Mr. Meacham presented the application at the opening session of the public hearing, which was attended by abutters and other interested parties. Mr. Meacham explained that he intends to sell electricity from a future wind tower, anticipated to be built following successful wind tests, to the Town. He also indicated he has been a regular attendee of the Town's Energy Committee, formerly known as the Wind Power Committee, currently tasked with evaluating and proposing any future bylaw changes required for such purpose.

Although the proposed test tower could develop into a potential commercial use of the property as the site of a future wind-powered electrical generator, members indicated only the application before the Board could be considered.

**Jim Trenz of 347 Mount Blue Street**, located directly opposite the subject property, spoke in opposition to the proposed project, expressing concern about noise from a wind

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TOWN CLERK  
PATRICIA M. ANDERSON

tower and the general impact of its construction on the quality of life in and character of the neighborhood. He requested the Board obtain caselaw and an opinion from Norwell's Town Counsel.

**Joseph Burm of 300 Mount Blue Street** also stated opposition to the proposed project for similar reasons.

**Donald E. Shute of 41 Fox Hill Road**, Trustee of Broadway Realty Trust, owner of an adjoining parcel on Mount Blue Street, questioned whether there is currently a bylaw provision allowing the proposed project.

**Margaret Callahan of 374 Mount Blue Street** expressed concern about drainage and stormwater issues from land clearing.

**Marie Molla of 88 Prospect Street** expressed concern about whether the area may have historical or archaeological significance, which issue should be carefully examined prior to any development activities.

The Board adjourned for a short recess.

Upon the Board's return to open session, testimony resumed with **Mr. Shute** stating he wanted "to go on record" that he has plans to develop the abutting parcel of 40 +/- acres as a residential subdivision of five or more homes. He claimed the proposed project would devalue his property or at least become a future marketing issue.

**Further concerns** expressed by the audience related to the visual impact of the tower, which Mr. Meacham indicated would rise some 75' above the treeline at the top of the rise in elevation known locally as Mount Blue. An aircraft warning light would likely be required at the proposed tower elevation, which it was claimed would create an additional nighttime visual disturbance to the scenic nature of the neighborhood.

There was limited discussion among Board members about whether the project might qualify under an agricultural exemption of 40A, Section 3, or Section 4600, Personal Wireless Service Facilities, of the NZBL. However, no convincing argument could be established for either.

The hearing was continued on three occasions, due to member conflicts and illness with testimony resuming on October 20, 2010 in Room 108. Approximately a dozen members of the public were present during all or part of the hearing.

Two additional documents have been received since the last meeting, including an extension letter from Mr. Meacham and a letter from MassDOT Aeronautics Division regarding use of airspace by the proposed tower.

**Mr. Meacham** asked whether the Board had consulted with Town Counsel, which the Chair indicated she had.

Member Barbour indicated the Board must examine whether the proposed application complies with uses permitted in Residential District A or the specified accessory uses outlined in Section 2320, which Member Brown read. The proposed use does not appear to be a permitted accessory use.

**Donald Shute of 41 Fox Hill Road** stated that Mr. Meacham is not entitled to a Special Permit at this time. He indicated that 342 Mount Blue is currently taxed at an agricultural

rate under M.G.L 61A and is subject to the conversion requirements contained in section 14, which would allow the Town to purchase the land. He is concerned about the affect of the wind test tower on the value of his abutting land, which would create a hardship for him.

**Marie Molla of 88 Prospect Street** stated that to maintain continuing agricultural tax status requires annual filing with the Assessors Office by October 1<sup>st</sup> of each year, which Mr. Meacham confirmed had been done. Ms. Molla stated that if the agricultural use is going to change, the Assessors Office should be notified and appropriate taxes paid.

**Stephen R. Alpert of Otis Hill Road** wanted to verify rumors that after successful wind tower testing, a wind tower 400 feet tall could be built.

Member Barbour indicated that question cannot be answered at this time as the Board can only look at the application before it. The Board cannot speculate about future applications.

**Marcy Corwin of 44 Otis Hill Road** wants to know if there will be another meeting on October 29, 2010, to which the Board responded that is the decision filing deadline.

**George D. Jamieson III of 8 Otis Hill Road** stated zoning clearly does not allow for the proposed use, but if favorable data came back, another application would be filed.

Member Barbour went through the Special Permit requirements and feels that the proposed wind test tower is not an allowed use in the district, that commercial enterprises are not allowed, and there will be negative noise and visual impacts to the neighborhood.

Member Brown stated this is not an accessory scientific use so that the application could not be granted under that section of the bylaw.

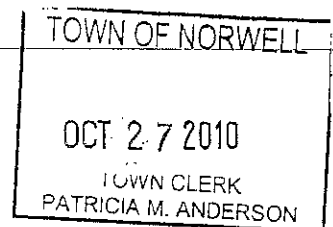
Member Kiernan stated he agrees that it is commercial use in a residential district and that Section 4410 does not apply under these circumstances.

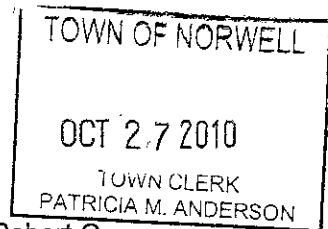
The Chair called for a motion.

#### **FILE DOCUMENTATION:**

The board received the following information into its files:

1. Completed application for Special Permit, signed by the property owner, Barbara B. Meacham, and applicant, Bruce F. Meacham, date-stamped by the Town Clerk on July 15, 2010.
2. Advertising notice for Public Hearing and Abutter's List
3. Copy of the Assessor's office card
4. A 3-page information sheet circulated "To Our Neighbors", dated July 2010
5. Conservation Commission Approval for Building Permit, dated 12/15/09, indicating the proposed project is not located within jurisdictional resource areas
6. Installation Manual & Specifications for the proposed NRG tower (multipaged)





7. Copies of two Quitclaim Deeds conveying the subject property to Robert C. Meacham et ux, recorded at the Registry of Deeds on 11/14/1946, at 23679 and 23680
8. Letter of 8/9/10 signed by Mr. Meacham, as Manager of Mount Blue Farm, LLC, to the Norwell Zoning Board of Appeals with enclosures relating to proposed amendment of the MA State Building Code and other tower structural and load information
9. Plan drawing entitled, *Met Tower Site Plan/ No. 342 Mount Blue Street*, dated 12/23/09, and prepared by mr SURVEYING, INC. of P. O. Box 5104, Norwell, MA, as sealed and signed by Ralph H. Cole on 7/7/10
10. *Extension of Time Required to File a Decision* letter, dated October 5, 2010, signed by the applicant, Bruce Meacham, authorizing extension to October 29, 2010
11. Authorization letter from MassDOT Aeronautics Division, dated September 2, 2010, airspace review stating the proposal does not violate MassDOT regulations regarding airspace

### FINDINGS:

1. The subject property is comprised of 42 +/- acres, part of which is used for the site of a single-family dwelling, a part is used for agricultural uses, and the remainder is vacant land.
2. The applicant claims agricultural use with approximately 12 acres of the total presently leased to others for farming purposes.
3. The subject property is under a 61A agricultural restriction.
4. In this instance, the agricultural zoning exemption under M.G.L. c. 40A, sec. 3, also applies to the existing condition and use of the subject property.
5. In the application submittal letter to the Board of Appeals, Mr. Meacham signed as "Manager" of "Mount Blue Farm, LLC", an entity, according to the Secretary of State's website, created on 6/29/07.
6. It is unclear what relationship "Mount Blue Farm, LLC" may have to this application or the subject property, as that entity was not mentioned in the application form, except in the submittal letter.
7. The proposed wind test tower would be 200 feet in height and temporary in nature with a one-year time period anticipated. However, there would be construction and removal times required, with aerial and visual impacts likely in excess of the stated one-year timeframe.
8. Mr. Meacham stated that successful wind testing, as determined by the proposed wind test tower, would result in a future additional proposal to allow for construction of a wind tower to generate electrical energy, employing "Neighborhood Net Metering," under which he proposes to sell electricity to the Town of Norwell. However, no evidence of any such future agreement with the Town of Norwell was submitted.
9. Section 2460 of the Norwell Zoning Bylaw ("NZBL") under which the Special Permit is requested, restricts the height of a "building and/or structure" to 34 feet within a residential district, while projections not used for human occupancy may be "extended a maximum of 10 feet". Therefore, the total allowable height in a residential district is 44 feet. The proposed wind test tower would exceed the allowable height by 156 feet.
10. Although Section 2461 of the NZBL allows for issuance of a height extension by special permit, it is not specific as to requirements other than those applicable to Special Permits in general. However, it is the opinion of Board

members that the proposed wind test tower clearly must be considered a commercial use. Allowing a commercial use within a residential district, however, would far exceed the Board's authority to grant a special permit as a residential height extension under the current NZBL.

11. The Board received no evidence that ties the proposed wind test tower either to the current residential or agricultural use of the subject property.
12. The Board examined the District Regulations, specifically NZBL Section 2313, *Permitted Accessory Uses*, and NZBL Section 2314, *Uses requiring a Special Permit*, and finds that:
  - a. The proposed wind tower is not a permitted use or use permitted by special permit in Residential District A.
  - b. The proposed wind tower is not a permitted community service use in Residential District A.
  - c. The proposed wind tower is not a permissible home occupation within the meaning of the Norwell Zoning Bylaw.
  - d. The proposed wind tower is not a permitted accessory use since the sale of electricity to the Town of Norwell or to any third person on a wholesale or retail basis is not subordinate to or customarily incidental to the principal residential use or agricultural use of the property.
13. In its examination of evidence during the public hearing, the Board also looked at NZBL Section 4600, *Personal Wireless Service Facilities*, as a possible permitting option. Although the NZBL includes an overlay-zoning district for *Personal Wireless Service Facilities*, the proposed project does not fall within that overlay district. In any event, the Board opined that the proposed wind test tower does not meet the definition of a "cell tower" and, therefore, falls outside uses that can be permitted under NZBL Section 4600.
14. The Board further considered whether the proposed wind test tower could be permitted as an accessory scientific use under NZBL Section 2316(b) and related Section 4410. Members opined that as the proposed use is not one permitted either by right or special permit, these sections would not apply.
15. A commercial structure, such as the proposed wind test tower, in the opinion of the Board, is not an allowable use under the existing NZBL, nor is more than one use allowable on a residential lot.
16. No use variances are allowable under the NZBL.
17. In accordance with NZBL Section 1420, in its deliberations whether or not to grant a Special Permit, the Board of Appeals must consider the conduct of the proposed use, and determine such use will not:
  - a. *Be detrimental to the neighborhood and zoning district,*
  - b. *Significantly alter the character of the zoning district, and*
  - c. *Be injurious, noxious, or offensive to the neighborhood . . . nor hazardous to the community on account of fire, explosion or other cause.*
18. Finally, the Board examined the requirements for issuance of a special permit and finds that the proposed use:
  - a. Would be detrimental to the neighborhood and zoning district, as it is not a currently allowed use,
  - b. Would significantly alter the character of the zoning district, which does not allow commercial enterprises, except permitted accessory uses, and
  - c. Would be offensive to the neighborhood by reason of increased noise and visual disruption of the natural landscape. Further, there may be other potential causes not determined by the Board at this time.

## DECISION OF THE BOARD:

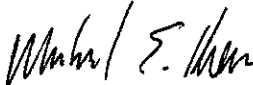
Based on evidence submitted and testimony taken during the public hearing and its findings delineated above, upon a motion duly made by Member Kiernan and seconded by Member Kiernan, Members Barbour, Brown, and Kiernan **VOTED TO DENY** the application for a **Special Permit** to allow construction of a proposed wind test tower on the 42-acre lot known as **342 Mount Blue Street**.



Lois S. Barbour



Philip Y. Brown



Michael E. Kiernan

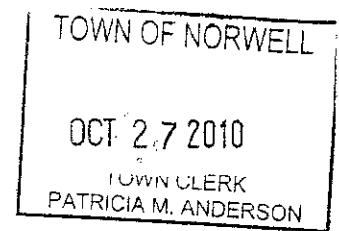
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Date Stamp of Town Clerk*

TOWN OF NORWELL

OCT 27 2010

TOWN CLERK  
PATRICIA M. ANDERSON



**NOTICE OF APPELLATE RIGHTS:** Any decision of the Board of Appeals may be appealed to Superior Court within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activity is undertaken at the applicant's risk during the appeal period.