

OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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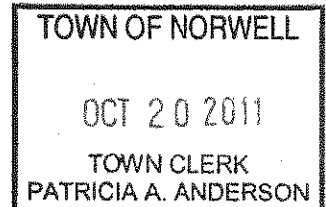
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FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS

File No. 11-11



PUBLIC HEARING(s) were held on September 14 and October 5, 2011, by the Norwell Zoning Board of Appeals under Massachusetts General Laws, Chapter 40A, Sections 6 and 9, at the Norwell Town offices, 345 Main Street Norwell, MA on the application of:

Bruce F. Meacham
168 Vernon Road
Scituate, MA 02066

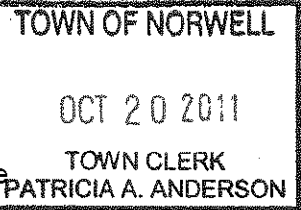
For a **Special Permit** (Sections 1400, 1420) as required under Height Restrictions (Sections 2460, 2461) of 34 feet and **Variance** (Section 1322 to raise a temporary 200 foot guyed tubular steel tower to support cross arms holding anemometers and wind vanes that will measure the wind speed and direction over Mount Blue Street for approximately one year to determine the feasibility of a wind turbine for the purpose of providing electrical power to the farm for agricultural use. The property is located at 342 Mount Blue Street and shown on Assessor's Map 2D, Block 6, Lot 1 Registry of Deeds Book 35653, page 7 in Residential District A and used as farmland.

The Public Hearing for this application was duly noticed in The Norwell Mariner on August 25 and September 1, 2011, and posted by the Town Clerk, as required by the Open Meeting Law.

The Applicant and his attorney were in attendance at the hearing to present the application for the proposed change in the property. There was substantial opposition to the proposed project from neighbors who voiced concern over the height of the proposed temporary structure, concerns involving, necessity of the structure and the fact that the applicant had made a previous application for a similar structure.

The Board received the following information into its files:

1. Completed application for Special Permit and Variance, signed by the property owner, Barbara B. Meacham, and applicant, Bruce F. Meacham, with attached "Exhibit A", date-stamped by the Town Clerk on August 9 2011.
2. Copy of the Findings and Decision of the Board of Appeals regarding the application of Hornstra Farm Norwell, LLC for a Special Permit and Variance filed with Town Clerk 8/23/10.
3. Copy of General Counsel's letter dated 8/17/10 from the Mass Department of Agricultural Resources to Norwell Town's Counsel, Robert W. Galvin regarding Hornstra Farms.

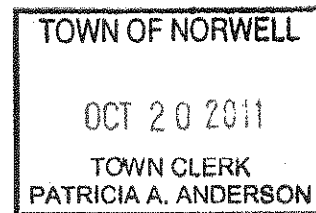


4. Findings and Decision of the Board of Appeals regarding the application of Bruce F. Meacham for a Special Permit filed with the Town Clerk 10/27/10.
5. Copies of two Quitclaim Deeds conveying the subject property to Robert C. Meacham et ux, recorded at the Registry of the Deeds on 11/14/46, at 23679 and 23680.
6. Conservation Commission Approval for Building Permit, dated 12/15/09, indicating the proposed project is not located within jurisdictional resource areas.
7. Letter from the Federal Aviation Administration, Air Traffic Airspace Branch, dated 11/9/10 determining that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided that the structure is marked and/or lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, paint/red lights – Chapters 3(Marked),4,5(Red),&12.
8. Installation Manual & Specifications for the proposed NRG tower (multipaged).
9. Plan of Land, 342 Mount Blue Street, Norwell, MA showing updated abutter list as of 1/26/10.
10. 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 12/3/10.
11. Letter dated 10/5/11 from the General Counsel of the Mass Department of Agricultural Resources to Attorney Steven M. Guard re meteorological towers as agricultural structures under M.G.L. c. 40A, sec. 3.

FINDINGS:

1. As a threshold finding, the Board finds that the property is being used for commercial agricultural purposes. The property is comprised of 42 acres and has been used continuously as a farm for approximately 200 years. It currently has five acres of crops, eight to ten acres of field, four acres are devoted to the homestead on the farm and the remainder of the property is wooded. From time to time, timber is harvested from the wooded acreage.
2. The Applicant seeks to build a temporary tower on top of a hill on the property as a means by which to measure wind speed and direction. The Applicant wishes to determine whether there is sufficient wind to power a turbine that would provide electricity exclusively for the farm. If there is sufficient wind to power a turbine, the Applicant believes that by generating electricity on the property, the Applicant can install irrigation pumps to make the farm more efficient and productive.
3. The proposed tower will be situated approximately 500 feet from the nearest neighboring lot line and approximately 800 feet from the nearest neighboring house.

4. Mass. Gen. Laws c. 40A, sec. 3, provides that no zoning ordinance or by-law may prohibit, unreasonably regulate or require a special permit for structures used for the primary purpose of commercial agriculture.
5. Farm structures are those that have a primary purpose of agriculture. A variety of structures have been found by courts to have a primary purpose of agriculture. For example, courts have found a riding arena or a barn to be for agricultural use. See, e.g., *Bateman v. Board of Appeals of Georgetown*, 56 Mass. App. Ct. 236, rev. denied, 438 Mass. 1107 (2002). Likewise, courts have found a greenhouse with a 4,000 gallon fuel tank for growing hydroponic fruits and vegetables to be an agricultural use. *Town of Tisbury v. Martha's Vineyard Com'n*, 27 Mass. App. Ct. 1204 (1989).
6. We find that a wind turbine that is properly sized to provide power to the farm (but not sized so as to sell excess power) is an agricultural structure. Since the proposed temporary tower would be installed for the direct purpose of constructing a wind turbine for the farm, it is also an agricultural structure. If the temporary tower were not considered to be an agricultural structure, the net effect would be to preclude the construction of an appropriately sized wind turbine.
7. Because the proposed structure is an agricultural structure, the Board may not impose unreasonable regulations upon the structure.
8. At hearings in 2010, the Applicant sought a special permit and variance to build the same tower for commercial purposes with the intent to sell power. That application was expressly for commercial, and not for agricultural, purposes. The Board denied the special permit and variance by decision dated October 27, 2010. The Applicant has appealed that decision but has informed the Board that he agrees to withdraw his appeal and has changed his proposal to that of a structure to gauge the suitability of the site for a wind turbine to power the needs of the farm.



DECISION OF THE BOARD:

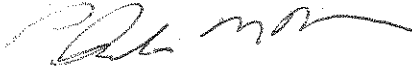
Based on the application and evidence presented, and its findings above, upon a motion duly made and seconded, the Board VOTED unanimously that it could not unreasonably regulate the proposed agricultural structure because the property is being used for the primary purpose of commercial agricultural use. Accordingly, the Board cannot require the Applicant to obtain a special permit or variance. However, the Board can impose reasonable regulations upon the proposed structure. Accordingly, the Board requires that the temporary tower be dismantled within 15 months from when construction commences and that the Applicant provide to the Board copies of the wind test data gathered during the use of the temporary structure. The Board further requires that the proposed temporary tower be constructed in accordance with the design, specifications and materials provided to the Board and that it is up to the Applicant to obtain the appropriate approvals from the building inspector so as to ensure the safety of the proposed project and compliance with any Massachusetts Building Code issues and compliance with Federal Aviation rules and regulations. Should the Applicant determine to proceed with placement and construction of a wind turbine, the Applicant is required to submit an application for approval prior to the issuance of any building permit. Finally, this approval is granted to Bruce Meacham and is not transferrable to any other person or entity.

CONDITIONS APPLYING TO ALL SPECIAL PERMITS:


1. **RECORDING OF THE DECISION:** After receiving certification from the Town Clerk that no appeal has been taken within twenty days, or if appealed than dismissed or denied, a copy of the Board's decision must be filed with either the Registrar of the Plymouth County Registry of Deeds to be recorded and indexed in the grantor index under the name of the owner of record in the case of unregistered land, or with the Recorder of the Land Court to be registered and noted on the owner's certificate of title in the case of registered land.
2. **RECORDING RECEIPT:** A copy of the recording fee receipt must be returned to the Board of Appeals. NOTE: No building permit shall be issued without such evidence
3. **EFFECTIVE DATE OF APPROVAL:** The Special Permit granted by this Decision shall take effect only at such time as a copy of this Decision, certified by the Office of the Town Clerk of the Town of Norwell, is recorded with the Registrar of Deeds or Recorder of the Land Court.
4. **EXPIRATION:** The applicant must exercise any Special Permit granted by the ZBA within two (2) years from the date of the decision or it shall lapse.



Lois S. Barbour



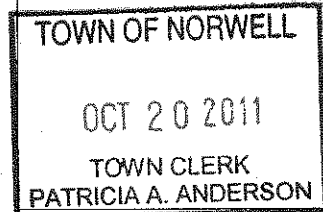
Philip Y. Brown



Michael E. Kiernan

Date Filed with Office of the Town Clerk

*This space reserved for
Date Stamp of Town Clerk*



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.