



ZONING BOARD OF APPEALS
TOWN OF MONTAGUE
ONE AVENUE A
TURNERS FALLS, MA 01376

NOTICE OF DECISION & VOTE

Applicant:

Urban Power USA Inc., by Mark Maynard
180 Pleasant St.
Easthampton, MA 01027

Case No. 11-09

Date February 29, 2011

Owner:

Donald E. Fugere, Trustee
Fugere Family Trust
1516 S. Lakeside Dr., Apt. 216
Lake Worth, FL 33460

Premises Affected:

(5½) & Rear - South High St.
Turners Falls, MA 01376
Assessors' Map 20 Lot 4 & Map 13 Lot 37
F Co. Registry of Deeds: Bk 3432 Pg 158

Special Permit	(X)
Variance Application (40A)	()
Section 8 (40A) Appeal	(X)
Site Plan Review	()

After a public hearing held on:
Continued to:

Wednesday, November 30, 2011
Wednesday, January 11, 2012

APPEAL: Section 8. MGL Chapter 40A

Appeal to the Board that a privately owned and net metered wind generator of electricity is a "Public Utility" in the context of the Montague Zoning By-laws.

The Board of Appeals Finds:

- The Zoning Act, Ch 40A Section 3 allows an independent appeal right to a "public service corporation" commonly assumed to be a "Public Utility".
- The Special Permit category of "Public Utility" was established in the Montague Zoning By-laws in 1973.
- The ownership of power production and the regulation of distribution of electrical power have substantially changed in the intervening 40 years.
- Urban Power USA is not a public service corporation under current law.
- Power generated from the proposed facility is to be distributed through WMECO a public service corporation. The power generated is available for private sale to WMECO customers in Montague.

- The proposed wind turbine facility intends to provide power as a generating utility to specific public customers by contract and to the general users of the electric distribution system.
- The power distribution and billing structure is publicly regulated.

The Majority of the Board of Appeals Concludes:

There is sufficient reason to allow this wind turbine proposal to proceed as a Special Permit request as a Public Utility use.

THE BOARD OF APPEALS VOTED:

The vote of the Zoning Board of Appeals was as follows:

- | | | | |
|-------------------------------------|------------|-------------------------------------|------------|
| 1. <u>Ernest L. Brown, Chairman</u> | <u>Yes</u> | 2. <u>John Burek, Vice-Chairman</u> | <u>Yes</u> |
| 3. <u>John Reynolds</u> | <u>Yes</u> | 4. <u>Robert Sojka</u> | <u>Yes</u> |
| 5. <u>Ericka Almeida</u> | <u>No</u> | | |

SPECIAL PERMIT REQUEST:

The request is to allow a single 73' ground mounted 20 KW installation consisting of two 23' tall by 26' diameter vertical axis wind turbines largely out of sight of abutting residences.

The Board of Appeals Finds:

- Power lines are to be underground except for a final pole and aerial drop to South High Street from Lot 37 on Assessors Map13.
- Construction access is across land of an abutter, substantially by way of an existing drive.
- Access for maintenance shall be by path or trail from South High Street or by drive of the abutter.
- Clearing of land is proposed to be a 150' radius and generally limited to the selective clearance of larger interfering trees.
- The wind turbines are quiet and "will make no noise whatsoever". No complaints of noise are anticipated. *Applicant stated that the facility would be removed if noise occurs.*
- Wildlife will be largely unaffected by the turbines and the supporting structure. Ground structure will be poles and struts with climbing guards. The turbines' bulk is an easily avoided visual clue to birds and bats. Smaller prototypes have not caused bird or bat collisions or deaths.
- The slower moving drum turbines do not cause flicker or below audio pulses that have been associated with negative human health and comfort.
- Design parameters are to be based on a 130-mph wind speed using the International Electrotechnical Commission (IEC) 61400-2, part 2, Design requirements for small wind turbines, and ASCE-7 (costal).

THE BOARD OF APPEALS VOTED:

To grant a Special Permit to allow a single 73' tall ground mounted electrical generating installation consisting of two vertically stacked 23' tall by 26' diameter vertical axis wind turbines. Such facility shall attach to and distribute the generated power through the WMECO distribution system.

- The tower design and attachments shall follow best engineering practices.
- Guy wire supports are not anticipated in this approval.
- The safety fence requirement is waved provided that the proposed climbing guards are constructed and prove to be an adequate safety barrier.
- Modification and Approval: Any changes proposed shall be reviewed by the Board of Appeals or its designee. The Chairman or designee may approve changes if in conformance with the intent of the Special Permit or may refer it to the Board. Changes consistent with the purpose of this approval may be allowed by the Board without further hearings. Further hearings shall be at the discretion of the Board. Approval shall not be unreasonably withheld.

The vote of the Zoning Board of Appeals was as follows:

- | | | | |
|-------------------------------------|------------|-------------------------------------|------------|
| 1. <u>Ernest L. Brown, Chairman</u> | <u>Yes</u> | 2. <u>John Burek, Vice-Chairman</u> | <u>Yes</u> |
| 3. <u>John Reynolds</u> | <u>Yes</u> | 4. <u>Robert Sojka</u> | <u>Yes</u> |
| 5. <u>Ericka Almeida</u> | <u>Yes</u> | | |

IMPORTANT: Any appeal from the decision of the Town of Montague Zoning Board of Appeals can be made only to the Court and must be made pursuant to Section 17, Chapter 40A (MGL) as amended, and must be filed in the office of the Town Clerk within twenty (20) days after the date of filing of the decision with the Town Clerk.

Board of Appeals

By Ernest L. Brown, Chairman
Clerk

Karen Casey-Chretien,

Received for filing by Town Clerk: _____
Time Date

Twenty day appeal period ends: _____
Time Date

I HEREBY CERTIFY THAT NO APPEAL HAS BEEN FILED WITHIN 20 DAYS
FROM THE DATE THAT THIS DECISION WAS FILED WITH THE TOWN CLERK:

Montague Town Clerk

Date

Notice to be recorded by Landowner