

Zoning Board of Appeals Decisions Decisions for: 05-01-2014

[Close Window](#)

FINDINGS AND DECISION OF FALMOUTH ZONING BOARD OF APPEALS

Appeal #109-13 – of Edward and Suzanne Hobart

APPELLANT: EDWARD and SUZANNE HOBART of Cataumet, MA

SUBJECT PROPERTY: 82 Technology Park Drive, East Falmouth, MA
Map 15, Section 04, Parcel 027A, Lot 088

PROCEDURAL HISTORY

1. On June 27, 2013 the appellant submitted a "Confidential Complaint Form" to Eladio Gore, Building Commissioner for the Town of Falmouth. The complaint form is a formal request for enforcement of an alleged violation of the zoning bylaws wherein the Hobarts allege that the "Webb/Notus wind turbine at 82 Technology Park Drive causes noise and physical vibrations which have destroyed their ability to live in their home at 476 Blacksmith Shop Road"; "...forced to purchase another place to live"; "The turbine effects are 100% of the reason we moved and abandoned our custom designed lovely home."; and "The visual and physical impact of the turbine has rendered their home unsellable".
2. In a letter dated October 28, 2013 the Building Commissioner responded to the June 27, 2013 complaint from the Hobarts wherein, after giving brief history of events, process set forth in Special Permit 19-08 for Webb/Notus turbine and noise study(s) for the wind turbine, he states: "It is my opinion that no irrefutable information has been presented to prove that there is a violation of the Special Permit issued by the Zoning Board of Appeals (ZBA) and/or Section 240-110. Additionally, it is my opinion that no documented evidence has been submitted to substantiate the allegation that the wind turbine has prevented the sale of your home." He stated that the majority of information submitted has been anecdotal; and "Therefore, the Inspectional Service Department will take no enforcement action regarding the above referenced wind turbine."
3. On November 21, 2013 Edward and Suzanne Hobart formerly of 476 Blacksmith Shop Road in East Falmouth (hereinafter Appellant) filed a letter with the Town Clerk pursuant to Section 240-110 and 240-202 of the Code of Falmouth and Massachusetts General Law Chapter 40A to appeal the decision of the Building Commissioner dated October 28, 2013 denying relief of the request for zoning enforcement regarding operation of the Webb/Notus wind turbine located at 82 Technology Park Drive in East Falmouth and the effect the turbine has on 476 Blacksmith Shop Road and its inhabitants.
4. On January 23, 2014 a public hearing was opened after notice was duly given as required by Section 11 of Chapter 40A, MGL as well as notices sent to all persons deemed to be affected thereby as they appear on a tax list and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard. Present at the hearing was the appellant – Edward and Suzanne Hobart, the owner of the Webb Notus turbine – Daniel Webb and his legal counsel. At the hearing the appellant Edward Hobart stated that information from Mr. Webb's attorney [owner of Webb/Notus wind turbine] was just submitted to the file and he has not had sufficient time to review the material and therefor is requesting a continuation. All parties agreed to the date of March 6, 2014. The Board unanimously voted to continue the hearing to March 6, 2014 at 6:30 pm. There was no testimony given.
5. At the duly posted meeting of the Board of Appeals held on March 6, 2014 testimony was given, the Board asked questions and the Board requested time to review issues and asked the parties of May 1, 2014 was an available date for the parties. Chairman Haddad asked Mr. Hobart how May 1, 2014 at 5:30 sounds and Mr. Hobart responded: "Sounds good." All parties agreed with May 1, 2014 at 5:30 pm and Board voted unanimously to continue the hearing to May 1, 2014 at 5:30 pm.
6. At the duly posted meeting of the Board of Appeals held on May 1, 2014 testimony was given and public comment was heard. The Board discussed and rendered a decision to deny the appeal and uphold the Building Commissioner's determination that no enforcement action be taken regarding Webb/Notus wind turbine.

HEARING PROCESS

BOARD MEMBERS SITTING: Chairman David Haddad, Clerk Scott Zylinski, Member Patricia Johnson and Associate Kimberly Bielan (sitting as voting member)

NOTE: There was substantial information submitted from both parties [appellant and Webb] As well as information and substantial letters in support of appeal and a few in opposition to the appeal (see files 1 of 3 through 3 of 3).

January 23, 2014:

The appellant Edward Hobart explained that documents were submitted to the file by Mr. Webb and that he has not had time to review them and is requesting a continuance. Board discussed and all parties agreed to continue the hearing to March 6, 2014. Board voted unanimously to continue to March 6, 2014 at 5:30 pm.

March 6, 2014:

Chairman Haddad made a statement clarifying that this hearing is not a forum for wind turbines – we will not be debating political aspects of wind turbines and that any comments made at the hearing shall be relevant to 476 Blacksmith Shop Road [appellant's former home] and/or Webb/Notus wind turbine [82 Technology Park Drive].

Edward Hobart, owner of 476 Blacksmith Shop Road (not in residence), addressed the Board and read from a prepared statement his facts: The essence of our complaint is that the operation of the Webb/Notus wind turbine has substantially interfered with our health and use, enjoyment and value of our property. He said the bylaw defines nuisance as offensive, injurious, obnoxious and objectionable and that in this regard he can say without any reservation that the Webb/Notus turbine meets the definition. He said a significant professional in depth acoustic study was performed both outdoors and indoors at their home in April of 2011 and Mr. Ambrose, a professional acoustician, will speak on that at this hearing. Mr. Hobart stated that the operation of the Webb/Notus wind turbine has forced them to leave their dream behind – their dream home on Blacksmith Shop Road – and being forced to give it up has been a devastating experience. He said the turbine is located 1700 feet from their home and has operated continuously since July of 2010; the harm from the turbine varies with wind direction, speed and weather fluctuations. He explained the health impacts include sleep disruption, headaches, occasional feeling of dizziness and even nausea, spatial disorientation and conditions that result from sleep loss such as depression and anxiety. Issues with health started soon after the turbine became operational and got progressively worse; it became hard for Sue [Suzanne Hobart] to sleep in the house and she eventually tried sleeping at other locations. He said health impacts were reported to Board of Selectmen and Board of Health with no result. Mr. Hobart explained that issues became desperate when his wife [Suzanne] attempted to end her life in April of 2011 and they decided to leave their home. He noted that since vacating the property, Mrs. Hobart's health has improved and they sleep through the nights and they are no longer subject to offensive, injurious, obnoxious and objectionable nuisance at all hours of the day and night. Mr. Hobart referred to finding by Commissioner Gore that stated "no documented evidence has been submitted to substantiate the allegation that the wind turbine has prevented the sale of your home." – Mr. Hobart said that evidence of decreased price of the home well below appraised value. He stated they recently accepted an offer of \$325,000.00, which is below the assessed value; and that other costs have been incurred such as legal fees, moving costs and living expenses have made them spend their 401K monies. Mr. Hobart asked the Board to be reasonable and sensible in their deliberation and decision and not be swayed by the Boston attorney on behalf of Mr. Webb; and he asked the Board to listen to he and his wife and believe them when they say that the Webb/Notus turbine has not only substantially interfered with their use and enjoyment of their property – but has forced them to give it up.

Steve Ambrose, professional acoustician from Maine stated his credentials and discussed power point presentation that he had submitted with slides showing what is expected of turbines, the sound power of a turbine and the testing of the turbine at a lower power.

Suzanne Hobart stated that their situation has been a 'harrowing' experience.

Michael O'Neill an attorney with McGregor & Associates spoke on behalf of Dan Webb and Notus Clean Energy, LLC and Float Realty Trust [owners of 82 Technology Park Drive, East Falmouth]. Attorney O'Neill

asked the Board to affirm the Building Commissioner's determination. He spoke on the Special Permit (#19-08) for the Webb/Notus turbine that has a condition if noise of turbine exceeds 6dba and what the process for the nuisance is and noted that in November of 2010 a complaint was filed with the Board of Appeals pursuant to the Special Permit regarding noise. The Board found that Webb/Notus was not in violation. The Hobarts did not appeal that decision made by the Board of Appeals. He said this appeal is the same as the 2010 complaint and that the process for a complaint set forth in the Special Permit was not followed by the appellant and to shut down Webb/Notus will not help the Hobarts as they have moved from the Blacksmith Shop property. Attorney O'Neill stated that the Hobarts have a money claim in Superior Court against Webb/Notus that is not before this Board. He has reviewed the information regarding the Hobarts residence and notes that the home inspection report states the presence of mold and levels of radon found in the dwelling. Attorney O'Neill stated that there is now a listing sheet for the property with a disclosure form attached that gives the physical symptoms that the Hobarts have that states (#3): "Prior to the construction of the Turbine, the Sellers did not experience the symptoms with the same frequency or the same degree of severity which the sellers have experienced since construction of the turbine." Attorney O'Neill submits that when Mr. Hobart said in his statement that: "our symptoms started when the wind turbine went up", is not correct – they had symptoms before and what else is important is the statement (#4): "Sellers make no representation or warranty as to whether the symptoms are in any way related to the existence of the turbine". Attorney O'Neill stated that based on this the Hobarts are saying to a buyer that they don't say the turbine caused the symptoms, which is the exact opposite of what they are saying here and in their complaint. The property is located near a sand and gravel operation. The dwelling is not unsellable as they have a buyer for the property. Attorney O'Neill then reviewed Eladio Gore's letter stating that the denial was correct and that the Hobarts did not follow the procedure in the special permit for a complaint and that they have not produced any evidence to satisfy him that the house is not sellable.

Robert O'Neill of Epsilon Association [sound engineers] showed slides regarding Epsilon report including information from 2010 and 2011. He noted the McPherson study that was conducted in 2011 at the Hobart property and compared it with another property on Brush Hill – same distance from Webb/Notus. Chairman Haddad interrupted and asked that only information relative to the appeal before the Board and the subject property be discussed.

Dan Webb of Notus Clean Energy LLC stated that the Commonwealth of Massachusetts has a model bylaw that recommends a setback distance of a turbine that is three times the height of a turbine to a residence – this turbine is 500 feet in excess of that recommended setback. He spoke on the Special Permit issued to Webb/Notus for the wind turbine and noted that there has not been any complaints in the past three (3) years and suggested that this nuisance complaint is to circumvent the Special Permit conditions. He reviewed press release on turbines property devaluation; Assessors' Department statements; noted letters of support of Webb/Notus from people who live closest to Webb; and he showed a video tape from the Hobart's webpage of their property with the Webb turbine in the background operating – ambient noise prevalent and no wind turbine sound [birds chirping] – video from 5/24/11. He also reviewed comments from Susan Donaldson James of ABC News from 11/21/2013 stating that the property is a peaceful and undisturbed spot and noting that there is a wind turbine at her back. Mr. Webb said that these videos rebut Hobart's statement of "all day and all night" noise/disruption.

Board Questions:

Member Bielan asked what exactly is the nuisance – is it noise, light, or a slew of things.

Mrs. Hobart answered that there is a low level of vibration and it varies quite a bit – and it is not noise. She said in her case she could live with it if it was just noise – this is, she said, well documented in other cases - a very low level hum that comes into her ear. She said it is how her ears, which are sensitive can tell when pressure fluctuations are coming in – when storms are coming. She stated she has never been a migraine sufferer but that she became a migraine sufferer at her house from the turbine. She further said never before has she not been able to be comfortable or sleep – the symptoms started with sleeplessness and agitation, just unable to rest.

Member Bielan asked Mr. Hobart if he has some symptoms Mrs. Hobart has.

Mr. Hobart stated he got headaches and that there was intense pounding on the house that all you could do is just sit up in the living room. He stated that they cannot live in the house and the zoning bylaw says "destruction of property" – that is a significant portion of our nuisance complaint because we have been

driven from the house and the value of the house has been taken away.

Member Zylinski asked the Hobarts how soon after the wind turbine was operating, did they feel any symptoms.

Mrs. Hobart stated she got headaches immediately.

Member Zylinski asked when was the first complaint made about Webb/Notus turbine.

Mr. Hobart said he believes in November of that year [2010].

Member Zylinski commented that the complaint came before the Board of Appeals [through the process of the special permit condition], and the Board determined no violation; how come you did not appeal that decision.

Mr. Hobart stated he didn't know there was a mechanism to do that.

Member Zylinski said you [Hobarts] are declaring devaluation as part of the nuisance; did you consider also change in the economy may have reduced the value of your home?

Mrs. Hobart stated she didn't know but that she wouldn't have sold except for the turbine.

Mr. Hobart stated that the economy may be a contributing factor in the devaluation but for it to sell \$67,000.00 below the Town's assessment is significant.

Member Zylinski asked if the disrepair of the property is also a factor in the devaluation of the property.

Mr. Hobart commented on the video Mr. Webb had shown at the hearing and asked the Board that looking at the property – amount of landscaping and quality of the property – do they feel the property was abandoned for frivolous reasons?

Chairman Haddad asked how many offers have been made for your property.

Mr. Hobart stated four in total.

Chairman Haddad asked how many home inspections have been done.

Mr. Hobart stated one – in 2013.

Chairman Haddad asked how many appraisals have been done.

Mrs. Hobart stated two.

Chairman Haddad asked if those were the two in the file by Clancy.

Mrs. Hobart said all are in the file. She said when the turbine went up they realized quickly that their house – property – were going to be devalued and they were going to live with it. Thinking they could get used to it. She said for the sake of the ZBA hearing we asked Clancy to do an appraisal of what he thought was probably the June value before the turbine went up and then what the value was in October. She further stated that there is a recent one which he [Clancy] did the same thing; he did comparisons with the new information they now know about turbines four years later and with fluctuations down in the marketplace.

Chairman Haddad said that in the appraisal Mr. Clancy mentioned some adverse conditions of external factors and the size of your property; also that homes in area appear to be adversely affected by three wind turbines. He [Haddad] said the Board is strictly talking about Webb/Notus turbine – so the appraisal does not specifically state that Webb/Notus is specifically impacting the property.

Mrs. Hobart stated that she believes he included some of the other locations that were affected – heavily affected.

Chairman Haddad asked if mold and radon testing had been done.

Mrs. Hobart stated it was done in October and the new buyers accepted that inspection; the radon did come out high, but the house had been locked up for a long time. She said they had done a home radon test that turned out better.

Chairman Haddad asked if the Board could see the results of the tests.

Mrs. Hobart said she does not have them with her – she could get them but asked the Board to make a decision tonight if possible because they need to get on with their life.

Chairman Haddad asked why they did not go through the process set forth in the Special Permit for Webb/Notus turbine regarding complaints.

Mr. Hobart said first of all they are not requesting the permit here; they are making a nuisance complaint and that he did not know to make a nuisance complaint that they had to go through this process. He said he thought they were complaining about the turbine exceeding the excessive noise level – this is a nuisance.

Chairman Haddad told Mrs. Hobart he is going to touch on some of her medical issues.

Mrs. Hobart stated she was ready.

Chairman Haddad said that she [Mrs. Hobart] had stated earlier that she was not a 'migraine' sufferer but in Dr. Chambers' January 23, 2014 report it said no new headaches when mentioning migraines – could you [Mrs. Hobart] explain why she wrote that.

Mrs. Hobart commented on pharmacy records. She then stated she has not had a headache since leaving the house [476 Blacksmith Shop Rd]; headaches but not migraines that put you to bed and narrow your vision.

Chairman Haddad the report also mentioned backaches since 2009 – is that factual?

Mrs. Hobart said she is old and out of shape – she gets backaches and they are not related to the wind turbine – she promises.

Chairman Haddad asked about the depression that Mr. Hobart spoke of and the report that says this has been going on for thirteen years.

Mrs. Hobart acknowledged.

Chairman Haddad asked if there are good results now and no concerns at this time and if this just happened in 2010.

Mrs. Hobart stated no.

Chairman Haddad asked if it is fair to say it has been going on long past that.

Mrs. Hobart said that way before she has suffered seasonal depression with light levels – you will see a great 'mania' coming in spring. There is a helplessness not being able to know where you are going to be, not knowing your future – it is devastating. She said they lived there twelve years and expected to die there – this stuff isn't easy to get through. She said she is still suffering depression.

Chairman Haddad said he did not see any information in the file from a doctor that says whatever conditions you are suffering from is from the wind turbine.

Mrs. Hobart said Dr. Steven Rausch.

Chairman Haddad said he read that but will re-read it.

Mrs. Hobart said she has a diagnosis of wind turbine from the top guy at Mass Eye and Ear.

Member Zylinski asked Mrs. Hobart about her testimony when the wind turbine was being erected and said "we knew it was going to affect the value of our home".

Mr. Hobart said no.

Mrs. Hobart said she misspoke and that when they saw the crane; when the pole went up, we [Hobarts] said "Oh dear".

Member Zylinski asked if this was before the turbine started operating.

Mrs. Hobart said as soon as the blades went up – another week or so – we were amazed at the size of it because we thought it would be the size of the one in Woods Hole.

Member Zylinski asked if they [Hobarts] attended any preconstruction meetings or any of the hearings before the Board of Appeals.

Mr. Hobart stated that they do not subscribe to Comcast.

Mrs. Hobart stated they were unaware as they don't subscribe to Comcast or the Enterprise. She further stated that they had heard of it through the 'grapevine – Ed had heard it at work and they assumed it would be the size of the one at the research center.

Member Johnson asked why they did not go through the process set forth in the Special Permit.

Mr. Hobart stated it may be an error but they are complaining of a nuisance and feels this meets the criteria in the bylaw.

Member Zylinski asked what they hoped to achieve if it is already in Superior Court.

Mr. Hobart stated that they have been to many Town Boards with no acknowledgement of its devastation.

Mrs. Hobart stated that they need to get on with life and that this will get them to court a little quicker.

Member Zylinski asked Mr. Webb if he has had any complaints from his employees at the site of any symptoms that have been described at this hearing.

Mr. Webb stated no.

Member Bielan asked Mr. Webb if any testing has been done in 2013 to ensure that the wind turbine is in compliance with the special permit.

Mr. Webb said the last test was in 2010.

Chairman Haddad asked Mr. Webb if any testing was done by him at the Hobart's property such as sound studies.

Mr. Webb said their test locations are specified very clearly in the permit and those are the only test locations. 476 Blacksmith Shop is not a site.

Mr. Webb commented that Dr. Steven Rausch was mentioned as the doctor who gave Mrs. Hobart a diagnosis is quoted in section 4 of the blue binder I submitted; and also previous Town Assessor David Bailey once said that when a person repeatedly proclaims their property is toxic and unlivable they have essentially devalued it themselves.

Attorney O'Neill asked the Board to direct their attention to Section 240-110 of the bylaw dealing with nuisances citing that the first part says "no use shall be permitted which shall be offensive" – he says that is what the Hobarts are here for tonight; and the second sentence says "no permit shall be granted". He then spoke on "Performance Requirements" and the requirements of a special permit – which the wind turbine has. Attorney O'Neill stated that the claim from the Hobarts is about money and they have a claim pending in Superior Court.

Board discussion:

The Board discussed. Member Zylinski said he is trying to digest this and said he is being sensitive to the fact that Mrs. Hobart wants this over – but he also thinks that she wants a fair and just opinion by the Board. He [Zylinski] said he would like more time to review the file.

Member Zylinski made a motion to continue to the hearing to May 1, 2014 at 5:30 PM. Member Bielan seconded the motion.

All parties [Ed Hobart and Dan Webb] agreed to the continuation.

Motion carried 4 – 0.

Board voted 4 – 0 to continue the hearing to May 1, 2014 at 5:30 PM

Continuation: May 1, 2014 – 4:30 pm, Selectmen's Meeting Room

#109-13 Hobart Appeal of Building Commissioner Gore

Board members sitting: Chairman David Haddad, Clerk Scott Zylinski, Member Patricia Johnson and Associate Kimberly Bielan

Chairman Haddad reminded everyone that the appeal before the Board is not a forum on wind energy and there will be no debating political aspects on wind turbines. He stated that this is a private nuisance with regards to 476 Blacksmith Shop Road and testimony must relate to the Webb/Notus turbine. He noted that since the last hearing, information had been submitted to the file relating to the Special Permit process [for Webb/Notus]; the Special Permit process is not what is before this Board – what is before this Board is whether or not to overturn the Building Commissioner's determination that the Webb/Notus turbine is not a nuisance.

Chairman Haddad briefly addressed Attorney Michael O'Neill, representative of Daniel Webb of Webb/Notus, regarding a letter he submitted dated April 24, 2014 suggesting that the Hobarts do not have standing as they have recently sold the property at 476 Blacksmith Shop Road.

Chairman Haddad asked if anyone present would like to speak in support of the Appeal (overturning the Building Commissioner's determination).

Todd Drummey of 360 Blacksmith Shop Road stated support and said he visited the subject property [Hobarts] several times while they resided there and after they abandoned it. He said he reviewed notes from previous hearing and wanted to review case law for the new Board member Ms. Bielan.

Chairman Haddad explained to Mr. Drummey that Ms. Bielan is an attorney and specializes in land use and appeals.

Mr. Drummey spoke on the noise study that they conducted on their own and that the report shows noise over 6dba. He said the data shows problem with noise and asked the Board to vote in favor of the Hobarts.

Member Zylinski asked Mr. Drummey if he was an acoustical engineer.

Mr. Drummey stated he is not but that DEP asked him to work on the tactical team regarding wind turbines.

Member Zylinski asked Mr. Drummey if the Hobarts had contracted him and where he lived in relation to the Hobarts.

Mr. Drummey stated he did not have a contract and that he lived down the street – he is a friend.

Member Bielan asked Mr. Drummey if the test was done only on April 5, 2014 – one day.

Mr. Drummey stated yes.

Member Johnson asked if the turbines (Wind I and Wind II) were shut down during this test.

Mr. Drummey stated no.

Member Zylinski asked Mr. Drummey if he spoke at the initial hearing for Webb/Notus special permit.

Mr. Drummey stated yes.

Member Zylinski asked if he was then aware of the Webb/Notus process in special permit.

Mr. Drummey stated yes.

John Ford of 37 Blacksmith Shop Road discussed a recent visit (1/23/14) he had at the Hobarts where after 15 minutes he felt queasy and had to leave the property. He is in support of the Hobarts appeal.

Member Zylinski asked Mr. Ford if he knew the Hobarts prior to the appeal.

Mr. Ford stated yes.

Member Johnson asked Mr. Ford if he visited the Hobarts when they resided there.

Mr. Ford stated yes.

Member Johnson said on the 1/23/14 visit if the Hobarts were there.

Mr. Ford said they had moved. He further stated that the weather was southwest winds at 15 MPH.

Diane Funfar of 27 Ridgeview Drive stated she was in support of this appeal and spoke on the different effects on people from the wind turbines. She commented that the Hobarts have lost their home and that they had invited Town officials to visit their home and no one did.

Malcolm Donald of 124 Ambleside Drive stated support of the appeal and said he has known the Hobarts several years and is aware of Mrs. Hobart's medical stress while she lived at 476 Blacksmith Shop Road.

Member Bielan asked Mr. Donald if he was a medical doctor.

Mr. Donald stated no – he has practical training.

Member Zylinski asked Mr. Donald where the nuisance lies.

Mr. Donald stated the industrial park.

Final Comments:

Mr. Hobart said a comment by Attorney O'Neill that the special permit negates nuisance is not fact according to town counsel. Mr. Hobart explained that they left the property but mental and physical and financial issues followed them. He commented that based on what the house sold for what else could have devalued the property but the turbine.

Mrs. Hobart said 24 hours a day was the issue – the wind turbine was 24 hours a day and she couldn't get sleep there. She said the attorney's for Webb will bring up medical report from 1980's but that she is a tough lady and has worked the land and equipment to make her dream at 476 Blacksmith Shop Road and that now they lie in a rat trap, they don't trust anyone and they didn't want to re-start life now. She said April of 2011 was bad and that she had stayed at friend's house down the street for 8 months; she had missed her son's wedding. She spoke on financial issues they now have.

Member Johnson asked when they moved and when was appeal filed.

Mrs. Hobart said they moved 4/14/11 after she was hospitalized and that the complaint was filed July of 2013.

Member Johnson asked if there was any reason they didn't file complaint previously.

Mr. Hobart said they didn't know they could.

Member Zylinski explained to the Hobarts that their integrity is not in question; that the Board is not testing them but that they have to ask questions. Member Zylinski asked them if their house was so important to them why they sold the house before the appeal.

Mr. Hobart stated that they are desperate for money.

Member Zylinski said the house [476 Blacksmith Shop Rd] was built in 2002 and asked the Hobarts if the nearby industrial park was there and if they knew it was there.

Mr. Hobart stated yes.

Mrs. Hobart stated it was just a sandpit.

Member Zylinski noted that the Hobarts made a statement at the last hearing of what they would get out of this appeal.

Mrs. Hobart asked what the statement was.

Member Zylinski said you stated "it will help to get into court easier". – it won't get your house back.

Mrs. Hobart said what I want from this Board is if you think this turbine was a nuisance – with or without sale of house that Webb turbine is a nuisance.

Mr. Hobart stated they knew about the gravel pit and possible equipment noise but not at 10pm or in middle of night.

Attorney O'Neill spoke: If Board grants this appeal it has no effect as it has to do with living at property. If granted nothing is gained – no effect on their current living conditions. He then cited Section 240-202 of the Code of Falmouth – "person has to be aggrieved" – he said the Hobarts no longer are aggrieved. Attorney O'Neill discussed 'loss of value' and cited from 240-110 – "no permit shall be issued..." – if Hobart had issue with the special permit then they should have appealed the Board's decision on special permit. He then asked "Why is gravel pit not a nuisance?" He then pointed out that Mr. Webb has presented evidence from a number of people who are not affected by the wind turbine; and that Mrs. Hobart stated sound didn't bother her – although sound issues were discussed. Also, he continued, Mrs. Hobart said all was beautiful before turbine but medical history submitted proves otherwise. He said there has been no medical evidence submitted that Webb/Notus turbine was cause of medical issue. He further stated that the Hobarts were aware of the process set forth in the special permit for Webb/Notus as they tested it previously and this Board found in favor of no violation by Webb/Notus. Attorney O'Neill said with respect to Mr. Drummey's comments – his test is not appropriate or adequate. He commented on the sale price of the property and the issues around the price.

Member Bielan asked question regarding new owner of 476 Blacksmith Shop Road and if they will be bound by complaint procedure.

Attorney O'Neill stated yes. The issue is incumbent on Webb/Notus.

Member Johnson asked Attorney O'Neill if devaluation is a nuisance.

Attorney O'Neill said bylaw is specific: [240-110] "...No permit shall be granted for any use which would prove injurious to the safety or welfare of the neighborhood into which it proposes to go, and destructive of property values, because of any excessive nuisance qualities."

Board discussion:

Member Zylinski commented that the area of 476 Blacksmith Shop Road is an 'industrial park' and this should have been addressed at time of special permit and the comment made by Mrs. Hobart that this appeal will assist them in their pending court process is concerning.

Member Bielan said she agrees with Member Zylinski that there was not sufficient causation to medical issues. She said financial devaluation not tied directly to turbine; the property is near an industrial park and has value effect. She said she finds it persuasive that they have not been in residence since 2011 and the appeal was brought in 2013 for a nuisance. Ms. Bielan said the Board's role is to determine current status – they no longer own the property. She further stated that the Hobarts testified that they wanted the Board to determine whether the turbine was a nuisance rather than is a nuisance.

Chairman Haddad agrees with the Board and said the disrepair, radon findings, mold and location of the industrial park all take a role in the value of the property. He said regarding medical issue – Mrs. Hobart stated that the noise didn't bother her; and Mr. Drummey's noise study of one day – if it did exceed the dba does that determine nuisance.

Member Zylinski said he was bothered by others stating that Mrs. Hobart was drastically improved.

Chairman Haddad said there was no medical evidence submitted that ties her issues to the Webb/Notus wind turbine.

Member Zylinski made a motion to close the hearing. Member Bielan seconded the motion. Motion carried 4 - 0.

Chairman Haddad closed the Hearing.

FINDINGS:

Edward and Suzanne Hobart (herein referred to as Appellant) submitted a complaint to the Falmouth Building Commissioner, Eladio Gore on June 27, 2013 regarding a nuisance being created on their property located at 476 Blacksmith Shop Road in East Falmouth by the Webb/Notus turbine located at 82 Technology Park Drive in East Falmouth. On October 28, 2013 Building Commissioner Gore made a determination that the Inspectional Services will take no action regarding the wind turbine based on the facts that there was no documented evidence submitted to substantiate the allegation that the wind turbine prevented the sale of the Appellant's home, that the majority of information submitted had been anecdotal and that information submitted was same information submitted in the complaint of 2010 regarding the wind turbine.

476 Blacksmith Shop Road in East Falmouth – formerly the property of the Appellant – is a six acre site. Appraisals for the property and a listing sheet by a realtor was submitted to the file. The marketing of the property was a little confusing as it showed as both a six acre parcel with residence and then as a 3 acre parcel with residence and abutting vacant 3 acre parcel (subdivided into two lots). The Board conducted site visits at the property and was given permission to go inside the dwelling by the Appellant which combination of the realtor's lock box on the door.

As noted herein the Board found that there was no evidence submitted to the file or given orally by any professional that confirms the Webb/Notus wind turbine was the cause of Mrs. Hobart's medical issues. The Board further finds through information submitted to the file that Mrs. Hobart did suffer from same medical issues prior to the construction and operation of the Webb/Notus wind turbine.

The Board finds that there was no evidence submitted that the Webb/Notus wind turbine caused the devaluation of the property located at 476 Blacksmith Shop Road – formerly owned by the Appellant. The Board further finds that the combined effects from the location of an industrial park, abandonment of the residence for over a year, presence of radon and mold within the dwelling and the status of the economy have played a role in the devaluation of the property at 476 Blacksmith Shop Road. Furthermore, the presence of mold and radon could have been a determining factor in the medical issues of the Appellant which was not addressed.

The Board finds that there were two appraisals submitted to the file on January 2, 2014 from Clancy Appraisal Company, Inc. for 476 Blacksmith Shop Road; one appraisal was for Lot A (3 acre parcel) which is a portion of 476 Blacksmith Shop Road that was being subdivided and sold separate; and one appraisal was for the actual residence at same address. The Board further finds that both appraisals had comments [from Clancy Appraisal Co.] reflecting the two Town owned wind turbines and the Webb/Notus wind turbine as well as recent Board of Appeals and Superior Court actions regarding the Town owned wind turbines which are not a part of this appeal and therefore not appropriate as evidence of devaluation of property.

The Board finds that testimony given by Mrs. Hobart such as "the noise does not bother me" and when asked what may be gained by this Appeal, she stated "this [appeal] will get us to court a little quicker." leads to conflict of purpose of appeal. The Board further finds that the appeal may be capricious as the Appellant had vacated the property approximately six months prior to the complaint submitted to the Building Commissioner and several months after the Appellant filed a complaint with Superior Court.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 to 0 to Deny the Appeal of Edward and Suzanne Hobart (herein referred to as Appellant) formerly of 476 Blacksmith Shop Road, East Falmouth and Uphold the Building Commissioner's determination that no enforcement action shall be taken regarding the Webb/Notus wind turbine located at 82 Technology Park Drive, East Falmouth, Massachusetts.

Decision of the Falmouth Zoning Board of Appeals Continued:

Appeal Number: 109-13

Appellant: EDWARD HOBART and SUZANNE HOBART of Cataumet, MA

Subject Property: 82 Technology Park Drive, East Falmouth, MA
Map 15, Section 04, Parcel 027A, Lot 88
Notus Clean Energy / Float Realty Trust, Douglas Webb, Trustee (Owner)

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Deny the Appeal and Uphold the determination by the Building Commissioner

David Haddad, Board Chairman

Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

#109-13 Hobart / Appeal of Bldg Commissioners Determination posted to web 5/14/14 mm