

Motion by Mary S. Hickey, duly seconded, that Town Meeting be adjourned until Tuesday, May 6, 2008 at 7:30 p.m. at the Essex Elementary School gym.

Voted.

Meeting adjourned at 10:30 p.m. to be continued at 7:30 p.m. on Tuesday, May 6, 2008.

The adjourned session of the 2008 Annual Town Meeting of the Town of Essex was called to order at 7:30 p.m. on Tuesday, May 6, 2008. A quorum of over 100 voters was present.

Motion by Betsy Ridge Madsen, duly seconded, to postpone Article 20 until after Article 21.

Voted unanimously.

Article 21. WIND ENERGY DEFINITIONS

Motion by L. William Holton, duly seconded, that the Town vote to amend Section 6-3 DEFINITIONS of the Essex Zoning by-laws as shown in Article 21 of the Annual Town Meeting Warrant (and printed below), by replacing it with the following:

6-3.47 WIND ENERGY CONVERSION SYSTEM(WECS). A wind energy system consisting of a wind turbine, a tower, and associated control or conversion electronics.

6-3.48 BUILDING MOUNTED WECS. Any WECS unit, mounted on a building intended to generate power.

6-3.49 WIND TOWER. The structure that supports the wind turbine.

6-3.50 TOTAL TOWER HEIGHT. The vertical distance from current grade to the tip of the rotor blade when at its highest point.

6-3.51 WIND FARM.....Delete

(A motion by Westley C. Burnham to define Total Tower Height as “vertical distance from current grade to the tip of main support structure” was ruled by the Moderator to be beyond the scope of the article because it would have allowed taller wind turbines than defined in the Warrant.)

Main motion voted by declared 2/3's vote.

(ORIGINAL ARTICLE 21 AS PRINTED IN WARRANT

To see if the Town will vote to amend section 6.3 DEFINITIONS of the Town zoning By-Laws by adding the following:

6-3.47 WIND ENERGY CONVERSION SYSTEM (WECS): A wind energy system consisting of a wind turbine, a tower, and associated control or conversion electronics.

6-3.48 HOUSE OR BUILDING MOUNTED WECS: Any WECS unit, mounted on a house or accessory building, intended to generate power.

6-3.49 WIND TOWER: The structure that supports the wind turbine.

6-3.50 TOTAL TOWER HEIGHT: The vertical distance from current grade to the tip of the rotor blade when at its highest point.

6-3.51 WIND FARM: A cluster of 2 or more wind turbines used to produce electrical energy.)

Article 20. BY-LAW CHANGE – SPECIAL PERMITS/WIND ENERGY CONVERSION SYSTEMS

Motion by L. William Holton, duly seconded, that the Town vote to amend Chapter 6-6.9 SPECIAL PERMITS of the Essex zoning bylaw by adding, after part k, parts l, m and n.

1. WIND ENERGY CONVERSION SYSTEMS (WECS)

Installation of Wind Energy Conversion Systems (WECS), except units which are building mounted, but including temporary wind monitoring towers, shall be permitted subject to the following requirements and such other conditions as the Special Permit Granting Authority may impose under M.G.L. Chapter 40A and this bylaw.

1. Only towers not exceeding 150 feet in total tower height shall be allowed.

2. WECS towers shall be set back a distance equal to 1.25 times the Total Tower Height from:
 - a) Any public or private road right of way
 - b) Any overhead utility lines, unless written permission is otherwise granted by the affected utility to reduce this requirement.
 - c) All front, side, and rear property lines unless written permission is granted by abutters to reduce this requirement.
3. Density of units: When more than one WECS may be installed on a lot there shall be a minimum of one acre allotted for each unit.
4. Color: WECS units shall be painted a non-reflective color that blends with sky and clouds.
5. Noise and electromagnetic interference: The WECS and associated equipment shall conform with the provisions of the Massachusetts Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10) as measured at the nearest lot line. The applicant shall provide certification at his/her expense that the system will not cause electromagnetic interference as measured at the lot line. After the installation, if neighbors can demonstrate that there is interference, the Building Inspector may order that the WECS be dismantled or modified to eliminate said interference.
6. Lighting: The WECS shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). A temporary light used to inspect a WECS and associated equipment is permissible provided said light is used only for inspection purposes and not in operation for an extended period of time.
7. Access: All ground mounted electrical and control equipment shall be secured to prevent unauthorized access, and the tower shall be designed and installed so as not to provide step bolts or ladders readily accessible to the public for a minimum height of eight(8) feet above the ground.
8. Signs: All signs, other than manufacturers or installers identification, warning signs or owner identification on a WECS tower, or other structure visible from any public road shall be prohibited. All signs shall comply with Sect. 6-5.10 of Town of Essex bylaws.
9. Equipment shelters: All equipment necessary for monitoring and operation of the WECS should be contained within the turbine tower. If this is not feasible, ancillary equipment may be located outside of the tower, provided it is contained either within an underground vault or enclosed within a separate structure which shall be screened from view by year-round landscape or vegetated buffer.
10. Abandonment: A WECS that is out of service for a continuous 12-month period will be deemed to have been abandoned and the Building Inspector may issue a Notice of Abandonment to the owner. The owner shall have the right to respond to the Notice of Abandonment within 30 days from receipt of the Notice. The Building Inspector shall withdraw the Notice and notify the owner of same if the owner provides information that demonstrates that the WECS has not be abandoned.
11. Removal: If the WECS is determined to be abandoned, the owner shall remove the WECS equipment at the owner's sole expense within 90 days of receipt of the Notice of Abandonment. If the owner fails to remove the WECS the Building Inspector may pursue legal action to have the tower and equipment removed at the owner's expense.

12. Building Mounted Units: Any WECS unit mounted on a building, intended to generate power, is excluded from the provisions of 6-6.9(1) and may be granted a building permit if the following requirements are met:

- a. The total height of the installed unit must not be more than 20% above the highest point of the building, and must keep in reasonable scale with the size of the building.
- b. The color of the unit must blend with the building and the surroundings.
- c. Noise and electromagnetic interference: The WECS and associated equipment shall conform to the provisions of the Massachusetts Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10) as measured at the nearest lot line. The applicant shall provide certification at his/her expense that the system will not cause electromagnetic interference as measured at the lot line. After the installation, if neighbors can demonstrate that there is interference the Building Inspector may order that the WECS be dismantled or modified to eliminate said interference.
- d. The WECS unit must be situated in a manner that minimizes shadow and flickering. The applicant has the burden of proving that this effect does not have an adverse impact on the neighboring or adjacent uses through either site placement or mitigation.

(n. WIND FARMS Section as shown in Warrant Article deleted in main motion.)

A motion by William Holton, duly seconded, to amend his main motion by deleting in his introduction the words "by adding after part k, parts l, m and n" and replacing them with "by adding the following new section:"

Amendment. Voted unanimously.

A motion by Clifford Ageloff was ruled beyond the scope of the article.

A motion by John T. Guerin, duly seconded, to amend both sections of 6-6.9 titled NOISE AND ELECTROMAGNETIC INTERFERENCE (5 and 12.c.) by adding at the end of the first and second sentences "unless said abutter(s) give written permission otherwise."

Amendment. Voted.

A motion was made and seconded to terminate debate.
Voted unanimously.

Main motion as amended. Voted by declared 2/3's vote.

ARTICLE 22

Motion by William Holton, duly seconded that the Town vote to amend Section 6-5.3 SUPPLEMENTARY HEIGHT PROVISIONS of the Zoning Bylaw as shown in Article 22 of the 2008 Annual Town Meeting Warrant, which reads as follows:

The provisions of this chapter governing the height of buildings shall not apply to chimneys, cooling towers, elevator bulkheads, skylights, ventilators, and other necessary appurtenances carried above the roofs, nor stacks or spires if not used for human occupancy and not more than 25 percent of the ground floor area of the building, nor to observation towers, television and radio towers and antennae, nor to churches or public or institutional buildings.

By inserting the term "wind energy conversion system WECS" between the words "observation towers" and "television"

The amended by-law will read as follows:

The provisions of this chapter governing the height of buildings shall not apply to chimneys, cooling towers, elevator bulkheads, skylights, ventilators, and other necessary appurtenances carried above the roofs, nor stacks or spires if not used for human occupancy and not more than 25 percent of the ground floor area of the building, nor to observation towers, wind energy conversion system WECS, television and radio towers and antennae, nor to churches or public or institutional buildings.

Voted unanimously.

ARTICLE 23

Motion by Michael Cataldo, duly seconded that the Zoning Bylaws be amended as shown in Article 23 of the Annual Town Meeting Warrant. (And printed below.)

To see if the Town will vote to amend Section 6-12 Flood Plain District by replacing Section 6-12 in its entirety with the following:

6-12.1 ESTABLISHMENT: The Floodplain District is established, effective July 17, 1986, as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- a. Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 3107, "Flood Resistant Construction")
- b. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00)
- c. Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)
- d. Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00)
- e. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5)

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30, V, and V1-V30 on the Essex Flood Insurance Rate Maps (FIRM), dated July 17, 1986 and revised July 230, 1998 and July 2, 1992, and as revised by letter(s) of map amendment, and Flood Insurance Study dated July 17, 1986, on file with the Town Clerk, Planning Board, and Building Inspector. The Essex Flood Insurance Rate Maps (FIRM) and the accompanying Essex Flood Insurance Study are incorporated herein by reference.

6-12.2 DEVELOPMENT REGULATIONS: The following regulations apply to the Flood Plain District.

- a. UNNUMBERED ZONE: Within any unnumbered Zone A, since the base flood elevation is not provided on the Flood Insurance Rate Map (FIRM), the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the building inspector for its reasonable utilization toward meeting the elevation or flood-proofing requirements, as appropriate, of the State Building Code. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is lesser, within unnumbered zone A.

- b. ZONE V: Within areas designated as coastal high hazard areas (Zone V), all development shall be located landward of the reach of mean high tide, since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash.
- c. ZONE V1-30: Man-made alteration of sand dunes within Zones V1-30, VE, and V which would increase potential flood damage are prohibited.
- d. SUBDIVISIONS: All subdivision proposals must be designed to assure that:
 - 1. Such proposals minimize flood damage
 - 2. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - 3. Adequate drainage is provided to reduce exposure to flood hazards.

6-12.3 NOTIFICATION OF WATERCOURSE ALTERATION

In a riverine situation, upon submission of the application to the Planning Board, evidence shall be provided that the following entities have been notified, in writing including copy of the application and plans, of a pending zoning permit to alter or relocate a watercourse:

- a. The adjacent communities of Gloucester, Hamilton, Ipswich, Manchester by the Sea
- b. National Flood Insurance Program (NFIP) State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104 and
- c. NFIP Program Specialist
FEMA Region 1,
99 High Street
6th Floor
Boston, MA 02110

6-12.4 CONDITIONS FOR REVIEW AND APPROVAL: The following standards shall be adhered to:

- a. The basement floor elevation for any structure having sustained living occupancy shall be at or above the base flood elevation as shown on the FIRM. Other structures shall meet the elevation or flood-proofing requirements, as appropriate, in accordance with 780 CMR, Massachusetts State Building Code. Within Zones A, where the base flood elevation is not shown on the FIRM, the applicant shall obtain any existing base flood elevation data as a basis for the elevation and flood-proofing requirements.
- b. Structures shall be so designed and secured that during flooding the foundation will not be undermined, or the structure will not be floated off, battered off, or swept away.
- c. There shall be no danger of pollution to the public or on-site water facilities because of the location or elevation of the building, filling of the area, or for other related reasons.
- d. The containment of sewage, the safety of gas, electric, fuel and other utilities from breaking, leaking, short-circuiting, grounding, igniting, electrocution or any other dangers due to flooding shall be adequately protected.
- e. Methods of drainage shall be adequate.

f. A professional registered engineer shall stamp and certify all plans and provide a written certification that all of the conditions for approval, per sub-section 6-12.4, have been satisfied with a particular notation that the project has been designed in such a manner that any encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood and any encroachment shall comply with the flood plain requirements of the State Building Code.

Motion by John T. Guerin, duly seconded, to delete Section 6-12.4 CONDITION FOR REVIEW AND APPROVAL in its entirety.

Motion made, duly seconded, to terminate debate. Voted – Declared 2/3's vote.

Vote on amendment. Chair in doubt on voice vote- Card Vote Passed 142 to 92

Motion by John T. Guerin, duly seconded, to add the words "if affected" at the end of 6-12.3a
Motion Failed.

Motion made, duly seconded, to terminate debate on main motion as amended.
Voted by declared 2/3's vote.

Main Motion as amended. Voted by declared 2/3's vote.

ARTICLE 24

Motion by Robert Fitzgibbon, duly seconded, that the Town vote to amend Section 6-5.5 of the Zoning Bylaws by retaining the first sentence, deleting the existing second sentence which begins with the word "Notwithstanding" and substituting therefore the text as shown in Article 24 on the Annual Town Meeting Warrant (and printed below):

More than one structure which is housing a permitted or permissible use may be erected on a single lot provided that yard and lot requirements of this chapter be met. Notwithstanding the preceding, a second structure which is a single family residential use may be erected on a single residential lot of at least 70,000 square feet in area which lot has had a residential structure in use for at least five years from the time of issuance of permanent Certificate of Occupancy and a third residential structure may be erected on a single lot of at least 110,000 square feet in area on a lot which has had two residential structures in use for a least five years from the time of issuance of permanent Certificate of Occupancy, provided that they house in the aggregate no more than three dwelling units, that lot area equal to that required for a single structure could be allotted to each structure, and that yard and lot coverage requirements of sections 6-6.2, RESIDENTIAL LAND USES - SINGLE FAMILY, and 6-6.3, RESIDENTIAL LAND USE, TWO FAMILY be met.

Each building must have access either jointly or separately by means of a driveway from the front lot line which is entirely within the lot. Any driveway must conform to the requirements of §6-5.14 and shall not be within 10 feet of a side or rear lot line, nor pass within 20 feet of residential structure which it does not serve.

Motion by John T. Guerin, duly seconded, to amend the motion to amend Section 6-5.5 of the Town of Essex Bylaws by deleting the words in the second paragraph "from the front lot line" and by adding at the end of the first sentence "s that it serves". And by adding a "comma" after the word "structure" in the last line and replace the words "which it" with the words "that such driveway".

The second paragraph will now read "Each building must have access either jointly or separately by means of a driveway which is entirely within the lots that it serves. Any driveway must conform to the requirements of Section 6-5.14 and shall not be within 10 feet of a side or rear lot line, nor pass within 20 feet of a residential structure, that such driveway does not serve.

Motion made and duly seconded, to terminate debate. Passed by declared 2/3's vote.

Amendment.

Voted.

Main Motion as amended.

Voted by declared 2/3's vote.

Article 25. BY-LAW CHANGE

Motion by Robert Fitzgibbon, duly seconded, that the Zoning Bylaws be amended as shown in Article 25 of the 2008 Town Meeting Warrant. (and printed below)

To see if the Town will vote to make the following amendments to Chapter 6 Zoning Bylaws, for the purpose of increasing clarity and congruence of the Town Zoning Bylaws with those enacted by the Commonwealth by adding to the present definition which reads:

6-3.38 Structure: Anything constructed or erected of more than one member requiring a fixed location on the ground.

The following sentence:

Structures which are exempted from requirement of a building permit by the Massachusetts State Building Code (780 CMR Section 110.3 Exemptions), shall also be exempt from requirement of a building permit by this Chapter.

Voted unanimously.

Article 26. BYLAW CHANGE – Administrative Review

Motion by Susan Scott Robinson, duly seconded, to indefinitely postpone action on this article.

Voted unanimously.

Article 27. BYLAW CHANGE - Appeal Procedure

Motion by Susan Scott Robinson, duly seconded, to indefinitely postpone action on this article.

Voted unanimously.

Article 28. BYLAW CHANGE – Building Permit

Motion by Susan Scott Robinson, duly seconded, to indefinitely postpone action on this article.

Voted unanimously.

Article 29. BYLAW CHANGE – Site Plan Review

Motion by Robert Fitzgibbon, duly seconded, that the Zoning Bylaws be amended as shown in Article 29 of the 2008 Annual Town Meeting Warrant. (and printed below).

To see if the Town will vote to make the following amendments to Chapter 6 Zoning Bylaws, for the purpose of increasing clarity and congruence of the Town Zoning Bylaws with those enacted by the Commonwealth by deleting the severability clauses of SITE PLAN REVIEW: SPECIAL PERMITS. 6-6.12.5 SEVERABILITY, and WATER RESOURCE PROTECTION DISTRICT, 6-13.3d. Severability, which read:

Each provision of this by-law shall be construed as separate to that end, that if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect.

And adding that same deleted section on severability to:

6-2 PURPOSE: This chapter is enacted in accordance with the provisions of Chapter 40A, Massachusetts General Laws, for the purpose of promoting the health, safety, and welfare of the inhabitants of the town.

as:

6-2A SEVERABILITY: Each provision of this Bylaw shall be construed as separate to the end that if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect.

Motion by Edward Neal to amend main motion was ruled beyond the scope of article.

Main motion. Voted by declared 2/3's vote.

Moderator Lane recused himself and Deputy Moderator Madsen presided for rest of Articles.

Article 30. BY-LAW CHANGE. Agricultural District

Motion by Peter Kellerman, duly seconded, that Essex By-law be amended as shown in Article 30 of the 2008 Annual Town Meeting Warrant (and printed below) and that when vote is taken, it be taken by secret ballot.

To see if the Town will vote to Amend Chapter 6 the Zoning Bylaws by adding:

6-14 RESIDENTIAL-AGRICULTURAL DISTRICT

6-14.1 PURPOSE.

The purpose of the Residential-Agricultural District is to ensure preservation of the unique scenic open spaces of Essex. Vistas of hayfields, pastures, woods, salt marsh and wetlands help define the rural character of Essex, encourage tourism and the tourist-dependent economy, as well as enhance the quality of life for all citizens of Essex.

6-14.2 RESIDENTIAL-AGRICULTURAL DISTRICT DELINEATION.

The boundaries of the Residential-Agricultural District are shown on a plan entitled "Residential-Agricultural District", dated 1/28/08, filed with the Essex Town Clerk and incorporated herein by reference (the "District Map").

The Residential-Agricultural District shall be considered to be superimposed over any other existing districts, e.g. Wetlands, Flood Plain, Water Resource Protection.

6-14.3 RESIDENTIAL-AGRICULTURAL DISTRICT USES:

Only the following uses are allowed in the Residential-Agricultural District:

- a. Residential Land uses, single family, as regulated by Section 6-6.2 of the Zoning Bylaw.
- b. Residential Land uses, two family as regulated by Section 6-6.3 of the Zoning Bylaw.
- c. Single and two-family dwelling units erected under Section 6-5.5 of the Zoning Bylaw.
- d. Agricultural Land uses (as defined by MGL Chapter 128, Section 1A).
- e. Land retained predominantly in its natural, scenic, or open condition for purposes of land or water conservation, wildlife habitat, drainage, erosion control, flood control, or passive outdoor recreation.
- f. Wind Turbines, as regulated by Section 6-6.9 of the Zoning Bylaw.

6-14.4 Any nonconforming preexisting use is permitted in accordance with M.G.L. Chapter 40A, Section 6.

A motion by Marian Keeler to amend main motion was ruled beyond scope of article.

A motion was made and duly seconded to terminate debate.
Voted by declared 2/3's vote.

The vote on request to have secret ballot was declared passed by 20% or more of voters present.

Results of secret balloting:	Yes	153
	No	99
Two-thirds vote required.	Motion failed.	