

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
C.A. NO.

KENNETH and JOAN CASTINO, DONALD and MARY NEVES, )  
JOHN and GERALDINE AYLWARD, NOBERTO and )  
ISAURA PACHECO, DAVID COSTA, EDWARD and )  
MICHELLE BRITO, MICHAEL and BETH ARGUIN, LEONEL and )  
DORINDA AMARAL, MARIO and RAQUEL RIBEIRO, )  
ROBERT and LINDA GONSALVES, JAIME and )  
JEAN SALGADO, BRIAN DUPRE and DEVAN VINCENT, )  
SUSAN IBRAHIM, BARRETT HURWITZ, RICHARD C. )  
BORGES, SR., MARK and ANNE MARIE DESORCY, and )  
MICHAEL and PAULA MEDEIROS )  
Plaintiffs )

Vs. )

LARA H. STONE, WILLIAM J. TRIMBLE, JOSEPH )  
MICHAUD, NATHALIE L. DIAS and MICHAEL P. )  
WATSON as they are Members of the Select Board of the )  
TOWN OF DARTMOUTH and the TOWN OF DARTMOUTH, )  
Defendants )

**PLAINTIFFS' COMPLAINT**

**INTRODUCTION**

This action is brought pursuant to M.G.L. c. 40A, Section 19 and M.G.L. c. 231A.

Plaintiffs are property owners and residents of Dartmouth, Massachusetts who are

negatively affected by the issuance of a special permit granted by the Town of

Dartmouth, to itself on January 6, 2010. Said special permit relates to the construction

and operation of two wind turbines that, if constructed, will be the largest and highest

in the Eastern United States.

Defendants have acted under a newly enacted zoning by-law that is ambiguous,  
conflicted and opposed to principles of Massachusetts state zoning law. Defendants  
have also failed to follow the procedures set forth in said by-law, including notice  
requirements required by state and local law for the processing of special permits.  
Further, the defendants' application for zoning relief was improperly delegated and/or  
not properly authorized by the defendant Select Board which effectively transferred its  
responsibilities to a so-called Alternative Energy Committee. Neither said Committee  
nor the Town Executive Administrator had legal authority to apply for the special  
permit at issue in this case. )

**PARTIES**

1. The plaintiffs, Kenneth and Joan Castino, own and occupy residential real estate located at 4 Longmeadow Road, Dartmouth, Massachusetts.
2. The plaintiffs, Donald and Mary Neves, own and occupy residential real estate located at 581 Chase Road, Dartmouth, Massachusetts.
3. The plaintiffs, John and Geraldine Aylward, own and occupy residential real estate located at 656 Chase Road, Dartmouth, Massachusetts.
4. The plaintiffs, Noberto and Isaura Pacheco, own and occupy residential real estate located at 589 Chase Road, Dartmouth, Massachusetts.

5. The plaintiffs, David Costa, owns and occupies residential real estate located at 727 Chase Road, Dartmouth, Massachusetts.
6. The plaintiffs, Edward and Michelle Brito, own and occupy residential real estate located at 949 Russells Mills Road, Dartmouth, Massachusetts.
7. The plaintiffs, Michael and Beth Arguin, owns and occupies residential real estate located at 941 Russells Mills Road, Dartmouth, Massachusetts.
8. The plaintiffs, Leonel and Dorinda Amaral, own and occupy residential real estate located at 749 Chase Road, Dartmouth, Massachusetts.
9. The plaintiffs, Mario and Raquel Ribeiro, own and occupy residential real estate located at 775 Russells Mills Road, Dartmouth, Massachusetts.
10. The plaintiffs, Robert and Linda Gonsalves, own and occupy residential real estate located at 537 Chase Road, Dartmouth, Massachusetts.
11. The plaintiffs, Jaime and Jean Salgado, own and occupy residential real estate located at 779 Russells Mills Road, Dartmouth, Massachusetts.
12. The plaintiffs, Brian Dupre and Devan Vincent, own and occupy residential real estate located at 957 Russells Mills Road, Dartmouth, Massachusetts.
13. The plaintiff, Susan Ibrahim, owns and occupies residential real estate located at 38 Pembroke Drive, Dartmouth, Massachusetts.

14. The plaintiff, Barrett Hurwitz, owns and occupies residential real estate located at 531 Chase Road, Dartmouth, Massachusetts.

15. The plaintiff, Richard C. Borges, Sr., owns and occupies residential real estate located at 567 Chase Road, Dartmouth, Massachusetts.

16. The plaintiffs, Mark and Ann Marie Desorcy, own and occupy residential real estate located at 8 Pembroke Drive, Dartmouth, Massachusetts.

17. The plaintiffs, Michael and Paula Medeiros, own and occupy residential real estate located at 521 Chase Road, Dartmouth, Massachusetts.

18. The defendant, Town of Dartmouth, is a Massachusetts municipality with a principal place of business 400 Slocum Road, North Dartmouth, Massachusetts.

19. The defendant, Laura H. Stone, is a Member of the Select Board (and Special Permit Granting Authority (SPGA)) which granted the special permit at issue in this case. She resides at 53 School Street, Dartmouth, Massachusetts.

20. The defendant, William J. Trimble, is a Member of the Select Board (and Special Permit Granting Authority (SPGA)) which granted the special permit at issue in this case. He resides at 201 Hicksville Road, Dartmouth, Massachusetts.

21. The defendant, Joseph Michaud, is a Member of the Select Board (and Special Permit Granting Authority (SPGA)) which granted the special permit at issue in this case. He resides at 31 Sales Farm Lane, Dartmouth, Massachusetts.

22. The defendant, Nathalie L. Dias, is a Member of the Select Board (and Special Permit Granting Authority (SPGA)) which granted the special permit at issue in this case. She resides at 20 Highland Street, Dartmouth, Massachusetts.

23. The defendant, Michael P. Watson, is a Member of the Select Board (and Special Permit Granting Authority (SPGA)) which granted the special permit at issue in this case. He resides at 59 Slocum Farms Lane, Dartmouth, Massachusetts.

24. All plaintiffs listed above are abutters, or abutters of abutters within three hundred feet of the Town of Dartmouth real estate that is the subject of the special permit that is challenged in this case. All said plaintiffs are in varying ways harmed by the defendants' issuance of a special permit in this case. The process utilized by defendants deprived plaintiffs of the objectivity in decision making required by state zoning law.

25. Plaintiffs Hurwitz, Borges, Robert and Linda Gonsalves, Donald and Mary Neves and Norberto and Isaura Pacheco own recorded easements for passage on Town land that is included in defendants' Site Plans for the Wind Project. Notwithstanding said ownerships, in violation of their easement rights, and in violation of the notice provisions of M.G.L. c. 40A, defendants illegally proceeded with the issuance of the special permit without notice to them and in derogation of plaintiffs' respective easement rights.

26. Plaintiffs were not properly notified of the special permit application, and/or amendments thereto, pursuant to state law, and they were therefore denied correct process of law by the defendant Town's actions.

27. The process followed by defendants in conceiving, considering and deciding on the placement of the two wind turbines on Town property was also legally flawed in the following respects:

a. The utilization of a so-called Alternative Energy Committee (AEC) improperly allowed the Committee to decide matters of policy and land use that are legally vested in the Select Board under Massachusetts law and the Dartmouth Town charter. Further said Committee improperly included members of a so-called Technical Research Board. The defendant Select Board thus acted as policymaker and manager, and adjudicator in the process that concluded with the issuance of a special permit at issue in this case. Said process deprived plaintiffs of objectivity required by state zoning law.

b. The special permit decision incorrectly states that no business structure is in the "clear zone," i.e., within a perimeter where the tower structures could fall. In fact, a substantial Town building and facility (water filtration plant) and monitoring wells are located within the "clear zone." In this respect, the special permit expressly violates the zoning by-law.

c. On information and belief, one or more Select Board persons discussed with on another, and decided their votes before the public hearing and caused a favorable decision to be written prior to a vote being taken by the Select Board as SPGA. This process violated G.L. c. 40A and other state law.

**COUNT I – M.G.L. c. 40A, §17**  
**Appeal of Special Permit**

28. The plaintiffs repeat and reaver their allegations contained in paragraphs 1 through 27 above as if expressly rewritten and set forth herein.

29. Plaintiffs are persons aggrieved by the actions of the defendants pursuant to M.G.L. c. 40A, Section 17.

30. The actions and decision of the defendant Members of the Select Board herein cited exceed their authority as Members of the Select Board.

31. The defendant Members of the Select Board held a public hearing continued to January 6, 2010. At the close of the hearing, the Members of the Select Board granted the Town of Dartmouth's petition for relief. The decision was filed by the Members of the Select Board with the Town Clerk on January 6, 2010, with a Notice of Decision filed with the Town Clerk on January 8, 2010.

32. Attached hereto as Exhibit A is a certified and attested copy of the defendant Members of the Select Boards' action and decision on the special permit from which this appeal is taken.

33. The Select Board's decision (Exhibit A) is invalid, it interpreted the by-law incorrectly, and it exceeds the legal authority of the defendant Board.

34. Further said decision (Exhibit A) is unreasonable, arbitrary, capricious and/or unsupported by substantial evidence.

35. The Select Board's decision (Exhibit A) should be annulled and/or reversed.

36. On information and belief, the application for a special permit was not properly signed, and the decision was not properly signed and created by at least four members of the Select Board/SPGA.

**WHEREFORE**, plaintiffs request the following relief:

1. That the Court annul and/or reserve the Select Board's decision (Exhibit A); and
2. That the Court award such other relief deemed just and proper.

**COUNT II**  
**Declaratory Judgment**

37. The plaintiffs repeat and reaver their allegations contained in paragraphs 1 through 27 and paragraphs 28 through 36 of Count I above as if expressly rewritten and set forth herein.

38. The manner in which the defendant Town of Dartmouth and its by-law initiated, developed, considered and decided an issuance of a special permit in this case improperly involved the Select Board as adjudicator or SPGA. Under the circumstances, the policy and letter of G.L. c. 40A was violated by having the Select Board issue a permit to itself as



sole manager and controller of Town land. A separate Town Board should have decided on the issuance of special zoning relief in this case.

39. The defendant Select Board acted arbitrarily in deciding to authorize and/or undertake an object third-party review and declining to require §§34.805 of the by-law (application filing requirements).

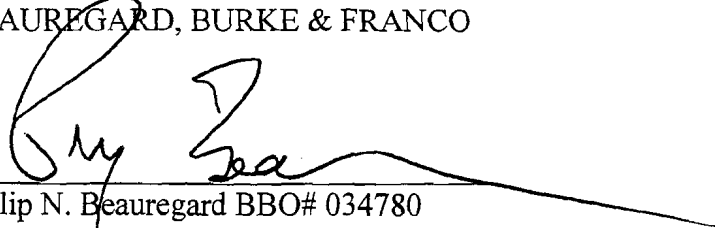
**WHEREFORE**, plaintiffs request a declaratory judgment that defendants' actions violated their rights as property owners and citizens and taxpayers of the Town of Dartmouth.

Respectfully submitted,

The Plaintiffs

By their Attorneys,

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