

**Town of East Kingston, New Hampshire**  
**Zoning Board of Adjustment Meeting Minutes**  
**February 8, 2007**

AGENDA

7:30 PM Motion for rehearing filed on behalf of Kendridge Farm, LLC c/o Monique Waldron, 285 N. Haverhill Road, Kensington with respect to the ZBA's decision to grant a variance to Industrial Tower and Wireless, LLC and Co-Applicant Cingular Wireless from Article XV, Section D2 - USE Districts for construction of a 180" monopole and equipment area in a Residential Zone.

Members Attending: Vice Chairman David A. Ciardelli, Norman J. Freeman, Peter Riley  
Alternate Members: Catherine Belcher, Paul Falman  
Acting Town Counsel Peter Loughlin, Attorney

Vice Chairman Ciardelli opened the meeting of the East Kingston Zoning Board of Adjustment at the East Kingston Town Hall on January 8, 2007, at 7:30 PM with regards to a Motion for Rehearing filed on behalf of Kendridge Farm, LLC, c/o Monique Waldron, 285 N. Haverhill Road, Kensington with respect to the ZBA's December 19, 2006 decision to grant a variance to Industrial Tower and Wireless, LLC and Co-Applicant Cingular Wireless from Article XV, Section D2 - USE Districts for construction of a 180" monopole and equipment area in a Residential Zone. This hearing was not open for public comment and no testimony or written comments will be accepted, but the public is invited to attend. Mr. Ciardelli explained that the height of the monopole is now 160'.

Mr. Ciardelli introduced Attorney Peter Loughlin, who would be sitting as Town Counsel for the duration of this case. He explained that Mr. Loughlin would be in an advisory capacity to the Board during the meeting.

Mr. Ciardelli stated that he had read every word of the Motion for Rehearing and addressed some items contained within. The first part addresses allegations of procedural errors, technical errors and oversights and possible mistakes.

Mr. Ciardelli explained the reason Chairman John Daly was not chairing the meeting. Mr. Daly is a member of a large law firm, and at some point after both the initial ZBA meeting in May and the Motion for Rehearing, but before the December 19<sup>th</sup> ZBA meeting, Mr. Daly had learned that the parent company of the wireless company that is at issue here was involved with his law firm. When he became aware of it, and in an effort to make sure there was no perception or appearance of conflict of interest, he welcomed Mr. Ciardelli to chair the next meeting.

Mr. Loughlin explained that he was brought in to represent the Town in the previous appeal, which resulted in this remand. He further explained that when Mr. Daly had found out one of his partners represented a sister corporation of Cingular Wireless, he had contacted him and they discussed whether it was a disqualifying event for Mr. Daly. It was decided to disclose the information and Mr. Loughlin contacted Mr. Sumner Kalman, who represented the abutters at the time.

Mr. Ciardelli referred to the Board of Adjustment Handbook as the bible the Board goes by when figuring out legal issues relative to the ZBA. There are numerous court rulings, which are hard to understand at times, so they are put in the Handbook in language that the Board, as Town Officials, can understand and interpret.

Mr. Ciardelli explained that the public had heard much about what it takes for a variance at the last meeting, especially about the five points. He stated that there was some language he wanted to read from that handbook so that the attending public would know what the Board was dealing with, and also so that the Board would know what their charter was for this evening's meeting. Mr. Ciardelli read:

*"A person has a right to apply for a rehearing and the board has the authority to grant it. However, the board is not required to grant the rehearing and should use its judgment in deciding whether justice will be served by so doing. In trying to be fair to a person asking for a rehearing, the board may be unfair to others who will be forced to defend their interests for a second time"*

Mr. Ciardelli stated that in a small town, what you are required to do when you sit on a Board is to make an objective decision based on input from different individuals. One of the requirements to sit on the Board is to be a resident of the Town, and to say that you can do that without knowing some of the residents is almost impossible. He himself lives on the other end of Giles Road from the Marston's and since he has worked out of Town for all the years he has served on the Board, he barely knows anyone else living on the road. He feels for this reason he can be objective about the decisions he makes.

Mr. Ciardelli stated he had worked for the Department of the Air Force for 26 years, and they have a cornerstone of core values that becomes ingrained in everyone who is either in the Air Force or is employed by them. The first of those core values is *Integrity First*; the second is *Service before Self*.

He explained that when you walk into this room and take on a civic duty, you put on a different hat. If you have a friendship with someone else or knowledge of some other issue, you take on a different responsibility. He believes that he has done that, and his experience with the other members on this Board is that they have also done that.

Mr. Daly has, as Town Counsel, stepped aside numerous times and Mr. Ciardelli has chaired those meetings where there was a perceived conflict of interest. Mr. Ciardelli asked that the whole conflict of interest, integrity issue be put aside, as he completely trusts the integrity of the Board members to make good decisions and side step any conflict of interest.

Mr. Ciardelli explained that there were two basic issues here tonight; was there a mistake made and is there new information? There are most likely a lot of people thinking that the ZBA has made a mistake, depending on which way their perspective is on the issue.

He personally did not agree with everyone's vote, but that does not mean that the Board did not go through the process fairly. Disagreeing with the outcome does not necessarily mean a mistake was made. As far as new information is concerned, it is information that was not available when the last meeting was conducted. The packet of information the Board received was good information, most of it addressing property evaluations in different towns by different appraisers. It was available, but the Board did not see it at the last meeting. What is up for discussion by the Board tonight is if they should address the new information and include it, and can they do a better job. The goal is not to prove someone wrong or right, it is to do the right thing.

Mr. Ciardelli asked the Board members for discussion on the matter.

Mr. Falman stated that a number of appraisals included in the appeal addressed a project in North Hampton. Depending on what you read and if you took for face value what was being given to you, you could easily swing either way in reading the information as to whether it does or does not affect property values. Mr. Falman stated that the majority of the people living on Giles Road are concerned there will be a decline in their property values.

The appraisal from Rauseo and Associates declared, *"If the tower view is other than the primary view from the residence, its impact on sale price is limited."* It also said, *"The impacted residential properties generally experienced longer marketing times. In short, prospective buyers of these properties either overlooked the negative influence of the tower and paid market value for the property without discounting, or no longer considered the property."*

This basically says unless you have a direct view, unless it is your primary view, this real estate associate felt that the impact of a cell tower was quite negligible on property values. This appraisal was included in the packet in which other appraisers felt that, in some cases, property values may have declined.

Mr. Falman stated it is a matter of opinion and a person's desire to sell their property in a timely manner whether or not it will have a negative impact on property value for them. None of the Board members are experts and have to rely on the information presented to them, and both sides of the spectrum are shown. There is conflicting information even in what was submitted in the appeal.

It is Mr. Falman's conclusion that cell towers do not directly affect the property values of the majority of the abutters. It may have some influence and impact on a few, but the overall property values will not be impacted because it is not their primary view.

Mr. Riley disagreed and considered it a misapplication of the analysis provided in the appeal. He thought several real estate appraisals clearly demonstrated there would be a decline in property values.

Mr. Riley stated that his firm was just successful in acquiring a variance for a tower in Seabrook, which was contrary to the ordinance there. He stated that there are a number of other technologies available that would be less objectionable; they were more costly at this time, but will be less costly 5-10 years from now. In this case, he felt the applicant had a golden egg as they would have around \$6,000 a month in income they could look forward to for as long as their lease is with Cingular. Ultimately, as the new technologies and systems are successful, those lease agreements will not be financially beneficial to landowners as they are more geared to telephone poles, and companies that provide electrical services. Mr. Riley does think that implicit in the requirements the Board has to analyze is what the least objectionable alternative that can be used would be.

Mr. Falman said that one of the contentions was that the Board did not discuss the issue at the last meeting. He personally knew that they had discussed it at the first meeting and therefore did not bring it up again. He wanted to know if it could have been a mistake on the Board's part that they did not bring it up again at the last meeting in December.

Mr. Loughlin stated that the petitioner had alleged that the Board referred back to what had happened in May, and indicated that they thought that was improper. He did not think that referring back in a case that was continuing and just remanded is, in itself, improper. He stated that usually when you get a remand, you want to announce that you are back bearing something that was brought up before. You do not have to reinvent the wheel; a lot of the information has been heard and you are also open to hear any new information. You cannot purge what you have already heard from your mind, and you have the right to rely on it. If the Board feels that particular issue has been covered, the Board can point to that, and can decide tonight or at any point whether the issue was adequately covered.

Mr. Ciardelli stated that the motion also mentioned the Telecommunication Act. He reiterated that the only point he had touched upon at the previous meeting was that there had been mention of RF emissions as being a reason to deny the construction of the tower. The Telecommunication Act directly prohibits the Board from using RF emissions as a reason to deny the tower.

The motion also went into all the criteria for granting the variance. Mr. Ciardelli stated that at that last hearing, the Board had discussed those points for a long time. All of the points were hit upon and although there had been differences in opinion of the members of the Board, the Board voted to grant the variance.

One of the things that concerned Mr. Ciardelli was the term "*rush to judgment*" in the motion. The appraisal people spent a lot of time in court dealing on issues just like this one. This matter was new to him, and although the Town has an ordinance, this issue was new; the Board had never dealt with anything of this scale before.

In all the years he has been on the Board, Mr. Ciardelli cannot remember ever extending a meeting, so it was not a natural assumption to continue the meeting. He took responsibility for the December meeting running as long as it did; he did not anticipate that it would run so late.

There had been a concern that there have been improprieties outside of the Town offices, so Mr. Ciardelli thought he would carry the December meeting through. He explained that nothing went on that the public did not see at the meeting. Was it a rush to judgment; could the Board have done a better job? Maybe it was within the ZBA's jurisdiction to ask for alternatives. He did not even think to ask those questions, thinking it was more of a Planning Board issue. Mrs. Belcher agreed that she also thought it was a Planning Board issue.

Mr. Freeman offered that he thought the Board was to deal with what was presented to them, and it was not up to them to ask for alternatives. Mr. Ciardelli agreed he thought the same way; if you deny Plan A, then it forces the applicant to investigate Plan B.

Mr. Riley said that in light of Mr. Daly's recusal, he had not been sure if the original materials supplied by him would create a problem or not. His recollection of the first meeting was that Mr. Falman seemed to have been swayed by some of the documents Mr. Daly had submitted to the Board prior to the original hearing.

Mr. Ciardelli stated he took that to mean that Mr. Daly had an "angle", and he did not for a moment believe that to be true. He did not believe that the information was presented to the Board with any ulterior motive.

Mr. Riley rebutted that he did not say anything that remotely inferred that there had been any ulterior motive by Mr. Daly.

In that particular piece of property, there wouldn't be a fair and substantial relationship between the set back. Realistically, the setback is trying to get buildings back from the travel portion of the road. There is something unique about this piece of property, and it doesn't need to apply. There is not a fair and substantial relationship.

Mrs. Belcher answered that she was now comfortable that she understood that criteria.

Mr. Riley stated that he had always looked at it as the restriction does not substantially promote the ordinance.

Mr. Ciardelli advised the Board that they now needed to consider if there were grounds for a rehearing.

Mrs. Belcher stated that she had thought that exhausting all the alternatives to the monopole had been the responsibility of the Planning Board. She was also not convinced either way on the property values, given the information provided, and perhaps the Board could have gone slower in their decision. She thinks these three items are grounds for a rehearing.

Mr. Ciardelli asked for a Motion.

**MOTION:** Mrs. Belcher **MOVED** the Zoning Board grant the Motion for Rehearing; Mr. Ciardelli seconded.

Mr. Riley, Mr. Ciardelli and Mrs. Belcher voted yes, for a total of three votes. The rehearing is granted.

The meeting was adjourned at 8:30 PM.

Respectfully Submitted,

**Barbara White**

Barbara White  
Recording Secretary

David Ciardelli  
Vice Chairman

Minutes approved on August 23, 2007