

**Town of East Kingston, New Hampshire**  
**Zoning Board of Adjustment Meeting Minutes**  
**April 26, 2007**

**AGENDA**

**7:30 PM** Re-hearing on behalf of Kenridge 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 & Wireless, LLC and Co-Applicant Cingular Wireless from Article XV, Section D2 – USE Districts for construction of a 160" monopole and equipment area in a Residential Zone.

**Members Attending:** Vice Chairman David Ciardelli, Norman J. Freeman,  
**Alternate Members:** Catherine Belcher, Paul Falman, Tim Allen  
**Acting Town Counsel:** Peter Louglin, Attorney

Also present were Mr. Don Cody, Director of Operations, Industrial Wireless and Communications, LLC; Mr. John Champ, Site Acquisition Specialist, Industrial Tower & Wireless; Mr. Barry Hobbins, representing Industrial Wireless & Communications; and Mr. Bernard W. Pelech, Attorney for Mr. & Mrs. Marston.

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 regard to a Motion for Rehearing filed on behalf of Kenridge Farm, LLC, c/o Monique Waldron, 285 N. Haverhill Road, Kensington with respect to the ZBA's February 8, 2007 decision to grant a variance to Industrial Tower & Wireless, LLC and co-applicant Cingular Wireless from Article XV, Section D2 – Use Districts for construction of a 160" monopole and equipment area in a Residential Zone.

Mr. Ciardelli informed the public he would go over the background of how the Board got here tonight, what they have been doing since the last ZBA hearing on 8 February 2007, and the goals for tonight's meeting. He explained that the date of this hearing was decided on so as not to lose the time slot. Mr. Ciardelli also informed the public that this meeting would be largely procedural in nature, with a goal of smoothing out details that would lead to an open-forum discussion on the merits of the case resulting in a vote on the variance application at another hearing.

Mr. Ciardelli reviewed the background of this application:

*How we got here tonight.* On February 8, 2007, the Zoning Board of Adjustment (ZBA) granted a re-hearing on Industrial Tower & Wireless, LLC and co-applicant Cingular Wireless's application for a variance from East Kingston's Zoning Ordinance, Article XV, Section D.2. "use districts". The applicant sought permission to construct a 160' monopole and equipment area in a residential zone.

Per the 8 February 2007 minutes, this decision was based largely on three issues:

- the ZBA's concern that neither East Kingston's ZBA nor the Planning Board had seen that all alternatives to the proposed monopole had been exhausted (a requirement of East Kingston's Zoning Ordinance, Article XV, B.4.);
- the analysis of the potential negative effect on neighboring property values (a New Hampshire variance criteria) had not been definitely resolved in the eyes of the Board, and
- it was mentioned the fact that Board could possible have gone slower in reaching its decision.

*What the Board has been doing since 8 February 2007.* It has become evident through submitted documents, our own research and input from our Town Counsel, that many municipalities in New England employ a consultant RF Engineer to help their Boards understand the complexities of wireless communications. The bulk of the time since our last meeting has been absorbed in locating and contacting RF Engineers. We now have the names and resumes of two qualified individuals whom are willing to work for the Town on this case.

Since the opposing parties nominated different individuals, an objective process for choosing the consultant was decided upon. The resumes were "sanitized", removing their names and thereby eliminating Board member's

knowledge of who nominated whom. The resume headings now reflect RF Consultant A and RF Consultant B, and the consultant will be chosen through a majority vote of the Board. Obviously, both consultants are quite qualified, and through e-mail correspondence, the Board has been ensured that either of them would be willing to work for the Town.

The resumes were distributed to the Board members yesterday to afford them an opportunity to review and familiarize themselves with the qualifications of the two consultants. They can now judge those qualifications against the objectives the Board needs them to accomplish and make an informed decision on which would be the best candidate to accomplish the expectations of the Board. Mr. Ciardelli explained that he had put together a statement of objectives of what the Board would like the RF Consultant to do.

**Remaining issues for the Board tonight:** This includes discussion of the escrow agreement (to guarantee payment of Town's expenses in review of the project); scheduling of a balloon test; scheduling dates for submission of materials to the RF Consultant for review; scheduling the date of the next public hearing; and any other relevant matters.

Mr. Ciardelli explained that the Board wanted to accomplish as much as they could tonight and not lose another month. This will enable the Board to make educated judgments on everything heard. The abutters and their attorneys, and the attorneys for Industrial Tower are well aware that there has been much communication between their attorneys and Town Counsel and they are up-to-date on what has taken place. If anyone has any comments regarding the selection process for the RF Engineers, they are welcome to ask. Mr. Cody stated that he would reserve that right until he heard the Board's discussion on the choice.

Mr. Ciardelli explained that he was the only one on the Board who knew who nominated which consultant, and stated because of this knowledge, he would not participate in the consultant selection process. After discussion, the Board would have a majority vote to choose the consultant they thought best fit the needs of the Town.

The objectives the Town would like the consultant to provide include reviewing the relevant parts of East Kingston's Zoning ordinance; performing technical review of current application and other documents relating to the history of the case; including Radio Frequency (RF) coverage and/or capacity; performing analysis of propagation maps of existing and proposed telecommunications coverage in East Kingston; examining compliance with FCC human exposure guidelines; providing analysis of technical issues associated with the Telecommunications Act of 1996; performing evaluation of the subject site; performing evaluation of possible siting alternatives; and providing expert opinion and testimony if necessary.

Mr. Ciardelli opened the discussion regarding *RF Consultant A* and *RF Consultant B* to the Board.

**Paul Falman.** Mr. Falman asked why the names were blanked out, indicating even if the names were on the resumes he would have no way of knowing who submitted which name. Mr. Ciardelli explained he had thought it the fairest way in the event someone on the Board might be able to tell which was which, and he was trying to eliminate the question of any type of favoritism.

Mr. Falman thought although both consultants seemed to be quite qualified, in his opinion, Consultant B seemed to meet the objectives of the Board as he has assisted with other Boards in the past and they were looking for someone with that type of experience. Mr. Falman referred a particular section of the resume that stated of the consultant's experience, "he has been retained to perform terrain analysis coverage and propagation modeling, and spectrum compliance and coverage testing." Mr. Falman stated this was one of the issues before the Board because of the topography of the property. It is Mr. Falman's opinion that *Consultant B* stands above Consultant A in applicable relative experience.

**Catherine Belcher.** Mrs. Belcher agreed with Mr. Falman and was impressed with Consultant B's municipal experience. His resume indicated he has been employed by local state and retail entities, and conducts workshops. Mrs. Belcher felt comfortable with the fact he seemed to be more in line with all the aspects the Board was looking for in that Consultant B had helped other boards with their questions. Although both candidates were qualified, it seemed that Consultant A's experience has been mostly corporate. She felt if the consultants had known just what it was that the Board needed, they might have worded their resumes differently and perhaps the choice could have changed. Because of the expertise he has demonstrated, Mrs. Belcher's choice is *Consultant B*.

**Norman Freeman.** Mr. Freeman also agrees that Consultant B is the best choice. He thinks he would be the better choice because he has the most municipal experience. Although Mr. Freeman agrees that both candidates are certainly qualified, his choice is *Consultant B*.

**Tim Allen.** Mr. Allen agrees that Consultant B has a wider range of projects he has worked on, and touched much broader work with many Boards. The experience this person brings to this decision would be extremely valuable. It seems that Consultant B has more engineering, government, and Town experience; Consultant A seems more corporately motivated. For those reasons, Mr. Allen chooses *Consultant B*.

Mr. Ciardelli reminded everyone that the consultant chosen would be representing the Town. The Town already has an expert Town Counsel on land use and affairs; the expert RF Consultant chosen will represent the Town to help the Board make an educated decision.

Mr. Ciardelli called for a vote of the Board.

The vote was 4-0 for Consultant B, for a unanimous vote. Consultant B is Mark F. Hutchins from Brattleboro, Vermont.

Mr. Cody asked if the Board had estimates from the consultants. Mr. Ciardelli answered that both consultants had given comparable estimates of between \$3,000-\$3,500.

Atty. Loughlin, Acting Town Counsel, pointed out that the lawyers for both the applicant and the abutters have received all the same information the board has on the two consultants. He had solicited names from both the applicant and the abutters, along with names Mr. Ciardelli had offered. From those names submitted, the two consultants were chosen on their ability to represent municipalities. Either consultant would have been qualified.

**Balloon Test.** Mr. Ciardelli stated that the next item on the agenda was to schedule a balloon test. As there had been controversy concerning the previous balloon test, the Board had decided to have another test conducted in *leaf-off* conditions. He thought the leaf-off conditions would be good for things down low such as houses and was not sure it would make much difference for the tower issue. The test would need to be scheduled very soon, within the next week or so, to take advantage of *leaf-off* conditions.

Mr. Cody agreed that it needed to be done soon to be in *leaf-off* season, and inquired if it was possible to coordinate the Board's balloon test with the one Industrial Tower needed to conduct for the NH Historical Commission. If that were not an option, he would be glad to schedule it for whenever the Board requested. He was not sure what the noticing requirements for New Hampshire were, and Mr. Ciardelli answered he thought they would have no problem getting the word out quickly. Mr. Cody was amazed at how much ahead of Massachusetts the trees were in New Hampshire. He asked Mr. Ciardelli when they would like to schedule the test.

Mr. Ciardelli stated that the Board's goal was to turn over every stone and make sure they have not sidestepped any issue. Mr. Ciardelli inquired if the coming weekend was a good time. Mrs. Waldron had a comment.

**Mrs. Monique Waldron, 285 North Haverhill Road, Kensington.** Mrs. Waldron stated that the Historic Commission required a 7-day notice. The Division of Historic Resources is coordinating the Section 106 Review.

**Mr. Tim Berry, 285 North Haverhill Road, Kensington.** Mr. Berry asked if Mr. Ciardelli had seen the letter sent by the NH Historical Commission; he stated it was very enlightening. He reported that Industrial Tower was to conduct a balloon test in early March in leaf-off conditions and expand the radius to 1 ½ miles as per the Historical Commission.

Mr. Ciardelli explained that this was the first opportunity that the Board had to meet and talk about the balloon test. Mrs. White, ZBA secretary, informed the Board that there was a lead time for the deadline in which to submit legal notices to the newspaper. She did not have the schedule with her and would check Friday, but thought it possible to get the notice in to the paper by noon on Friday for publication on Tuesday. Atty. Loughlin asked what newspaper was used and how often it ran. Mrs. White stated they used the Exeter Newsletter and that editions came out on Tuesdays and Fridays.

Atty.Loughlin stated that there appeared to be two separate issues; the Board's interest in having a balloon test and the State requirement for a balloon test. Even though it may be in the applicant's interest that both requirements be satisfied at the same time, that issue was not the Board's concern. Since this was a legally noticed meeting, it would be within the Board's right to state at this meeting that there was to be a balloon test scheduled on a certain date and that would serve as notice to those present who have an interest.

*Attorney Bernard W. Pelech.* Atty. Pelech agreed with Atty.Loughlin that the State's requirement for balloon test and the Board's request for a balloon test were two separate issues. He also agreed that notice at this meeting would be sufficient; the Board did not need to meet the State's requirements.

Mr. Falman asked for enlightenment regarding the State Historic Commission. Mr. Berry asked if he might explain as he had the letter with him. Mr. Ciardelli agreed to let Mr. Berry explain.

Mr. Berry stated that after giving conditional approval for the tower, the Planning Board had asked Mr. Cody when he was going to build the tower and he had answered that he had to "go through this little thing with the state". Mr. Berry stated that that "little thing" is called a Section 106 Review, which is part of the infamous Telecommunications Act. It is a part of the law that stipulates that you cannot build cell towers in really, visually inappropriate locations, such as in direct view of a historic building. There are some state agencies that work with this federal law to oversee the placement of new telecommunication facilities.

Several months ago, Mr. Cody stated he had done a balloon test previous to the one required for the Planning Board. When asked why they had conducted the test, Mr. Cody had answered for historical reasons; that historical reason was the Section 106 Review. Mr. Berry stated that he had actually seen a total of three balloon tests from his house.

There are two women who live in Concord and work for the New Hampshire Department of Historic Resources, and a cell tower cannot be built without an application, a review, and input from them. They are practical people who have been tasked to help to locate and mitigate the location of cell towers as they affect our visual environment. The original application was for Industrial Tower to conduct an impact study within a ½ mile radius. There are photos of balloon test #3 in October 2006, and the balloon is higher than on the windy day of the Planning Board test.

In early March, Industrial Tower had their hearing with the New Hampshire Historical Resources. Having had considerable input from the community, and more knowledge about the site, Historical Resources sent Industrial Tower back and told them to increase their area of impact from ½ mile to 1 ½ miles, take pictures from various locations (historic properties and view-shed properties) in leaf-off conditions, and have photo-simulation from their expert in Providence, Rhode Island, of a cell tower put onto the photos. Mr. Berry stated that this was very valuable information, and thought the Town should take advantage of what Industrial Tower has to produce for the Historic Resource Commission.

Mr. Ciardelli explained that the matter before the ZBA at the present time is the application for variance, which is an independent issue from what Mr. Berry was talking about. The goal is to get as much information to the Board from the RF Consultant's report so the Board can make an educated judgment on the variance request. Conducting a balloon test will increase the information the Board has. Mr. Ciardelli stated that what Mr. Berry talked about is significant, but was not the issue at the present time.

*Mrs. Monique Waldron.* Mrs. Waldron interjected that the State Historic Commission thought this was a vitally important test for the applicant to perform, and were taken aback that the first test was not mandated to be conducted in "leaf-off" conditions. Mrs. Waldron stated that her house is a historic house and thereby falls under the guidelines of the State Historic Commission. She felt that the photos with the simulated towers imposed on them would be very important evidence of the impact of the tower for the Zoning Board to consider.

Mr. Ciardelli stated that he had been out of Town at the time of the previous balloon test, but did see pictures. He thought it would be good for the ZBA to schedule this balloon test, let people know about it, and have the Board members view it from several different locations. This way, the Board members can physically see it for themselves. Whether it complies with the state regulation or not, is not the issue.

*Mr. Peter Merrill, 275 North Haverhill Road, Kensington.* Mr. Merrill thought it was imperative to take video of the balloon test, as well as pictures from several different locations, since at the last balloon test the balloon was bobbing below the trestops. He suggested that some of the photos that were presented might have been taken at a time when the balloon had dipped below the trestops.

Mr. Ciardelli stated he would like the Board members to view it themselves with their own eyes; then camera lenses or the perspective of the wind would not be an issue. They would be able to observe the balloon for a period of time.

Mr. Merrill stated that one of the five criteria the ZBA examines was diminution of property value. As that is very subjective and is about the viewscape, his opinion is that the closer the Board mirrors the historic requirements, the better it could address the issues the Board was chartered to examine.

*Nancy Howaniec, 24 John West Road, Exeter.* Mrs. Howaniec agreed that the sooner the balloon test was conducted, the better, and she had no objections to it being conducted the next weekend. She also stated that in other towns, abutters and others have invited Board members onto their property to view the balloon, so they could view the impact from their property.

Mr. Cody stated that it would be good for them if the balloon tests were able to be coordinated at the same time, but he was more than willing to conduct it at any time the Board requested. He wanted to know at what height the Board wanted them to have the balloon; at 180' or 160'. The original height of the tower had been requested at 180', but had been changed by the Planning Board to 160'.

Mr. Merrill interjected that although the Planning Board had approved the tower for 160' and not 180', Industrial Tower had the option for an additional 20' should it become necessary; thereby it was his opinion that the test should be for 180'.

Atty. Loughlin stated that since the approved height from the Planning Board was 160', and the height of the tower that was noticed was 160', the test should be for 160'. The applicant would need to come back before the Planning Board before any additional height could be added. Mr. Ciardelli stated that the test would be held at 160'.

Atty. Loughlin stated that they could set a date tonight, with a rain date. He asked Mr. Cody if the morning was the better time for the test. Mr. Cody replied that the morning was better, as the wind picked up in the afternoon.

*Micelle Larson, Giles Road, East Kingston.* Mrs. Larson asked if the test was two hours, could it be at 160' for one hour and 180' for the second hour, since the applicant could go back to the Planning Board for the extra height? Mr. Ciardelli replied that since the request was for a 160' tower, the test would be held at 160'.

Mrs. Howaniec asked if the test would be long enough in time to give people a chance to ride around and view the balloon from different locations. Mr. Ciardelli asked how long the test usually was, and Mr. Cody answered usually 3-4 hours.

Mrs. Belcher asked if it might be held on a weekday if the weekend was an issue for Board members. After discussion, it was decided that a weekend would better afford most people a chance to view the balloon as a good portion of the people interested in seeing it could be working during the week.

After discussion on when to conduct the test and how long the test should be, and it was decided that it would be held on Saturday, May 5<sup>th</sup> from 9am to 2pm. There would be a rain date of Sunday, May 6<sup>th</sup>, at the same times. This would be advertised in the Exeter newsletter for the Tuesday edition.

Mrs. Howaniec referred to a balloon test in another Town in which it was found that the height of the rope for the balloon was 25' short. She asked if someone from the Board could check that the rope was the correct length. It was decided that Mr. Allen would verify the correct length before the balloon is raised.

Mr. Ciardelli stated that the next item on the agenda was scheduling the dates for submission of information to the RF Consultant. The applicant would submit their information first, and then 10 days later the abutters would submit their information.



Mr. Cody stated he thought the RF Consultant was going to review the application information Industrial Tower had already submitted to the Board. Mr. Ciardelli confirmed if what they had submitted to the Board was what they planned, that was what they should submit to the consultant. He stated that Section 5 was the section that the Board needed clarification on for their own understanding. Atty. Loughlin also stated that if Industrial Tower's application is what they were submitting to the consultant, the abutter's attorneys were already aware of that information.

Atty. Loughlin stated that the Board would need to make sure that Mr. Hutchins was on board. When that was verified, the applicant could forward their information to him by May 2<sup>nd</sup>, and the abutters could submit their information by May 12<sup>th</sup>. Atty. Pelech stated that if there was additional information to be submitted, copies would be provided to all the attorneys involved. He also asked if information should be submitted directly to Mr. Hutchins or through the ZBA. Atty. Loughlin stated it should be submitted to Mr. Ciardelli or himself.

Mr. Ciardelli stated that the next hearing date available was May 31<sup>st</sup>, but they were not sure at the present time if the consultant would need more time or could be ready by that date. Atty. Pelech suggested scheduling the next hearing for that available date, and postponing it if necessary when the date came around. Mr. Ciardelli agreed. The date of the next hearing was set at May 31<sup>st</sup>, at 7:30 in the Town Hall.

Mr. Ciardelli confirmed that the only thing left on the agenda for tonight was "other relevant matters".

Atty. Pelech stated that the only thing left was the escrow agreement. He and Atty. Loughlin had agreed on the language, and Mr. Cody is on board with that also. Mr. Cody will send the paperwork to Mrs. Gallant at the Town Office. Atty. Loughlin stated that in terms of a dollar amount, it was \$2,000-\$3,000.

Mr. Berry asked for clarification of the noticing of the balloon test. Mr. Ciardelli explained that Mrs. White would be contacting the Exeter Newsletter for a legal notice to be placed in the Tuesday, May 1 edition. She would also be posting a notice of the balloon test on the door of the Town Offices and at the East Kingston Post Office. Mr. Ciardelli explained that it was up to the people in the room to help get the word out.

Mr. Merrill asked if the surrounding towns would be notified of the balloon test. He was told they would not be notified separately. Mrs. White stated that all the surrounding towns had been notified of tonight's meeting. Mr. Merrill asked if a courtesy notification could be sent to Kensington and Exeter, Mrs. White agreed she would send a copy of the balloon test notice to the Towns of Kensington and Exeter as a courtesy.

Mr. Ciardelli asked if anyone had any other questions.

Mrs. Waldron asked if there would be the same Board members for the duration of the cell tower hearing. Mr. Ciardelli stated that the Board make-up depended on which Board members were available at the time of the meetings. All the Board members were volunteers, and at the present time one of the members was on vacation and another had a personal issue. If there are not enough members available for a quorum, then no meeting can be held. All the members do receive copies of the minutes, so they are informed of what transpires even if they are not at the meeting.

Mrs. Howaniec asked if the absent members of the ZBA would be notified of the balloon test. Mr. Ciardelli answered he would inform them of the test and was sure they would attend if they were available. She also asked if the Planning Board members would be interested in attending, and Mr. Ciardelli stated he would also let them know of the test. Mrs. Howaniec wanted to know if she asked 10 days ahead of that time, would she be able to know if the meeting was going to be held or not in the event the consultant needed more time. Mr. Ciardelli explained that the meeting on May 31 would need to take place since it was a continuation of this hearing.

Mr. Ciardelli asked Mrs. Waldron if she could make sure that all abutter's information needing to get to Mr. Hutchins could go through her lawyer and she stated that would be all right with her. Anything on the applicant's end would go either to Atty. Loughlin or Mr. Ciardelli to be forwarded to Mr. Hutchins.

Mr. Falman asked that the Board members be made aware of whatever information was forwarded to Mr. Hutchins from the applicant. Mr. Ciardelli stated that the Board members already had that information, as it was included in the applicant's original application for variance. Mr. Cody verified that that was the information they would be sending to Mr. Hutchins.

Mrs. Howaniec asked if the report the applicant had handed out to the Board members at the start of the meeting was new information that the abutter's needed to be made aware of. Mr. Ciardelli answered that it was not propagation information but property value information and would not be going to the consultant.

Mr. Merrill commented he thought Mrs. Howaniec was actually asking if the consultant was going to conduct completely new information, or rely or make use of the data the applicant has already put forward. Mr. Ciardelli stated the applicant's original information would be going to the consultant; if there was any new information submitted, the attorneys would be made aware of the information.

Mrs. Belcher verified the dates of the balloon test with Mr. Ciardelli. It will be held on Saturday, May 5 from 9am-2pm, with a rain date of Sunday, May 6 beginning at 1pm. The ZBA members will meet at the Town Hall at 9:30 am.

Mr. Berry informed the Board that since they were the most impacted property, he and Mrs. Waldron would like to invite the Board members to view the balloon test from their property. He would take them to the riding arena and the other parcel of property they own that is affected by the tower so they can observe the balloon test from those areas.

Mr. Ciardelli stated that the Board members should meet at the Town Hall at 9:30am to allow Mr. Allen time to get back off the hill and meet with the rest of the Board. They would carpool from the Town Hall.

Mrs. Belcher also verified that the time and place of the next meeting was on May 31 at 7:30pm at the Town Hall. Mr. Ciardelli stated that was correct.

Mrs. Waldron asked if the Board could let them know what time they would come to her residence. Mr. Ciardelli stated that the Board would be there at 10am on Saturday, May 5.

Mr. Allen asked Mr. Cody what was the best way to access the site, and Mr. Marston said he could meet at his driveway.

Mrs. Waldron stated that in the event the Saturday date was cancelled due to rain or wind, the Board could meet them at 1pm on Sunday at their house.

Mr. Ciardelli asked for a motion to continue this hearing until May 31.

**MOTION:** Mrs. Belcher **MOVED** the Zoning Board of Adjustment continue the rehearing for Industrial Tower & Wireless, LLC and Co-Applicant Cingular Wireless until May 31 at 7:30pm. Mr. Freeman seconded, and the motion passed unanimously.

The meeting was adjourned at 8:45 PM.

Respectfully Submitted,

*Barbara White*

Barbara White  
Recording Secretary

David Ciardelli  
Vice Chairman

Minutes approved on August 23, 2007