

Town of East Kingston, New Hampshire  
Zoning Board of Adjustment Meeting Minutes  
May 25, 2006

AGENDA

**7:30 PM Industrial Tower and Wireless, LLC  
and Co-Applicant Cingular Wireless  
40 Lone Street  
Marshfield, MA 02050  
MBL #16-4-01 (36 Giles Road, East Kingston)**

**Members Attending: Chairman John V. Daly, Vice Chairman David A. Ciardelli, Norman J. Freeman.**

**Alternate Members: Catherine Belcher, Paul Falman, Peter Riley.**

**Others Attending: Mr. John Cody [Representative] and Mr. John Champ [Site Acquisition Specialist] representing Industrial Tower and Wireless, Mr. Barry Hobbins [Counsel for Cingular Wireless], and Mr. and Mrs. J. Marston [Property Owners].**

Mr. Daly opened the meeting of the East Kingston Zoning Board of Adjustment at the East Kingston Town Hall on May 25, 2006, at 7:30 PM to consider the application seeking variance from Article XV, Section D.2.– USE DISTRICTS for construction of a 180-foot monopole and equipment area in a Residential Zone.

Mr. Cody spoke to the board, giving a history of the evolvement of the company. He then explained the need for coverage in East Kingston in areas not covered by existing towers in zoned areas. He explained how the company had searched for an appropriate site.

Mr. Champ showed a PowerPoint presentation, which showed the type of proposed tower (a monopole), current, signal coverage, and lack thereof for various companies (i.e., Sprint, Nextel, Cingular, T-Mobile, Verizon). The presentation showed definite blank spaces in the northerly area of East Kingston and parts of adjoining Kensington, and demonstrated how a tower on the Marston's hill would fill in the dead areas. He explained that all the major carriers have a need for coverage in a certain area on Route 108. He also referred to a Propagation Study performed by an RF Engineer, which showed that if the tower was installed in the commercial areas where presently allowed service would not reach the area needed on Route 108.

Mr. Champ addressed the site plan and explained that Mr. Marston owned both sections 17-3-1 and 16-4-1, but lived on section 16-4-1. He described a proposed utility easement and site construction, and showed what the tower look like.

Mr. Cody stated that from a hardship stand point, there was a need to find a location further north for coverage to be effective and explained that they were one of the many companies that bring carriers together to co-locate to meets the needs of the telecommunications act. He then described the value of being able to utilize a cell phone for emergencies in the event of power outages.

Mr. Cody stated that the variance is warranted, as the by-laws were not able to project what the needs would be in the future. Also that he chose a remote, heavily wooded site at the edge of a utility easement.

Mr. Hobbins interjected that the coverage as shown by Mr. Champ for all the competitors is a true representation. He also stated that communities have great input for a competitive system for carriers, this variance would not give one carrier an advantage over another, and it meets the needs of all the carriers. He also stated that the site meets Simplex technology decision.

He stated that he thought the community could go beyond the ordinance since the site is so unique. He explained that Cingular was in East Kingston 4½ years ago, but decided to pass for a number of reasons.

Mr. Hobbins also stated that Jennifer Luchy, Site Specialist from TRM, was with him and confirmed John Champ's findings on the coverage areas and lack thereof.

Mr. Daly asked if Mr. Cody wanted to address the five points to be met for the variance consideration.

Mr. Cody explained that there was no locale in town that could address the need as this site could. It is strategically located in an area where there is no other practical use for it because of the utility easements and it would not pose a detriment to the town. It would serve various wireless companies and would produce no smoke, noise, and no objectionable side effects. It would be monitored remotely for the most part, not increase traffic, and place no demand on town services (water or septic).

Mr. Daly inquired about the potential of decreased property values.

Mr. Cody provided Mr. Daly with a copy of an appraisal for another site in New Hampshire, which concluded "*development of the proposed tower will not have a detrimental affect on neighboring residential property values*". This appraisal was not site specific, but did show that in other New Hampshire towns there was no measurable difference in the value of property near a tower.

He explained that his company has installed 80 towers throughout New England, and that the tower locations had started in remote areas, but that gradually towns grew up near the towers and they were now as accepted as utility poles.

Mr. Cody recalled an instance where a tower was installed on a golf course and a woman living there asked to have trees put up on her property line with the golf course so she would not have to see the tower. She called later to ask when the tower was to be installed and was told it was already up. She looked outside and found she could not see it so cancelled the request for the trees.

Mr. Daly asked if the pole was to be a pine tree pole and Mr. Cody stated that if that was what the town requested, they could install that type of pole. It was his consensus and Mr. Cody's also, after some discussion, that it would still look like a tower and would stand out even more if it was the tree type rather than a monopole.

Mr. Daly opened the floor to the board members for questions and explained that Alternate Members Mr. Falman and Mr. Riley would be participating in the voting this evening.

Mr. Falman asked if more than the five providers named would have room on the tower and not be excluded.

Mr. Cody explained that all the towers were overbuilt and over-structured for future expandability and that there would be room for more carriers.

Mr. Riley questioned the leased 100x100 foot site and how the "*fall zone*" for the 180' tower would be addressed. Would the tower fall outside of the leased area?

Mr. Champ explained that the tower would not have a 180-foot "*fall zone*" as it was designed to collapse within itself and not fall over.

Mr. Cody explained that the company only leased as much land as they needed and that the circular area on the plan denoted 360 degree circumference around the site, not the 100x100 area and the 180' "*fall zone*" would be on the owner's property.

Mr. Riley inquired if Cingular (as the co-applicant) required a 180' tower or would they be satisfied with a tower of lesser height?

Mr. Cody explained that each of the carriers needed to be placed 10 feet apart so as not to interfere with other carriers' signals. And also, that as a rule, most carriers wait until there is approval before committing themselves. A shorter tower would not accommodate multiple carriers.

Mr. Riley suggested the Rosencrantz Tower could be built out with new technology to serve other carriers.

Mr. Champ answered that that tower was over 3 miles away from the area to be covered and could not cover the area.

Mr. Riley stated he understood that there are electronics now that could support this build-out.

Mr. Cody explained that what he referred to was a plug-in system (DAS system) and explained that the system is flawed. Medford, who had such a system, had found it unreliable. It is complicated and expensive to build, and not at all reliable. Service would be available only along the road and not in residential areas, as trees would block the signal.

Mr. Daly interjected that discussion should stay with the variance criteria and not be sidelined.

Mrs. Belcher asked for a better explanation of 3b of the Statements of Reasons– Use Variance– *fair and substantial relationship between...* for her understanding.

Mr. Daly interjected that it might be more understandable if “*logical*” were substituted for “*fair and substantial*” and Mrs. Belcher agreed that now it made more sense and was understandable.

Mr. Ciardelli questioned Mr. Cody if the 180’ tower would be good for the foreseeable future.

Mr. Cody stated that the tower needed to extend above the tree line and that there was a plan for expandability since it would be expensive to rebuild.

Mr. Daly explained that if in the future a higher tower were needed, the applicant would need to reapply.

Mr. Ciardelli stated that it seemed as if the site was the “Holy Grail” of sites as there were not many hills on the seacoast and also asked if there was any requirement for lighting to be put on the tower.

Mr. Cody stated that lighting was not planned, as the tower did not exceed 200 feet.

Mr. Daly opened the floor to abutters.

**Mr. Reid Simpson, 35 Giles Road, E. Kingston**, agreed that the service was bad in areas but did not want to see the tower in a residential zone. He was interested in seeing the facts regarding salability of residential property, as he would not want to buy a house near a tower.

Mr. Daly asked Mr. Simpson if he could see the top of the hill from his property and he stated he could.

Mr. Simpson also asked that if the board granted the variance, could one of the conditions be that Industrial Tower would provide space for fire, police and emergency phone services at no cost?

Mr. Cody answered that that service would be provided.

**Mr. Tim Berry, 285 N. Haverhill Road, Kensington** asked how many feet above the trees the tower would protrude and Mr. Champ replied that it would be approximately 150’ above the tree line.

Mr. Berry stated that he owned a 225’ dressage arena in Kensington and that people boarded and trained expensive horses there. He stated they rode not only in the arena but elsewhere on the property and that his business would be impacted by the view of the proposed tower. He was concerned with what the elevation was at the tower site.

Mr. Cody stated that the tower location was critical to coverage.

Mr. Berry replied he thought the cell phone coverage was fine the way it was. He also stated that he would like to see the plot plan regarding the height of the proposed property. He thought if he could see just where he was located in conjunction with the proposed tower location he might be appeased somewhat that it might not be in his direct vision.

Mr. Champ stated that the plot plan was specific to the property and did not show the surrounding area. He did not think it would be helpful to Mr. Simpson.

Mr. Daly replied that that question was a Planning Board issue, not for the ZBA and stated that the petitioner would be going back to the Planning Board.

**Mr. Pete Merrill, 75 N. Haverhill Road** asked about the 180’ drop zone in the case of a tornado or a microburst. He stated that if the tower dropped, it would take out the electric line. He was concerned with the 100x100 foot area shown on the plot map.

Mr. Champ explained that Mr. Merrill had mistaken the area marked as the 100x100 compound area, but it actually indicated 180' from the center of the pole.

Mr. Merrill also stated the tower was in the flight plan of the Cole airstrip, a small local airport that pilots used at dusk and dawn. He reiterated what Mr. Cody had stated, "it was not the tower that you know about that could cause a problem, but the tower which you did not know about". He requested that if the board granted the variance, they consider seriously installing a beacon or some sort of light on the tower.

Mr. Cody stated that he was a pilot and that the FAA requires pilots to fly at 1,000 feet, which is well above the height of the tower. He also stated that if requested, they would place a light on the tower.

Mr. Merrill affirmed that cell phones have come a long way and did not believe that the life of the tower would exceed technology. He asked how long it would be until the tower became obsolete and in that case, who would bear the expense of dismantling the tower?

Mr. Daly stated that in the presentation to the Planning Board, there is a provision for Industrial Tower to reclaim the tower in the event it became necessary for removal.

Mr. Cody explained that all the towers are designed to withstand hurricanes and are overbuilt as such, and that the power lines would be destroyed before the tower would be.

Mr. Merrill stated that the power lines are below the tree line and doubted they would be affected by a storm, only the tower falling.

Mr. Hobbins stated it would balance the community benefits versus individual benefits and look at the whole idea of personal communication services. He stated that he was from Maine and they had made it a priority to have seamless coverage because of communication concerns. This was consistent with the Telecommunications Act and would take care of the gaps in service. He believed that the public would not be injured but benefit from the tower, that it would be in compliance with the license, and that it was not contrary to the ordinance.

Mr. Merrill made two points: 1) he acknowledged that cell phone coverage was spotty but had resolved that problem with a magnetic antenna on his car and 2) the law referred to allows a competitive plan but does not mandate it.

Mr. Hobbins stated they were not trying to muscle their way in, but that 47 USC Section 332 states that if a community has an ordinance prohibiting wireless communications, then that ordinance violates the Telecommunications Act.

He also stated that towns that had had a 35' ordinance came to the realization that service would not be possible with a tower of that low height and that they needed to go beyond the scope of their original ordinance for adequate service.

Mr. Merrill stated that the Town of East Kingston has allowed for an equal playing field in as they already allow towers in the commercial zones and an equal opportunity for all carriers.

Mr. Daly closed the discussion to the public to allow for discussion by the board.

Mrs. Belcher asked the property owner, Mr. Marston, to explain exactly where the tower was to be located on the property and if there were any buildings on that property. He replied that there were no buildings and that he resided on the other section of property. She also asked for clarification of the grade of the property. It was thought to be more than Greystone, which was at least 10% and perhaps even 15%. A picture of the property was shown. Mrs. Belcher reiterated that the town did not allow developments on slopes greater than 15%

**Mr. Tim Berry**, asked to speak and the Chairman recognized him for a short time.

Mr. Berry wanted to address the issue of "Public Good". He stated an example of nearby communities who decided that it was in the "Public Good" for the train not to blow the whistle at the crossing, even though their chances of having an accident at the grade crossing are greater because there is no horn blown by the train. He explained that this was his take on the issue of the variance requested. Mr. Daly thanked Mr. Berry for his input.

Mr. Daly then asked the board members to address the use variance criteria.

*Question #1 – There (would-would not) be a diminution of value of surrounding properties as a result of the granting of this variance because...*

Mr. Daly noted that the applicant had provided a non-site specific document that specified that a tower would not result in diminished property values if the board wished to consider it.

At this point, Ms. Monique Waldron (an abutter) started to speak and the Chairman reminded her that the floor was closed for discussion.

**Discussion** - Mr. Riley stated he thought the tower would diminish surrounding property values. Mrs. Belcher stated that culture was changing and even though the towers were large and protruding, they have become acceptable as a means of public communication and regarded as utility pole and therefore she did not believe it would diminish property values. Mr. Ciardelli agreed with Mrs. Belcher and agreed that after a while, you just did not even notice the towers. Mr. Falman noted that utility poles were becoming acceptable. Mr. Freeman stated that he drove by the tower in Kensington on a frequent basis and did not even notice it. Mr. Ciardelli stated that people tended to look for the tree towers more so than the monopoles.

Mr. Daly asked for a show of hands on the criteria #1. The vote was three (would not) and one (would).

*Question #2 – The granting of this variance (would-would not) be contrary to the public interest because...*

**Discussion** – Mr. Freeman stated he thought it improved the ability for fire, police and emergency personal traveling through our town to react in the event of an emergency. Mr. Riley stated that the town had already voted and deemed the area residential and since this was not a residential usage, it therefore was contrary to public interest. Mr. Ciardelli stated that it recognized the gaps in service and would negate those gaps and that the public interest did not just affect the town; that the town was not just a little island unto itself. Therefore in Mr. Ciardelli's opinion, it was not contrary to public interest.

Mr. Daly asked for a show of hands on the criteria #2. The vote was three (would not) and one (would).

*Question #3a – Since the zoning restriction as applied to the property (interferes-does not interfere) with the reasonable use of the property, considering the unique setting of the property in its environment such that...*

**Discussion** – Mr. Freeman believed it was too steep to be developed or used for anything else. In Mr. Riley's judgment, the applicant had not shown enough evidence to address this issue, that it was zoned and taxed as a residential property and could still be used for that purpose. Mr. Ciardelli stated he thought given the nature of the hill, it was a reasonable use of the property and that the present zoning puts an unreasonable restriction on it. Mr. Daly stated that they were dealing with the slope.

Mr. Daly asked for a show of hands on the criteria #3a. The vote was three (interferes with) and one (doesn't interfere).

*Question #3b – Since there (is-is not) a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because...*

**Discussion** – Mr. Daly stated that the town voted not too long ago to restrict cell towers to a certain area of town. The issue here perhaps was changes in technology and what was intended at the time it was adopted. Mr. Freeman stated that the original zoning was adopted in 1997 and things have changed since then. Mrs. Belcher stated that she was working for the Planning Board at the time (1997) and that at that time, the point was to keep the town rural in nature; towers were big sore thumbs then and today they are considered differently and constructed differently. At the time they were written, there were only the lattice towers, which is what the board was looking at. Mrs. Belcher spoke on behalf of the planning board, stating that their opinion was that they were supportive of this variance, but the problem they had was getting around the language of the zoning board.

Mr. Riley did not agree that towers were the same as telephone poles. Mrs. Belcher agreed they were not the same, but interjected they were in the same category. Mr. Riley did not think it would make a difference even if the tower was made to look like a fake tree and agreed with Mr. Simpson that they were an eyesore and would diminish property values. He stated that the town had voted on this issue and unless the town voted to change the ordinance, his opinion was that it should be adhered to. Mr. Daly stated that the zoning board would be out of business if everything in the ordinance could not be changed because the town voted on it. Mr. Riley stated he understood the board was empowered and authorized, but thought

the board had an obligation to adhere to what they understood the intent of the town to be unless they found there was a reason for the variance and that those reasons satisfied each criteria.

Mr. Ciardelli read a portion of Mr. Peter Loughlin's points regarding fair and substantial relationship: "...the general purpose of restricting a zone to residential use is to separate residential areas from non-residential uses that are deemed incompatible, and then to preserve the residential character of the zone once it is established." He stated that the property is at the top of a hill on a steep incline with power lines and would difficult to use for anything else. His opinion was that this use is not incompatible with the property even though it is residential.

At this point, Mr. Tim Berry (an abutter) started to speak and the Chairman reminded him that the floor was closed for discussion.

Mr. Riley stated there had been no presentation [by the applicant] to demonstrate there was that type of issue with the property. He thought it was something that should have been addressed if they wanted to and was part of the argument before the board. And did not think the board could even consider it without that information being presented to them. He personally did not know if the entire parcel was undevelopable.

Mr. Daly reiterated that the question was "is the proposed use a reasonable use" which does not necessarily exclude all other possible uses, but could make other uses unlikely.

Mr. Riley stated he did not have enough personal knowledge of the site to make that decision.

Mr. Daly asked for a show of hands on the criteria #3b. The vote was three (is not) and one (is).

**Question #3c** – That the variance (would-would not) injure the public or private rights of others since...

**Discussion** – Mr. Falman asked what are the private rights were and Mr. Daly explained that it could be the rights as an abutter. Mr. Riley believed the ordinance should be adhered to as originally voted and would devalue property. He stated that abutters had indicated that the tower would have an impact on their business and value of their property and agreed with them. Mr. Daly reminded the board that there were two pieces of information to take into consideration, the non-site specific assessment of property devaluation and the testimony of the abutters. Mr. Falman stated he believed there was no substantial evidence submitted that there would be injury to the public or private rights of others.

Mr. Ciardelli stated that Mr. Simpson had stated a paradox – that while he was opposed as an abutter, he also realized that there were dead spots of service in the town. Mr. Ciardelli's opinion was that the public benefit in increased coverage would outweigh subjective opinions since we do not know for sure if there is diminished value.

Mr. Riley countered with the fact that the question was not was it a benefit, but was it injurious to the public or private rights.

Mrs. Belcher stated that from a personal standpoint, she did not think the view of power 1,000 feet away from the property line would interfere with the comfort, well being and security a person would find on their own property. She stated that she would feel differently if it were the neighbor's dog barking at the house all day long, as this would be considered injurious.

She also stated that we all want to feel comfortable to do what we want with our own property; if we have opportunities to better our property that do not interfere with the property line. If what I am proposing crosses my boundary and interferes in a tangible way that will affect the comfort and well being of that neighbor, clearly she would oppose that in a heartbeat. Her opinion is that a monopole up in the woods would not be injurious and that the utility lines were more unsightly than the pole.

Mr. Freeman stated that it was 1,600 feet from Giles Road to where the tower would be and he did not think much of the tower could be seen from the angle of the road.

Mr. Daly asked for a show of hands on the criteria #3c. The vote was three (would not) and one (would).

**Question #4** – By granting this variance substantial justice (would-would not) be done because...

**Discussion** – Mr. Riley stated that the issue was that the Marston's were looking to make money from the use of their property and the applicant was here on behalf of the carriers as an investment opportunity for industrial communications. He did not believe there was substantial justice because essentially what they are doing was pirating the use of a 100x100 area of

land so the owners can receive a tax benefit in order to offset current real estate taxes and he does not see how that does substantial justice. The owners knew the property was hilly terrain and zoned residential when they purchased it.

Mr. Falman stated that circumstance and situations change and just because the property was purchased as residential does not mean there couldn't be another need later.

Mr. Riley stated that the pipeline was a taking and the town did not have a say in that decision and Mr. Freeman agreed.

Mr. Daly stated that he was on the fence with this question.

Mrs. Belcher stated in her opinion it was a fair and practical use of a piece of property already afflicted by steep grades and railroad and utility easements, and noted that Great Brook ran through a portion of the property as well.

Mr. Ciardelli stated that justice was a tough word, but thought it was a justified usage of the property.

Mr. Daly asked for a show of hands on criteria #4. The vote was three (would) and two (would not).

**Question 5** – The use contemplated by petitioner as a result of obtaining this variance (would – would not) be contrary to the spirit of the ordinance because...

**Discussion** – Mr. Daly stated that it was the applicant's position that the location of the tower meets the spirit of the ordinance as well as providing wireless coverage to the Route 108 corridor where no service exists. The proposed location will have minimum impact, provide for maximum co-location, thereby reducing the number of additional structures needed, adverse impacts are reduced and the removal of abandoned structures will be provided for. Therefore the proposed use and location is in the spirit of the Town of East Kingston's zoning ordinance.

Mrs. Belcher stated she believed the spirit of the ordinance was to protect the general public, and constitutes reasonable use.

Mr. Falman read the background of other cases and viewed it differently as public trust.

Mr. Riley stated that the town voted to have towers in light and industrial and commercial areas as defined and that the ordinance should stand.

Mr. Daly asked for a show of hands on criteria #5. The vote was three (would not) and one (would).

Mr. Daly stated that the applicant had prevailed in all five categories and asked for a motion.

**MOTION:** Mr. Freeman **MOVED** that the board grant the variance request for Industrial Tower and Wireless. Mr. Ciardelli seconded the motion. The vote was three "ayes" and one "nay" and the motion carried.

The meeting was adjourned at 9:35 PM.

**Barbara White**  
Recording Secretary