

**Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
May 31, 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, Peter Riley
Acting Town Counsel: Peter Loughlin, Attorney

Also present were: John Champ, Site Acquisition Specialist for Industrial Tower and Wireless; Don Cody, Director of Operations for Industrial Wireless and Communications; Kevin Delaney, Radio Frequency (RF) Propagation Manager for Industrial Tower and Wireless; and Mr. Bernard W. Pelech, Attorney for Mr. & Mrs. Marston.

Mr. Ciardelli opened the meeting of the East Kingston Zoning Board of Adjustment (ZBA) at the East Kingston Town Hall on May 31, 2007, at 7:35 PM.

Mr. Ciardelli explained that tonight's meeting would not be a hearing on the merits of the application as the Board was still in the information-gathering process and did not have all the data necessary to proceed to a vote.

Mr. Ciardelli reviewed the four items the Board would be addressing this evening:

- A question of bias and objectivity of a member of the Board.
- Review of the balloon test.
- Summary of the RF Engineer's progress.
- The setting of a date in June for the continuation of this hearing.

Question of Bias and Objectivity. Mr. Ciardelli explained that he had received a letter from a Giles Road resident who took part in the balloon viewing on May 5. The letter alleges that while the resident was interacting with Mrs. Belcher that day, Mrs. Belcher conducted herself in a manner leading the resident to the conclusion that she was bias towards the Marstons. Based on this conclusion, the resident does not feel that Mrs. Belcher can make an objective decision in this case and should recuse herself. Mr. Ciardelli declared that all Board members had received a copy of the letter.

Mr. Ciardelli explained the statute governing the situation of disqualification of a member, and read the statute to the public.

67.3.14 – Disqualification of a Member.

I. No member of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, or historic district commission shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties.

II. *When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676.1.*

III. *If a member is disqualified or unable to act in any particular case pending before the board, the chair person shall designate an alternate to act in the member's place, as provided in RSA 673.11.*

The Secretary distributed copies of Mrs. Belcher's response to the Board members, who took a few minutes to read the response to the allegations.

Mr. Ciardelli asked Mrs. Belcher to speak to the allegations.

Mrs. Belcher stated that the letter alleged that she had made negative comments towards the resident and indicated that Mrs. Belcher had been threatening towards her. Mrs. Belcher stated that at the time of the alleged incident, Secretary Barbara White and Board member Norman Freeman accompanied her. Mrs. Belcher was shocked when she read the resident's account of what had transpired, and had requested Mr. Ciardelli ask Mrs. White and Mr. Freeman if they had seen any indication of the alleged incident.

Mrs. Belcher stated had been a little unnerved being on the properties in the first place, knowing that the residents were unhappy with the whole situation, and was trying to be as fair and as kind to them as she possibly could be. What made the allegation more shocking was the fact that they had spent some time admiring the view of the wetlands from the properties. Mrs. Belcher agreed that Mr. Ciardelli should read her response to the allegations to the Board members, and he did so.

Mrs. Belcher's response is attached to these minutes. Mr. Ciardelli asked if the Board members had comments.

Mr. Falman stated he would like to hear an account of the visit from Mr. Freeman and Mrs. White.

Mr. Freeman stated he did not see any sort of confrontation that could be considered aggressive. He stated he had lived in Town for 70 years and he knew the Marstons; he did not think that made him a prejudiced person. He stated it was hard to live in a Town for 70 years and not know quite a few people to say hello to when you walked down the street.

Mrs. White stated she did not witness anything that was confrontational. She did hear Mrs. Belcher say that it would be a "test of their friendship", but it did not sound to her that it was in any way, shape or form threatening or with any kind of animosity. To her knowledge, she did not see anything that could be considered threatening in any way.

Mr. Ciardelli asked the Board members for a response.

Mr. Riley stated he had known Mrs. Belcher as the secretary of the Planning Board and the Zoning Board and did not think Mrs. Belcher would be confrontational with anyone.

Mr. Falman stated he had known Mrs. Belcher for quite a while, from back when she was in charge of the Town newsletter, searching out information for that newsletter. Mrs. Belcher was viewed as one of the most polite and cordial people in Town, and she is the last person he would think to have a mean spirit in her body, and he was shocked to read the allegation.

Mr. Ciardelli stated that it seemed there was a difference of perception of what had transpired, but the question in front of the Board was the alleged non-objectivity. He wanted to know if the Board members felt that Mrs. Belcher could be objective in her decisions in relation to this case. The statute states: *When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified...*

Mr. Riley asked of Mr. Laughlin that no matter what the decision the Board reached was, was it was proper to have this decision recorded in the minutes? Mr. Laughlin stated he had not heard any appearance of impropriety in

anything he had heard tonight. It was his contention that if there is a legitimate question, someone should step down, but that people should not be bullied off the boards they serve on.

Mr. Ciardelli asked for a vote of the Board whether or not Mrs. Belcher should be disqualified due to non-objectivity.

MOTION: Mr. Freeman **MOVED** that Mrs. Belcher should remain in her position on the Board. Mr. Ciardelli seconded the motion. Mr. Falman, Mr. Allen, and Mr. Riley voted she should remain; the vote was unanimous.

Mr. Ciardelli stated to the public that Mrs. Belcher would remain on the Board, and that she had the greatest background of most of the Board members, with the added experience of being on the Planning Board.

Balloon Test Results The next item on the agenda was the results of the balloon test. Mr. Ciardelli referred the public to the presentation of photos set up and reviewed the sequence of events on the day of the May 5 balloon test.

The Board had been concerned about the weather, but it ended up being a good day for the test. It was fairly clear and there was not too much wind as had been the case during the previous balloon test. Mr. Ciardelli had gone to the launch site of the balloon and found that it had already been put up. He asked for it to be lowered so he could verify the length of the tether, which he did, and explained just how the measurement had been taken. In fact, when it was raised for the second time, the tether was 10 feet higher than the proposed height of the balloon, making it 170' high.

Of the pictures displayed, Mr. Ciardelli reported he had taken pictures from the top of the hill, and that he and Mr. Allen both had taken photos from other vantage points. Mr. Ciardelli then cut-and-pasted a picture of a monopole and super-imposed it on the photos to give a better idea of what it would look like. The Waldron's property was in the closest proximity to the proposed monopole. Other areas where the balloon was observed from included the Seiler's property, Mrs. Howaniec's property, and from Stumpfield Road. Along with the pictures, there was a map showing the various locations from which viewing had taken place. Mr. Ciardelli explained that the reason for the balloon test was not to see where the balloon was visible from, as that was not the question. It was to collect data so the Board could make an educated decision, which ties in with the 5 points that must be met for the variance to be granted.

Mr. Ciardelli stated that the test had been in nearly perfect leaf-off conditions and gave a clear view of where the balloon could be seen.

Mrs. Carrie Sullivan, Giles Road, East Kingston. Mrs. Sullivan stated that the photos don't show what you can see from her house. She stated she could see the Marston's windows from her property.

Mr. Tim Berry, 275 North Haverhill Road, Kensington. Mr. Berry stated that Mr. Ciardelli had done a good job of showing what the monopole would look like in perspective to the pictures. He referred to the viewscape, and was particularly happy that Mr. Ciardelli had included the photo from Route 108, as it showed what would be seen when driving up that road.

Mr. Paul Kimball, 21 Kimball Road, Kensington. Mr. Kimball wanted to know what the duration of the balloon test had been. Mr. Ciardelli stated the balloon test had been from 9:00am to 2:00 pm. He explained that the time had been chosen because the previous balloon test had been conducted later and wind (later in the day) had been a factor they tried to eliminate. Mr. Ciardelli stated he had taken the photos when the balloon was at its highest point.

Mrs. Nancy Howaniec, 24 John West Road, Exeter. Mrs. Howaniec stated it appeared that was not the case from her house; she had watched the balloon for 15 minutes and it appeared much higher (almost two times higher) to her eye than what the photos showed in the display.

Mr. Ciardelli stated that the question was not if it could be seen, as they already knew it could be seen. The question was *how does how much you see it play into the words in the zoning ordinance that talks to the esthetics issue.*

Mr. Ron Terrill, 59 Giles Road, East Kingston. Mr. Terrill stated he could not see the balloon on the photos from where he was sitting, but appreciated the simulation of the monopoles on the corresponding photos since it gave him a more realistic idea of what the pole would look like.

RF Engineer Summary. Mr. Ciardelli stated that at the last meeting, Mr. Mark Hutchins had been employed as the RF Consultant for the Town. As of this date, they were still in a data-gathering mode. Mr. Ciardelli read the letter

from Mr. Hutchins to Kevin Delaney from Industrial Communications, asking for certain information to be provided to him. An e-mail from Mr. Loughlin indicated he had spoken to Mr. Hutchins, who is convinced that Cingular is

now truly involved in the application, not just Industrial Tower, and that the Engineer from Cingular is someone he knows and he feels he is most capable. Mr. Hutchins has asked Cingular for studies at various heights to determine what would be an appropriate height under various circumstances, and has asked for more information about alternative sites. The Cingular Engineer stated that in any event, the DAS would not work at this location. Mr. Hutchins will look at height issues, co-location and flush-mounted antennas. Mr. Hutchins' letter and the e-mail are attached to the minutes.

Mrs. Howaniec. Mrs. Howaniec stated that coverage was such a generic word, and wanted to know when "coverage" was mentioned, could it be specified if it was coverage for Exeter or Kensington that was being reduced?

Mr. Ciardelli stated he had a copy of a report from a David Maxim from Broadcast Signal Lab, another RF Engineer that is not the Town's consultant. He explained that, like the pictures, it was more information so the Board could be better informed. Mr. Ciardelli explained that history is a compilation of different people's perspective of what took place.

Mrs. Howaniec asked if she could get a copy Mr. Maxim's report; the Secretary stated she could be a copy of the report next Tuesday when she was in the office.

Mrs. Sullivan. Mrs. Sullivan asked when (what date) Mr. Hutchins went on his drive to gather his information. Mr. Freeman interjected that Mr. Hutchins stated he "was reviewing prior test data"; that he had not conducted his own test. Mrs. Sullivan wanted the Board to know that the information in the original drive test was obsolete. Since then, there has been 20' added to the Rosencrantz tower with new antennas, and there were new antennas on the tower in the industrial park in East Kingston.

Continuation of the Rehearing. Mr. Ciardelli polled the Board members to ascertain who would be available for possible dates to which the meeting could be continued. Mr. Falman was not available on the 29th, and Mr. Cody was not available on the 25th, but would be available for the 28th or the 29th; Mr. Pelech was available for the 29th. Mr. Riley asked if the hearing could be held on the regularly scheduled meeting night of the ZBA, and Mr. Ciardelli stated that they did not want to combine the hearings. After polling the Board members and the applicants, June 29th at 7:30pm was decided upon. Mrs. White will send out reminders to Board members of the meeting date.

Mr. Paul Kimball. Mr. Kimball presented to the Board a letter from the New Hampshire Division of Historical Resources, which stated that his property has been approved for purchase in perpetuity. He also showed an early photograph of his property, pointing out where the proposed cell tower would be located and indicated it would be damaging to the view, from a historic sense, from his property. He indicated that the Town and the State both had a stake in purchasing the property, so it was more than just an issue from him. Mrs. White will make a copy of the letter for the Board members. The Board thanked him for the information.

Mrs. White also received pictures from Mrs. Howaniec and Mrs. Sullivan to be added to the file.

Attorney Pelech stated that Kevin Delaney was present and had indicated to him he had responded to all of Mr. Hutchins' requests (from the letter) Mr. Ciardelli had read.

Mr. Riley asked if the Board members would receive Mr. Hutchins report before the date of the next meeting. Mr. Ciardelli stated that the Board members would get a copy of the report in enough time to digest the information before the meeting in June. He did not know just when Mr. Hutchins would be submitting that report, but he was hoping it would be in time to have the hearing on the merits at the June meeting; if all the information was not in, the hearing would need to be continued again.

Mrs. Howaniec asked if the Board members would be staying the same for the duration of the hearing, and Mr. Ciardelli answered that those attending the meetings might vary with the availability of the members, but the Board members would stay the same. Mrs. White informed the public that all Board members were provided the same information, including minutes of the meetings; thereby ensuring they were all up-to-date and aware of what had happened at any given meeting.

Mrs. Howaniec asked how she herself could get information to the RF Engineer for review, as she did not have an attorney to submit information through. Mr. Ciardelli stated that she could drop it at the Town Offices and the ZBA Secretary would see that it got to the RF Engineer. Mr. Pelech asked to make sure he and others concerned received a copy of any information Mrs. Howaniec submitted to Mr. Hutchins.

Mrs. Howaniec asked if Industrial Tower's presentation would be as long as it was the last time, and Mr. Ciardelli stated that since it was their application, it would be their decision what to present and how long that presentation would be.

MOTION: Mr. Allen **MOVED** the meeting be adjourned. Mr. Falman seconded; and the motion passed unanimously.

The meeting was adjourned at 8:35 PM.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

David Ciardelli
Vice Chairman

Minutes approved on August 23, 2007