

**Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
June 29, 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 D 2- 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, Tim Allen
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; Mr. David Maxson, RF Engineer representing Kenridge Farms; Mr. Mark Hutchins, RF Engineer representing the Town of East Kingston; 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 June 29, 2007, at 7:35 PM.

Mr. Ciardelli reviewed that on February 8, the Board granted a rehearing based largely on the following 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 NH variance criteria) had not been definitively resolved.
- The Board could have possibly gone slower in reaching its decision.

The focus for tonight will be on the alternatives sought by Industrial Tower and Wireless before applying for the variance, and how exhaustive that research was.

In an effort to help with the technical data, a prestigious group of Radio Frequency Engineers has been gathered together for this meeting. Mr. Kevin Delaney is representing Industrial Tower and Wireless; Mr. David Maxson is representing Kenridge Farms; and Mr. Mark Hutchins is representing the Town of East Kingston. They are New England's "All Star Team" in this field.

Mr. Ciardelli explained that the five criteria were displayed so as not to lose focus of how all this expertise ties into the Board's ultimate responsibility to either grant or not grant a variance. These five criteria remain the target of this Board. The "spirit of the ordinance" bullet is in all probability the most significant one for tonight's topic.

Mr. Ciardelli read excerpts of the East Kingston Zoning Ordinance, Article XV, from which the applicant desires a variance:

- B. Purpose and Goals— This Ordinance is enacted in order to establish general guidelines for the siting of telecommunications towers and antennas and to enhance and fulfill the following goals:*
- 2. Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics..*
 - 3. Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.*
 - 4. Permit the construction of new towers only where all other reasonable opportunities have been exhausted and to encourage the use of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.*
 - 5. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impact upon East Kingston.*

Mr. Ciardelli noted that as soon as Town involvement in siting of telecommunications facilities and RF technology begins, the issue of the Telecommunications Act of 1996 comes up. As one of the involved lawyers had previously mentioned, RF issues and the Telecommunications Act are inextricably intertwined. The Board only wants to discuss the Telecommunications Act to the extent that it exists as the logical backdrop of much of the case and not get into a legal philosophical debate on the Telecommunications Act as that would cut into the time for the RF engineers to speak tonight.

Mr. Ciardelli explained that ultimately, the Board would be making a decision based on the information and data gleaned over this series of hearings. While the Board is made up of reasonably educated citizens, none are experts in the area of RF Engineering. Therefore, he asked the RF engineers to present in terms everyone could understand.

Mr. Ciardelli explained that the order of business for tonight's hearing would be as follows: Mr. Kevin Delaney would make his presentation; then Mr. David Maxson would have a chance to review and comment; then there would be review and comment from Mr. Mark Hutchins.

Mr. Ciardelli asked that the public hold any questions until after the presentations and comments by the experts, and asked that they then address the Chair directly, identifying themselves and providing their address.

Mr. Ciardelli turned the floor over to Mr. Kevin Delaney, Propagation Manager for Industrial Communication. Mr. Delaney explained that a propagation study looks at the location of the site, ground elevation, latitude and longitude, antenna height, frequencies, cable types, and surrounding terrain and vegetation. Through a computer program, it projects what the coverage would be for a particular site.

Mr. Delaney's first map showed all the existing sites approximately 3 miles from the proposed site, and two sites further than that distance away from the proposed site. He explained where each site was and the height of the antennas. Locations included Kingston, East Kingston, Kensington, and Exeter. There were a series of maps showing areas of coverage at tower heights ranging from 100 feet to 140 feet. He explained that Cingular's coverage is approximately 3 miles, and that the white areas illustrated on the maps were gaps in service.

Mr. Delaney then explained that the Drive Test Data maps were measurements taken in the field with a laptop and a telephone, with the laptop capturing the signal levels. A computer program then deciphers the data and turns it into maps that plot the signal strengths of the various companies. Drive test data was performed for ATT, Nextel, Sprint, Verizon, Cingular and T-Mobile. Mr. Delaney explained that pink, gray, blue and green indicate strong to medium coverage, yellow indicates marginal coverage, and red and black indicate the likelihood of dropped calls.

Next to speak was David Maxson from Broadcast Lab. Mr. Maxson stated that what was shown was two different kinds of representation. He explained that although the proposed site would solve the gap problem, the model provided by Cingular for coverage is optimistic and shows more in-vehicle coverage than what might be realistically expected. Carriers look at three tiers of coverage – outdoor, in-vehicle and in-building, and there is no way to ensure that the proposed coverage will indeed overlap with already existing coverage and eliminate the gap.

From the Town's perspective, the proposed location may not be the best place to locate the tower. The proposed location is quite far from the business end of East Kingston, which might make do for now, but in time the carriers will be back. This is not the last tower the town will see. Perhaps it should be located more toward the center of the gap. At the proposed location, Exeter would get the most benefit as the area is more densely settled in that direction. Mr. Maxson stated there are alternatives to provide coverage for the Route 107/108 area, with all sorts of options in compliance with the ordinance such as rooftops, silos, flagpoles, on the fire house roof, etc.

The final RF Engineer to speak was Mr. Mark Hutchins. He explained that higher frequencies were affected by foliage and terrain, and as Cingular uses these higher frequencies, it would be necessary for their antenna to be above the tree canopy to be effective.

He had looked at moving the location southeast as a viable option, but that would place it on Mrs. Waldron's property. He then looked at the possibility of placing it west, which would still be on the Marston property.

In regard to neighboring towers being adjusted to close the gap, transmission power from neighboring towers could be increased, but this would necessitate all towers to be on the same strength to work effectively with each other.

Several alternative sites were discussed by Mr. Hutchins; a flagpole-designed pole at the Hillside Cemetery, Giles Hill, the Bodwell Silo, and a flagpole design at the school on South Road. There would be considerable expense to building and operating three sites, and there could still be gaps in service in some areas.

According to Mr. Delaney's presentation, Cingular has demonstrated that existing sites cannot be used to fill coverage gaps, and provided an explanation of why small-scale facilities are unable to address those gaps.

Mr. Hutchins feels the applicant has not demonstrated that the 160' height would be necessary given the hill location. Cingular's engineer had stated 120' is the minimum height required at that site, and that 140' would be ideal. Mr. Hutchins did state that the use of the Bodwell silo, even if an option, would not enable the co-location of more than two providers, compelling the need for more sites to be developed.

Mr. Ciardelli asked the applicant about the scenario of moving the tower to the west of the proposed site, lowering the height so the top of the tower would be even with the existing tree canopy, and disguising it as a tree. This way you would see a "tree" with a backdrop of trees, and you would not be able to see the tower from the Kensington side of the property. This would solve the dilemma of the historic properties' view. The tower could serve the Town of East Kingston; it was not East Kingston's jurisdiction to solve other town's problems. Mr. Cody stated he would answer that question when Mr. Hutchins finished his report.

Mr. Hutchins reviewed a series of maps in his presentation, which showed where the gaps in service would be projecting usage of each alternative site. Other maps showed what the projected coverage would be from the proposed site at different heights. Some overlap occurs to ensure there is coverage at edges of the gaps, as the exact delineation of where service stops and starts cannot be determined. Mr. Hutchins had determined there could still be gaps in service in the northern end of East Kingston.

Mr. Ciardelli thanked Messer's Delaney, Maxson and Hutchins for their presentations/reports.

Mr. Don Cody, Director of Operations for Industrial Wireless and Communications. Mr. Cody stated he was glad Mr. Maxson had concurred that the proposed site does solve the problem. And as Mr. Hutchins and Mr. Maxson stated, there is a need for overlap. In answer to Mr. Ciardelli's statement regarding that East Kingston did not have to solve other Town's problems, he pointed out that East Kingston is enjoying the benefit of other town's towers filtering over. There is an expectation of users for uninterrupted coverage throughout the area.

Mr. Cody stated they do have a concern for in-building service, as there should be reliable service for public safety reasons. They had attempted to find the most suitable, available site for their tower. The problem in looking at a multi-site solution is that they all have to be available for it to work, and developing three sites would be cost-prohibitive. He indicated that in Massachusetts, a cemetery over 100 years old could not be used for any other purpose than burying people; he did not know if it was the same in New Hampshire.

John Champ, Site Acquisition Specialist for Industrial Tower and Wireless (ITW). Mr. Champ stated he had looked in East Kingston for suitable sites. He had looked at the largest pieces of property that would meet setback issues according to the Town's by-laws. As far as using Mr. Bodwell's silo, Mr. Bodwell was not interested in considering any proposal from ITW, so they did not get to speak to him regarding the silo. They had sent a letter to the owner of record of the Giles Hill location and got no response. Each of the sites in the report that was presented was not available for one reason or other. It was determined that the proposed site was the best site to use. They had investigated the possibility of moving the proposed tower site to a different location on the same property, but the owner had indicated a potential other use for that other site, such as developing it or giving it to their children.

Mr. Cody stated a multi-site alternative would be cost-prohibitive; the returns have to out-weigh the cost. In regard to Mr. Ciardelli's question of bringing the tower down the hill, he would have an answer on that for the Board at the next meeting.

Mr. Ciardelli asked if the Board members had any questions.

Mr. Tim Allen Mr. Allen asked who owned the tower in the industrial park. Mr. Delaney answered that it was owned by National Tower. Mr. Allen also asked if there were alternatives for increasing signal strength other than forcing everyone to convert to go to 800 MHz, which he realizes is not an option, enabling the Marston tower height to be lower.

Mr. Cody replied that it is a two-way signal issue. With the new phone technology out there now, increasing only the signal from the transmitter (the tower) does not necessarily assure that the signal can come back.

Mrs. Catherine Belcher. Mrs. Belcher stated she had three questions for the applicant.

1. She would be interested in seeing the other properties solicited in the area for proposed sites. Mr. Cody directed her attention to site search information he had presented to the Board.
2. Did the flagpole type allow for co-location? Mr. Hutchins stated it allowed for up to three, depending on the height.
3. In the multi-site solution, were all three sites necessary to meet the need? Mr. Cody answered that the three sites would be needed for it to work. Mr. Maxson stated that the proposed tower was not a single-site solution; he suspects there will be a need for more sites in Town eventually. Mr. Hutchins stated there would be a need to cover the southeast section of Town.

Mr. Ciardelli opened the floor for public comment and questions.

Carrie Sullivan, Giles Road, East Kingston. Mrs. Sullivan asked for clarification (to Mr. Ciardelli's suggestion) if you would not see the tower from Kensington now, or only if the height was lowered. Mr. Ciardelli answered that if the tower height was moved below the ridge, it stood to reason that it would not be seen on the Kensington side of the ridge. Mrs. Sullivan also stated that if these tower people did not want to spend the money on multiple towers, there could be others that would.

Monique Waldron, 275 North Haverhill Road, Kensington. Mrs. Waldron stated that ITW said they had no alternative sites. She had knocked on doors that morning and found that Mr. Leo Cansinsis is restoring his barn on 108, which is 250' above sea level, and he would be more than willing to have an antenna on his barn. The people who own Carmen's Restaurant were interested in having ITW put an antenna on the barn behind the restaurant. And Mr. Mark Brown, who owns Memories Ice Cream and had a large barn, is willing to talk to ITW about the possibility of an antenna on his barn. The people who own the Rosencrantz tower were willing to do something with their tower, such as raise the height. Mrs. Waldron stated she thought it would not be wrong to service other towns, and other towns service us.

Tim Berry, 275 North Haverhill Road, Kensington. Mr. Berry was a little upset about service having to be made available to people coming by on passing trains. He referred to the due diligence report and saw they had contacted Boston and Maine Railroad, which gave him doubts they were contacted as the railroad is Guilford Transportation. He asked if ITW had contacted the Guilford Railroad about the possibility of installing an antenna on their right-of-way. Mr. Champ answered that they had; it was listed in the Town records as B&M. Mr. Berry asked if Mr. Champ had contacted all the people who were listed on the report, or had he just looked up the information from the Town records? Mr. Ciardelli interjected that Mr. Champ had just answered that question.

He also asked if ITW had contacted Mr. Glenn Clark, who had wanted to put a cell tower on Bean Hill some years ago? Mr. Champ stated that that location was not in his search area. Mr. Berry stressed the point Mrs. Waldron had spent three hours that that morning canvassing the area for alternative options, and had come up with many for consideration.

Mrs. Sullivan also offered that Karen McMahon owned 33 acres near the elementary school and is interested in putting something on her property.

Rosanne Sieler, 93 Giles Road, East Kingston. Mrs. Sieler asked what was the Town's responsibility to the tower people. Was it to cover the entire gap or only a part of the gap?

Mr. Ciardelli answered that the Telecommunications Act states everybody has the responsibility to take on a piece of the action in providing service; Town's cannot prohibit service and have to help promote service by some means. According to East Kingston's ordinance, building a new tower is a last resort, after other alternatives have been exhausted. Other locations may or may not work; this is why the RF experts are here tonight. The Board has to weigh all the information to make a decision.

Mrs. Seiler asked Mr. Hutchins if utilizing the school, cemetery and the fire department would cover the gap, and Mr. Hutchins said the south gap would still need to be covered.

Mrs. Waldron thought we could be creative enough without variances; look at the options she found in just 3 hours. We can't plan for the future in one day.

Mr. Ciardelli stated that even though alternatives were being suggested, the Board *was* hearing the application that was before them, and based on the five criteria, would need to either grant the variance or deny it. The Board has to work with what they have before them.

Mr. Maxson stated that towns had created a way for carriers to co-locate in residential locations; it was the current height of the structure plus 30 feet without a variance.

Mr. Cody said they had "*what ifs*" and "*smoke and mirrors*", scenarios that did not exist at the time they applied and don't necessarily exist today. ITW could not be certain of the availability of the sites mentioned. Some of the sites may be open fields, which are not considered as a viable option. He stated that ITW had done a tremendous amount of due diligence in seeking appropriate sites, and the alternatives being presented were scenarios and not concrete options.

Mr. Berry asked that the Board members study the Telecommunications Act before the next meeting, as it provided more authority for local jurisdictions than they would be led to believe.

Mr. Ciardelli closed the floor to the public.

Continuation of the Rehearing. Mr. Ciardelli polled the Board members and the applicants to ascertain who would be available for possible dates to which the meeting could be continued. Tuesday, July 24th at 6:30pm was decided upon.

Mr. Ciardelli stated that the focus for the next meeting would be real estate values and appraisals. Mrs. White will send out reminders to Board members of the meeting date.

MOTION: Mr. Ciardelli **MOVED** the hearing be continued to the 24th of July at 6:30pm, and that the meeting be adjourned. Mr. Allen seconded; and the motion passed unanimously.

The meeting was adjourned at 9:10 PM.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

David Ciardelli
Vice Chairman

Minutes approved on August 23, 2007