

**Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
July 24, 2007**

AGENDA

6:30 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, Peter Riley
Alternate Members: Catherine Belcher, Tim Allen, Paul Falman
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; Ms. Marsha Campaniello, Fremeau Appraisal, Inc.; Mr. Louis Manias, Capital Appraisal Associates, Inc.; Mr. Jeffrey Spear, Attorney for Monique Waldron and Kenridge Farm LLC; and Mr. Barry Hobbins, representing Mr. & Mrs. Marston in the absence of Mr. Bernard Pelech tonight.

Mr. Ciardelli opened the meeting of the East Kingston Zoning Board of Adjustment (ZBA) at the East Kingston Town Hall on July 24, 2007, at 6:30 PM.

Mr. Ciardelli updated Board members that Mr. Cardone was on a leave of absence and therefore Mrs. Belcher would be filling in for him. Also, the Board of Selectmen had appointed Mr. Riley a permanent member. Mr. Falman and Mr. Allen were alternate members.

Mr. Ciardelli read the following letter dated July 1st, that he had sent to the Board members following the June 29th meeting with the radio frequency engineers.

"We just had a very informative hearing Friday night that I think all members in attendance will agree helped in our data-gathering process as we move toward a decision on Industrial Tower's variance application. The RF engineers present shared their different perspectives in an effort to describe "alternatives", "coverage", "gaps", and the methodology used in solving those problems. I would urge all ZBA members to review the minutes of this (and every) meeting to help remember what was discussed and how questions were answered. Along these lines I would also recommend that members develop their own notes on how each of the topics covered relates to our Use Variance criteria. This case is very complex and has become lengthy of necessity in order to allow the gathering of relevant supporting information. Note keeping is very important! Write your impressions down while the thoughts and issues are still fresh in your minds. When we do get the point when we vote to either grant or not grant a variance, each member should be able to state, point-by-point, how they feel each of the criteria was either met or not met and why.

For your convenience, I've attached a checklist noting the Use Variance criteria.

My thanks to each and every one of you for selflessly providing your time and energy in ensuring this case is handled thoroughly and fairly."

Mr. Ciardelli stated that at the last meeting, the discussion had left off at why the proposed tower couldn't be moved down the hill on the Marston property. Mr. Hutchins has responded to that suggestion with a letter and the technical ramifications of that move. That letter also spoke of a Vermont perspective on due diligence in exhausting alternatives. As this was Vermont and his opinion, at some point and time Mr. Loughlin will give the New Hampshire perspective on this point. Tonight we will begin with Industrial Tower addressing the idea of moving the tower down the hill.

Don Cody, Director of Operations for Industrial Wireless and Communications. Mr. Cody referred to potential newly-found properties and alternative sites as suggested from the RF engineers. He reported that Industrial Tower and Wireless had looked at all of them; Mr. Champ had contacted or attempted to contact all the owners. All the

suggested properties were addressed. Mr. Cody reminded the Board that for a multiple-site solution, all three sites would need to be available.

In reference to moving the location on the present parcel of property 700+ feet down the hill. That would create a problem from a build-out capability as it is extreme terrain, and the owner is unwilling to renegotiate a new lease for a site that far from the originally proposed location. Also, moving it to that location would not meet the propagation needs and would require a new agreement. There is a steep drop-off on the ridge to the East and North. There is an alternative site further off the peak away from the ridge, and the owner is considering this. It is further from the high-tension wires and 180' into the woods.

John Champ, Site Acquisition Specialist for Industrial Tower and Wireless (ITW). Mr. Champ referred to the Maxson and Hutchins RF reports.

Mr. Maxson had indicated a possible alternative site at Monahan 4 Corners. In investigating the site, Mr. Champ found the area to be small, it did not meet the setback requirements, and there was also not enough space for the 10,000 sf compound area. As it is a very open area, the visual impact would be very great. It was also located too far south of the search area.

Another alternative site mentioned was the Bodwell silo near Sanborn Road. Mr. Champ had sent a registered letter and the owner had responded, indicating he was not interested. There were 3 properties suggested on Moulton Ridge Road, which were in Kensington, and all were entities of Sullivan properties. Letters were sent to all of them with no response generated, indicating they have no interest. Another property mentioned was on top of Giles Hill. The owners live in Florida and did not respond to the certified letter.

Mr. Hutchins indicated Morse Hill as an alternative, which is in the southeastern corner of the Town. Mr. Hutchins wrote in his report: "Note that use of Morse Hill would likely eliminate need for an additional facility for the SE corner of the Town. None-the-less, North Road (Route 108) still remains inadequately covered. The use of York Hill, using such a high point, would almost certainly raise concerns about visual impact." Industrial Tower has demonstrated in the past that utilizing the land on Morse Hill would not satisfy coverage needs, and Mr. Hutchins agreed in his report.

The commercial zone and light industrial zone were investigated, and neither location would close the gap in the North Road area. The cemetery location was investigated and it was found that you could not build within 25' of a cemetery. Moving the location of the tower has been addressed with the landowner, and he is considering that option.

Barry Hobbins, acting as a duly authorized agent of Industrial Communications and Wireless. Mr. Hobbins apologized for Attorney Pelech's absence, as he had a conflicting Planning Board meeting. Mr. Pelech had provided Mr. Hobbins with a statute regarding the prohibition of any type of new construction on or about a cemetery or burial grounds. He could not locate that statute at the present time, but would ensure the Board and the attorneys received a copy. He reminded the Board that the cemetery location was one link in a three-location alternative, and that all three links would be necessary to replace the proposed site. Since the cemetery was not a possible location as per statute, it would break the chain of the three links.

Industrial Tower and Wireless has made significant effort demonstrating they have explored alternatives in location, and great pain and effort has gone into contacting these people. New construction has been investigated, and they have demonstrated due diligence in siting for the telecommunications facility. The report provided to the Board included 800 possible sites. Verizon has indicated a need in this area and would look objectively at co-location at this site.

Mr. Hobbins reiterated that the applicant had attempted to contact all the alternative sites suggested by Messers. Maxson and Hutchins, and provided copies of the letters and certified receipts for the record of those attempts.

Mr. Hobbins reiterated that in investigating for a location, they had looked at the ordinance first before suggesting new construction. If the Board desired, they would review the steps that have been taken to mitigate the impact at the proposed site. Mr. Ciardelli stated the Board was familiar with the steps that had been taken and did not think it was necessary to review it again.

Mr. Hobbins answered he had raised that issue in light of the recent court case of U.S. Cellular vs. the Town of Bow and what steps are necessary to be taken with respect to arguing or putting on record a potential relationship to whether or not if we cannot locate a site in a residential zone by a variance, and all the other aspects have been exhausted, it is our belief that this Board can utilize the Telecommunications Act. They could basically trump the regulatory and statutory aspect of East Kingston's particular ordinance, and look to the Telecommunications Act for the possibility of effective prohibition. He would leave that issue to Attorney Pelech.

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

Paul Falman. Mr. Falman asked how many telecommunications companies, other than the co-applicant and tonight's mention of Verizon, have inquired about co-location. Mr. Cody answered there were just the two at this time. He explained that cell companies all have a budget, don't want to commit to a tower that has not been built yet. Typically they wait to see if a tower will be built before absolutely committing the money for co-location. The Board can rely on the drive test and the testimony of the RF engineers, demonstrating there is a deficiency in service in that area.

Catherine Belcher. Mrs. Belcher stated she would like to hear the applicant discuss the change in location, as it could be more visually palatable. Mr. Ciardelli stated there was another issue that may tie into that when they talk about real estate. There is information from PAL and NHDHR.

Mr. Cody stated that in regard to the PAL and the NEPA filings, the Board had addressed that issue some time ago and recognized that this Board and the Town was not responsible for that mitigation issue. It is a national program whereby a state historical program has been delegated to be the representative of the federal agency. And it is a separate issue from the variance issue we are here for tonight. The process of historical sites, what type of impact it may have, and the mitigation process is really outside of the Town's responsibility or authority. Furthermore, one of the problems is that it is a Planning Board issue and not a Zoning Board issue.

When we do historical site reviews, and there is an impact, it is a mitigation process and not an elimination process. In the end it will be mitigated; either by location change, a height change, stealthing, or sometimes a monetary payment. The review with the historic people cannot be finalized until we finalize here with you. We are talking about lowering the height, and locating farther down the ridge; we have not talked about stealthing or a monopine. Until all that is finalized, they cannot make a judgment as they have only looked at the original application – a monopole, at 180', at the ridgeline. This is why we keep things totally separate; your decision is not based on theirs, theirs is really based on yours.

Mr. Ciardelli stated that throughout the entire process, there has been much subjectivity. The RF engineers' reports are similar in some respects, but there are differences also. And the real estate information so far is off the scale (with respect to conflicting opinions). The Board is continually searching for objectivity and an independent view. Part of the record is that you hire a contractor to conduct a balloon test and submit their finding to the state. He completely agreed with Mr. Cody that the historic review is a separate review, but one of their findings relates to effects on esthetics, which is parallel to what the Board has to take into consideration under this review. It does not mean that the Board should push this data point aside, as it contains information on properties, landscapes, and viewscapes affected. Mr. Ciardelli stated that it might drive some change in what the applicant may be doing. To the extent they can describe that now, the Board would like to be a part of that.

Mr. Cody was not sure he could describe it to the Board at this point, reminding Mr. Ciardelli that that review was based on the original application with no changes. It is a very different animal than what they were discussing today. It should be noted that the State of New Hampshire Historic Commission had exceeded their authority, asking them to review an area beyond what the standards are, and they have been very strongly chastised for having exceeded that authority on a similar site. We were told we had exceeded our responsibilities in requirements. They had taken it to a level they had no authority to. Mr. Cody suggested that nothing has gone on there that the Board was not already more than aware of. If in the final review, something changes here, it will change that report.

Mr. Ciardelli clarified that the Historic Commission's report was on the 180' tower at the top the ridge and what they were talking about now with the Board was a 160' tower in the same location. Mr. Cody did state that one of the suggestions by the historic commission was for them to use flush-mounted antennas painted brown; Mr. Cody thought the monopine would be more appropriate. These were all discussions, with no formal proposal. Mr. Cody asked Mr. Delaney for clarification.

Mr. Delaney interjected that the initial filing with the state agency was at 180', but in the last meeting they spoke of 160'.

Mr. Ciardelli stated that they were still reviewing the idea of moving the tower as per Mr. Hutchins, and exhausting other alternatives.

Mr. Riley asked if the applicant had additional copies of the new alternate sites they had contacted or tried to contact. Mr. Hobbins stated he had given the Board copies of the Sullivan letters; he would make sure the Board was provided with a copy of the Bodwell silo letter also.

Jeffrey Spear, Attorney for Monique Waldron, reiterated Mr. Champ had stated that the Monahan Corner property was too small for a 10,000 sf compound. The property was 2.1 acres and he wanted to know why this site was considered too small.

Mr. Champ answered the property already houses the restaurant and the parking lot, and there is not sufficient land for the 10,000 sq compound and tower in addition to the existing buildings. It is 144' wide at the widest and 300 feet deep, and does not meet the setbacks.

Mr. Ciardelli asked if 10,000 sf was the minimum square footage for the footprint required to build a tower. Mr. Cody responded that that amount of space was required in order to be able to expand and offer co-location, as each company would have their own facility as part of the compound. Also, there needed to be enough room for their own trucks and public safety vehicles to move around, if necessary. This site is already burdened with a substantial amount of business activity. Furthermore, it should be noted it is outside the area needed to fill the gap as it is too far to the South; it was only mentioned in the terms of a multiple-site solution. It was never considered as a single site solution. Mr. Champ has already spoken to the fact that the Bodwells were not interested in having an antenna on their silo, and there was no response from the owners of Giles Hill.

Mr. Hobbins quoted from the East Kingston Telecommunications Facilities ordinance, F.4. which states "towers must be set back a distance equal to 125% of the height of the tower from all lot lines."

Mr. Spear also asked if any other alternative to a monopole and 10,000 sf compound such as an antenna on a cupola or silo was researched at the alternative sites.

Mr. Riley stated that the applicant had stated it was a business decision to request the 10,000 sf compound. He wanted to know why that much space was required, as the generator systems and the enclosed systems the carriers use were smaller and did not require that much space. Mr. Cody thought they were digressing from the issue. They look to the future and that is why they look to lease an area that large.

Mr. Riley stated that the application before them was for a four-array tower, which is all that the Board has to deal with. The applicant is supposing for future things to occur, and that is not what is before us; we cannot approve that. Even if there was a future, if that was to occur, it would require an additional phase and the applicant would need to come back before the Board for an additional variance.

Mr. Cody was sure he was not proposing they lease the minimum area required today, and worry about tomorrow when they could lease more. Mr. Riley said he was only concerned with what the Board had the authority to consider. Mr. Cody said the size of the lease area was not really relevant to the question of the Board, as they were meeting the setback requirements. They have chosen a parcel large enough that the proposal is well away from the property lines, so they do not have to ask for relief. If they chose to build at a smaller location, they would be required to ask for additional variances because the property would not be large enough to meet the requirements of the Town's by-laws.

Mr. Riley stated that one of the requirements the Board has to look at is minimizing the impact of the variance they are considering.

Mr. Ciardelli stated that the wording of the original request was "...seek a use variance to construct a 180' foot wireless communication monopole tower on a 100x100 ft area for purposes of housing wireless equipment." Mr. Ciardelli interpreted that to mean that the footprint, in conjunction with the tower, is that 100x100 area. Mr. Cody agreed.

Mr. Riley confirmed that was what they were applying for, but stated it did not necessarily mean that that was what was required to satisfied the requirements. Is the application satisfying the need? Mr. Riley had worked on a similar case for another Town where the ZBA had required the applicant to minimize the site location to the extent possible. The actual boxes holding the equipment do not take up a lot of space.

Mr. Riley said that the applicant was here to satisfy the requirements for the five criteria the Board has to vote on and he wondered if the applicant was doing that as best they could.

Mr. Hobbins answered that in the last month, the applicant has looked at properties suggested to them to demonstrate they have investigated other alternates to mitigate the situation as proposed in the application. The fall zone has to be taken into consideration, which would limit the development of the balance of the property. A 160' tower would have a 200' radius fall zone, which limits the scope of other use of the land.

Mr. Cody stated that to build in the commercial or industrial zones where they would not need variances, they would not be able to provide coverage to the area needed. This means they have to come before the Board for relief for the area they chose that would meet the need. They are not inclined to come before the Board for a piece of property for which they have to ask for several variances. Mr. Cody stated that visual impact was a subjective determination, but the Board was not issuing a variance for esthetics.

They tried to use common sense and to meet the by-laws as best they could; which is why they looked for the larger lots. If they tried to use a one-acre lot, there would be many more variances they would need to ask for. They also did not consider a lot with vegetation not more than 4' high an appropriate place for a tower.

Mr. Champ's assessment of the Monahan Corner property showed it was too small to accommodate the 10,000sf compound, and placing a tower there would also not meet the needs of filling the gap. Mr. Hutchins stated that one site is a solution for the southern part of the Town, but that site would not be a solution for the area we are trying to cover now.

When Industrial Tower chooses a property, they try for one that has the greatest probability of getting approval. Mr. Cody reminded the Board that they have already looked at hundreds of alternatives, and even though it is late in the game, they have gone back and looked at the ones again that have been recently suggested. For one reason or other, they would not work. In trying to be more complete in our answer, we might have caused some confusion.

Mr. Riley answered that he was not confused; but needed an explanation in order to satisfy the Board's decision.

Mr. Champ asked if there was anywhere in the by-laws that states there could not be a 10,000 sf area; Mr. Riley answered no.

Mr. Spear asked why the compound was an issue. Mr. Cody answered that the compound was not the issue. He stated that no matter the size of the compound, that was not the variance that was before the Board. The proposed site is on a very large parcel of land, well away from the property lines and meets all the setbacks. It will not even be seen, as it would if it was to be located in the middle of a field.

Mr. Spear asked if when they assessed Monahan Corner, they were assuming they would install a 160' tower.

Mr. Hobbins stated that the first thing to do is look at alternatives structures. If there was something at Monahan Corners that was 100', it would have been looked at as a possibility. The Bodwells rejected the silo site. We investigated the locations suggested by the RF Engineer; there is nothing there that height. We are trying to move the site to mitigate visual impact, and are in discussion with the landowner regarding the possibility of moving the site. You have to have a landowner who is willing to make a significant compromise, and it is now one year and 6 months since the original application.

Rosanne Sieler, 93 Giles Road, East Kingston. Mrs. Sieler asked about the flagpoles, and Mr. Ciardelli responded that Mr. Hutchins had been suggesting a flagpole at the cemetery and one at the school. Mrs. Sieler also asked about the possibility of placing a flagpole at Carmen's, since one would not be allowed at the cemetery. She wanted to know since the structures at Carmen's were not tall enough, could they install a flagpole there. Mr. Cody answered that a flagpole would need to be taller than other structures at that location, because the antennas would need to be installed vertically. Mr. Delaney stated that the typical height of a flagpole would be 120'.

Mr. Ciardelli explained that he had taken the information to mean that the arrays would be further apart in a triangular configuration, and if they were flush-mounted, it would require additional height. Mr. Hutchins had mentioned that a ridiculously high flagpole would look foolish. Mr. Spear mentioned that Mr. Hutchins' report stated that a flagpole could be 80' high. Mr. Hobbins stated that was the 3-site alternative. Mr. Delaney stated with a second carrier, it would be 90' height.

Mr. Ciardelli stated they would now move on to the real estate portion of the hearing, and the proposed effect there would be on real estate values and turned the floor over to Mr. Cody. Mr. Cody stated they had asked Ms. Marsha Campaniello to conduct a comprehensive real estate analysis as it relates to the placing of towers and the market values of surrounding properties.

Ms. Campaniello introduced herself as being a certified real estate appraiser from Fremereau Appraisal, Inc., Manchester, New Hampshire.

She summarized that her assignment was to determine the impact the proposed tower would have on market values of surrounding properties, with a focus on recent sales of residential properties within close proximity to telecommunications towers in southeastern New Hampshire.

From this assignment, there was a three-point conclusion: 1. there is no diminution of market value found for residential properties in close proximity to and/or in view of telecommunications towers; 2. no municipalities researched within New Hampshire have either given any tax abatements or made any downward adjustments to assessed values for properties within close proximity to telecommunications towers; and 3. no diminution was found in either the asking or selling price, appraised or assessed value of residential properties within close proximity to telecommunications towers.

These conclusions were drawn by the following: inspecting the proposed site; reviewing the application; reviewing Zoning Board minutes; and location, inspection and research of 28 cell towers in order to identify those that met the following criteria – location was similar zoning, residential use, property values and development density; varied installation dates of towers (including recent installations), residential properties located within ¼ mile and/or have a view of cell tower; recent residential property sales within close proximity to towers, and review of towers with added focus on the resale of these residential properties within recent years.

Also direct analysis of 5 cell towers in Rockingham County within close proximity to residential properties that have had recent sales; external inspection, research and collection of data related to the sale of residential properties in close proximity and/or view of the above 5 cell towers, including confirmation of sales data; research and collection of data related to comparable property sales not in close proximity to cell towers; statistical analysis of residential sales data for pertinent towns and regions; research of market conditions; review of records and interviews with representatives in Deerfield, Kensington, Newfields, Stratham, Chester and East Kingston's Assessor's offices to determine town-assessed values and equalized values as of the various sales dates; location, inspection and research of 16 additional towers and one tower easement within close proximity to residential properties that have had sales within the last 5 years; interviews with area brokers and appraisers with respect to cell and radio tower proximity on asking and selling prices and appraised values of residential properties; and research and review of various websites, articles and studies which pertain to the influence on the market value of residential properties within close proximity to cell towers.

It should also be noted that no properties were excluded from this report based on findings that were inconsistent with the conclusions of this report. All properties that met the criteria listed above for the identified tower locations, and for which sufficient information could be obtained, were included in this report.

The conclusion was based on a proposed 160' monopole tower in East Kingston. Four out of five of the comparable towers were taller than 160' (i.e. 200-462'), and most comparable sales had more prominent views of their applicable tower than an abutter would have of the proposed subject tower.

Mr. Riley asked if Ms. Campaniello had read the report by Mr. Louis Manias; she responded she had. He stated that Mr. Manias is a highly respected appraiser, and he asked how she differentiated in her report from Mr. Manias' report in respect to the proposed site. How did she justify the fact that her report showed there was no diminution in property values and Mr. Manias's report stated there was? Was it her understanding that different appraisers could

come to different conclusions on the same issue? Ms. Campaniello stated that that fact was obvious as seen in the difference in their reports.

Mr. Riley wanted to know what specific facts she found in her report that went against Mr. Manias' conclusions that the properties *will* have a change in value. Ms. Campaniello stated she had looked at some of the comparable sales Mr. Manias had looked at, and she had determined they were not applicable. Ms. Campaniello asked if there was a specific instance in the report Mr. Riley was asking about. Mr. Riley referred to the Palmer Hill project in Kensington on a commercial property. Ms. Campaniello answered that although it was commercial property, it was surrounded by residential property; she had focused on if there was any diminution of value on those properties surrounding that location. The tower at that location is 200'.

Mr. Riley referred to the Newfields tower, which is 120' and just above the tree line. The proposed tower will be significantly above the tree line, and Mr. Riley asked if the height played into her consideration of values? Ms. Campaniello responded her conclusion was consistent with the towers that were researched, the highest tower being at 462', and none of those towers indicated any diminution of value of the properties in close proximity or view of those towers. For those towers, and others she had researched in the past, height does not seem to have an effect.

Mr. Riley also asked if she had looked into the historical data submitted by the Waldrons in respect to the property. Ms. Campaniello answered that she had reviewed that data, and it was not pertinent to her assignment. On being asked if any other sites she had researched of historical value, Ms. Campaniello responded again that was not her assignment.

Mr. Hobbins asked if Ms. Campaniello had looked at the comments of the appraiser of the two properties located on Giles Road, and had she verified independently where there was a differing view? Ms. Campaniello responded she was familiar with some of the properties. The Oak Hill Road tower in Springfield, Vermont was a 295' tower with guy wires and beacons on three sides, and all houses in view of the tower had been erected after the tower was constructed. There had been no tax abatements requested or issued for any of these properties. Other negative influences in the area include historic water issues, unpaved roads and the need for deep wells. Officials solicited verified that long marketing times were because of difficulty in obtaining water on the lots. The current listing broker for one particular property, who is also the past broker, stated that the tower location is not and was not considered to be a negative influence on either the 2003 nor the current sales price. Other lots have superior views and were not considered comparable.

Mr. Hobbins acknowledged that a letter accompanying the two appraisals by Mr. Louis Manias referred to a 1998 Zoning Board case involving Smithfield, and he wanted to know if Ms. Campaniello concurred with Mr. Manias' opinion. In Ms. Campaniello's opinion, the 1998 Rhode Island information did not appear to be applicable with the 2007 East Kingston situation, as the real estate market has changed since that time. That area is not the same market as East Kingston, and sales cannot be considered comparable.

Mr. Hobbins mentioned that visual impact was an issue raised. He asked if Ms. Campaniello had reviewed the letter in respect to the existing power line easement. Mr. Manias had indicated that power lines represented offsetting influence when compared to the cell tower. Ms. Campaniello's opinion was if there is already a power line easement and it is considered to be comparable to any possible influence of the cell tower, it would be the same type of influence.

Ms. Campaniello had spoken to appraisers and developers, and there is a feeling there might be a negative impact on real estate; however, in further asking for examples, they were not able to provide specific examples of diminution of value due to the close proximity and/or view of a cell tower.

Mr. Hobbins asked in looking at Mr. Manias' conclusions and opinion with respect to property values, did Ms. Campaniello think there were other variables that impacted property sales whether or not there is a cell tower involved. Ms. Campaniello answered that buyers were influenced by a number of things such as length and type of driveway, inclusion or lack thereof of a swimming pool, an updated kitchen, carpet versus hardwood floors, how the house smells, etc. All these things could affect the value.

Mr. Hobbins referred to Mr. Manias' report and mention of the North Hampton battle between two carriers attempting to locate a wireless telecommunications facility; the tower had not been built. In the Glinden example, Mr. Manias had referred to the question that *anticipation* of a proposed cell tower would have an effect on the value of

property. Ms. Campaniello understood that case to be an agreement between the landowners that if there were a diminution of value, they would split the difference. As the tower was never built and there was no data, she did not use it in her research.

Mr. Hobbins asked if it was within the guidelines of Ms. Campaniello's criteria to use hypothetical versus real sales. Ms. Campaniello responded she was asked to use comparable sales and not hypotheticals.

Mr. Hobbins asked if any of the brokers had real examples of diminution of value. Ms. Campaniello stated that with all the appraisers, brokers and assessors she had spoken to, there was not one indication of a sale where there was diminution of value due to close proximity and/or view of a cell tower.

Mr. Falman asked if there was any hard data supporting an increase in days on the market. Ms. Campaniello stated there are many factors that could affect the sales time, but she had found no clear evidence of a longer length of time to sell because the property was in close proximity and/or view of a cell tower.

Mr. Spear asked if Ms. Campaniello had looked at any undeveloped parcels. Ms. Campaniello referred to pages 49, 50 and 51 of her report, which included examples of undeveloped land. She indicated that a spec home in Londonderry with tower view to the east would be a "high end" home at \$675,000 (Pg49). In Manchester, an entire development was created in full view of an existing tower; there was no mention of the tower being detrimental (Pg 50). In Tilton, 31.7 acres of land with full view of cell tower; the buyer indicated that the location of the tower had no affect on the sale price (Pg51).

Mr. Spear asked if there were any comparable sales included of raw land not near a cell tower. Ms. Campaniello stated there were not.

Mr. Ciardelli thanked Ms. Campaniello for her presentation.

He then turned over the floor to Mr. Manias, appraiser for Monique Waldron and Kenridge properties, for his report.

Mr. Louis Manias introduced himself as being a certified general real estate appraiser from Capital Appraisal Associates, Inc., Concord, New Hampshire.

Mr. Manias had been asked by Mrs. Waldron to value her properties; those three properties owned by Kenridge properties and Ms. Waldron have a total market value of \$1,925,000. He had also considered reports on the North Hampton zoning variance hearing supplied by Mr. Spear.

Mr. Manias wanted to clarify previous comments made by Ms. Campaniello in reference to the Glinden properties and their agreement. He stated he did not analyze the agreement made between the Glinden's and their buyers; it was included as reference material and support to the statement that there is market reaction to it. The grid of sales did not include an analysis on that, so any commentary relative to using that as direct market support is incorrect. It was used as support for a market reaction and a fear that people do have.

There was a question brought up to differentiating his report and Ms. Campaniello's. There is a real difference between the two. In reading Ms. Campaniello's impact study, she lists a sale price and several comparable sales below. She states the sale price of the property with a tower view is within the range of property without a tower view. That statement is correct.

There are also other factors and features that affect the sale of property. It is important to note that Ms. Campaniello's report does not take any of that data into consideration. That is the difference in her report and the conclusions in mine.

Appraisers can have different opinions; it is a matter of how the data presented is interpreted, the amount of data analyzed, and what the actual assignment is. Mr. Manias provided a grid of sales using Ms. Campaniello's properties to the Board members. He had performed a grid analysis looking at specific features of the properties - size of the home and land, whether it had been renovated or not, and other amenities. His grid analysis was for property with a tower view as the first sale and the comparables as the ensuing properties.

Mr. Manias directed the Board's attention to the bottom of the page, where a percentage of difference between the subject and the sales was listed. In using the information in the sales Ms. Campaniello provided, the property with a tower view has a different reconciled value than the comparables used; the difference by percentages is listed on the bottom of each page. This shows as a negative difference, which shows that the sales without a tower view have sold at a higher reconciled value after making the adjustment than the property with the tower view. Some sales are not affected by the tower, which could be a function of negotiations. Good analysis will include properties that may or may not be affected as well, for a balancing point.

There are 20 sales Ms. Campaniello has analyzed with no tower view, and of those 20 sales, my grid shows the range of differential between the adjusted sales prices of the comparables and the tower view properties from +8% to -19%. Only four were at 3% or above, and fourteen showed a negative effect. This shows that the evidence will support a negative adjustment when a proper analysis is completed. Mr. Manias was glad Ms. Campaniello talked about *other* factors; all factors should be considered and the tower is a very prevalent factor in a lot of sales. Property values, sales and the market has changed; the perception a cell tower will produce a negative effect on property values has not changed.

Appraisers do differ in opinions; an appraisal is not an exact science. Data gathering and reporting of data should be done as completely as possible, so a reliable conclusion can be drawn.

Mr. Manias referred to Ms. Campaniello's Tower 2 comment on page 24 of her report. He wanted to know if "*the selling broker indicated she was unaware of the cell tower*", why did the last line of the comments state "*the tower had no effect on the asking price.*" This leaves one to doubt the reliability of the data presented.

Assessors do not willingly give out abatements. Those who can produce data to support a negative effect request abatements. There is no data showing a tax abatement was given if people do not apply. People are afraid of cell towers affecting their property values, as it is one of their biggest investments.

The analysis from my report, and the sales Ms. Campaniello provided, show there is evidence that suggests there is a diminution of property values as a result of the presence of a cell tower. In zoning variances, you are always talking about hypotheticals. An appraiser has to assume the hypothetical is in place and gather data to support or refute a position. You cannot do an appraisal without hypotheticals; it is not unlike doing an appraisal for a construction loan.

We are both unbiased appraisers and cannot assure that the conclusions we reach will support the position of the persons employing us. We are presenting the data as we interpret it and are presenting it to the Zoning Board. It is up to the Zoning Board to come up with a ruling based on *their* interpretation of that data.

The data, when analyzed properly, supports a diminution in value as a result of a direct view of a cell tower. Mr. Manias found it interesting that the National Register for Historic properties finds that an adverse effect will occur if a tower is placed in that location. This supports the market data for that particular location.

Every appraiser's opinion is different, based on experience and methods of analyses.

Mr. Ciardelli thanked Mr. Manias for his presentation. He asked if Board members had any questions.

Mrs. Belcher asked for clarification on how Mr. Manias came to the adjustments on his grid. Mr. Manias replied that a positive feature will have a negative adjustment, and any inferior feature will have a positive adjustment. This will make it equal to the control. Adjustments are made to market reactions to those differences.

Mr. Falman asked Mr. Manias what the \$6,440 is 19% of. Mr. Manias replied that the \$6,440 (Comp 1a) is the net sum of the adjustment made. The percentage shown on the bottom of the grid is the difference between the adjusted sale price (indicated value) and the \$379,900 of Comp. 1. Mr. Falman asked why it was not compared back to the original asking sales price of the property. Mr. Manias answered they have to be adjusted for the features to make them as equal as possible to the control; then the reconciled number is compared to the sale price of the control. That is the difference indicated.

Mr. Allen understood the grid, and stated that the adjustments are entirely subjective. Mr. Manias stated they were based on buyer's reactions. Mr. Allen asked if the data was based on thousands of data points used in the past, or was

it an opinion. Mr. Manias answered that part was based on opinion, but most was based on market reactions. The appraiser has to ask if there will be an economic adjustment or not.

Mr. Allen stated he felt it moved in a more subjective direction. It was completely impossible to compare an apple to an apple, for instance. Every house is different, and every person's opinion is different. This appears to be a situation of personal opinion. Mr. Manias stated that was why so many different features were analyzed.

Mr. Falman offered that the adjustments could then change every 6 months to a year; Mr. Manias agreed they might change. Depending on where you were located, it could change as much as \$80-90 sf as opposed to \$30-40.

Mr. Allen asked if in Mr. Manias opinion, a sales price + or - 5% is completely dependent on emotional attachment to the property, negotiation skills and the seller's willingness to sell quickly or hold out. Mr. Manias stated he would not "put his finger" on that number at all, as appraisers have to look at what the end result is; what the price is after closing. Appraisers cannot always discern the reasons; a lot of factors cannot be determined since the specifics cannot be isolated. We can say the market value is based on an agreement of a willing seller and a willing buyer, without undue influence.

Mrs. Belcher asked why it appeared there was no adjustment made for lot size. Mr. Manias stated after adjusting for features, he had made no adjustment for lot size since there was only a 1% difference; they were basically the same. Mrs. Belcher found it difficult to understand why someone would pay the same for a house with basically the same features, when one has one acre and the other has two acres. Mr. Manias explained that in Comp 1C and Comp 1D, after the adjustments, there was less than a 1% difference.

Mr. Champ noted that properties 1C and 1D sold more than a year apart, and pointed out that the real estate market had changed in that time. Mr. Manias agreed it had. Mr. Manias also noted that one of the properties did not have updated features, and the other did.

Mr. Ciardelli asked if there was a rule book where they got their factors from. Mr. Manias answered no, there was not; everything needed to be taken from the market.

Mr. Hobbins asked about Mr. Manias' term of "lack of data". Didn't he consider it telling that there was no data at all about any information he had reviewed of anyone applying for an abatement, either a positive or negative adjustment, with respect to residential property that is in close proximity to a wireless communications tower?

Mr. Manias stated he had responded, "a lack of data does not support a position one way or another." It may be there is a lack of sophistication on the part of property owners in those situations, and they have not applied.

Mr. Hobbins asked if they used that data as a relative element of their appraisal. Mr. Manias answered that adjustments may or may not be relevant in market value, but appraisers do not use assessments in valuing real estate; they only use market relations. An assessment is strictly made in order to produce tax revenues to run a community.

Mr. Hobbins asked Mr. Manias if he agreed or did not agree with the following quote: "Construction of tall industrial towers does have a negative effect on property values." Mr. Manias stated it would depend on the location. If it were in an industrial zone, it would not; if it were in a residential area, it would. Mr. Hobbins stated that this was the generalization that was made in a memorandum in a motion of support of rehearing for this case. Mr. Manias stated he did not know who wrote it; Mr. Hobbins answered Mr. Spear had written it.

Mr. Spear asked if Mr. Manias had assessed any raw land. Mr. Manias answered he had stated in a study he attached to his report; diminution of value as the result of the presence of a cell tower could be anywhere from 10-30% on raw land, especially in executive-style communities. This had been the core of the argument in South Hampton.

Mr. Sieler, 93 Giles Road, East Kingston. Mr. Sieler reviewed that it was stated market values could diminish 1-2%. He stated that many people had assumed that the first criterion was already answered.

Tim Berry, 275 North Haverhill Road, Kensington. As Mr. Dworman had said at an earlier meeting, 5% may not be much to you, but it is to me.

Mr. Cody offered that it was a margin of error, a difference of opinion.

Mr. Ciardelli closed the floor to the public.

Mr. Hobbins stated he was told they would only be doing the real estate appraisal tonight; he was not prepared to present the alternative sites at this time. Mr. Ciardelli verified they were not closing the hearing, only closing it off to the public for the present time.

Mr. Ciardelli stated that the Board has pounds of information, some of it conflicting. It is hard to discern something that is not concrete. What do you do when it is not crystal clear; we look to the Zoning Board of Adjustment handbook and the five criteria. The first criterion states: *"No decrease in value of surrounding properties would be suffered."*

The piece of guidance the state of New Hampshire gives us is stated in #1. Perhaps Attorney Tim Bates says it best in the OEP training video, Zoning and the ZBA: *"Whether the project made possible by the grant of a variance will decrease the value of surrounding properties is one of those issues that will depend on the facts of each application. While objections to the variance by the abutters may be taken as some indication that property values might be decreased, such objections do not require the zoning board of adjustment to find that values would decrease. Very often, there will be conflicting evidence and dueling experts on this point, and on many others in a controversial application. It is the job of the ZBA to sift through the conflicting testimony and other evidence and to make a finding as to whether a decrease in property value will occur. The ZBA members may also draw upon their own knowledge of the area involved in reading a decision on this and other issues. Because of this, the ZBA does not have to accept the conclusions of experts on the question of value, or on any other point, since one of the functions of the board is to decide how much weight, or credibility, to give testimony or opinions of witnesses, including expert witnesses. Keep in mind that the burden is on the applicant to convince the ZBA that it is more likely than not that the project will not decrease value."*

Mr. Cody stated he would like to reserve the opportunity to make their final argument on the 5 criteria at the next meeting.

Mr. Ciardelli stated the Board has the bulk of information that generated the rehearing. He asked if the Board was satisfied they had researched all the alternative sites. Mr. Ciardelli said he would like to look at next month for closing arguments from both sides and evaluate the points then.

Mr. Cody wanted to know if the Board was satisfied they had researched all the alternative sites. They would talk to the property owner about changing the location on his property. They would be prepared to speak to that at the next meeting, as well as the issue of lowering the height and making it stealth.

Mr. Hobbins reminded the Board they could make conditions on their approval. Mr. Cody stated that even if the ZBA granted the variance, Industrial Tower could not build the tower without resolving the issue with the New Hampshire Historic Association.

Mr. Hobbins stated that because of the expansion of this Board's jurisdiction over issues that are normally planning board issues in this particular case, they are using Mr. Loughlin's January 23rd letter, where he outlined what the ZBA should consider, which includes performance standards of the Telecommunications Ordinance, including site plan review conditional use standards. Mr. Hobbins asked the Board to consider another element. He believes the Board has to go beyond the ordinance and the regulations of the local board, and consider the Telecommunications Act of 1996 as a separate argument. If they can demonstrate a substantial gap in coverage, if they have exhausted all the alternatives and this is the only alternative left, the Telecommunications Act, Sec 3.3.2 can trump and this Board can take action on that issue.

Mr. Loughlin stated he surmised Mr. Hobbins was speaking that Telecommunications Act issues would be the next most legitimate subject of debate. The presumption is that both sides would make arguments as to what the effect is or isn't on the Telecommunications Act, and the Board will need to make a decision based on that.

Mr. Spear stated he had some new information to submit; some he could provide tonight and the rest he would get in later.

Mr. Hobbins stated that at some point in time, the Board might need to consider issues beyond the scope of the 5 criteria.

Mr. Hobbins stated that they would investigate the alternatives Mr. Spear referred to for the next meeting. But at some time they should need to stop submitting alternatives. Mr. Ciardelli asked the Board if they felt the applicant has sufficiently described their pursuit of other alternatives. Mr. Hobbins wanted to make sure they had, on the record, investigated all the alternatives. They could make the argument that beyond the scope of the ordinance and the variance issue, there is that possibility that federal law usurps that if you meet the criteria of exhausting all the alternatives. It would do no good to make any effort to go forward, because you will get the same result of not being able to meet the criteria.

Mr. Loughlin stated that whether the applicant had exhausted all the alternatives is the heart of the matter and not for the Board to decide at this point and time. The Board will need to make that determination when all the final information is submitted; it should not be made separate.

Continuation of the Rehearing. Mr. Ciardelli asked for a motion to continue this hearing to next month.

MOTION: Mr. Riley MOVED the hearing be continued. Mr. Allen seconded; and the motion passed unanimously.

Mr. Ciardelli stated the focus of the next meeting would be the Telecommunications Act and the Five Criteria.

Mr. Allen asked the applicant if one month would be an appropriate amount of time in which to exhaust all alternatives prior to the final decision.

Mr. Cody stated that each time they came to a meeting, they were presented with more alternatives, all of which they investigated for the next meeting. He feels it is a stall effort and done to frustrate them. They have tried hard to work with the Town, and made adjustments after adjustments and looked at every suggestion. At some point, there needs to be some finality to it, or they could be there forever.

Mr. Paul Kimball, 21 Kimball Road, Kensington. Mr. Kimball wanted to know if the applicant had considered a site at Great Hill, as it was less than a mile away from the proposed site. He thought it was in Kensington, and not in East Kingston.

Mrs. Belcher asked if the change of location on the Marston's property would be discussed by the applicant at the next meeting. Mr. Cody replied that it would.

Mr. Allen asked if the decision would it be conditional for the new location if it was approved. Mr. Ciardelli answered that according to counsel, the Board had a number of options. The Board could disapprove the current variance, go back to the drawing Board, and start all over again. Or the Board could look at how the new proposal addresses the five points and approve it with conditions. Mr. Loughlin had been concerned about adequate notification if the location were to be changed. It is on the same property and has the same abutters.

Mr. Spear asked if there would be drawings to show the new proposed location, as opposed to just stating it would be moved 350 or 500 feet from the present location. Mr. Cody likened it to a site plan for a development, with different lots. The variance is the same use variance, on the same piece of property, with the same abutters; and moving it a few feet to diminish the impact of the tower would not change the application.

Mr. Loughlin stated that the Board needed to know where the location would be in order to make a determination if it satisfied the 5 conditions, and what the effect would be on the view.

Mr. Ciardelli stated they needed to know the height, the location, and the stealth characteristics. Mr. Cody ensured the Board that all that information would be available at the next meeting.

Mr. Spear asked that they be provided with any new information sometime before the next meeting date, and not on the date of the meeting. Mr. Cody stated that they had been provided new information at each new meeting date. They have supplied advance information to the Town, and also to the opposing attorney, which is not required. He noted they have not been afforded the same courtesy back.

Mr. Loughlin stated that if he had been provided with information on the date of the hearing, he would not feel comfortable making a decision without the opportunity to review that information. Mr. Ciardelli stated that the

property. Ms. Campaniello understood that case to be an agreement between the landowners that if there were a diminution of value, they would split the difference. As the tower was never built and there was no data, she did not use it in her research.

Mr. Hobbins asked if it was within the guidelines of Ms. Campaniello's criteria to use hypothetical versus real sales. Ms. Campaniello responded she was asked to use comparable sales and not hypotheticals.

Mr. Hobbins asked if any of the brokers had real examples of diminution of value. Ms. Campaniello stated that with all the appraisers, brokers and assessors she had spoken to, there was not one indication of a sale where there was diminution of value due to close proximity and/or view of a cell tower.

Mr. Falman asked if there was any hard data supporting an increase in days on the market. Ms. Campaniello stated there are many factors that could affect the sales time, but she had found no clear evidence of a longer length of time to sell because the property was in close proximity and/or view of a cell tower.

Mr. Spear asked if Ms. Campaniello had looked at any undeveloped parcels. Ms. Campaniello referred to pages 49, 50 and 51 of her report, which included examples of undeveloped land. She indicated that a spec home in Londonderry with tower view to the east would be a "high end" home at \$675,000 (Pg 49). In Manchester, an entire development was created in full view of an existing tower; there was no mention of the tower being detrimental (Pg 50). In Tilton, 31.7 acres of land with full view of cell tower; the buyer indicated that the location of the tower had no affect on the sale price (Pg 51).

Mr. Spear asked if she had analyzed or reached any conclusions about the effect of cell towers on the value of nearby undeveloped, buildable lots? She stated that she had not.

Mr. Ciardelli thanked Ms. Campaniello for her presentation.

He then turned over the floor to Mr. Manias, appraiser for Monique Waldron and Kenridge properties, for his report.

Mr. Louis Manias introduced himself as being a certified general real estate appraiser from Capital Appraisal Associates, Inc., Concord, New Hampshire.

Mr. Manias had been asked by Mrs. Waldron to value her properties; those three properties owned by Kenridge properties and Ms. Waldron have a total market value of \$1,925,000. He had also considered reports on the North Hampton zoning variance hearing supplied by Mr. Spear.

Mr. Manias wanted to clarify previous comments made by Ms. Campaniello in reference to the Glinden properties and their agreement. He stated he did not analyze the agreement made between the Glinden's and their buyers; it was included as reference material and support to the statement that there is market reaction to it. The grid of sales did not include an analysis on that, so any commentary relative to using that as direct market support is incorrect. It was used as support for a market reaction and a fear that people do have.

There was a question brought up to differentiating his report and Ms. Campaniello's. There is a real difference between the two. In reading Ms. Campaniello's impact study, she lists a sale price and several comparable sales below. She states the sale price of the property with a tower view is within the range of property without a tower view. That statement is correct.

There are also other factors and features that affect the sale of property. It is important to note that Ms. Campaniello's report does not take any of that data into consideration. That is the difference in her report and the conclusions in mine.

Appraisers can have different opinions; it is a matter of how the data presented is interpreted, the amount of data analyzed, and what the actual assignment is. Mr. Manias provided a grid of sales using Ms. Campaniello's properties to the Board members. He had performed a grid analysis looking at specific features of the properties - size of the home and land, whether it had been renovated or not, and other amenities. His grid analysis was for property with a tower view as the first sale and the comparables as the ensuing properties.

sooner the information was provided to the Board, the better they would have a chance to absorb it. Information provided the night of the meeting would most likely require another meeting.

Mr. Freeman asked if 6 weeks would be a better timeframe to have the hearing and give the applicant more time. Mr. Cody appreciated the thought of the extra time, but stated they would be ready in 4 weeks. Mr. Ciardelli reminded the Board that the 4th Thursday of the month is the Board's regular meeting night.

Mr. Cody asked if they would need to fly another balloon for the new proposed site. It was discussed and ascertained there was too much foliage. The Board could extrapolate the information from the previous balloon test for the new site.

Tim Berry, 275 North Haverhill Road, Kensington. Mr. Berry asked Mr. Cody to explain just what he meant when he referred to stealth, as it appeared Industrial Tower only constructed cell towers and not flagpoles or silos.

Mr. Hobbins answered that communities who wanted an alternative to a regular lattice tower, monopole or guide tower ask for artificial trees and flagpoles.

Mr. Hobbins stated that per the ordinance, they have the burden of proof to show that they have attempted in good faith to research alternative sites. The person with the silo was not interested and a flagpole in the cemetery is illegal.

Mr. Ciardelli stated that the Board was, with its consultants and through counsel, trying to turn over every stone and exercise their responsibilities in looking at the zoning ordinance and adhering to their charter with the state.

Monique Waldron, 275 North Haverhill Road, Kensington. Mrs. Waldron stated that last month she had canvassed the area and presented three options. She said the people she contacted were genuinely interested and she wanted to know why that information was not used.

Mr. Hobbins stated that they had investigated the suggestions of the two experts, who were hired, both by Mrs. Waldron and the Town. Mrs. Waldron could have submitted her options through the expert she hired. Having the opponents make recommendations was not the first priority with the short window of time.

Mr. Ciardelli suggested the next meeting be held on Thursday, the 23rd of August at 6:30pm at the Town Hall. All parties agreed.

Mr. Ciardelli reviewed that the next meeting would target the Telecommunications Act and the new proposed location for the tower.

MOTION: Mr. Falman **MOVED** the meeting be adjourned. Mr. Riley seconded.

The meeting was adjourned at 9:30 PM.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

David Ciardelli
Vice Chairman

Minutes approved on August 23, 2007