

**Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes
September 27, 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, Paul Falman
Acting Town Counsel: Peter Loughlin, Attorney

Also present were: John Champ, Site Acquisition Specialist for Industrial Tower and Wireless (ITW); Don Cody, Director of Operations for Industrial Wireless and Communications; Rick Voci, ITW; Kevin Delaney, Radio Frequency (RF) Propagation Manager for ITW; Jeffrey Spear, Attorney for Monique Waldron and Kenridge Farm, LLC; and Bernard Pelech, representing Mr. and Mrs. Marston.

Mr. Ciardelli opened the meeting of the East Kingston Zoning Board of Adjustment (ZBA) at the East Kingston Town Hall on September 27, 2007 at 6:30PM stating that this was a continuation of the 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. He also stated that this hearing was not open for public comment and no testimony or written comments would be accepted, but the public was invited to attend.

The first order of business was to be approval of the August 23rd minutes. Mrs. White reported changes to those minutes were offered by Attorney Spear and had been received only that morning (Sept. 27). After discussion, the Board proposed that Mrs. White listen to the tapes of the meeting again to ascertain if Mr. Spear's changes were warranted; then the Board would discuss the changes. Therefore, approval of the 23 August minutes was continued until 25 October when both the minutes of the 23 August rehearing and the minutes of the 27 September rehearing would be reviewed and approved.

Mr. Ciardelli stated that several months ago he had sent a letter to the Board members suggesting they keep notes for themselves during the meetings so as to keep the information current in their minds. He explained that the members would read from those notes this evening and be open for debate and discussion on the five points.

Mr. Ciardelli was hoping to kick off what he expected would be a healthy exchange between Board members and stated the obvious, *"We are sitting in the East Kingston Town Hall. We are not in Exeter, Kensington or Hampton Falls. Those of us sitting around this table are representing the Town of East Kingston, its ordinances and all of its residents."*

Mr. Ciardelli stated that over the course of the hearings, he had called Board members prior to upcoming meetings to confirm the time of that meeting and whether the member would be attending. In answer to questions posed related to research the member was doing on the case, his stock answer was *"bring it up at the meeting."* Mr. Ciardelli's point was that the Board members represented at this hearing have all *"gone the extra mile"* in this case to thoroughly prepare for these difficult hearings. It was Mr. Ciardelli's opinion that the applicant, the other concerned parties, and the Town in general, has been served well by each of the Board members and he thanked them publicly for all their hard work.

Mr. Ciardelli reiterated that Industrial Tower and Wireless (ITW) was proposing to build a 140' cell tower in a residential district, and that by East Kingston's zoning ordinance, this is a prohibited use in a residential district. To build the desired tower, ITW requires a Use Variance from the ordinance requirements. To acquire a Use Variance, the Board must be convinced that each and every criterion here is met; again, the burden of proof is on the applicant.

As a Board, they have heard much testimony and have been bombarded with technical information. They have also heard passionate pleas, but have to remind themselves what their responsibility is and who in these hearings bears the burden of proof. Again, the Board's start point is that new cell tower construction in a residential area is prohibited by our ordinance as voted by our Town's residents. The abutters have sometimes been painted in the light that they must show why the tower shouldn't be constructed in this location. In reality, what they have been reiterating are all the reasons why the use is a prohibited one by East Kingston's Zoning ordinance. Again, the burden of proof lies with the applicant.

Mr. Ciardelli opened the discussion among the Board members by sharing his views on what the Board has heard, and voiced some strong opinions on a few of criteria.

Mr. Falman asked for clarification if the Board was going to discuss all the points and then vote at the end, or whether they would be discussing the points one at a time and voting on each in turn. Mr. Ciardelli stated that they would go over the points one by one and vote on each point at the end of the discussion for that point.

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

Mr. Ciardelli. Mr. Ciardelli stated that both sides highlighting their points of view have submitted pounds of data. Literally hours have been spent on the subject, with some of the following summaries: Ms. Campaniello, Fremeau Appraisal - "no evidence found to indicate diminution"; Randall Bell - "no measurable impact"; Gardner, Berg - "no impact on value"; Rauseo - "longer marketing times"; Mr. Manias - "20-30% (reduction) as a result of a cell tower"; Isherwood Appraisal - "8-15% loss"; Mr. Manias relative to Waldron's property - "the impact to the total property value is 5-15%".

The ZBA Handbook states: *"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 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 reaching 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 values."*

Mr. Ciardelli stated that of everything he has seen or heard, to him, Mr. Manias' presentation was the most compelling. Mr. Ciardelli's background is engineering, construction and maintenance and in that world, cost estimates and projections are a way of life. With the Government, he has heard the phrase "unforeseen site conditions" and "WAG" more time than he can count, but you have to start somewhere and in Mr. Ciardelli's estimation, Mr. Manias did the best job presenting a reasonable case. He had asked Mr. Manias if there was a handbook providing balancing factors, and Mr. Manias had stated there was not. In Mr. Ciardelli's estimation, Mr. Manias used fair, equitable, consistent methodology in his analysis, creating a reasonable benchmark for making comparisons between properties.

The Town also received a letter from a current boarder of Ms. Waldron's informing the Board that should the tower be constructed, the boarder would move her 5 horses to a different facility. She stated her reasons in the letter and whether she would follow though is anybody's guess; regardless it means real money to Ms. Waldron's business.

Mr. Ciardelli used the analogy of someone being sent to the gallows after a trial. Good evidence sent him to the gallows. Along comes DNA testing and guess what? He wasn't guilty after all. Too late for that poor guy!!

Assuming the variance is approved, our DNA test will be when an abutter actually goes to sell a piece of property. If a delay is experienced or the price has to be negotiated down as a result of this tower, then it is too late to take the tower down. Mr. Ciardelli believes that conflicting or balanced opinions on property value, which we have here, go to the Town. For the Board to grant a variance in this case, the preponderance of evidence must favor the applicant's view. Again, the burden of proof is on the applicant to make a clear-cut case. In Mr. Ciardelli's opinion, they did not.

In this case, he believes more evidence points in the direction of predictable diminished value. Mr. Ciardelli believes that construction of the proposed cell tower in its current configuration *would* decrease the surrounding property values.

Mr. Ciardelli opened up discussion from the Board members.

Mr. Riley. Mr. Riley thought Mrs. Campaniello's report was non-persuasive, and that she had been argumentative and non-responsive to many of the questions posed to her. He thought Mr. Manias had more concrete evidence as to diminution of property value in the event the tower was placed next to the Waldron's property. He thought Mr. Manias supported his views with more than adequate evidence. Mrs. Campaniello was not able to present a comparable argument to the contrary.

Mr. Falman. Mr. Falman agreed that there had been conflicting and contradictory testimony presented to the Board. He had asked several acquaintances in real estate for their input on the effect of cell towers. He found there is no clear school of thought or "booklet" on what would slow down a sale or make it less appealing other than a strong smell, for example. He also asked if the value could not be measured, could the sale time be measured. The answer was that in many cases, property not expected to sell would sell right away. So basically there was no set answer; there was no way to judge if the presence of a cell tower would affect the sale. He also asked about professional appraisals and was told that the appraised value of a property did not always mean that was what it would sell for; it was what the current market would bear at the time.

Mr. Riley was concerned with the fact that the Board could not base their opinion on conversations Mr. Falman had had with someone outside the evidence presented at the meetings. It was Mr. Riley's opinion that if Mr. Falman was going to vote, he would need to base his opinion on what had been presented at the meetings.

Mr. Falman explained he was on the fence, as he did not believe there was compelling evidence one way or the other. He was trying to see if he had looked at the appraisal process correctly and wanted clarification to make sure he understood the process.

Mr. Ciardelli interjected that part of what was required to grant a variance was that the applicant had to prove that there would be no decrease in value, and in his opinion, "on the fence" goes to the Town. The Board has to be convinced that there will not be a decrease in value to grant a variance.

Mr. Falman stated that Mr. Manias was a very credible expert witness, but when questioned as to how he determined his result, it did not appear factual and concrete to Mr. Falman. If he believed solely on what Mr. Manias stated, he would have to vote in favor of the Town. If he believed solely on what Ms. Campaniello stated, he would have to vote for the applicant.

Mrs. Belcher. Mrs. Belcher had read through all the appraisals and the letters from the real estate agents again for her determination this evening. Mrs. Campaniello had given testimony that she could not find any evidence through sales analysis that supported a negative effect on property values of homes located in the vicinity of a cell tower. Mr. Manias stated that after he had manipulated the sales data, he found the complete opposite. She was ready to completely believe Mr. Manias' conclusion until he explained his methodology. He had as much as stated that the diminution of property values was due to the "fear of a cell tower" reducing property values, and that there was no clear evidence that cell towers actually reduced property values. He also explained that he had to manipulate the data based on speculation to show an adverse effect.

As Mr. Manias explained his process, Mrs. Belcher became more convinced that without manipulation, Mr. Manias had come to the same conclusion that Mrs. Campaniello had; he could not find data to support the diminution in property values of sales and property. He could not, so he manipulated the data to come to the conclusion he did. She realizes it is all based on speculation as the bottom line, is not going to "hang her hat" on speculation, and believes very strongly about that.

Mrs. Belcher stated "Regardless of where I stand on each of the points, I have to walk away and say "I get it completely, I understand it, I'm going to support it all the way down the line. That's where I have to be in my decision."

The PAL letter also played a part for her. The PAL letter claimed "the proposed facility would have an adverse affect on the National Register, quality of significance, and integrity of two properties – Kenridge Farm and the Warren

Kimball property. Does this mean that it affects the property value or just its historical significance? The letter spoke nothing of property value; it only spoke of its historical integrity. Does that equate to money? It does not say. They did not say anywhere in the report that historical value equated to property value. PAL indicates in their letter that the affect could be mitigated, which means they (the cell tower folks) could pay their money to stay there. If the effect can be mitigated, then the argument of property value diminution is false.

Mr. Ciardelli commented on the PAL letter. To his thinking, the tower would have to be far enough down this side of the hill to not be seen from the other side. It has been moved down some, but would still be seen from the other side. There has not been another report addressing the proposed change of location. As it would still be visible from the other side, it is Mr. Ciardelli opinion that PALs' view would still be the same.

Mr. Freeman. Mr. Freeman stated that he had listened to the two appraisers and they seemed to be subjective – one person would like it and another would hate it. His example was that he himself lives next to a cemetery, which does not bother him. But he knows of other folks who would never consider living there. As far as the historical impact, he wanted to know if it would be better if they had dirt roads, and eliminated the telephone and electric lines to make it back to more historical. In a few years the trees will be so high, there won't be a view anyway.

He remembered when the poles for the warning system were installed for the nuclear plant. Everyone was worried that people would be hitting the poles and there would be turmoil on the roads. Mr. Freeman did not think the cell tower could affect property values that much.

Mr. Riley restated that Mr. Freeman had said he did not think the tower would not affect the property values that much, and asked if he meant it would affect property values a little bit. Mr. Freeman reiterated that he did not think it would affect property values that much, and he did not think it would affect the historical value of the properties either. The Waldron property has two house lots for sale. Neither appraiser addressed the issue if the two house lots were sold, how would the property of the main house be affected. That's subjective.

Mr. Riley said that Mr. Freeman's statement that it would not affect the property values that much means that he believes it will affect the property value and he needed to vote no. Mr. Freeman reiterated that he did not believe the tower, at 140' and moved back 235', will affect property values that much, if any.

Mr. Freeman recalled that considering the impact on historic properties, he thought he had read something about diminishing the impact by use of stealth. Mr. Riley stated that was not before them. Mr. Freeman stated they were talking in general about diminution of property values. Mr. Riley stated the application was for 140' cell tower, and has nothing to do with stealth technology.

Mr. Riley advised Mrs. Belcher she was putting the burden on Mr. Manias and the Waldrons, and the burden should be on Ms. Campaniello to convince her there *would not* be diminution of property values.

Mrs. Belcher stated along with Mrs. Campaniello's testimony and the submission by Angela May and Robert McKennon, the evidence that there would be no diminution of property values has been met.

Mr. Riley stated Mrs. Belcher had spoken mainly of Mrs. Campaniello's report, and Mrs. Belcher responded that Mr. Riley had spoken mainly of Mr. Manias' report. They had a difference of opinion; she respected Mr. Riley's opinion and she hoped he would respect hers. She stated she felt as compelled in her decision as he had felt compelled in his.

Mr. Ciardelli said it was predictable that the members would draw different conclusions from the information. He felt strongly that the applicant had not proven there would be no diminution of property values, but that was his stance.

Mr. Falman stated that he looked at it the opposite way. Someone had brought up the point that valuations are normally subjective. If you go by Ms. Campaniello's report as being factual, then the applicant did provide evidence that there is no diminution of property values. We also had an opposing appraiser offer a different methodology and he determined that there is possibly a diminution of property values. Mr. Falman disagreed that the applicant had not provided evidence there was no property diminution. He thought they had provided that information. They needed to determine which of the appraisals was most credible to each Board member.

Mr. Ciardelli asked for a vote on Criteria #1. Mr. Riley and Mr. Ciardelli opined that there *would* be diminution of property values. Mrs. Belcher, Mr. Falman, and Mr. Freeman opined that there *would not* be diminution of property values. The vote was 3 (*would not*) and 2 (*would*). The Board voted 3 to 2 that the criteria was satisfied.

Based on the testimony and the evidence presented, the argument for no decrease in property value was more compelling, and it was determined there would not be a diminution of value of surrounding properties as a result of the granting of this variance.

Criteria #2 – Granting the variance must not be contrary to the public interest.

Mr. Ciardelli. Mr. Ciardelli prefaced his view by stating that the public he is concerned with are the residents of East Kingston. The only issue where he could see construction of the proposed tower being contrary to anything "public" is the view-shed. A previous quote from the New Hampshire Division of Historical Resources (NHDR) stated that the "proposed installation would create a significant intrusion on the rural scenic backdrop and important public views." There is no question in his mind that the construction of any cell tower would improve cellular communication, thereby benefiting the public. However, he believes a less intrusive solution is available that would benefit East Kingston residents through improved cellular communications without compromising East Kingston's or neighboring Town's public views. Mr. Ciardelli believes the granting the variance *would* be contrary to the public interest.

Mr. Riley. Mr. Riley stated he had been split on this question. There was no doubt the Town could benefit from the service. The Town voted to limit the visual impact of cell towers to the light industrial and commercial areas, and this Board was here to represent those people who voted. He also was not convinced the applicant had pursued all possible alternatives. Mr. Riley believes that granting the variance *would be* contrary to the public interest.

Mr. Falman. Mr. Falman stated that when the Board voted for the rehearing, the Board had felt that they needed to get expertise to advise them; and chose Mark Hutchins, who provided his technical expertise to the Board. There is a public need for improved cell service. From the standpoint of reasonable approach, the Board had heard that cell towers would be cheaper than other options. The utility companies would not have erected poles and run wires to provide service without some reasonable payback; the same can be said for cell service. There are other technologies out there that can be useful alternatives in some applications. Oftentimes, they are in more densely populated areas with more users and the greater cost can be justified by the payback. He believes Mr. Hutchins provided some good guidance and evaluations of potential alternatives. He determined there was no one stand-alone alternative that would be a substitute for the proposed tower, and he did bring up the question if pursuing the alternatives was economically feasible. Mr. Falman believes that granting the variance would provide improved cell phone service to the Town. Mr. Falman believes that granting the variance *would not* be contrary to the public interest.

Mr. Freeman. Mr. Freeman agreed with Mr. Falman. He told of a family that had had a robbery where their land-line phone line was cut and they could not use their cell phone to call the police since they did not have service at that location. Several other people had expressed their opinions that they would like to have better service in the areas that were defined as the "gap" area, as their present service was terrible. Mr. Falman knew that the ambulance has had transmitting problems in the past due to poor service, especially when attempting to transmit information from their heart machines to the hospital.

He realized that they were only dealing with East Kingston, but it also affects surrounding people as they did not "drop a gate" at the Town line. If that were true, the railroad and the power lines would not go through the Town. Mr. Hutchins had offered other locations, but Mr. Freeman did not think they would serve any better or as well as the proposed location. Carmen's Restaurant has buildings in close proximity, at the school location a tower would need to be higher since the school sits lower. Mr. Freeman believes that granting the variance *would not* be contrary to public interest.

Mrs. Belcher. Based on testimony from Mr. Hutchins, Mrs. Belcher believes the applicant has demonstrated gaps in the service along the 108 corridor. Mr. Hutchins' executive summary dated 6/27 states that "...service to the Town's northern portion cannot reasonably be provided by the use of existing commercial district, light industrial district, or existing facilities in neighboring towns." He even goes so far as to include Amtrak commuters in his number of people affected. One of the things both Mr. Riley and Mr. Ciardelli referred to was the fact that they were only concerned with service in East Kingston. The extent of the coverage area was designed to meet the needs East Kingston, Kensington, and small parts of Exeter.

The idea we should not consider service to neighboring towns is a double standard. On one hand, you say we should not consider other towns' coverage since they are outside our jurisdiction, but on the other hand we are told we need to consider the impact on those properties. It depends on which side you are looking at it. If the argument is really to preserve the rural character, why would you create a scenario where two towers were needed to meet that targeted area? A couple of miles down the road is still "our area". Just because it is not in East Kingston does not mean it is not in our area. Our community goes beyond the boundaries of East Kingston; it is still our community. Mrs. Belcher believes the public will be benefited by the proposal. Mrs. Belcher believes that granting the variance *would not* be contrary to public interest this evening

Mr. Ciardelli agreed that the cell service issue is a strong one. Here is an excerpt from the letter from the New Hampshire Division of Historical Resources (NHDHS), whose job it is to evaluate historic properties. The NHDHS stated ". . . the proposed installation would create a significant intrusion in the rural scenic backdrop and important public views of two significant historic buildings." Mr. Ciardelli clarified that whether you are standing in the front yard of a historic building, or standing in his front yard, a view is a view, and it is public view. And it is a public view to anyone who can see the tower. The NHDHS is saying it is a negative thing; this is an objective opinion.

Mr. Ciardelli asked for a vote on Criteria #2. Mr. Riley and Mr. Ciardelli opined that granting the variance *would* be contrary to the public interest. Mrs. Belcher, Mr. Falman and Mr. Freeman opined that granting the variance *would not* be contrary to the public interest. The vote was 3 (*would not*) and 2 (*would*). The Board voted 3 to 2 that the criteria was satisfied.

Based on the demonstrated analysis performed by Mark Hutchins in his June 27 report, granting the variance would not be contrary to the public interest.

Criteria #3. - Denial of the variance would result in unnecessary hardship to the owner seeking it.

(a) The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property and its environment.

Mr. Ciardelli. It was Mr. Ciardelli's feeling that although the land was steep, the Marston's had somehow managed to build a beautiful house at the top of the hill and get a driveway to it. It was his opinion that if the very criteria required to issue a variance to build a cell tower in a prohibited area were applied to an applicant wishing to build a house in a residential neighborhood, it would be far less of a leap than what the Board is being asked to do here. Saying that there is no other reasonable use for this property is quite a stretch in Mr. Ciardelli's mind. Additionally, when an alternate site on the property was suggested that would provide East Kingston residents with improved cell service with a less intrusive tower, there was an apparent reluctance on the part of the owner relative to compromising future potential use of the land. In Mr. Ciardelli's estimation, this stance flies in the face of the basic tenets of "hardship". Mr. Ciardelli does not believe that denial of the variance would result in an unnecessary hardship to the owner, as he believes the owner retains reasonable use of the property without the variance.

Mr. Riley. Mr. Riley agreed with what Mr. Ciardelli stated. In his opinion, it was not an unreasonable hardship. When the Marston's purchased the property, they knew what the topographical limits were and they were able to build almost on the top of the ridge. He thought they were trying to maximize their value, as they would be collecting approximately \$1,500 per carrier per month in rent for the tower, and he thought it disingenuous for them to state there was no other reasonable use for the property. Mr. Riley does not believe that denial of the variance would result in an unnecessary hardship to the owner, and would not interfere with the reasonable use of the property.

Mr. Falman. Mr. Falman stated he had struggled with this question. Up to the last meeting, he had thought it would be easy to state that there was a hardship. Then reluctance on the part of the applicant to strongly consider Mr. Hutchins' proposal to relocate the tower had been demonstrated. Mr. Falman was already concerned if at the reduced height of 140', the tower would have the capability to provide service to the carriers. And if the Board approved at 140' at that location, would an additional tower need to be erected to provide additional carriers down the road? With increased tree growth several years from now, it could render the carriers at a lower height ineffective. Mr. Falman does not believe that denial of the variance would interfere with the reasonable use of the property.

Mr. Freeman. Mr. Freeman stated that this question was difficult for him also. He believes Mr. Marston could put a house on one of the two lots the way the zoning was at the present time. As far as trying to develop the other lot, he believes there is zoning to the effect that nothing could be built on greater than a 15% slope, so a development with a road could not be built there. Mr. Freeman asked Mrs. Belcher if there wasn't a steep slope regulation. Mrs. Belcher referred to the Subdivision Regulation (SR) on steep slopes. Section VII.L. of the SR states that: "All development and its associated infrastructure requirements is prohibited on slopes of 15% or greater. The construction of roadways is prohibited on slopes of 10% or greater." She stated it would be a hardship to try and build a house anywhere on that property because of that regulation. There were two easements and Great Brook running across the lot. With today's standards, you could not build on the front portion of the lot. You would be compelled to build further up on the lot. Mr. Freeman stated Mr. Marston could put in a driveway since it was a pre-existing lot, but could not put in a road for a housing development because of the slope of the land.

Mr. Ciardelli stated that if the Marston's wanted to put in a driveway or build a house, they would need to come before the ZBA for a variance to build in a residential area. His point was that it would be less of a stretch to use the land for its zoned purpose as opposed to using the land for a prohibited purpose.

Mr. Freeman noted that if they wanted to develop it into two-acre lots and a road, they would be prohibited from doing that because of the slope of the land.

Mr. Ciardelli asked if the Board would be restricting them from any reasonable use by not granting the variance.

Mr. Freeman stated that if a residential development were considered reasonable, the Marston's would not be able to develop the land within the current Town regulations.

Mr. Loughlin cautioned the Board to take care in the post-Simplex wording of the criteria. Where it previously read *any* reasonable use, now it reads *the* reasonable use. He mentioned that it was a subtle difference, but the Board should be careful with the wording used in the criteria. Mr. Loughlin explained that in the old test for the criteria, if there were ANY other use of the property, a variance could not be granted. Now it asks does the restriction interfere with THE reasonable use of the property. Is it a reasonable use of the property given the unique setting?

Mr. Riley stated they were there for a cell tower and not a subdivision issue. Whether they have another reasonable use for the property is the real issue.

Mrs. Belcher disagreed, saying the issue was not did they have another use, but is the use reasonable for the property? It appeared that Mr. Riley was looking at it by the old test.

Mr. Loughlin clarified by stating, "given the unique circumstances of this property, is the proposed use a reasonable use?"

Mr. Riley declared that the question is if the zoning restriction interferes with the reasonable use. The question was if the commercial character and the other issues associated with the cell phone tower interfered with the reasonable use of the property. Mr. Riley recalled that when the Marston's purchased the property in the first place, there was question of the zoning restrictions at that time.

Mr. Freeman's opinion was that the tower would not be any more intrusive than if they were going to put 6 or 7 houses and a road on the property. He believes the tower was better sited there than in some of the other areas that had been suggested.

Mr. Ciardelli stated that he would take the houses any day; Mr. Freeman disagreed with him. To him, houses in an agricultural area were more intrusive. At a previous meeting, referring to the agricultural vista, Mr. Bodwell had stated "if he did not see the utility poles with the wires from his window, he thought his property would probably not be worth anything." It was Mr. Freeman's opinion that a tower anywhere on Mr. Bodwell's land or on his silo would be more intrusive than at the proposed location.

Mr. Freeman stated he thought that the zoning restriction, as applied to the property, interferes with the reasonable use of the property, considering the unique setting.

Mrs. Belcher. Mrs. Belcher stated since the change in the hardship criteria had come about, it was hard to put the previous criteria out of their minds as they had been dealing with it for so long. She had broken it down and thought about what made the property unique. There were power easements, Great Brook and the slope; these made the property unique. As per the new criteria, now it only needs to be shown that the *proposal* is a reasonable use.

Mrs. Belcher stated she thought that the zoning restriction, as applied to the property, interferes with the reasonable use of the property, considering the unique setting.

Mr. Falman stated he had agreed with Mrs. Belcher until the proposal by the RF Engineer at an earlier meeting to move the location of the tower was rejected by the property owner. Mrs. Belcher stated that the uniqueness applied to the property as a whole, so the uniqueness would be applied to anywhere on the property. If it were reasonable in one spot on the property, it was reasonable anywhere on the property. Mr. Falman asked Mr. Loughlin for clarification on Mrs. Belcher's statement.

Mr. Loughlin did not necessarily agree with the fact if it was reasonable in one spot, it would necessarily be a reasonable use in another location. The Board might find a certain location was a reasonable use, and another location might not be a reasonable use.

Mrs. Belcher did not understand then why it would not be the same, as it was the same use and the same property.

Mr. Riley interjected the reason the Marston's had rejected the alternative site was that they had another use for the property. Mrs. Belcher said they could not speculate on that. Mr. Falman agreed they could not speculate, but there had been a proposal to minimize some objections to the tower so that the service and coverage for the Town would still be provided, and the Marstons had rejected that proposal.

Mr. Ciardelli stated that the proposed new location would provide service to the Town of East Kingston, but not provide as much service on the other side of the ridge; he thought this was not acceptable to the applicant. He believes there are many reasonable uses of the property. He considered moving the tower further down the hill, disguised as a tree so you would not see it from the other side of the ridge, a far more reasonable use of the proposal.

Mr. Falman believes if the Board did approve the compromised location at the 140' height, then it would not be adequate to provide coverage for all potential carriers necessitating another tower at that location.

Mr. Ciardelli asked for a vote on Criteria #3a. Mrs. Belcher and Mr. Freeman opined the zoning restriction as applied to the property *would interfere* with the reasonable use of the property considering the unique setting of the property. Mr. Ciardelli, Mr. Riley and Mr. Falman opined the zoning restriction as applied to the property *would not interfere* with the reasonable use of the property considering the unique setting of the property. The vote was 3 (*would not interfere*) and 2 (*would interfere*). The Board voted 3 to 2 that the criteria was not satisfied.

Criteria #3. - Denial of the variance would result in unnecessary hardship to the owner seeking it.

(b) No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property.

Mr. Ciardelli. Mr. Ciardelli stated that the most significant factor is the language in the East Kingston zoning ordinance, Paragraph XV.B2, Purposes and Goals, "Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, and historically significant locations..". Two independent entities, PAL and the NHDHR, had concluded that the proposed tower installation "would create a significant intrusion in the rural scenic backdrop and important public views of two significant historic buildings." This is the exact reason construction of new towers in residential districts is prohibited. Mr. Ciardelli believes that a substantial relationship *does* exist between the general purposes of the zoning ordinance and the specific restriction on the property.

Mr. Riley. Mr. Riley agreed with Mr. Ciardelli, and agreed with the PAL and NHDHR conclusions. He reiterated the purpose of the ordinance was to maintain East Kingston as a farming community as much as possible. Mr. Riley believes that a substantial relationship *does* exist between the general purposes of the zoning ordinance and the specific restriction on the property.

Mr. Falman. Mr. Falman disagreed. He believes that through stealth technology, we will minimize the view impact. He does not support the view impact as significant. Mr. Falman believes that a substantial relationship *does not* exist between the general purposes of the zoning ordinance and the specific restriction on the property.

Mr. Freeman. Mr. Freeman agreed with Mr. Falman. Mr. Riley inquired if by stealth they were referring to the "tree" discussed at earlier meetings. Mr. Freeman was not sure if it was up to the ZBA to decide on stealth or if it was the Planning Board's jurisdiction. Mr. Loughlin stated the ZBA could set stealth as a condition if they wished. Mr. Freeman believes that a substantial relationship *does not* exist between the general purposes of the zoning ordinance and the specific restriction on the property.

Mrs. Belcher. Mrs. Belcher stated that this criterion was a double negative and she has used the Zoning Handbook for guidance. It states, "*Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance..?*"

The East Kingston Zoning Ordinance under XV.H. – Waivers states

1. *"...may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board may not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply.*
 - a) *is not detrimental to the public safety, health and welfare, or is injurious to other property...will promote the public interest.*
 - b) *will not in any manner vary the provisions of the Zoning Ordinance, Master Plan, or Official Maps.*
 - c) *...will substantially secure the objectives, standards and requirements of these regulations.*
 - d) *A particular and identifiable hardship exists or a specific circumstance warrants granting the waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:*
 - 1) *topography and other sites ...*
 - 2) *availability of alternative sites ...*
 - 3) *geographic location ...*
 - 4) *size/magnitude of project being evaluated ..."*
2. *Conditions. In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.*

Mrs. Belcher's question was "could this proposal be allowed through a waiver?" Without going to the Zoning Board, could the Planning Board have granted the waiver for its permitted use based on this waiver article? If it could, then it *does not* frustrate the ordinance, as it does not meet that criteria. If it could not, then it *does* frustrate the ordinance. In her opinion, if the Planning Board could not apply this waiver to the permitted use location in a residential district, then it does frustrate the ordinance. If it frustrates the ordinance, then it meets the hardship. Her question to Mr. Loughlin was "*could the Planning Board have applied the waiver requirement for placement of that cell tower?*"

Mr. Riley stated that the applicant would have had to ask for that option from the Planning Board, and apparently the Planning Board had passed it on to the Zoning Board. Mrs. Belcher stated that she was looking to see if it frustrated the ordinance or not, and it had no bearing on whether or not the applicant had asked for the waiver. Mrs. Belcher also referred to Section D.2. USE DISTRICTS, which was part of the same regulation.

Mr. Loughlin answered that the Planning Board could not have granted a waiver for the cell tower. Zoning Ordinance XV.H 1. states: "*Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the forgoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations.*" It was Mr. Loughlin's opinion that the Planning Board only has authority to waive its regulations as opposed to the zoning ordinance. It does not have the authority to permit placement of cell towers in residential zones.

Based on Attorney Loughlin's council on the waiver criteria not being able to be utilized for the placement of the cell tower in a residential zone, Mrs. Belcher held that then the ordinance is frustrated and therefore meets the hardship criteria. No fair and substantial relationship exists between the proposal or the zoning ordinance and the restrictions on the property. Therefore, this proposal cannot be granted without frustrating the ordinance. Even a waiver is not allowed as per section H.1.B of the Telecommunications ordinance and cannot be satisfied, as doing so will vary or change the Zoning regulations.

Mr. Falman quoted from the Zoning Handbook that *"This test attempts to balance the public good resulting from the application of the ordinance against the potential harm to a private landowner. It goes to the question of whether it creates a necessary or 'unnecessary' hardship."*

Mr. Ciardelli asked for a vote on Criteria #3b. Mrs. Belcher, Mr. Freeman and Mr. Falman opined there was no substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property. Mr. Ciardelli and Mr. Riley opined that a fair and substantial relationship does exist between the general purposes of the zoning ordinance and the specific restriction on the property. The vote was 3 (*does not exist*) and 2 (*does exist*). The Board voted 3 to 2 that the criteria was satisfied.

Criteria #3. - Denial of the variance would result in unnecessary hardship to the owner seeking it.

(c) The variance would not injure the public or private rights of others.

Mr. Ciardelli. Mr. Ciardelli's opinion was that, as stated in PAL and NHDHR correspondence (an independent evaluation), the proposed tower installation *"would create a significant intrusion in the rural scenic backdrop and important public views of two significant historic buildings."* It was Mr. Ciardelli's belief that granting the variance *would* injure the public and private rights of others.

Mr. Riley. Mr. Riley agreed with Mr. Ciardelli's observation that granting the variance would injure the public and private rights of others.

Mr. Falman. Mr. Falman believes a view is subjective, and views can change. He believes that cell towers are an accepted part of the landscape. For example, some would welcome homes to be built on that property, and others would consider it would take away from their view. Mr. Falman believes that granting the variance *would not* injure the public and private rights of others.

Mr. Freeman. Mr. Freeman agreed with Mr. Falman and does not believe that cell towers are any more intrusive than the light poles or water towers. Mr. Freeman believes that granting the variance *would not* injure the public and private rights of others.

Mrs. Belcher. Mrs. Belcher asked: Will granting a variance create a public or private nuisance? Will it create an unreasonable interference with the use and enjoyment of another's property? The most impact to the surrounding property is the visibility above the tree line. The majority of the complex will be hidden in the elevation and vegetation. Will people not be able to use their property as they currently do because of this proposal?

Quoting from the Zoning Handbook: *"A public nuisance is behavior which unreasonably interferes with the health, safety, peace, comfort or convenience of the general community. In order for a nuisance to exist, the interference complained of must be substantial, that is, the harm alleged must be in excess of the customary interference a land user suffers in an organized society..."*

Based on the Zoning Handbook's description of nuisance, Mrs. Belcher does not believe the cell tower proposal is a nuisance, and does not believe it would prohibit people the use of their property. Mr. Riley offered he did not believe the requirement was a public nuisance; he thought it to be less than that. Mrs. Belcher explained that the Zoning Handbook was her guideline to ensure she understood the way in which the criteria were to be measured. She believes that granting the variance *would not* injure the public and private rights of others.

Mr. Ciardelli commented that this criterion was the toughest and most subjective of all the criteria.

Mr. Ciardelli asked for a vote on Criteria #3c. Mrs. Belcher, Mr. Falman and Mr. Freeman opined the variance *would not* injure the public or private rights of others. Mr. Ciardelli and Mr. Riley opined the variance *would* injure the public or private rights of others. The vote was 3 (*would not*) and 2 (*would*). The Board voted 3 to 2 that the criteria was satisfied.

Criteria #4. - By granting the variance, substantial justice would be done.

Mr. Ciardelli. The Zoning Handbook states: *"It is not possible to set up rules that can measure or determine justice. Each case must be individually determined by board members. Perhaps the only guiding rule is that any loss to the individual that is*

not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications. A board of adjustment cannot alleviate an injustice by granting an illegal variance."

Mr. Ciardelli explained that this point implies that without granting this variance, the property owner will incur a loss. Incurring a loss is very different from *not experience a financial gain*. As he stated before, he does not believe a hardship exists, therefore can't conceive a loss that needs to be offset by a gain to the public. On the contrary, in this case, in Mr. Ciardelli's opinion, by granting the variance, the property owner will experience a gain at the *expense* of the general public. Mr. Ciardelli believes granting the variance *would not do* substantial justice.

Mr. Riley. Mr. Riley agreed with Mr. Ciardelli. He does not think they have established the hardship requirements. They were aware of the topography of the property when they purchased it, and Mr. Riley believes there is other reasonable use for the property. In Mr. Riley's opinion, substantial justice would occur if the variance were denied.

Mr. Falman. Mr. Falman stated there were two issues. By granting the variance, substantial justice would be done to the general public in the form of improved cell service and communication links for both residential and emergency uses would be improved in East Kingston. The financial gain is a factor. By substantial justice, were they looking at the landowner or the general public? Regardless of any lease agreement, there would be substantial benefit to the residents of East Kingston by granting the variance. Mr. Falman believes that by granting the variance, **substantial justice would be done.**

Mr. Freeman. Mr. Freeman stated there was no doubt in his mind that there would be substantial justice to the general public by granting the variance, for both the people who live in East Kingston and for those passing through. He did not think it was the Board's concern whether or not the Marston's made money on the arrangement; it was not what they were there to decide. They were there to decide whether a tower should be built. Mr. Freeman would grant the variance.

Mrs. Belcher. Mrs. Belcher stated that to her, any money amount discussed was speculation and she felt it was not an issue to consider. In her opinion, granting the variance would allow the usage of a parcel that is restricted because of slope, easements and a running brook. It would also provide a service to the area population, and the use of an otherwise compromised residential lot outweighs the injustice. Mrs. Belcher believes that by granting the variance, substantial justice *would be done.*

Mr. Ciardelli asked for a vote on Criteria #4. Mrs. Belcher, Mr. Falman and Mr. Freeman opined by granting the variance, substantial justice *would be done.* Mr. Ciardelli and Mr. Riley opined by granting the variance, substantial justice *would not be done.* The vote was 3 (*would*) and 2 (*would not*). The Board voted 3 to 2 that the criteria was satisfied.

Criteria #5. – The use must not be contrary to the spirit and intent of the ordinance.

Mr. Ciardelli. Mr. Ciardelli stated that the spirit and intent of the ordinance is what this case is all about. The Telecommunications Ordinance under Purposes and Goals states:

"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. *Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas."*

And from the Zoning Handbook:

"However, when the ordinance contains a restriction against a particular use of the land, the board of adjustment would violate the spirit and intent of the ordinance by allowing that use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be of doubtful legality. The board cannot change the ordinance."

The Town voted this ordinance in, and Mr. Ciardelli realizes that the Board has the authority to adjust ordinances.

The reference "all other reasonable alternatives have been exhausted" really puts it out there for him, as does the quote from page one in the Zoning Ordinance "improve the attractiveness of the Town of East Kingston." The term "low hanging fruit" comes to his mind when he thinks of the proposed location, along with "most bang for the buck." If he were an investor in ITW or any of the affiliated cell companies, he would apply this location as a great one, and does not fault the company representatives for pursuing it. He himself had even referred to the location as the "holy grail of cell tower sites" at a previous meeting. This location provides a huge blanket of coverage with the construction of one tower, most in densely populated Exeter. Another appropriate term comes to mind, "return on investment."

The Board's charter is different from ITW's in that it is our responsibility to protect the aesthetics of East Kingston and to honor the Town's ordinances. These goals do not have to be mutually exclusive, but now seem to be at odds. When reading the phrase "*exhaust alternatives before constructing a new tower*", he mentally adds "to serve the residents of East Kingston". Wording from a New Hampshire district court ruling involving the potential construction of a cell tower in Hopkinton, NH reads "*nothing in the Hopkinton Zoning Ordinance or in the TCA requires the local zoning authority to permit the construction of a facility within its community in order to service neighboring jurisdictions.*" Our ordinance is the same.

At the last meeting, Mr. Ciardelli asked ITW if they had ever asked to build or extend a silo; something in keeping with East Kingston's local viewscapes. The answer was "no". To Mr. Ciardelli, this plays into the issue of the TCA and he thinks it is fairly simple. If a company came to our town and said "*we have a goal of improving wireless communications in the Town of East Kingston*", it is his belief that there are avenues within the ordinances to provide for that. Even disregarding DAS, multiple "allowed" or even potentially variances, unobtrusive solutions could be put together to serve East Kingston.

ITW's goal is a different one; they want to build a tower on a hill and with that tower, they hope to "get the most bang for their buck" by serving the most customers; mostly in densely populated Exeter. Service to East Kingston is nothing but a by-product of that venture. ITW stated that placing the tower below the ridgeline, as suggested at a previous meeting, would block the signal to a large part of ITW's "target area". Obviously, the other side of the ridgeline, which is not in East Kingston, is the target area. But East Kingston is being asked to make the compromises. It seems to be a paradox of sorts that if the Marston's had said "no" and Ms. Waldron had been approached and said "yes", many of this group might be sitting in the Kensington Town Hall debating these points. Constructing the tower further down York Hill would improve cell coverage in East Kingston without compromising the aesthetics. Pursuing these alternatives may not be a good business decision, or provide the previously mentioned "return on investment", but those are not our areas of responsibility.

ITW has been informed by the NHDHR that its proposed tower installation "*would create a significant intrusion on the rural scenic backdrop and important public views of two significant historic buildings.*" In Mr. Ciardelli's opinion, a public view is a public view, whether or not you happen to be standing in the yard of a historic building or not. This assessment by ITW's own contractor (PAL) and the NHDHR applies a level of independent objectivity to what "*preserve and improve the attractiveness of the Town*" means. Mr. Ciardelli believes that permitting the construction of the proposed cell tower in its current configuration is *contrary* to the spirit and intent of East Kingston's Zoning ordinance.

Mr. Riley. Mr. Riley agreed with Mr. Ciardelli, adding that in his opinion, the applicant had not satisfied the ordinance by "exhausting all other available alternatives". He does not believe they have exhausted all other available alternatives as coverage relates to East Kingston. The location was chosen to give the applicant "the most bang for their buck" in opposition to other less obtrusive locations, which may or may not be as effective as the original location chosen. Mr. Riley believes that permitting the construction of the proposed cell tower is *contrary* to the spirit and intent of East Kingston's Zoning ordinance.

Mr. Falman. Mr. Falman stated that as a Town, when they had adopted the ordinance, telecommunications was in its infancy stages and like the towns around them, they had proposed an ordinance that sounded reasonable to them at the time. Mr. Falman's opinion is that the ordinance is unreasonable as cell towers are only allowed in industrial and commercial areas, which are very limited in East Kingston, and towers in those areas will not provide the cell service coverage needed. He agreed that their objective was not to be providing improved cell service outside the community. While East Kingston benefits from other areas to some degree, it is East Kingston's responsibility to provide their own service. They should not rely on other towns for their cell service. He believes their zoning is inadequate as far as offering parcels on which to locate cell towers.

Mr. Falman believes they have to apply some reason as far as exhaustive research. Obviously the cell companies are in business to make money, but East Kingston would be the benefactor of their research and experience. If every Town imposed a *no cell tower attitude*, the cost would be prohibitive and not as widely used. The Board voted 3 to 2 that the variance was not satisfied. The reverse is true; it is proven to be a very beneficial service, and more and more people are relying on it for their everyday communications. Due to the current ordinance, and the lack of commercial and industrial locations on which to install cell towers, Mr. Falman believes that permitting the construction of the proposed cell tower is *not contrary* to the spirit and intent of East Kingston's Zoning ordinance.

Mr. Freeman. Mr. Freeman agreed with Mr. Falman, and believes that permitting the construction of the proposed cell tower is *not contrary* to the spirit and intent of East Kingston's Zoning ordinance.

Mrs. Belcher. Mrs. Belcher stated that Mr. Ciardelli had given a very compelling argument to his position in terms of the spirit and intent of the ordinance. Mr. Falman had said that the ordinance is too restrictive. The ordinance itself does not even allow for antennas. Even for DAS, except in the commercial and industrial areas, every antenna would require a variance. In a sense, the ordinance as it stands does not permit the gaps to be covered. Mrs. Belcher agrees that the order is restrictive, but the question really is "is it contrary to the spirit and intent of the ordinance." Does the telecommunications ordinance need to be updated to allow the gaps to be filled? She thinks it does.

Her first thought was that it was not contrary to the spirit of the ordinance. But as the Zoning Handbook says, "*The board cannot change the ordinance.*" She believes the ordinance may be flawed, but the ordinance is what the ordinance is. And if it says it's not allowed, then it is not allowed. The only way to change it would be to change the ordinance to allow it to be less restrictive in certain situations. Listed under the goals of the telecommunications ordinance that Mr. Ciardelli did not mention is to "*provide such services to the community quickly, effectively and efficiently.*"

Also, in reference to adverse impact, it says to reduce but not necessarily eliminate. She had thought that placing it below the top of the ridge would clearly reduce an adverse affect. It was providing what the ordinance allows it to do, which is provide such service to the community, and it was a reduction of the adverse affect. And it had been stated that another position for the tower would reduce the impact even further. Based on the proposed location, it is possible that another tower would have to be built in Kensington to cover the gap, and just because she does not live in Kensington, does not mean she doesn't care if another tower has to be built in close proximity.

The bottom line is, is it reduced enough for satisfaction to where it does not contradict the spirit of the ordinance? Mrs. Belcher changed her original position. She now believes that permitting the construction of the proposed cell tower is *contrary* to the spirit and intent of East Kingston's Zoning ordinance.

Mr. Falman asked Mr. Loughlin if he had anything to add since basically the Board had said their ordinance is too restrictive and does not allow for location of cell towers or antennas in other locations other than industrial and commercial. Mr. Falman wanted to know if Mr. Loughlin had come to the same conclusion or was the ordinance being misinterpreted.

Mr. Loughlin stated that although not everyone would agree with what the Board decided, they had done their job to find the facts on each point as they see them.

Mrs. Belcher added, from page one of the Zoning Ordinance, that the purpose of the ordinance "*...is to preserve and improve the attractiveness of the Town of East Kingston as a rural, residential and farming community and to continue its desirability as a place in which to live and do business and to promote the health, welfare, morals, convenience and safety of its citizens.*" Her original position was that the proposed location, hidden up on the ridge with only the top exposed would preserve and improve East Kingston. It also provided an additional element of communication, which speaks directly to the convenience and safety of the citizens and those who pass through. They both apply; on one hand it is not contradictory, but on the other hand, it is Mrs. Belcher's contention that the ordinance is flawed. The bottom line is it contradicts what the ordinance says today. If the Town wishes to change the ordinance to allow it to not be so restrictive, it should be up to them to do so. *But the board cannot change the ordinance.*

Mr. Ciardelli asked for a vote on Criteria #5. Criteria #5 asks if the use contemplated by the petitioner as result of obtaining this variance would or would not be contrary to the spirit and intent of the ordinance. Mr. Falman and Mr. Freeman opined that the use *would not* be contrary to the spirit and intent of the ordinance. Mrs. Belcher, Mr. Riley

and Mr. Ciardelli opined that the use *would* be contrary to the spirit and intent of the ordinance. The vote is 3 (*would*) and 2 (*would not*). The Board voted 3 to 2 that the criteria was not satisfied.

Mr. Ciardelli stated that all of the points have been voted on. Points 3a and 5 are against issuing the variance. All the points need to be met for the variance to be granted.

Mr. Ciardelli asked for a motion.

MOTION: Mr. Riley MOVED that the variance be denied based on points #3a and #5 not being met. Mr. Ciardelli seconded the motion, and the motion passed unanimously.

Mr. Ciardelli closed the public hearing.

The meeting was adjourned at 8:40 PM.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

David Ciardelli
Vice Chairman

Minutes approved on October 25, 2007