



**MEETING MINUTES  
TOWN OF NORTH HAMPTON  
ZONING BOARD OF ADJUSTMENT  
June 20, 2005**

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*These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. An audio recording of the meeting is available in the Town Office. In the event that a question arises about verbatim comments, it can be answered by listening to the recording.*

The Town of North Hampton Zoning Board of Adjustment (Board) met on Monday, June 20, 2005 in the **gymnasium** of the North Hampton School on Atlantic Avenue.

**Attendance**

**Present:** (1) John Anthony Simmons, Chair; (2) Michele Peckham, Vice-Chair; (3) Ted Turchan; (4) Susan Smith; (5) Jennifer Lerner

**Alternate(s) Present:** None.

**Staff Present:** Richard Mabey, Building Inspector/Code Enforcement Officer [BI/COE]; Maureen Cooper stand-in Recording Secretary

Mr. Simmons convened the meeting at 6:15 p.m.

**Preliminary Matters**

Mr Simmons confirmed that this meeting is a continuation meeting from the May 18, 2005 meeting specifically concerning 2005:14 – GridCom/Cingular Wireless and that all attendees were there for the sole purpose of listening or speaking regarding that concern. Mr. Simmons announced that an additional application had been received concerning a cell tower on Chapel Road, but that that issue was not going to be discussed at this meeting. Chapel Road, among other general concerns, will be discussed at the regularly scheduled meeting on Tuesday, June 28, 2005 at 6:00 pm in the Mary Herbert Conference Room in the Police/Fire Building on Atlantic Avenue. The regularly scheduled meetings will now be the fourth Tuesday of each month occurring at the same time and same location.

Mr. Simmons announced that several letters have been submitted **which will now be a part of the public record?**.

He began a review of the letters and articles that have been distributed to the Board members for review:

- Letter from Kathleen & Rob Eberle dated June 20 (not in favor)
- Letter from Robert Schoenberger dated May 24 (in favor)
- Hampton Union article of May 20 regarding balloon test

- Hampton Union article of June 3 regarding cell tower issue
- Hampton Union article of June 10 regarding the Planning Board's response to invitation for joint meeting
- Letter from Chair of Planning Board declining invitation dated June 7
- Letter from Attorney Peter Loughlin dated June 17 asking that, due to the revised plan to move the tower 250 feet to the southeast, the meeting be continued for a month or so after the applicant's discussion of the proposal at this meeting.
- Letter from Attorney Robert B. Field, Jr. dated June 10 reserving the right to supplement the record with testimony and evidence as the review of the application continues.

Mr. Simmons then reviewed the original packet distributed to all Board members for the benefit of all members in the audience.

Letter from Charles Gordon, Co-Chair of the New Hampshire Conservation Commission requesting that the Board require the applicants to provide specific, scientific data prepared by qualified professionals proving that neither proposal have any adverse environment impact on the conservations lands in question.

Letter from Attorney Jonathan Springer dated June 16 representing the applicant enclosing the following for distribution to all Board Members

- Revised plan to move to new location on property of Matthew Morton
- Photo simulations of balloon tests from May 11 and June 1
- Maximum Permissible Exposure report from Donald L. Haes, Jr., Ph.D, CHP, Radiation Safety Specialist

Other than change in location, the application remains the same. The applicants are still seeking relief from original items in 2005:14.

Mr. Simmons noted that the May Photo Simulation has more vantage points than the June Simulation; the packets have 60% identical locations.

Ms. Patricia Gianotti of 34 Woodland Road took the floor and asked about the residents being notified as to whether they were considered, at their address, an abutter to 22 Woodland Road. She had not received abutter notification and wanted to confirm that she could not see the tower from her address. Her address is across from the conservation land. Mr. Simmons confirmed that she was not considered a direct abutter. He replied that at the May 18, 2005 meeting, it had been decided that they would announce the date and time of the new balloon test to the abutters.

Atty. Springer, Bosen & Springer, representing the applicant, took the floor and confirmed that the notice of the new balloon test had been mailed to direct abutters only. He assured her that the May 11 photos would be sufficient for her to judge the impact on her view of the tower from her property. He confirmed, and showed on a drawing, that the revised proposal location is very close to where the first balloon test was. Ms. Gianotti's concern was that if the tower is closer to Woodland Road, the trees grow shorter and shorter toward Woodland Road and that that would affect other vantage

points. If she could trust the pictures, she would trust that May 11 pictures give a sufficient depiction of vantage points in question.

Stephen Minassian of 6 Woodland Road expressed concern as well about not being considered an abutter and having not been notified of the balloon test and the May 18, 2005 meeting. He wanted two questions to be on the record: (1) What will it look like when there is no foliage? And (2) What is a photo “simulation”?

Mr. Simmons asked that the applicant provide answers to those questions during the presentation. He then returned to housekeeping concerns and the contents of the Board Member packets.

- Petitions have been received from residents opposing the construction of the tower. The total signatures received were counted and the total was 55 residents. Mr. Simmons read the text that the petitions contain above the signatures.

Mr. Simmons confirmed with Mr. Mabey that all letters, articles, petitions be added to an exhibit and that the exhibit consistent between each board member, and be available for public record.

**Mr. Turchan moved that review of the Board packets be ended, and that the applicant be allowed to begin the presentation. All attendees voted in the affirmative.**

Mr. Simmons read the names of the residents and attorneys who had sent the remaining letters in the packet in case they were there in attendance and concerned that their letter had not been received and read.

Atty. Robert Fields expressed strong concern that two letters, one from Atty. Loughlin on June 15 and one from himself on June 19 (faxed). In the June 15 letter, Atty. Loughlin expressed concerns about the 5-day rule.

Mr. Minassian expressed concern that letters in question have been read by all Board Members. Mr. Simmons could not promise 100% accuracy but assured him that any that had not been distributed would be in the hands of the Board Members within the next few days be the Town Board personnel. Mr. Turchan was confident that all of the letters had been reviewed other than the two attorney letters that Atty. Fields had most recently listed.

### **Procedure; Swearing in of Witnesses; Recording Secretary Report**

Mr. Simmons announced that the Agenda and Rules of Procedure were available for review.

Mr. Simmons swore in witnesses present.

Mr. Simmons stated that notice of the meeting was properly posted on May 23, 2005 at (1) Library, (2) Post Office and (3) Town Clerk and the (4) North Hampton Town Website and published in the Hampton Union on ????????????

### **Acceptance of Minutes from May 18, 2005**

*Ms. Peckham had a question as to whether the minutes contained facts asserting that the applicant had applied for a variance Crown property (couldn't hear all that Michele said).*

*Attorney addressed all 5 criteria. Requested we add that he went through all five of the points.*

Mr. Simmons suggested that since that was in a matter not relevant to the application that they were considering that evening, that they would within the next eight days revisit and reconcile that issue.

**Mr. Simmons moved and Mr. Turchan that they accept the minutes only with regard to 2004:14 – GridCom/Cingular Wireless.**

**The vote was unanimous (5-0).**

### **Old Business**

**2005:14 – GridCom/Cingular Wireless, 25 Research Drive, Westborough, MA 01582**, requests a Variance (1) from Article IV, Section 415.3 to locate a 120-foot telecommunications tower on 22 Woodland Road; (2) from Article IV, Section 415.6.A.1. for relief from the fall-zone setback requirements; (3) from Article IV, Section 409.9.B for relief from the 100-foot wetland setback. Property location: 22 Woodland Road, R-2 zone district, Tax Map #002-050-000. This session is a continuation from the May 18, 2005 meeting.

Atty. Robert Fields expressed concern about the fact that his fax of June 19 addressed the issue of whether this application is appropriately before the Board tonight. Mr. Simmons expressed his concern regarding maintaining Rules of Procedure and allowing the applicant to speak. Atty. Fields asked that it be on the record that his objection, set forth in the letter, is that the applicant is claiming to be presenting a non-substantive change. He disagrees and thinks it is a very substantive change. He stated that his firm has spent approximately one month with several experts analyzing, critiquing and preparing for tonight's presentation as shown in the binders that he then provided to Mr. Mabey for distribution at a later time. He then stated that the changes from Atty. Springer came in late in the evening by courier on Friday, June 17 and that his firm had no capacity to review what they consider the second application. On behalf of the Donskers and Atty. Loughlin, he asked that after the presentation that they be allowed a month to prepare a response to the second application.

Atty. Peter Loughlin of Portsmouth, representing the Kokernaks, confirmed that Atty. Fields had spoken his concerns as well.

Mr. Simmons asked if the attorneys believed that the second application changed in any way the relief that was originally requested in 2005:14. Atty. Fields' concerns were other than that, that the request amounts to more than simply a request for variances, that it requires a change in public policy and requires input in a different forum. Mr. Simmons discussed procedural issues and reviewed the three types of relief requested in 2005:14, both within the first application and the second, with Atty. Loughlin and Atty. Fields.

Atty. Springer claimed that application one and application two both requested the same relief mentioned in 2005:14.

Atty. Loughlin stated that his firm has spent a great deal of time preparing research on the first application, and requested a continuance after tonight's presentation to allow them as much time to prepare as they had had with the first application. Atty. Fields asked that the board reserve them the right to present procedural objections and raise questions in the future. Mr. Simmons confirmed that the attorneys would be given the opportunity to do so.

Atty. Jon Springer, Bosen & Springer of Portsmouth, counsel for GridCom/Cingular, began his presentation and distributed the same materials for attendees to view during the presentation. The property, 22 Woodland Rd. is owned by Matthew Morton. He confirmed that the only change on the revised plan is the location of the facility. Details of his statements include:

The height does not change. The first balloon test on May 11 was done to determine visual impact at top of cul-de-sac in driveway. After the June 1 balloon test, it was decided that there was a disproportional visual impact, which brought them to the second application. The new tower is 15-20 feet from the driveway and they would be required to take down less trees. They will not be required to have as long of an access drive from the Morton driveway to the site. The compound itself is 40 feet by 80 feet. The wetlands are delineated on the plan. The proposed location of the facility meets the front/rear setbacks for this zone. The lot is heavily wooded, both in front and behind. The tree cover provides good cover for the facility. They are proposing a monopole (or a monopine) disguised as a tree. They are proposing a 4-carrier pole so that 4 carriers total will be able to locate their antenna on this pole. The ordinance that the town has encourages co-location. GridCom is aware of the Verizon proposal for Chapel Road, and there is no reason that Verizon couldn't co-locate on this site. There is ten feet of separation between each antenna from 117 feet. Lower than 87 feet would not allow very good use. Atty. Springer explained how the towers interface with handsets, and the importance of continuance coverage as you move from coverage area of one tower to another. At the base of the tower, there are equipment sheds or cabinets on site because different carriers prefer different types of sheds. There will be one per carrier at the base of the pole. The utilities needed are telephone and electric. The tower will not be lit. The only vehicular traffic generated is one or two visit per month per carrier for maintenance checks. He stated that this is considered a passive use of the land. The base equipment will not be visible from Woodland Road or the surrounding properties. This is a very popular technology. The technology is in the 1850 to 1950 megahertz range, a

higher radiofrequency range. It has some limitations but many advantages. It is safer, more encrypted for sending out data. But the range is limited, approximately 2 miles. You need height to achieve the range desired, which explains the need to exceed the tree line. There is no question that there is a gap in coverage. The town's ordinance limits the facilities to small zones. The permitted zone is 1000 feet west of centerline of Route 95. There is a tower at the Hampton toll booth. The GridCom team has done a diligent search of town-owned properties and they don't believe there are any town-owned properties that would be sufficient and which they could zone. Atty. Springer reviewed a map showing the gap in coverage presently.

David Choate, Principal at Grubb & Ellis|Coldstream Real Estate Advisors was introduced and asked to review a map showing town-owned properties considered for the site of the facility. Mr. Choate stated that they had spent a good amount of the year 2004 looking at potential sites. There were some parcels on which the tower could have been located, but they would not have provided the coverage needed, and yet another tower would need to be built elsewhere to provide sufficient coverage. They met with both the Town Manager and Mr. Mabey in an attempt to succeed at finding a town-owned property. In the packets, there is a chart outlining the sites investigated and the reasons why they were not sufficient for various reasons. The criteria were several and included the size of the parcel and location. Mr. Simmons clarified with Mr. Choate that the chart lists properties that would provide adequate or partial coverage but were restrictive in another manner. Mr. Choate confirmed, and added that there is a town-owned parcel that will be getting access or could be getting access on Mill Road near the Rye border but that also does not provide the coverage. Mr. Simmons clarified with Mr. Choate that the chart answers the question, "What other properties are available?" Mr. Choate further clarified, what other properties are available that would have been large enough parcels that may have or would have provided coverage to the necessary area. They also looked for existing building with towers that could hide the cell tower and found none in an area that was sufficient or appropriate. Mr. Simmons confirmed that the town officials Mr. Choate had spoken with about potential parcels were Mr. Mabey and Mr. Pardue in an informal discussion that included Bill McQuade of GridCom. Ms. Peckham asked Mr. Choate to address the note regarding Ship Rock Estates having been conveyed by a developer to the Town in 1986. He clarified that it had been conveyed as conservation land. All the parcels that they looked at are conservation restricted other than one or two.

Ms. Smith asked if the new tower being built in Rye was on line currently, and whether there would be an overlap in coverage. Mr. Bill McQuade from GridCom answered that the facility was currently on line and that there would not be an overlap in coverage. Atty. Springer reviewed the map showing coverage again, specifically pointing out the Rye tower in question and the coverage it was providing. Cingular is currently utilizing that tower. He then reviewed a map showing the coverage provided by the proposed site. Mr. Simmons asked if the area highlighted on the map was computer generated. Mr. Arvin Sebastian, Radiofrequency Design Engineer from Cingular explained that the map is computer generated. He is charged with designing the site and making sure it will work. It does not show a measured signal. Cingular has acquired AT&T and the drawing shows combined coverage. He pointed to an existing tower currently owned by AT&T

that they are planning on having decommissioned because the new tower will provide coverage in that area as well as in the area where there is now a gap. Mr. Simmons confirmed with Mr. Sebastian that the software used to generate the drawing is capable of accurately projecting the expected coverage. He asked what the margin of error is for a computer model. Mr. Sebastian pointed out another map showing a chart where they did an exact measurement of the current coverage using a receiver and antenna mounted on a vehicle along with a satellite that tracks coordinates.

Atty. Springer reviewed the balloon tests. A balloon is floated at tower height at or near the proposed site of the tower and photographs are taken in various areas. A monopine is then superimposed in the picture. One picture will show the picture of the balloon and the other the monopine. They submitted both the balloon tests because the May test is very similar to where the actual location will be. In the packet is a map that shows where a vehicle parked to take the pictures. Atty. Springer reviewed the pictures. He stated that Mr. McQuade had talked with several residents who had requested that the GridCom team come to their personal property and take pictures from their property. For example, the packets contain several pictures from Rockrimmon Road. Mr. Simmons confirmed that if another balloon test is done, that that offer to come to people's property and take pictures from their vantage point is still open. Atty. Springer agreed, and mentioned again that they had offered at the May 18, 2005 meeting. Mr. Simmons asked that if another balloon test is ordered, Atty. Springer provide him with the best way to get them in contact with him. Atty. Springer reviewed the picture from Donkser driveway from the first packet. It is his understanding that the Donksers forbade them from coming onto their property for the second balloon test. He reviewed a map of the Morton property on 22 Woodland Road and pointed out where the balloons were floated at each balloon test. There was some discussion as to the accuracy of the positions that GridCom was claiming the balloons had been placed in during the May 11 test. Mr. Bill McQuade from GridCom pointed out on the map where the float was done on May 11. On the June 1 float, they were approximately 250 feet away from the location that they are now proposing. Mr. Simmons asked if all pictures from May 11 are all from one location. Mr. McQuade answered that there was another location. As the day progressed, the wind caused them to decide to take the balloon down and raise it again. Mr. Simmons expressed concerns about accuracy of future balloon tests, for instance, if the rope gets caught on branches.

*Unidentified person (Maureen left room)* noted for the benefit of Mr. Minassian and other concerned parties as to the earlier question of how would the tower appear without foliage on the trees that in the May 11 photos, (photos 4A and 4B in the packet) there was less foliage on the trees, making it easier to see the difference. Mr. Simmons suggested that for the next meeting, the drawing showing the location of the balloon tests on the Morton property be reduced down for viewing by attendees, and that the location of the third balloon test be marked on the drawing.

Atty. Jim Bassett asked if the representatives from appropriate companies will be available at future meetings. Atty. Springer confirmed. He returned to his presentation, and called the Board Members' attention to the fact that for the report in their packet

from Donald Haes a supplement had been received. Dr. Haes is a radiation safety specialist with MIT who prepared reports specifically for the site in question. The measurements in the report are regarding maximum permissible exposure of radiofrequency waves. In layman's terms, the reports claim that the site is safe. Mr. Simmons requested on behalf of the Board that Curriculum Vitae qualifying them in their field be provided for each person providing information and reports. Atty. Springer confirmed that that would be possible. Mr. Simmons asked if Dr. Haes would be available for future meetings. Attorney Springer replied that Dr. Haes was quite expensive and that he has never attended any of the hearings. He has not seen anyone argue Dr. Haes' reports. Mr. Simmons asked if anyone with a question or comment was welcome to call, email or mail Dr. Haes at his office. Mr. McQuade stated that it was his understanding that the abutters had hired experts as well and if any arguments were to arise, he would be happy to make Dr. Haes available. He invited the Board to hire an expert on their own that would investigate Dr. Haes work. Mr. Simmons stated that the Board typically does not run into cases where expert witnesses are a concern. Atty. Fields submitted that he believes the Board has the Statutory authority to hire experts at the expense of the applicant and that he has submitted that same information to Mr. Mabey in the packets distributed by himself earlier in the evening.

Atty. Springer introduced Mr. Vern Gardner. Mr. Gardner studied comparables to determine whether there would be an impact on the selling value of the homes in the area surrounding the site of the tower.

Mr. Vern Gardner, Jr., MAI, SRA, Real Estate Appraiser of Horizon Associates qualified himself by stating that he has been appraising properties for 35 years from Portland, ME to Seabrook, NH. His goal is consistently to provide an unbiased view. He is confident that the property values are not affected by the cell tower. He explained the procedure for comparables. The only difference between two properties that he chose to compare in each case was that one property was affected by a cell tower or "adverse" feature and one was not. He gave other examples of "adverse" features. He claimed that the end result was no change in property value. Mr. Simmons asked how many reports he had prepared with the specific concern of cell towers. Mr. Gardner replied that this was the first case concerning cell towers, and sited cases where the concerns were power lines, Children's Museum of Portsmouth, odor issues. Mr. Simmons asked if the applicant had contacted other appraisers besides Mr. Gardner that came up with a different opinion. Atty. Springer answered that he had received a report from Mr. Stanhope of Hampton that there was no diminution in value in a case from the past concerning cell towers. Mr. Stanhope has done work for an abutter and was unable to work this case due to a conflict of interest. Mr. Stanhope had referred someone who was not available due to workload. Atty. Springer also called Kraft Appraisal from Manchester who has also provided reports stating no decrease in value specifically regarding cell towers in the past. Mr. Gardner was the fourth appraiser that he called. He has worked with Mr. Gardner in the past. He has never had a conversation with an appraiser in which the answer was in the negative. Ms. Peckham submitted that in Mr. Gardner's study, most of the homes ranged in value from \$100,000 to \$400,000 and that in this case most of the homes are of a value



that approaches or exceeds \$1,000,000. She asked if that would have an affect on the report. Mr. Gardner submitted that the value of the home effects expectation of the potential buyer, and stated that in his opening remarks he reviews this factor. However, in his opinion the canopy is substantially high enough to screen the cell tower. Mr. Simmons asked if Mr. Gardner had had the benefit of looking at the photos from the balloon test and was he able to attend the balloon test. Mr. Gardner submitted that he had seen the photos but not attended the balloon test. He submitted that one other aspect that concerned him during the study was "days on the market" for properties in question. Some properties with "adverse influence" stand on the market for a longer time. With this case, he felt that it didn't apply as the influence is not highly visible.

Atty. Springer summarized the variance criteria concerns and the information presented earlier. He resubmitted that the visual impact of the tower is very low. Also, he is willing to propose a stockade fence which will provide baffling which will further reduce any possibility of noise disturbance. Mr. McQuade gave further details regarding the appearance of the compound and the sound-deadening efforts to be made. Atty. Springer invited all concerned to go to an existing site in the area and determine the noise interference for themselves. Mr. Simmons asked about any humming or hissing emitted by the facility. Atty. Springer sited the lights and fans heard in the school at the time and estimated that the sound would be less than that.

Atty. Springer also brought up the 125-foot fall zone criteria. He pointed out the zone on the map and submitted examples of instances where the 125-foot variance is approved because the cell towers are very safe. He explained that the towers buckle or bend but do not fall over unless there has been extreme negligence during construction. Ms. Peckham requested technical data supporting his claim that the towers do not fall over. Atty. Springer confirmed with Mr. McQuade that they could provide an engineering study proving that fact.

Regarding the wetland criteria, he committed to preparing a report from wetland scientists to support their request for variance. He mentioned again the effort to locate the site on town-owned and sited the Telecommunication Act in existence requiring that the town provide reasonable opportunity for carriers to provide coverage. Mr. Simmons requested a summation of what the federal law requires in that area. He also asked for further information on any laws that govern multiple carriers per site. Atty. Springer addressed the multiple carrier question by explaining that the number of carriers per tower is determined by the height of the tower and the structural capability. Also, the Town has to allow equal opportunity to all federally licensed carriers. There is not a federal law requirement that the opportunity be provided by the proposed tower. Regarding the spirit of intent with the ordinances, Atty. Springer sited theoretically examples of what the zone allows in Mr. Morton's area, some of which would have more of an adverse effect than the cell tower. Mr. Simmons submitted that the spirit of intent that should be looked at more closely was regarding town-owned land. Discussion ensued as to the relevance of Atty. Springer's examples and the spirit of intent. Ms. Peckham stated that even though it's not written, she would assume that the motivation behind the ordinance is so that individuals would not receive the income involved. Atty.

Springer pointed to the proximity of 22 Woodland Road to town-owned land and sited the features and benefits with regards to the cell tower and again sited the search for town-owned land. Mr. McQuade gave more detailed information and justification regarding the search for town-owned land.

Mr. Simmons proposed that further discussion would be required on the spirit of the ordinance. He proposed an additional meeting be scheduled specifically for this case and that another balloon test be done.

Atty. Fields asked the Board to consider a crane test instead. Discussion included the pros and cons of a crane test vs. a balloon test.

**A vote was taken for balloon test vs. crane test. The result was 1 for balloon test and 2 for crane with the assumption that the crane company agreed to perform the test. Ms. Smith and Ms. Lerner abstained.**

**The date set for the crane test is Tuesday, July 5, 2005 from 8:00 a.m. to 2:00 p.m. with a rain date of Thursday, July 7, 2005. This date will be posted in the Hampton Union by June 30, 2005 at the latest.**

Atty. Springer asked that respect for the property owners be shown by those coming to view the crane test. Those whose behaviors are considered harassment will be asked to leave. He also proposed that they contact abutters via the Board to request opportunity to take pictures of the crane test from the abutter or neighbor property. Mr. Simmons expressed understanding of the neighbors' and abutters' stance if they choose not to allow the GridCom team onto their property. He also brought up the point that any abutters or neighbors that did not allow the pictures to be taken from the property would be depriving the Board of evidence that would help substantiate their claim about what effect it would have on their property.

Atty. Bassett, who will not be able to be present at the continuation meeting, requested that he be granted permission to distribute materials at that time that would be made a part of the record and reviewed by the Board. Mr. Simmons answered in the affirmative and invited all attendees to hand in any helpful materials for the record. Atty. Bassett also submitted that Mr. Kokernak had never been contacted regarding the opportunity to take pictures from his property.

**A continuation of this meeting is scheduled for Monday, July 18, 2005 from 6:00 p.m. to 10:00 p.m.**

**Adjournment**

**Red, no vote was taken to adjourn according to the tape.**

Respectfully submitted,

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