

The Town of North Hampton Zoning Board of Adjustment met on Tuesday, August 16, 2005 at 6:00pm in the Mary Herbert Room at the Town Offices.

Attendance

Present: (1) Jennifer Lermer; (2) Susan Smith; (3) John Anthony Simmons, Chairman;
(4) Michele Peckham, Vice Chairperson
Alternates Present: None
Absent: (1) Ted Turchan
Staff Present: (1) Richard Maybey, Building Inspector/Code Enforcement Officer;
(2) Carla Bonney, Recording Secretary

Mr. Simmons, Chair called the meeting to order at 6:23pm.

Preliminary Matters

Procedure; Mr. Simmons announced that anybody with questions regarding how the meeting was run should raise their hand to ask.

Swearing of Witnesses; Any member of the audience planning on speaking for/against any matter discussed was asked to stand, raise right hand and swear to tell the truth.

Recording Secretary Report; Notice of this meeting was posted on July 27, 2005 at the Library, Post Office, Town Clerk's Office and on www.north-hampton-nh.com. Public Notice posted in the *Hampton Union* on July 31, 2005.

4 Member Board; Announcement that there was no alternate available to stand in for regular Board Member Ted Turchan.

New Business

2005:20 – Request for rehearing regarding the special exception to operate a Family Day Care from Frances Ambrose, 19 New Road North Hampton for:

2005:20 – Melinda Fuller, 21 New Road North Hampton, NH 03862 requests a Special exception to Article V, Section 509 to operate a Family Day Care. *Property location: 21 New Road, R-1 zone district, Tax Map #014-095-000.*

Sharon Somers, the attorney representing Ms. Ambrose, after taking time with her client, asked for the re-hearing to be continued the regular ZBA meeting on September 27, 2005, due to the Board being down a member. She also brought to the Board's attention the fact that the minutes from the June 28, 2005 meeting had not yet been approved and confirmed the importance of those minutes being made part of the record before her client was comfortable proceeding. Note to the record that Attorney Somers has a potential scheduling conflict and that she would submit a letter requesting a continuance if that were the case. *TI 11:21ish*

(long discussion amongst Board as to whether June 28th notes had been circulated – decision to make their approval priority on September 27th 2005 Agenda TI 8:26ish)

Note that on the September 27, 2005 agenda, under I-Preliminary matters of the regular meeting, the minutes of the June 28, 2005 meeting need to be voted on for acceptance. Confirmation with Mr. Mabey that there was time to have that addition make the posting.

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 June 20, 2005 meeting.*

Attorney Bob Field stood to voice his concern that the panel seemed to be changing frequently. He emphasized the importance of consistency and asked that the ZBA do their best to maintain that consistency. He also referenced the June 28, 2005 and July 18, 2005 Minutes as being important to have on the record. Mr. Simmons concurred and agreed the Board would do their best, notwithstanding emergency circumstances and things out of their control. Mr. Field also brought to the Board's attention the fact that some of those who may be intending to speak may have come in after the swearing of the Witnesses. Mr. Simmons asked those people to raise their right hands and repeat the oath again.

Explanation that all entered exhibits had been compiled into 2 huge binders, organized, indexed tabbed and cross-referenced with the original exhibit numbers. Each Board member has a set, each Alternate has a set, the Building Inspector has one and there is a set for public reference at the Town Office.

T1 24:05 – 29:50 – indistinguishable mumbling – ZBA going over past minutes?

Mr. Simmons asked that anyone who had submitted evidence for the record check and confirm that their submissions were properly represented in the public records on display. Confirmed that any new submissions would be referenced and indexed accordingly (*T1 36:20ish*); assigned 'homework to the Board to transfer any pertinent notes from their original files to their binders.

Attorney Russ Hilliard, newly appointed legal council to the ZBA was asked to sit at the table with the Board – introduction of the Board and involved parties in the audience; Attorney Jonathan Springer, legal council for the Applicant; Attorney Peter Loughlin and Attorney Jim Bassett, legal council for **Denis and Donna Kokernak** (direct abutters to the application); Attorney Robert Field, legal council for **Dr. and Mrs. Donsker**; and John Sch_____ (*T1 33:15*), legal council for _____.

Attorney Springer stood to say his client wanted to proceed, despite the Board being down a member, with the understanding that the missing member would be able to review the minutes and vote. (*37:50*) Mr. Simmons asked Attorneys Loughlin and Bassett if the video recording the Kokernaks are having made of the meetings could be added to the record if needed. He was assured that the records would be available if needed, although there were no promises as to the sound quality.

Attorney Field reiterated his earlier concern about the changing Board members and asked that his concern be entered into the record. He noted that as the case went on, more and more expert witnesses were testifying and that it would be easy to overlook pertinent information if relying on secondhand

(written/taped) information. Mr. Simmons assured Attorney Field and the audience that everything in the ZBA's power was being done to maintain consistency going forward.

Additions to the record;

Document Description	Indexed by Atty. Hilliard
08/15/05 letter from North Hampton Conservation Commission – 2 pp	S-2
08/10/05 letter from Jim Bassett to Mr. Simmons; letter and copy of attachments submitted to the Conservation Commission.	P-17
2 news articles; ~ 08/12/05 <u>Hampton Union</u> <i>Lawyer to advice on cell phone matters</i> ~ 08/16/05 <u>Hampton Union</u> <i>Tower alternative explored</i>	D-16
07/28/05 letter of opposition from George & Marilyn Dresch	K-6
08/08/05 letter of opposition from Steven & Laura Klidas	O-2
08/11/05 letter from Peter Loughlin re: boundary dispute – 3 pp -	P-16
08/16/08 e-mail from Jon Springer; letter attached in reply to Atty Loughlin's letter of 08/11	A-21
07/27/05 online article (<u>Portsmouth Herald</u> ?) <i>Eminent Domain for Tower Site</i>	Already in the record
07/24/05 e-mail from Steven & Laura Kildaras	Already in the record
07/20/05 letter from the Kokernaks	Already in the record
10/07/03 – letter from Tech Environmental – back up to previous submission	Already in P-15

(T2 7:45)

Mr. Simmons announced that the night's purpose was for the applicant to finish his case in (*chief*); that will be the end of getting out (as a concept) what it is that they want to do. He explained that this case is taking much longer than usual due to the size of the application, amount of information and number of people involved, and that the process was still in the initial stages. He asked Attorney Springer for an estimate of time needed to finish his case in (*chief*). Attorney Springer said he believed he could finish in under an hour.

Mr. Simmons expressed that he would like to give any abutters/other interested parties who wanted to speak the opportunity so they would not have to keep coming back (as many had been) only to have their opportunity deferred again. He asked that interested parties not interrupt with their questions, knowing that the opportunity would be given to them tonight

Council asked if there were a targeted adjournment time, Mr. Simmons stated that they were "there for the duration", depending on tolerance/endurance of the involved parties.

Attorney Springer started by saying that they had left off with variance criteria with their presentation in June, and he would pick up with that after addressing some requirements (like the crane test) that had come up in the meantime.

Attorney Springer did not have his notes with him, so did not have the exact date, but stated that the crane was on the property and it is the applicants' understanding/belief that the residual impact shown

did not differ significantly from the original balloon test. While they had the crane on site they did a drive test to confirm the RF info previously submitted (explained that a drive test is simply driving around town noting signal strength from transmitter at the top of the crane).

The applicant's RF engineer, **Arvin Sebastian from Cingular** stood to explain those results (**** T02 11:00 -26:30 Mr. Sebastian's explanations are muffled*). He had color coded maps of June 30th and July 5th drive tests. The first map showed North Hampton's existing coverage done on June 30th;
Orange represents -82 ZBMs and above.
Gray represents below -82 ZBMs.

Mr. Simmons asked for confirmation that that the more negative ZBM, the better reception. Mr Sebastian explained that Cingular needs -82 ZBMs for good quality calls from within homes). -92 is needed for good quality calls outside. (*****)

The second map represented the coverage (using the same colors) that would be provided from a tower/transmitter the height/position of the crane on July 5th. Mr. Simmons stated he is colorblind and asked for an overview of what the two maps established. Mr. Sebastian stated that the second map showed that it would fill in many of the gaps on the first maps, thereby generating better cell coverage over the area of the Town of North Hampton. (*****)

Mr. Simmons asked if the reason some of the town looked white (no coverage) was because the readings were all taken from roads, as opposed to out in the middle of the woods. Mr. Sebastian confirmed this and stated it was his belief the coverage would extend to those areas as well, depending on topography (hills, tree level, etc.). (*****)

Ms. Smith asked if coverage strength fluctuated within the grid or was consistent – Mr. Sebastian stated that it is characteristic of a cell signal to fluctuate up and down and they took the average of the variations at each particular point (every half second or so). (*****)

Ms. Smith asked about some gray areas on both maps and whether they would receive coverage at all. Mr. Sebastian said that the readings represented on the map were from the one proposed cell tower area, and did not take into consideration other towers (such as in Rye) so were not necessarily representative of over all area coverage. (*****)

Mr. Simmons asked if, bottom line, color coded charts aside, this proposed tower would fill the necessary gap. He said he was unclear as to the overlap between the two maps and asked if, based on the information in front of him at that point, he would modify the original plans at all from the June 30th test. Mr. Sebastian said it would greatly improve it and that he would stand by the plans; that their original projections were right. (*****) Mr. Simmons thanked him and he sat down.

Attorney Springer stood to say another thing the Board had asked him to do was a wetlands study, which he had submitted at the last meeting (dated July 18, 2005, tabbed as A-19, previously exhibit 105). He introduced **John Dick of Hancock Associates** if the Board wanted to ask any questions, and stated that the two most important findings of the report in his mind were 1) most of the activity drainage runs away from the wetlands and 2) there would be no adverse impact on the wetlands.

Mr. Simmons asked Mr. Dick if he were a scientist; he confirmed that he is a wetlands scientist. Mr. Simmons asked if he agreed with Attorney Springer's overview of the report. Mr. Dick said yes – that it was a simple, straightforward case and the activity does drain away from the wetlands.

(T02 28:20) Another request the Board had made of Attorney Springer was for a memorandum of law regarding the Telecommunications Act; he had not written it as requested because (*recording muffled*) instead he wrote a 3-4 page (what he considers) objective statement of the law, good, bad or indifferent. (Already in the record, July 18, 2005 tabbed as A-18, previously exhibit 104).

Attorney Springer said that as Mr. Simmons had mentioned conservation plans (in passing whilst looking for above memorandum) he wanted to address the lot at the corner of Atlantic and Woodland. "They" say that that lot is a buildable lot, unburdened by conservation and therefore an alternate site. Attorney Springer said the applicant had looked at this parcel very closely, and it is burdened by conservation; that lot does show up in previously submitted material. He said the Kokernaks had purchased that lot and then donated it to the town. There is a conservation restriction area (easement) hi-lited on those documents; a deed with a note that says that property shall be maintained in perpetuity as open space . . . is also in those materials. (T02 34:00 –*Atty Springer talks about the term "area" vs "property" – very muffled*) It is his understanding that the town also agreed to leave the lot as conservation, so that would have to be undone in order to use the land for commercial purposes.

Mr. Simmons asked if the two points Attorney Springer was making were that Council was wrong in their distinction between "property" and "area", and that there might be misunderstanding (ignorant or not) in the town vote. Attorney Springer agreed and also noted that even if you get by those issues, this property is no different from the currently proposed lot in that either you'd have to go thru the conservation restriction area, or go thru wetlands to access it. The problem of being right next to a conservation restriction area is the same in both cases. He also assuming there are houses in the vicinity of that lot, which is another one of the problems with the current lot. He doesn't see why they would get by the same issues on the Atlantic/Woodland lot if they can't get by them on the currently proposed lot. (T02 36:00–38:00 *more muffled discussion on "area" vs. "property" and what could be built on*) Attorney Springer reemphasized that here really aren't a lot of alternative sites in this are of town.

Attorney Springer wanted to address a couple of points about the material that the Kokernaks and Donskers provided. 1 – the RF report submitted by Mr. Maxson (*Mr. Simmons interrupted to ask if this was information that had been submitted yet, and if not, he would prefer Attorney Springer handle comments on it as a rebuttal after the material was part of the record.*) Attorney Springer said it tied into his case in chief as far as explaining why the applicant did not pursue alternate technologies. He quoted Mr. Maxson as saying in his report "the highway district is not likely to provide more coverage in this area" which Attorney Springer understands to mean if you put a tower in the highway district, you can't reach the area they're trying to cover – if you take that admission and put it with the alternate sight issue they just talked about, he feels it goes a long way towards establishing that they do need a site, they do need a variance, and that there is a gap in coverage. Mr. Simmons asked him to locate that report. (tabbed at P-12 – previously exhibit 115)

(T02 44:15) Another issue that Mr. Maxson raised is "distributed antenna system" otherwise known as DAS – alternate technology – Mr. Springer believes Mr. Maxson's report says they ignored that possibility; they didn't ignroe it, the reason they didn't propose it is the same reason it's used virtually no where else. He said Mr. Maxson should be asked where in New Hampshire, Maine or Vermont it's

being used. Nantucket is about the only place around that uses it. He explained DAS is more for in-building use, tunnels, etc. where antennas are placed so a large number of people might be needing the service, but that towers won't provide.

Mr. Simmons asked why (technologically) it does not work. Attorney Springer explained that DAS is essentially putting antennas on the tops of telephone poles; height is relatively low (below tree coverage) so you need a lot of them, and each one is basically "driveway coverage". Another issue is that every DAS site under North Hampton ordinance, would need a variance. He quoted a wireless communication facility as being defined in the ordinance as "any antenna or other structure" used for RF transmission. Structure is defined as anything constructed or erected, the use of which requires a fixed location – so a telephone pole is a structure; if you put an antenna on t, it becomes a wireless communications facility according to North Hampton's ordinance. (T02 47:00)

Mr. Simmons asked, if an antenna were to be placed on a telephone pole, whose property would you be placing it on. Attorney Springer explained that it would be the utility who owned the pole – most likely PSNH, and they're not eager to do that often time due to liability and maintenance/operation issues. Mr. Simmons questioned whether those poles fall under the state right of way, Attorney Springer said "perhaps" (*muffled - discussion re: private property, state right of way – decided to take up this issue on another night*)

(T02 50:00) Mr. Simmons asked Attorney Springer to pick up where he'd left off on the points he'd been addressing.

Springer: the 125 foot fall zone which they say is not a fall zone and wetlands set back . . . we think the property does have some special conditions; the right area of town number one, pretty good size number two . . . number three . . . good footprint, we think the visibility is very limited. We think it is a very good use of the property. The other splotchy element is whether benefits could be achieved by some other method reasonably feasible to the applicant to . . . in this instance we don't believe there's any available alternatives. If we lower the tower height we could do away with . . . 125 foot set back, but that would reduce the amount of coverage and defeat the purpose. . . . part of this is every site . . . you're going to need a variance . . . probably a domestic variance as well. . .

Simmons: You've spoklen mostly to the 125 foot on your comments there – you've got three requests for relief, and you're now talking about the hardship prong and more specifically the second prong . . . benefits, no alternatives. Talking about reducing the height and fall zones and lost reception certainly speaks to the 125 foot. . . . What is your argument about not having alternatives with regards to the use of the relief you're requesting and the wetlands, . . .

Springer: the wetlands – we feel that we've situated it the best way we can – the impact on the wetlands as we've shown . . . is negligible if not nonexistent entirely and given the way the wetlands occur on the property, the reasons we're down here is that we're trying to move away from the Donsker property, we're trying to move away from the Kokernak property, and we really think that this situation – this siting proposal makes a lot of sense, and we need relief from variance in order to do that.

Simmons: so the combination you've chosen is least impact on the wetlands and least impact on the abutters.

Springer: right, and – can we achieve this by some other method legally feasible in terms of the wetlands, our position would be no, because if you move away from the wetlands you move closer to everybody else so . . . in terms of the use variance, we have to show that this . . .

zoning restriction as applied to the active property . . . if you look at the fact that . . . the landowner has one use for his property . . . variance for another type of use, that's exactly what we're doing . . . we feel that the property here does have some unique characteristics. I don't know if, in that area, . . . well any property in that area is going require a variance – if you look at this property again, the size, the location, the treecover, and the RF footprint, we feel all show that this is a good property. The monopole at 125 feet resolves the coverage issue and as I said, there's almost a hardship by going because anywhere you go in that part of town, in our opinion you're going to need a variance.

Simmons: How does that make it unique then? Doesn't it make it like every other piece of property?

Springer: But that goes to whether the ordinance interferes with reasonable use. This is a reasonable use on this property.

Simmons: What immediately comes to mind is that it's a more (spacial? facial?) challenge to our ordinance itself, and not as an applied argument.

Springer: Well, it's both. But I mean the restriction on the property is that you don't allow it there, even tho this is a reasonable use for that piece of property.

Simmons: but if the intent of Zoning is to create zones where uses are, and the voters in their infinite wisdom determined that one section of town is good for certain things, and not for others and such and such, if they've determined that this area of town is not suitable for telecommunications facilities, then, they're applying that equally on all similarly situated properties. I definitely see that your position would be a (facial?) challenge to the ordinance, but I'm having trouble with -

Springer: That argument would preclude every variance, ever – what you're saying in effect is the voters have said “you can't have this use here” and that prohibition applies to your neighbor as well.

Simmons: well right – but it says you can have a variance, but you need to show that something's unique about your property, what's unique about this piece of property? Isn't what's hard on you is the fact that this is the particular landowner you've struck a deal with?

Springer: Well – it's the particular landowner we've struck a deal with, but the land itself also has characteristics that we feel are rather unique.

Simmons: And what are those?

Springer: the size, the location, the RF characteristics, the low visual impact, so your argument Mr. Chair would go to preclude every variance in every situation in my opinion, because what you've said is “the voters have spoken – they precluded you Mr. Jones, from getting a variance on your property for anything, but the same prohibition governs Mr. Smith next door – so why should you get a variance when . . .”

Simmons: . . . until you mentioned size, location RF characteristics and low visual impact, you had lost me. So your argument is that those four things are what's unique about this property. Ok – so let's take them in turn. What about the size?

Springer: and can I add to that list? . . . part of it is absolutely, the willingness of the landlord to rent. You look at where we are – you look at who's sitting in this room and who's objected to this project. Is Mr. Kokernak going to rent to us? Is Dr. Donsker going to rent to us? Is the Boys Property going to rent to us? I don't think so.

Simmons: Have you asked them?

Springer: they put in the letter that they opposed to the project
?? They didn't ask me – they didn't ask anyone else.

- Simmons: I'm just trying to figure out what your argument is . . . now we're getting to what your arguments are, in my opinion, about what makes it unique. Ok – so 5 would be willingness of landlord to rent. So let's take them in turn – what's unique about the size of this?
- Springer: I think you have to take them all together – it's a bundle of characteristics.
- Simmons: What size property do you need to put a facility on? . . . I understand that you don't want to single them out; . . . pardon me for telling you you didn't have to break it down and then making you anyway. How big of a lot do you need to put a facility like this on? I assume 1/10 of an acre is not enough. (T02 1:01:30)
- Springer: It depends on what area you're looking at – if you were in downtown Boston, can you put a facility on a rooftop using 200 sq. ft, yes. If you're in North Hampton trying to bring coverage to this type of area, with this type of topography and this type of treecover, do you need a larger parcel, yes. We looked for larger parcels; would it be better if it were an 80acre parcel, yes. That would push the boundaries out further and give us more tree cover.
- Simmons: I guess what I'm asking is – is there a lot size – look SOMEbody said “we need a cell tower in North Hampton”. They took out a map, said ok what's available – you look at the ordinance . . . you looked and exhausted those possibilities . . . other than going eenie-meenie-miney-moe, I'm assuming you had some sort of a size parcel in mind – what was that threshold? Did you not look at anything under ¼ an acre and under? Did you not look at an acre and under?
- Springer: I'm not sure there's a hard, fast threshold. I can defer to Mr. McQuade, who's doing this, but it's not an exact science . . .
- Simmons: I understand that – but if you want me to say this size is unique, I want to know why. Without a hard and fast number of bright line tests, I think I need to hear that there were only – and this doesn't have to be the only thing that is unique – I don't have that little of an interpretation, I know that this is a sliding scale because of the other factors. . . but if you tell me you need ½acre or more and I go on a map and find 90% of the parcels in this area fit that description, your testimony to me that this is unique doesn't hold a lot of credibility in regard to that one fact. I'm trying to determine how big of a lot do you need, and how many of them are there in the area, give or take 50.
- Springer: If I may answer a question with a question - Every lot in this area is going to require a variance. You can't point me to a lot – this is the whole problem – you can't point me to a lot in this area where we don't need a variance. You can't say to me “well, ok – the minimum size we need is 4 acres and there's a lot here and a lot here and a lot here . . .” Guess what? They all need variances - none have permitted usage. We're going to have the same conversation. . .
- Simmons: And they might not meet your other characteristics – I understand that . . .
- Springer: It doesn't matter – you can point to any lot on a tax map in that area of town - That's it in a nutshell – it's the bundle of those characteristics.
- Simmons: So this absolutely was the only piece of property that fit (adequately, within a range) all 5 criteria you just mentioned? I don't want to get bogged down in size either, I think your comments are entirely appropriate – but I want to know was this it – or was it one of three, one of seven – and then once you got to that list was this the only piece . . .
- Springer: I will have to defer to Mr. McQuade; I was not involved in that.
- McQuade: Thank you Mr. Chairman. (T02 1:06:00) **Bill McQuaid, representing GridCom.** We looked at a number of sites initially. We looked first at your ordinance first of all . . . in our search to fill this gap in coverage, because we could not find existing structures in this area of a sufficient type to fill the gap, we were directed as your ordinance does direct us, to town

owned land. I met with Mr. Choate on 2 occasions and possibly 3 and met with Mr. Mabey and the town administrator. . .

Simmons: And you've testified to this before . . . you had a chart and said "this ones out . . . " I don't want to make you go thru that again . . .

McQuade: I'm just going to try to answer your questions a little bit further; our first choice, based on size and location, was the Boys piece – the piece that abuts the Morton's property. It was deed restricted, as these other parcels we looked at were as well. Every parcel we looked at that the town owned to fill this gap was deed restricted. What we did find, given time restraints, was a commercially available piece next to our first choice which turned out to me 22 Woodland Road. That's how, in the time constraints of this search, based on the ordinances that we arrived. . .

Simmons: so the chart that you submitted before would be that universe of – barring something that pulled it out of the group – that was the group that fit your needs based on size, location, RF frequency, low visual impact and willingness of landowner to rent that Attorney Springer mentioned – the list you submitted before was the universe. The reasons you had on that chart (deed restrictions, etc.) . . .

McQuade: I want you to recall, our first choice thru-out the process was the Boys piece. I think, trying to keep in the spirits of the ordinance, by choosing a piece, that, fortunately is not deed restricted, but it does require a variance. Every other piece of property that is not town owned or town controlled requires the same kind of variance that we are seeking here.

Smith: Can you elaborate on the use of the word "time constraint"? Why was there a time constraint?

Springer: Our co-applicant Cingular had a specific need to fill a gap in coverage here . . . they wanted bring forth their product to customers with existing service, either in Hampton, or in Rye, and also to attract new customers with expanded coverage.

Smith: So where does time come into that?

Springer: The time constraint is that, annually, they have roll-outs, and I too have objectives – certain things I want to meet, and when I say time constraints, we found a commercially viable property that fit the criteria . . . location filled the gap in coverage, it was available, it has very good screening, we've had 3 balloon tests given the time constraints that we had – let's see – 6 months – I think? Actually we started this process in August or July of 2004, we didn't lease this property until April of 2005. We had gotten to the point where we had thoroughly exhausted other alternatives.

Simmons: I'm trying to look at the exhibits here - that list, that I'm remembering that you had– would that have been submitted under your name or somebody elses? Choate? . . . if I find it I'll let you know. (T02 1:12:00) (Located at Tab d-5)

Springer: ok – the next criteria is whether any substantial relationship exists between general purpose of the zoning ordinance and the specific restriction of the property. We submit that there is no relationship – one of the goals of the ordinance is to meet the requirements of the Federal Telecommunications Act. I think that if you look at the ordinances it says one of the purposes is to provide reasonable opportunity for the siting of these types of facilities . . . I think that tract, for the purpose of the Telecommunications Act, therefore fits one of the purposes of the ordinance is to allow these types of facilities, subject to certain restrictions – there's no questions about that – the problem is, in this area of town, you don't allow it. There are no available, permitted sites, so the restriction is against all the properties in that area of town, there is no substantial fair relationship between that restriction and the purpose of the ordinance.

- Simmons: If I could hit the pause button there – wouldn't someone who paid to live in this part of town disagree with you?
- Springer: If so, we have a problem which is the Federal Telecommunications Act because you have to allow reasonable opportunities for these types of facilities in these towns – and that includes all areas of those towns
- Simmons: So a town that likes the way it looks, and doesn't want one of these thing in their town, is told by the Federal Government is you have to have one anyway.
- Springer: They're being told they have to allow reasonable opportunity for the siting of these facilities.
- Simmons: ok – and your answer to . . . it's fair to say that Nantucket is nation and world-wide known – they have a certain set of things they do there, and in my opinion Nantucket is much more restrictive about what you can and can't do there . . . much for the same reason that Nantucket would say "you can't have them, run your wires down the telephone poles and locate them" your telling me, for the reasons you articulated earlier, that's not an option because of cost and some things you mentioned earlier. I don't know where the question is in that but . . .
- Springer: I understand where you're going - Nantucket is different in many ways – the topography – it's very flat in my understanding – the tree cover is very different, very limited compared to what we have in North Hampton – it's my understanding – I've never been there . . .
- Simmons: here's my point – I'm just going to ask a succinct question; if the purpose of the ordinance, among other things, is to make sure that facilities like this don't go up, and people have been very deliberate about that choice, don't we meet the federal requirements by allowing you to lay the alternative technology within the town? I understand that might have a whole host of other concerns, and we're not going to get into that today – it's a discussion that we can have another day – but assuming we could come to some sort of reasonable conclusion on those issues, isn't that our compliance to the federal statute?
- Springer: I would say no based on the actual performance of what that alternative technology is in that part of town, because that's not going to give us reasonable opportunity for the coverage.
- Simmons: But for technical reasons, or some other reasons we haven't discussed so far – as a concept, that would meet the federal requirements – right? . . . Your objection is that the technology doesn't work - if it were reasonable, assuming it were to work, doesn't the availability of that, in the first instance meet the requirements, and then we could have the discussion and get into the merits.
- Springer: As a concept, yes – facially, you can say, in your ordinance, that you have to consider other alternatives. If those other alternatives allow the carrier reasonable opportunity to site their facilities, yes - our point is, that's not the case.
- Simmons: and we can have that discussion later – it would be for reasons that we haven't gotten into yet, I guess is my point.
- (T02 1:18:45 – somebody (woman) asks a question)*
- Simmons: well, I understand the argument – because of topography, you can't be up on route one, and I don't even know if route one would be – actually it wouldn't be within the zone . . . I wanted to see how you felt about DAS and that whole thing – we'll have that discussion another time.
- Springer: The third Simplex element is that the variance will not enter the public or private rights of others. We believe that will be the case here – it will not injure any public or private rights. There's no noise, smoke, fumes – abutters will probably say we have private rights that are being intruded upon but I think a fair reading of simplex means a private right is something along the lines of a view easement or something you hold of right – not to say "we don't

want to look at it, we don't like the fact that it's going there." That lowers the bar so much that no one could ever reach that – if someone were to say "I don't want to look at your fence" so you can't get the variance for your fence – that's not a private right . . .

Simmons: let me stop you there – forget cell towers and all that stuff – let's go up to route one - if I want to place a business on route one, and someone is generically going to call it a nuisance to the abutter . . . if it doesn't run afoul of view easement, or sewer easement – it's ok? . . . that's not what Simplex means when it talks about private rights?

Springer: No - I would think that would be a public right that would be injured – because you are creating a nuisance – you are making too much noise, you are creating unsafe traffic conditions, you are putting out too much fumes – I would agree with you if you create a nuisance, but in my opinion that's what Simplex says when it's a public right you're violating.

Smith: Didn't we talk about generators that would be placed on the property – that would produce – we talked about decibel levels – that there would be generators and that each company that would be on that tower would have their own equipment there, which means there would be noise.

Springer: The noise that would be put out would be very very limited. We would be happy to agree – I don't even know if North Hampton has a noise ordinance – but we'd be happy to observe it, we could make that a condition . . .

Simmons: I don't believe we do . . . I'm going to be on my best behavior here – you're still trying to cover hardship and I know you have one prong to go – so I'm going to reserve my questions for another time.

Springer: I think that's it for the Simplex criteria – I think I have two prongs to go – if I covered one already I apologize . . . the fourth element of granting a variance will result in substantial justice . . . we think there is a real problem under the town ordinances regarding the gap in coverage, regarding the Telecommunications Act here . . . shows that they're aware that there's an issue here, I don't see that as an admission of liability, but I think it's something to consider - when the select board says, in effect, "we've got to do something to try to correct this issue" granting the variance will avoid a possible Telecommunications act violation, it will allow us to bring coverage where there is no coverage now, it will be a very popular service, so we think that granting the variance will result in substantial justice. And finally, granting the variance will not be contrary to the spirit of intent of the ordinance in our opinion. For multiple locations, this is a proposal that allows pole location . . . We think this is very tacit in terms of visual impact, in terms of vehicular traffic and those kinds of criteria, there is little or no impact on town services, etc.

Simmons: That it?

Springer: I think that's it

Simmons: with that, at 8:43 we will end the applicant's case in chief (*T02 1:25:00*) until proper time comes to rebut any comments that you will hear . . .

Short break

Simmons: As I advertised earlier, I'm going to try to hear from folks that might want to make some comments and we're going to be on the honor system a little bit – if you think tonight will be the last time you will be coming for some time, if you're able to give your comments and – I don't want to limit anyone in any way – but we're going to be on the honor system, and I'm going to have a general guiding principle that if you are not represented by an attorney here today, and believe your comments to be 5 minutes or under, we're going to take that class of folks first. When we get done with that class of folks, we will go to the 5 and over club, and

then, if we have time, we will go to those who are represented by an attorney. Speaking of attorneys, I have been handed a card during the interim for **James T. Lombardi** from Manchester – also represents the applicant (Cingular Wireless) and would like that noted.

Field: I hate to fall into the category of people who are likely to be here until they die – I would like to be assured by the Board that the witnesses whose support what Mr. Springer says will be available for questions at future meetings. I have 5 or 6 questions – direct questions, derived from Mr. Springer’s comments that can be asked at any time, as long as Mr Springer assures me that they will be available.

Simmons: Fair enough – I believe the answer is yes – Attorney Springer, this is an ongoing representation that you’re making that - I understand that Attorney Field is trying to create a record and make sure he has the opportunity – but rather than put him in the position of having to ask every meeting – that is ongoing representation that those people will be available?

Springer: Yes yes it – is – but thinking about it, do we need everybody here? If you have questions for one or two of them – do you have questions for Mr. Choate? Do you have questions for the wetlands . . . do you have questions for Arvin . . .

Simmons: With all due respect – I’m going to cut to the chase – if they’ve given testimony I think they need to be – if those people aren’t here, then people who have questions will be deprived of the right to flush out their testimony, and you’ve put the board in the position of not being able to answer their questions – I guess I’m uncomfortable with that.

Springer: We’ll bring them – can I just . . . Arvin Sebastian, who spoke tonight, will be changing positions internally – he may be available for the next hearing – a gentleman by the name of _____ Pollister will be taking over the application for him . . . he is an RF engineer; I can’t guarantee that Mr. Sebastian will be available on an ongoing basis, but there will be an RF engineer here. Mr. Pollister is here tonight.

Simmons: You’re Pollister? You’re the new guy or the old guy? New guy - You’ve heard everything he’s said? . . . Tonight - but not previous nights . . .

Pollister: No – but Arvin and I have been working closely together, trying to make a . . . transition.

Simmons: You’re fully aware of what testimony has been presented here, and you’re fully capable of answering questions that might come to you.

Pollister: Yes

Field: I don’t find it acceptable to have “tag-team” witnesses. I think the witness has gotten up and spoken on certain matters . . . and I do have a very simple question. I don’t think it is appropriate or common in law that someone can come in . . .

Simmons: While I disagree, I would take - if you have one question, why don’t we just . . . Mr. Sebastian can you come forward? He has one question for you.

Sebastian: Do you want me to bring the map?

Field: Yes I do – this will be brief

(T02 1:30:30 –muffled - something about implication that there is incentive to not answer questions)

Simmons: Gentlemen – time out – first of all – everybody’s going to go thru the Chair to be recognized. Number two, I didn’t read into . . . comments – I’ve known him a while – I’m not married to him and don’t practice law with him, I can tell when - he wants to make a point, believe me you’ll know it. I think, quite frankly all he wants to do, particularly if it’s in the nature of a comment he particularly may remember having made, he wants to ask a question – let’s just hear the question – you can make whatever comments you’d like, but please go thru the Chair.

- Lombardi: I just want to state that there is no undue incentive here to get out of answering any questions – Mr. Sebastian has been here over the past few meetings to present – and he would have presented last time if it weren't . . . the board had a member missing - it's an internal thing, everybody else to my knowledge will be available to answer the questions – if I took it the wrong way I apologize - we have the people here to answer the questions.
- Simmons: I understand – without further ado
- Field: Mr. Chairman – I can often, I guess be interpreted as asking questions like that – it was not my intent – and the reason I wanted Mr. Sebastian is . . . Mr. Sebastian – on those maps, if the Chair permits you to, would you please identify and outline in a color the town of North Hampton? As I look at it, those coverages and all that - span 3 towns – am I correct? Could you just show what we're dealing with within the town of North Hampton? Are those, Mr. Chairman, part of our records?
- Simmons: These new ones may not be.
- Springer: I'll make it easy – I can submit those.
- Field: Would you also, to make it easy, identify that same perimeter on the other map? (*T02 1:34:30 Mr. Sebastian outlines North Hampton in yellow on both maps, lots of shuffling and muffled voices*)
- Simmons: These are going to be submitted for the record. . . if you could put on them A-22, that's where they are going in our binders – and I ask if you could get me a size 8.5x11.
- Field: Are we ready for my second my second question? – what strikes me, Mr. Sebastian is that – let's maybe go to the next map – if I understand, the orange color is the areas that are being filled in by the proposed towers – is that correct? It looks to me as if the proposed tower is within feet, perhaps, of the town line. (*confirmation from Mr. Sebastian that it is not far from the town line*) Some of these additional coverages that are being proposed here apply to the town of Hampton and the town of Rye is that right – are we filling gaps in the town of Rye and the town of Hampton? If we go back to the first map, without this tower North Hampton is getting service from towers in other towns right? Part of it. What is the reason, if there is one, if there are available outside sites in Hampton, that that could not be utilized in this exercise of securing coverage for your company to fill this gap.
- Sebastian: Based on . . . you'll see that this gap is . . .
- Field: That is not my question – my question is, can you demonstrate or have you determined, that if you were to move the tower site on a scale of – oh it looks like a half mile south, would that not also cover the gap?
- Sebastian: I would think that you would lose some coverage here . . .
- Field: But that gap is up in Rye – as I understand it you're here to provide coverage in North Hampton . . . let me ask the question simply – you say that you might lose coverage in Rye, would you also lose coverage in North Hampton? (*Mr. Sebastian indicated an area in the 3 northern part*) Why would you lose proportionally so much more coverage in the northern part when moving it south such a small amount? If you take that one inch, or whatever it is, you're saying there would be more loss up in the north
- Sebastian: . . . it would push coverage down depending on available height, what the trees are like there, ground . . . I don't imagine the trees going up and down drastically from here to here . . .
- Field: What did your studies show about that? When you analyzed where you wanted to put this tower, I assume you looked at several sites – what did your studies show about locating a site on another location?
- Sebastian: Like I said earlier, we have determined that the gap . . . and for us to cover it . . . (*muffled*)

- Springer: Mr. Chair – I hate to interrupt – but we’re now hearing arguments – I understood that he had one question . . . we understand Mr. Field’s point, but when he answers the question and Mr. Field basically goes back and starts a cross examination . . .
- Simmons: We’re trying to give him a little bit of liberty here because this gentleman isn’t going to be here . . . I’m trying to . . . balance between what this gentleman can answer and what the next gentleman couldn’t answer – quite frankly I don’t think I’ve heard anything yet that the new guy couldn’t answer, but I’m trying to give but I’m trying to give Mr. Field a line of questioning that I believe centers around “what are your alternative sites” . . . one of them was “could you locate it outside the town” and then when he did or didn’t, and I agree that this is a bit of a cross examination, when he didn’t hear the answer he wanted, he shifted to the technological reason of why it couldn’t be shifted . . . I have to agree that while you may feel insufficient opportunity to ask these questions . . . what you’re getting at is what alternatives there were in terms of location
- Field: I’d like the applicant to have all the information about the tower sites and where they’re proposed . . . part of the requirements is that they explore all feasible alternatives – I would like to know – have them introduce – what their other studies are showing as to why other locations of that tower would be inadequate to fill the gap.
- Simmons: Other locations being outside of town?
- Field: Inside or outside of town.
- Simmons: cause we did hear testimony, quite extensively, I’m looking for that list . . . I’d pretty well exhausted that line of questioning in town . . . you have a legitimate question about “what about Hampton” or somewhere else.
- Field: I don’t think we’ve exhausted in town – it’s very interesting that we have two applications before the board, to cover the same gap . . . and at no time have I heard this applicant suggest that the Verizon proposal on Chapel Road . . . I know that they don’t have a lease there - so maybe as a business matter it’s more difficult, but certainly if another company found a acceptable, one would immediately assume there are alternatives available . . . at no time has this applicant every said there are DAS alternatives . . .
- Simmons: With all due respect – I don’t think that’s this gentleman’s role.
- Field: I do – as I understood it, he was their RF expert and my simple question is, what alternative sites have you looked at . . . in or outside of North Hampton . . .
- Simmons: Would it be fair to say that Mr. Choate would be your person to address that and not your RF guy?
- Springer: I think we’ve beat the North Hampton site to death – we’ve talked about it - it may not have met Mr. Field’s standards, with all due respect . . .
- Simmons: Is there a technological reason why it needs to be there? If you move the tower 100 feet, do you also move the outer envelope 100 feet back? If you go a half a half a mile south into Hampton, do you lose a half a mile coverage up in Rye?
- Sebastion: If you move it – the coverage also moves
- Simmons: Right – is it in direct relation? If you go a half a half a mile south into Hampton, do you lose a half a mile coverage up in Rye?
- (T02 1:44:30 – muffled discussion)*
- Simmons: . . . by a different height – if it’s lower you’re gonna lose more, if it’s higher you may not lose a thing . . . Is the new guy going to be able to answer questions like I just asked? I mean I understand that’s not an exhaustive list but if Attorney Field has technological questions about the wisdom of the applicant’s decision to stay here as opposed to further south, the new guy can answer those kinds of questions – right?

Field: If Mr. Sebastian has been the person for Cingular performing these examinations and tests, and he has studied other sites, let's say within a mile of the proposed location . . . I would ask that the Chair request those studies remain available. If he hasn't done it, a simple statement that he hasn't done it is fine.

Simmons: Do you understand where he's going Attorney Springer? What I think he's getting at is are there going to be enough downloads from the old guy to the new guy? So the new guy at the next meeting doesn't say "well I don't know what he did for studies" Is he going to have complete and unfettered access to what was done and what wasn't, when he did it, whether he had a coffee break or not . . . are you prepared to answer those questions?

Pollister: Yes I am

Simmons: what I'd like to do now is get back to where we were, folks that have comments that are 5 minutes and under, I will do that willfully and . . . gladly

Deborah Minassian of 6 Woodland Road, North Hampton, NH 03862 stood to bring a couple of things to the board and public's attention:

I didn't get a chance to ask Mr. Sebastian to go over it again, however, I would like to point out that the proposed tower does not 100% complete the gap in coverage . . . I'd also like to point out that there is Cingular service on _____ Road(T02 1:48:0) if you have a new phone. So, if you're willing to upgrade your phone instead of having a cheap phone you buy a good phone . . .

Simmons: Now do you have one of those phones?

D.M.: Yes I do – and my phone works on _____ Road. It doesn't work in my house, but I really don't care. Another one is a comment made regarding the leveling that . . . impact the wetlands – I would like to hear more . . . about what the word "most" means. How does it "mostly" impact the wetlands? And one more important thing – I know we've had a couple of balloon tests, crane tests – but I would like to point out that our property abutts the Boys conservation property and it's parallel to Mr. Morton's property. In the wintertime, when there are no leaves on the trees, we can see Mr. Morton's house – so by moving it next to his home, we will be able to see this thing from our back yard – and I feel that affects our Simplex private rights . . .

Simmons: now – you can see the house? Or the garage?

D.M.: I can see the house . . .

Simmons: You understand that there are 2 buildings on the property? If you can see the log cabin, you can see the garage too . . .

D.M.: Yes – we can see the structures. . . In the summer, no – we can't see it, honestly, however when there are no leaves on the trees in the middle of winter, we can see . . . I also want to make a point – please consider alternative technology – or new technology – Cingular is not just cell phone coverage. . . it's not just voice, it's also data, and video . . . Additional technology adds to what needs to be on that tower . . . I haven't heard all the proposals about the technologies that would be available on that tower . . . those are other things I feel we need to take into consideration as a town.

Simmons: So your point is to consider – is it not just height, but what would be on it?

D.M.: Right – what I'm saying is that the reason they're proposing this tower is so they can offer all those services – versus just voice services - voice services can be provided by the DAS system – our area, it's funny – it's flat – I mean we live in the wetland area, over on Woodland Road . . .

- Smith: I have a question, when you talk about technology – are you saying the configuration of the pole would be different, in order to accommodate this, or bigger . . .
- D.M.: No – I’m not saying that - what I’m saying is that – they’re not just talking about sending voice signals so you can make a phone call – they’re talking about voice, video, and data . . .
- Simmons: How does that affect the application?
- D.M.: they need to go up higher – they need to be able to . . .
- Simmons: you want to mention that there’s a possibility they’ll want to go higher in the future . . .
- D.M.: Bandwidth – it’s a bandwidth thing – and the only way they can do that is by going up high – not at street level . . . I’m all for the DAS thing.
- Smith: So you think that they may come back in the future to ask for more height.
- D.M.: . . . – once they have their foot in the door, yes, absolutely, I think what the town really needs to understand is what they’re asking for now, and what they’re looking at – what their 3 – 5 year plan is.

Steve Minassian of 6 Woodland Road, North Hampton, NH 03862 (T02 1:54:50)

By way of introduction I’m an environmental consultant and industrial hygienist with 20 years experience in evaluating and testing physical and chemical agent exposure . . . so I’m not without experience. I’m not an expert in electromagnetic radiation, but I know enough to have concerns about long term chronic exposure, particularly in children and early development– if you’ll recall we’ve been here before with our 11 month old daughter and we have concerns about that . . . they’ll tell you that the health effects are . . . with respect to cell phone networks - they’ll tell you that – their experts will parade reports and technical data to support their assertion that microwave exposure is safe for the public. For every report you can find that suggests that EMF is intrinsically, you can find another that concludes or at least suggests that the jury is still out. This is, in fact, not true. They cannot assure us with 100% certainty and confidence that in 10 or 20 years from now, that this won’t become a significant public health issue. If the applicants before you are so confident that there are no potential long term effects. . . ask them to put their money where their mouths are – and ask them to put a few million in an interest bearing escrow account to cover any potential future medical costs for the children who live in the neighborhood . . . with an infant child, this is not a risk that we’re willing to take – which is why we’re here talking to you as our representatives - we want to know that this decision is more than about coverage and technology and convenience – this means a lot more to us as adjacent residents – we may not be abutters, but we sure as he-- are adjacent.

Simmons: I understand your passion – but we don’t speak like that around here . . .

S.M.: well then – you can redact it or distract it or whatever you do – maybe you can’t use the potential health effects as a reason to not permitting the siting of one or more cell towers in our neighborhood, but you can certainly make it part of your thoughtful deliberation along with all the other reasons raised by all my neighbors as the ultimate reason for not letting it move forward . . . the last few comments I’d like to make – with respect to the gentlemen – the RF expert – he did infact agree to your statement that there . . . will still be some drop areas here. There are a lot of maybe’s, possibly’s, perhapses that we hear from some of these representatives – these experts. As my wife had mentioned – when they talk about “most” of the activity drains away from the wetlands – what defines “most” – 95%, 60%, what does that really mean - to us laypeople in the wetlands world? I’d certainly like to know that, at least they’re doing a cost benefit analysis of alternative technologies rather than summarily dismissing it because we’re not Nantucket – or whatever. I think as you pointed out,

Chairperson, they have an obligation to us if they're going to impose upon us and our lifestyle and our potential property values, that they in fact exhaust all alternatives . . . I'd like to also comment – if this is such a positive thing, why is the primary applicant not here? And then, with respect to the co-applicant's behavior based on what I've seen and heard and read in the public record – and the bankruptcy issues . . . it certainly seems like predatory behavior in my opinion. I also have a document I'd like to submit – it's just a summary of some of our comments and thoughts. (Tabbed as R-2) But I'll leave you with this thought; the federal government has told us a lot of things are good and safe; asbestos, lead paint, DDT, . . . cigarette smoke was ok - and in the end, when the dust settles in the end, it's not the way it should be – and all I want to impose upon your thought process is to understand that, they'll tell you one thing now – and maybe they mean it, and maybe they believe it, but 10 or 20 years from now you may find out that there's something called Asbestosis, for example . . . and I think you all need to consider that in your deliberations. What the government tells us today is not always gonna be what it turns out to be. I'm not against the government – I pay my taxes, I obey the laws, but I think you need to consider that in your deliberations. I thank you for your time and I apologize for using the word.

Simmons: apology accepted – I understand your passion – I just want everybody to understand what I expect . . . ok – anybody else – 5 minute and under club?

S.M.: Can I have one comment? . . . if they were talking about siting this in your back yard and you had children or grandchildren to consider, what would you vote? A rhetorical question- for now.

Simmons: . . . is there anyone else here from the public not represented by an attorney that would like to speak? Time constraints notwithstanding. No one. There is no one here who wants to speak – either in favor or against this application. No one. Ok. Normally what we would do here gentleman – there are a couple of things I'd like to clear up – we have a member of the board who has suggested that we not go past 11 tonight – that leaves us another hour and a half. I think it's a good suggestion . . . what I do want to ask, so we don't run up against this problem again, this problem of folks leaving – folks – it's a little out of order but I hope that people tonight will grant me the liberty – Council – do you have any rebuttals that at this time – is everyone here on board with the 11:00 thing?

(11:00 tonight right? You meant tonight)

Attorney Field, while this gentleman here, I hate to open this box again, but I do want to provide you opportunity and I do want to be fair – I know I've made a ruling that the new guy is on the hook, but if you just can't contain yourself and you if you really really really need to address him specifically, now is the time.

Field: I can contain myself.

(T02 2:03:10)

Simmons: I guess what I'll do at this point . . . gentlemen, if you know who's going first, stand up and speak.

Loughlin: I'm Peter Loughlin, attorney from Portsmouth. I'm here with Jim Bassett, representing the Kokernaks. I think I can get thru my introductory remarks by 11. The Kokernaks live at 10 Shiprock Road . . . while we represent the Kokernaks, I think the concerns we're expressing are shared by more than the Kokernaks. We have an exhibit here, exhibit 110 (tabbed at P-13) . . . All of the properties marked in yellow are people who have signed a petition or sent letters expressing concern and in general opposing this application. There are 3 landowners who have expressed support and they are marked as well . . . as some of you zoning aficionados will recall, the first zoning . . . in this century that declared zoning was

constitutional was back in 1926, *Euclid v. Ambler* . . . and it determined that a court . . . could separate industrial uses from other uses. In that case, and I quote, “thus the question whether the power exists to forbid a particular use like the question of whether a particular thing is to be a nuisance, is to be determined not by an abstract consideration of the building, or the thing considered apart, but by considering it in connection with the circumstances and the locality. A nuisance might be the right thing, in the wrong place like a pig in the parlor instead of the barnyard.” 120 foot tower proposed by GridCom is not the right thing, and it’s not in the right place.

Simmons: *Euclid v. Ambler* 272 US 365 in 1926. Thank you.

Loughlin: Jon Springer and the GridCom team made a very civil professional presentation to you. As I mentioned 3 months ago, John is an expert, does these towers all the time. Problem is, because it’s a variance request, John’s clients have the burdon of proof. In this case, we would suggest that they have been unable to meet that burdon. They need to meet the 5 conditions, and even though John talked about them we don’t feel as if they have the facts or the law on their side. The issue is not whether cell coverage problems exist in North Hampton, or whether we’d all like to see better coverage. The issue is whether the tests for the variance . . . are satisfied. Because of the overlay of the Telecommunications Act, there are additional issues that need to be considered, . . .the bottom line is the application of the variance criteria for one particular piece of property, and that’s 22 Woodland Road. . . . At the June 20th meeting co-council Jim Basset provided you with a letter detailing precise reasons why we don’t feel the conditions either the use variance of the area variance, have been satisfied. Now we’re not going to re-read . . . What we’d like to start with tonight is to present a witness to provide information on one of the topics we feel is important. We’re going to present David Maxson from Broadcast Signal Labs. He is very highly regarded . . . all over New England. He represents over 75 towns plus the Cape Cod Commission. Generally he is hired, paid for, by the town at the applicant’s expense. We feel very fortunate that we were able to bring him to North Hampton. Why did the Kokernaks retain his services? It is not the Kokernak’s responsibility to provide other sites or other technologies. We wanted to demonstrate that there are solutions that don’t need to pit neighbor against neighbor. We want to demonstrate that the proposed tower is not required under federal law and is not permitted under your ordinance. David is well versed in your ordinances, he’s well versed on telecommunications facilities, and I won’t go any further . . .

Simmons: . . . We already have his materials right? (Tabbed at P-12)

(T02 2:12:40)

Maxson: Good Evening, my name is David Maxson, my company is Broadcast Signal Labs, and I’m here tonight at the behest of the Kokernaks. What I’m going to take you thru tonight is . . . how coverage is analyzed, do some comparisons with Cingular’s coverage analysis, and also talk about alternatives and how you as a board representing your community might look at those alternatives. I’d like to touch on 2 things before I start the slide presentation . . . first of all the noise report from the town of Hudson . . . that’s an example of the engineering work that is done in analyzing the noise of a facility. As I recall – the applicant on June 20th . . . one of the representatives stated that he would put some soundproofing in to reduce the noise of the facility . . .I think that type of thing deserves to be engineered and you deserve to have an engineering analysis so that you know what the noise behavior of that facility will be. The other thing is that I’ve heard at both meetings – there’s been some testimony, some concerns about radio frequency energy emissions. I have been analyzing under federal regulation

those emissions since they went into effect in 1985 . . . I'm quite familiar with the federal standards and the safety standards that apply in this case. I need to state very clearly, that these facilities do comply with the federal safety standards. As long as you know they comply with those federal safety standards, the Telecommunications Act says there really is nothing else that you can do. While we may be sensitive to the concerns of the members of the community. . . they are compliant with the federal standard – they have to be, and that's your assurance that you've met the objectives under the Telecommunications Act . . .

Simmons: You say the facility does meet the federal standards?

Maxson: It complies. Absolutely – I agree with Dr Hays' report that was submitted. First of all . . . one of the gentlemen who on June 20th early in the presentation said this – and I heard it and I wrote it down the moment I heard it - and I think he misspoke – he said “like it or not, you have to allow these towers in your community” Now we kind of get that sense of resignation – we see these towers going up all over the place and we think our neighborhood is next. I want to make it clear that this is a mistatement. What should be said is “like it or not, it is the provision of wireless service that you must allow in your community. Keep the tower separate. Coverage doesn't have to be 100% perfect, and it doesn't have to be just from towers. We'll be talking a little bit about alternatives as we move forward in this presentation.

Simmons: I wanted to point out that for our members . . . these slides and the written report are in your materials . . .

(T02 2:16:40 – muffled question from a woman)

Maxson: Right. The Telecommunications Act speaks of obligation of the community not to prohibit – double negative there – the provision of wireless service. . . there's all the legal experts in this room who can tell you what case law tells you, as to what constitutes the provision of wireless service, and what constitutes prohibition of the provision of wireless service – and you have an attorney who is expert in these matters who can help you negotiate that tortuous territory. Does that address your question? Great. So – we have this proposed facility at 22 Woodland Road, and it's a tower. Cingular claims there's a coverage gap and its made some presentations and submitted some evidence for the record . . . I'd like to start with the plot that Cingular originally submitted . . . I've highlighted the town boundary so you can see the area of North Hampton enclosed, and I've highlighted some major street – Atlantic, Mill, Woodland, coastal rt 1A – in green – I've tried to get the colors . . . that would be visible if copied in black and white . . . I've generously outlined the rough area that Cingular says is the gap. What I've estimated is about $\frac{3}{4}$ of a mile on Atlantic Avenue, and, in North Hampton another $\frac{3}{4}$ of a mile on Woodland – there's some more distance on the road as it penetrates Hampton, and gobs of marshland and coastal highway – areas that are uninhabited that may be lacking in the coverage that Cingular is looking for. Then there's an area on the Hampton side of the boundary that when I counted the houses, I got to about 100 and I quit – a very small, dense area. This is characteristic of the area that Cingular is calling a gap.

(T02 2:19:00- Mr. Maxson addresses a series of muffled questions) Which information? . . . Ok – the orange plot is Cingular's plot – I scanned that into my computer - they have the town boundaries – you see these thin blue lines? . . . the red and white area – this polygon here? What I've attempted to do is circle what Cingular shows as its gap, by attempting to enclose anything that is white or spotty, in a rough sense. So if you're outside this area and you lack coverage, well – we'll get to that shortly – that's an important thing . . . I'm sorry – which direction? To the North? Cingular says there's no gap up there. . . Cingular says this is the gap. . . Cingular's interpretation is a computer estimation – the computer is predicting

what the terrain and vegetation will do to the signal . . . presented in what I call “go”, “no-go” colors – in other words, the orange is coverage -82 dbm signal strength or better – that’s good – and then white is not good. So it’s easy to assume that the white area has no signal, and that’s not necessarily the case – and I can turn that around – it’s easy to assume that the orange area is fully covered, and you’ve given some anecdotal examples of where, even tho it’s showing orange on the map, there may not be coverage . . . then they provided this drive test to cooborate their estimates . . . I’d like to address that – if we could put that up again . . . the second plot . . . I have recently uncovered an error in drive test technique that may be included in this map. If I may, Mr. Chairman, just ask Mr. Sebastian if the antenna cable error that was identified in the last couple of weeks was corrected in this plot, or was this plot created before that error was identified.

Sebastian: It was created last month for the last hearing.

Maxson: So it’s fair to say that there may be an offset of several decibels . . . in the measurements?

Sebastian: We did the calculations . . . *(T02 2:23:00 - muffled)*

Maxson: Is this a plot for the PCS coverage?

Sebastian: It’s 800

Maxson: It’s 800 megahertz . . . the plot is not labeled. It does not indicate that it’s 800 megahertz coverage – and some of the other plots are clearly labeled. They have two services, licenses for the 800 megahertz which is the old cellular frequencies, and licenses for the PCS which are the higher frequencies. Generally we look at the PCS frequencies because they’re more . . . pessimistic the PCS coverage is not quite as good as the cellular coverage, all other things being equal.

Simmons: *(T02 2:23:45 - muffled)*

Maxson: no - the new phone old phone thing is a little bit different – phones are supposed to work to a certain threshold – I’ll be talking about that shortly . . . when Cingular aquired AT&T Wireless, they acquired a PCS company and a PCS license - and they already are a cellular company with a cellular license, so they want to operate on two bands, and the one of the reasons for operatingh on two bands, in addition to providing service to AT&T . . . now you have a little more bandwidth to provide the advanced services that the lady was speaking about earlier . . .

Simmons: . . . is the reasons for these comments to talk about gaps in coverage . . . not really being gaps . . . distinguish different bands . . . different gaps . . .

Maxson: I’m trying to show the complexity . . . and partly what I’m trying to do here is impune the accuracy of the plot . . . I would prefer that we rely, for now on a computer estimated plot - have not seen any backup data, and I remember in 9th grade when you did your first science project in science class and you had to do a lab report, and you had to describe exactly what you did so someone looking over your shoulder could say “I agree” . . that information is not available here. We have to trust that it’s accurate. I have found errors in Cingulars and other companies drivetest work before . . . sometimes it’s fine, sometimes it’s not . . . I was cringing . . . it will only complicate things later on – there’s enough uncertainty to it that we can’t compare it one for one with the computer generated report.

Simmons: You had raised your hand . . . do you want to speak directly to his point that the drivetest is unreliable?

Sebastian: I would just like to clarify that the plot that earlier was shown was measured using the 850, and this plot is a combination of existing coverage both 850 and 1900 . . .

Maxson: The existing service plot is a composite of whatever service is available at a given location . . . the reason is, that when you do a computer plot for 800 megahertz coverage, it’s going to

tell you, for given antenna height and given transmitter strength, it's going to cover a certain area.

Simmons: What am I doing when I'm using 800 megahertz . . .

Maxson: . . . your phone, if it's a multi-mode phone, it's deciding the best server, the best cell site, on Cingular's network, is an 800 megahertz cell site . . . so it switches

Simmons: So when your phone roams . . .

Maxson: . . . not roaming - it's the nature of cellular systems, so when you drive up the highway in state, and you're handed off from one Cingular site to the next, you might be, potentially, hopping bands . . . you won't know what you're using. Your phone knows, but you don't. PCS is nominally 1900 megahertz – a little more than twice . . . (*whole series of muffled questions from the Board*) . . . PCS is Personal Communication Service – those are the licenses that the FCC auctioned for billions of dollars beginning in 1995 - AT&T was one of the winners. . . . I've done the rest of the work based on 1900, so, it's another reason, now that I understand what it's doing, that it's somewhat apples and orange comparison. We need to treat that data with kid gloves if it's going to be entered into the record . . . all other things being equal – same signal strength, same antenna height . . . the 1900 megahertz is more susceptible to attenuation by vegetation and terrain and structure . . . what you're hitting on is the wavelength of the radio wave . . . there's that word towers – let's get that out of our vocabulary – we need more wireless facilities – all other things being equal, you may need more facilities for PCS but what tends to happen is everybody tends to use the same facilities, and they all want to get the same number of channels, the same intersections and those kinds of things in order to compete . . . there may not be, in a community like this may not be a significant difference in the number of facilities cellular company may need as opposed to PCS – but what you have here with . . . gives you bandwidth and services – all kinds of things . . . what we have here in Cingular, and also in Verizon, are companies that own frequencies in both sectors . . . the existing test drive – June 30th, the existing coverage, their system is behaving like a telephone saying “ok – where is the strongest signal coming from? Now what am I getting for coverage – ok – I'm going to use . . .”so it's a composite - using the best server on both systems . . . it matters when you're looking at the drive test, and it tells you “oh – it's telling me that my computer estimations are correct . . .” . . . you have orange and gray on that plot, and orange and white on the computer estimated plot – your tendency might be to say “what is the orange on each . . .” comparing apples and oranges is you're looking at computer generated compared to drive test. . . . This “go”, “no-go” thing with orange and white is not so simple as you might think. It is in some circumstances where there might be a huge area – a frontier - Where there are no wireless facilities, and you have no coverage, and you need something – you put a tall tower on a high hill to reach out as far as you can to get the system going. Otherwise you're talking about shades of gray - it's not like a formal break at -83dbm . . . what I've created here is a gradient – let's assume there's a radio signal begin transmitted from the center of the circle. The ground is flat, there are no structures, and no vegetation . . . As you go out from the center of the circle, the signal level gets weaker – that's something we expect. In order to characterize that, the first thing we might do – we might draw a contour - a certain distance out and the signal is quite strong it's -72dbm . . . we go further out – we walk around that contour and the signal strength all the way around on that line is -82dbm . . . we go out a little further it's weaker, but still usable – and we keep going out to where we decide to stop measuring – and it's -105dbm – . . . the threshold for a working telephone – I might buy a telephone that goes down to 110 – it might handle weaker signals – but specifications tend to be -105 – so a cheap phone should work at

tower – or any tower – doesn't need to be approved in this area. Oh – one more thing – GridCom does DAS systems. I'd like to mention that they do promote the cost effectiveness of these systems, and the benefits to the wireless carriers.

(T02 3:19:00-3:26:25 muffled discussion)

Adjournment

Mr. Simmons moved and Ms. Smith seconded the motion to adjourn at 11:04pm.
Unanimous vote (4-0)