

**Meeting Called to Order:** at 6:30 p.m. by Timothy Kinnon

**Members Present:** Timothy Kinnon-Vice Chairman, Timothy Morgan, Stephen Hurst, David Schaeffner-Alternate, Monica Jerkins-Planning Assistant, and Carolyn Schaeffner-Recording Secretary.

T. Kinnon: This meeting is a continuance for Case Z05-34. When we last left off we were in the public input phase and I would like to continue at that point. I would like to make a couple of statements first, though to just remind everybody that we have had joint Zoning Board and Planning Board meetings/hearings on this case. I want to encourage everybody to please come up and present any new evidence that they have. If they would like to speak again with the same type of evidence, I would ask for a summary or a refresher on what it was so we can try to move things along a little bit. But at the very least, I want to encourage everybody to come up and express their opinions and thoughts and please enter any facts or evidence that they may feel is pertinent. Also, I would like to remind the applicant that we still only have four (4) members and want to make sure that it is still your (the applicant) to move forward.

E. Duvall: Yes, it is. Thank you.

T. Kinnon: Thank you very much. I believe we had concluded the testimony by Mr. Slade and the rebuttal to it, so I would like to continue with the public input for anybody that is opposed to it. Please step forward to . . .

M. Jerkins: Mr. Chair, do you want to go through the appeal process and all the formalities, appoint the alternate?

T. Kinnon: Sure, give me one minute, please. I guess we should approve the agenda then. I do notice that Marcella Perry is listed as the Chairman, so there should have been that. And there is only one case on the agenda for this evening; do I have anybody that would like to make a motion to approve the agenda?

**Approval of Agenda:** Motion by D. Schaeffner to approve the agenda as presented. Second by S. Hurst. No discussion. Vote unanimous.

**Appointment of Alternates:** David Schaeffner (continued appointment for this hearing).

### **Statement of the Appeal Process**

The Vice-Chairman read a brief statement of the Appeal process. The purpose of this hearing is to allow anyone concerned with an Appeal to the Board of Adjustment to present evidence for or against the Appeal. This evidence may be in the form of an opinion rather than an established fact, however, it should support the grounds which the Board must consider when making a determination. The purpose of the hearing is not to gage the sentiment of the public or to hear



the gaps so noted by Mr. Duvall's clients without resorting to additional towers or extending tower height. Mr. Duvall represents two clients in this case, a tower company and a licensed wireless service provider. It's important to keep in mind that the TCA does not apply to independent tower companies. The TCA applies to the service. Mr. Duvall would be hard-pressed to argue in court that Congress intended the TCA preemptions for vertical real estate companies. That is why such companies typically have service providers as co-applicants. Both Alton and Unicef might consider hiring an RF engineer with specific expertise in designing low power repeater systems to fill in the coverage gaps from sites already approved by the town. Such repeaters can be mounted close to utility poles at heights of around 60 feet or less. One such RF engineer is Walter Cooper in New York. Mr. Cooper works for municipalities and service providers alike and has designed systems all over the world. The second part with regards to the self imposed hardship. This is one of her other passages. Mr. Duvall would have you think that Alton's own regulations create a legal hardship and there his clients are entitled to a variance under the TCA. If his clients do not get what they want and choose to take their case to the courts, this may be Mr. Duvall's main argument. But there is nothing in the TCA to support this contention. According to the maps in Mark Hutchins' report, Alton's regulations appear to provide adequate coverage to most of the town, plus the town's recent updating of those regulations show diligence and an attempt to accommodation to close what gaps may exist. In addition, technical options (i.e. repeaters, and microcell antennas) in lieu of new towers may fully close those gaps. That remains to be seen. Mr. Duvall would also have the ZBA think that towns have no zoning authority when service providers need to close coverage gaps and that ZBA variance granting is guaranteed them. New Hampshire law, notwithstanding, that is in direct contradiction to the language of the TCA which preserved control at the local level over the placement, construction, and modification of facilities. He would also have the town think that its regulatory efforts to allow wireless coverage, that can be both adequate and invisible at the same time, is wishful thinking. In fact, towns achieve this all the time through stealth siding on or within existing buildings or by placing towers at mid-height on a hillside, above sight lines from the highway but below sensitive ridgelines. It can and is often done. The second 1c of the conditions says specific requests, I am sorry I'm reading the wrong. . . that the variance would not injure the public or private rights of others. The variance for 120 ft tower with 5 tiers of antennas of antenna rays would injure the public and private rights of others. Alton's residents have rights not to have hazardous infrastructure forced upon them creating fear for their health and property values. 2. The specific request is the minimum variance that will grant reasonable relief to the owner and is necessary for such reasonable use. No it's not because no variance is necessary for reasonable use. A tower can be constructed on the property at a height of 75 ft which is 10 ft above the average tree canopy height of 65 ft to meet communication needs. Anything higher is just greed for additional vertical real estate and money. 3. The request is in harmony with spirit of the ordinance, the intent of the Master Plan and with the convenience health and safety and character of the district with which it is proposed. It is not. The spirit of the ordinance was "enabling the town to regulate the placement, construction, and modification personal wireless service facilities so as to eliminate and mitigate the visual impacts of PWSF facilities." This ordinance is structured to encourage carriers to locate PWSF on existing buildings and structures whenever possible. The ordinance also encourages the use of microcell antennas that are hidden or camouflaged; flag poles, utility

poles, electric transmission and distribution towers, steeples and chimneys. It also states that a ground mounted PWSF shall not project higher than 10 ft above the average tree canopy height within a 50 radius area. The intent of the Master Plan has and hopefully will remain to protect and preserve the magnificent beauty and magnificent view sheds and ridgelines of our Alton Bay. With respect to convenience, health and safety, convenience and adequacy of cellular communications is not diminished by use of smaller towers and the additional use of added disbursed antennas and repeaters where needed for gaps. Also health and safety for roadside needs or emergency workers. They can achieve their goals. However, large 120 ft towers with 5 tiers of 12 antennas each, making 60 antennas and the overall wattage of power and microwave and radio frequency radiation eliminating from these towers is not in harmony with the health and safety of the residents. Number 4 and 5, the request is not contrary to the public interest and substantial justice will be done. Answering both those together. The request is contrary to the public interest and justice will not be done. It is contrary to the public's majority vote over 75% who voted in favor of our new ordinance. It would be an injustice to the democratic process, rights, wishes, and will of Alton's residents if this variance is passed. Number 6, the request will not diminish the value of surrounding properties. The request absolutely diminishes the value of surrounding properties. If you were looking for a property have a choice of either a property with a 120 ft cell tower, bordering one, or in closed visual proximity of one or another property pristine without a looming cell tower near or sight. What would you choose? If you chose the pristine property the difference of the cell tower diminished the desire and therefore the value of that property. Can you honestly say to me or Mr. and Mrs. Slade, or any of the abutters that you would buy their homes or any home that encompassed or was in close proximity of a huge tower. I can answer for you, no, no you would not. The towers are unsightly and obviously. Moreover, you would be playing Russian-roulette with a big known and a big unknown, and I have discussed that before. So applicant, don't belittle and insult our intelligence in saying your studies show that cell towers have no bearing on property values. Your studies are not valid. In conclusion, Mr. Chairman and members of the Board, you have the awesome power and responsibility to serve and protect this town, its environment, its view sheds and its residents. Please, please honor that responsibility by enforcing our ordinance and denying the variance for the proposed 120 cell tower on Miramichi Hill. And last, I would also ask and urge that both Board, especially new members, please re-read and re-examine both reports from Blake Leavitt, dated April 24, 2006 and May 18, 2006. Thank you for your time. Happy holidays and happy New Year.

T. Kinnon: Thank you and you to. Is there anyone that would like to speak in opposition, please step forward.

E. Duvall: Mr. Chairman, if I may? and I apologize. Is it possible if we take the same course of action as we did last time and offer a rebuttal?

T. Kinnon: Yea, I don't think there's a problem. Would you mind waiting just a few minutes, especially where a lot of the testimony is quite lengthy. It is usually not so lengthy, in this case I think it is warranted.

E. Duvall: Thank you very much. Mr. Chairman, members of the Board, as you know, Earl Duvall and I represent the applicant. In rebuttal I guess I would to offer and to offer briefly and urge the members of the Board to please review the memo that we submitted with regards to the Telecommunications Act. I think that it's quite clear and that we have accurately, you know, set forth, you know, the law as it applies to this jurisdiction. I would also ask and urge you to look at the variance memo that we had submitted which I think addresses each and every one of the 5-part test for the variance. And also, we submitted tonight an area variance worksheet which, I think, provides a, a great summary with regards to each of the five part test. And a summary with regards to the TCA and the prohibition of services.

T. Kinnon: Mr. Wilson?

Russ Wilson.

Thank you and good evening. First, before I get started I found in my files a document from the FAA related to the National Grid Tower and there was some discussion about why the lighting is there and all and the FAA required both a strobe and a red flashing light because it is in the flight path of the Alton Bay sea-plane base and is also considered a military training area. There was a specialist, Dempsey, had signed the form and she also signed the two forms for the applicant's towers and I have spoken with her on the phone about the lighting and why the National Grid Tower required lighting and the other two did not and she says because on examination of the documents submitted, the information they have on file that at this time, no lighting is required. But that's no guarantee that in the future lighting won't be required. So at this point in time, no lighting is required but that can change. Excused me, just give me a minute to get set up. I'm not going to address each of the criteria for granting an variance in order, a lot of them overlap actually so I'm just going to start out actually with property values. I would like to address that issue first. The Slade property differs from studies presented by the applicant. The Slade's property has a view amenity with a value legally recognized by the town of Alton and the State of New Hampshire. People come to Alton and purchase these view properties for their great beauty. Single building lots on Alton Mountain Road, that's a lot that allows only one single family dwelling, has sold for, in the past four years, between \$125,000 to \$150,000. There is currently a lot available, it's a 1.3 acre lot for \$175,000. Across from the William Tell view lots have sold from \$60,000 to \$150,000 depending upon the quality of view. I always going around looking at lots and I particularly like view lots. And this gentlemen had four lots for sale and he had actually decided to take one for himself and he said to me, well the other lots, well that one's \$125,000, that one's \$90,000 and that one's \$70,000. Those two over there don't have as good a view. The value of the lot was dependent of the quality of view. The price of view lots around town range from \$60,000 to \$175,000, again depending on the quality of the view. This is an important concept. The price of view lots in Alton are dependent on the quality of the view. A tower, which is up-close in the view, obstructing the view diminishes the beauty and the quality of that view. It therefore diminishes the value of the property. The real estate reports submitted by the applicant are not applicable to this case for various reasons. The ATC realtor report indicates that some of the homes in Wilbraham, MA had a view of the tower. This is not synonymous with having a tower in and obstructing a view amenity. The home cited in the report overlook a valley. The tower is on the same ridge as the homes. If the tower were

out the bathroom window, the report would save the home and a view of the tower. The rest of study is superfluous because the home cited did not have a substantial view amenity. In the Formau report, none of the properties have a real view amenity. The Formau supplemental study, which was done at the height of the real estate market focus on high end homes and view properties. In the study, only two homes had towers that could possibly be considered within the view amenity. Both of these properties sold in a market, where the demand for homes surpasses the supply by the greatest margin in 30 years. The fact that there is such a statistically insignificant sample size of two properties sold in an abnormal market makes this study less than useless when applied to this case. In all the appraisal studies presented by the applicant, none addresses the relationship of a property in a rural setting with substantial lake and mountain views as its major amenity and the degradation of that value by have a tower placed directly in that view. Submitting these studies as relevant to this case is just another snow job by the applicant. I know that the members of the Board have spent many winters in New Hampshire and I am confident that you know snow when you see it. I would like to talk a little bit about tower camouflaging. If you could look at the two 8x10 photos of the cell towers that have been passed out to you. Photo A is from Clarence, NY. It is approximately 80 ft tall. The antenna arrays are the same size, width and spacing as on the applicant's plan. Photo B is Glen Falls, NY. It is approximately 150 ft. tall. The antenna array are the same size with end-spacing as the applicant's plan. If you grant a variance, this is what will be looming over the tree canopy by Mr. Slade's property. If you don't grant a variance, most of it is camouflaged behind the tree canopy from his property. The mono-pine camouflaging that would be used in this case is designed to be effective at a large distance. It is not at all effective up close and would be in Mr. Slade's case. I would like to address the issue of unnecessary hardship. The applicant argues that this site is only site that will work and they he need 120 ft to make it work. He states that you have to put a tower on a ridge somewhere. This is simply not true. Towers are frequently put on the sides of slopes. The truth is, that what the applicant wants is to put as many carriers as possible and cover as much area as possible from one site. This goes against the basic premise of the ordinance which calls for shorter facilities although more would be necessary. If you could now look at your topographical map that has been supplied. This is a topographical map of the Mirimichi Hill area. The hill is in the upper left quadron. You've all found that? Okay, right. We see . . . you all know how to read a topographical map? I'm sure you do, right? Yes? Okay. You can see that the slope falls off sharply to the west. This will enable a facility to be within the height parameters of the ordinance and still provide coverage to the west. The average tree canopy, that, you can see that slope falls off so sharply that, you know, within 100 feet you are going to be down 30 some odd feet at that point. So there will be few trees that will be in the way to the west, so that's also southwest/northwest. They may not be able to place the tower exactly where they want but there are places on that slope which will provide coverage from that site to the west. So this would include the gaps on 28-A, 11-D and areas of the Bay. The remaining gaps could be covered by another compliance facility east of 28 such as the 18 acres currently for sale right across from Mirimichi Hill. There is a 18 acre lot right now up for sale and it's high enough elevation to provide coverage for most of the gap that is between the intersection of 28A and Bay Hill Road, that's where the main gaps currently are. A facility could be put there to cover those gaps but they never looked in that. They did not ask those property owners because they felt they didn't need to. Or this gap could be filled by

repeaters along the highway. Just the use, Mr. Hutchins testified, they are best suited for. The applicant, however, doesn't do this. His company puts up facilities that service a large number of carriers and as large an area as possible with one site. That's what he does. He doesn't do repeaters, he doesn't do these other systems, he is interested in creating vertical real estate and making as much money with as little outlay as possible, period. It is not the town's burden, however, to propose alternatives that comply with the ordinance or even to prove that it's possible. It is the applicant's responsibility to find these options and make them work. Since applying under the new ordinance, the applicant has made now effort to find raw land sites that would provide alternatives compliant with the ordinance. He states that the ordinance does not require him to do so. But that is only if he is complying with the ordinance. If he wishes to get a variance he must prove that the ordinance cannot be complied with and that no combination of raw land sites can provide adequate coverage. It is not just that one sites does it all. I would like to talk about substantial justice. It is a substantial injustice to grant this variance. The town has a contractual agreement with the taxpayers of this town. Monies are exchanged for the provision of services. The construction, implementation and enforcement of ordinances are one of those services the town is mandated by the State to provide. It is your obligation to these taxpayers to enforce the ordinance unless absolutely necessary. It is not your duty to grant a variance because you think not many people will object. The latter puts an unfair burden on the townspeople. They will have to take time and resources to defend the enforcement of an ordinance because they fear that the Zoning Board will grant a variance unless enough people will be there to oppose it. The granting of a variance should be a rare occasion and not a common occurrence. The granting of a variance would be a great injustice to the voters who passed this ordinance by greater than a 75% majority. This ordinance was designed to prevent this type of personal wireless service facility from being cited at this type of location. The goal of the ordinance is to open up all locations to discussion so that the view sheds and ridgelines need not be sacrificed. It is not to have towers extend above the ridgeline in the most conspicuous place possible. The granting of this variance would be a great injustice to those carriers who would be willing to comply with the ordinance. The granting of a variance to this applicant would put others at a significant economic and competitive disadvantage. Complying with the ordinance is not the least expensive way to provide coverage. Carriers who wish to comply would end up having to pay more for there facilities to be compliant. So it will make them less competitive which is against the tenants of the TCA by-the-way. By granting a variance you will find yourselves here every time a new carrier comes to town. This in turn is a great injustice to the townspeople. The consequence of granting a variance will not be to encourage future carriers to designs systems in compliance with the ordinance but rather to seek a variance from it. I thank you for your time.

T. Kinnon: Thank you. Would you like to re-butt? Do you want to have a seat for just a minute? Thank you.

E. Duvall: Thank you Mr. Chairman. First, I would like to submit to this Board, although I appreciate what Mr. Wilson has said, he is not an expert in appraisals. The applicant has submitted two reports from Andrew Lemay who is an expert with greater than 30 years experience. I would urge you to review those reports. Secondly, I appreciate Mr. Wilson's

comment with regards to snow, but I too recognize snow as well and I would say that the photos Mr. Wilson have submitted are of sites that are very different from the sites that we have here in Alton, in particular, I would say that there is no tree cover. If you look at the town's foresters report, some of the trees that are there are 86 ft surrounding the facility. I would also submit that the town's expert has spoken without being repetitive. I think we need to listen to the expert. With regards to raw land sites, I would submit that every raw land site is going to require a variance. Every raw, every site must have tree cover, and according to the town's expert, no tower will work if it is limited to the 10 feet above the average tree canopy. And the expert has said that the facilities must be, you know, 15 to 20 feet above the tallest tree.

D. Cody: I won't burden the Board, I will summarize at the end, the thoughts I have about it. Thank you.

T. Kinnon: Thank you. Just one moment please, not to you Mr. Cody, to Mr. Wilson. I actually do have a question that I have been thinking about as far as the property value concern. We have had testimony on both sides saying that it won't diminish the value, it will diminish the value, has anybody ever looked at whether it would diminish the market, or if there would be fewer people interested in purchasing next to an antenna.

K. Kozyra: Mr. Chairman, for the record, my name is Kenneth Kozyra, representing US Cellular and absolutely, several of the reports that I submitted last time discusses how the market swings up, down, all around and is extremely cyclical and how just as buyers are sometimes turned off by shared driveways or by people having a swimming pool in their yard to having houses close to their rear yard, different buyers like different things and there has never been any established data that has said that "X" amount of buyers don't want to buy it because it is next to a cell tower or don't want to buy it because it's across the street from a cemetery or anything like that. If it were definitive information along that line then, obviously, we would be providing that to Boards. Unfortunately we have looked into it and never been able to, you know, determine the market. It is so vast that to be able to say that "X" percent prefer this or that because everyone is buying at different times it's impossible to say.

D. Cody: I think if I can add to that. It certainly is correct, simply because one individual, we hear that at many towns we go to, if I'd known there was a tower I would not have bought the property is a classic statement; it also referred to as not in my back yard. Simply because an individual or a number of individuals elect not to purchase a property there has been no indication where a value of a property had to be lowered in order to market it. This is not a new phenomenon although, Alton, for Alton this is a new experience. This has been going on around the country for over 20 years. Not one single documents has been produced to this Board that can document a single, even a single incident where property values were lowered in order to market that property. You have heard, not expert testimony, you've heard opinions. You've only heard one expert testimony and no reputed expert testimony showing that where the value has been diminished. It simply isn't there. We can show you document after document and we have of other towns, similar towns, what has occurred, subdivisions that have sprouted up right

beside 600 ft towers and they are not small homes, they are big homes. It doesn't make any difference on the large picture. There is no measurable a difference.

E. Duvall: Mr. Chairman I would like to add that I think that the proper analysis is that we need to remember that the use is permitted and we have not received any expert testimony or submissions regarding the effect on property values between the difference of the 71 ft tower vs. that of the proposed tower of 120 ft.

T. Kinnon: Thank you. Mr. Weston can you wait one moment please? Mr. Wilson and I ask you that address that Board.

R. Wilson: Russ Wilson again. I have purchase three view properties in this town, have sold one and have currently another one on the market. I have been watching the real estate market in Alton for 6 years now. Under the substantial evidence clause my testimony does carry weight. By case law, Oyster Bay, the case of Oyster Bay. I would like to state that I did bring forth that the difference between granting a variance and not granting a variance makes a difference in the effect of the view amenity of the Slade's. If the variance is not granted from several sections of the Slade property, the tower will not be visible. If the variance is granted it will loom over the property in the view amenity and again, only two of the properties in all of the studies that were presented by the applicant had towers in the view amenity. Both of those were in an abnormal market. The height of a buyers, of a sellers market for thirty years. Two cases is statistically insignificant and unreliable. That doesn't matter, no matter what scientific criteria you apply to that, it is not at all useful. I didn't show you those pictures to show you how there were not any trees around it. What is visible is the antenna arrays. Ignore below the antenna arrays. The antennas are shown on those towers are the same size, width, and spacing as what is shown on the applicant's plan. So when you visualize any of those balloon test pictures, all you have to do is scale the distance from the balloons and scale the spacing listed on their site plan and you will see what is sticking up over the tree canopy and over the Slade's property. If you look at the picture of Mirimichi Hill which was taken actually from the Slade's property you will see two balloon looming over the site. So all you need to do is figure out that distance between the two balloons, you have ten foot spacing on those antenna arrays and you will see what it's gonna look like right over their property. That's the purpose of those pictures. It isn't show what they look like without trees around them. Okay, that's another thing. Secondly, the closeness of the topographical lines shows that there, when they clear a distance of 50 ft each side of that tower, you got to go 50 ft before you have a single tree. If your dropping 20 feet in that distance, and or even there have to be trees within a close distance, if they use that slope to block the coverage, and I wasn't, there not going to get the same coverage complying with the ordinance. But that's not what the ordinance is about. You know, we're not, the ordinance isn't saying, oh yea, you can maximize that site to it's fullest potential if there weren't an ordinance, it's to protect the view sheds. If it takes you three facilities instead of one, that's what they have to do. Okay, so repeaters along the highway, towers that comply with the ordinance because of the slope, placed on the side of a slope, those towers are gonna get coverage. They're gonna be able to get out into the Bay across on 11-D, no maybe, I'm not an expert, I don't have to be. We don't have to prove right now that that works, take it to court,

make them prove in court that it doesn't work. It's their burden not ours. This ordinance is in several other towns. It's the State model. There's a tower in Wolfeboro with that 10 ft average canopy limit working. You can't tell me that it doesn't work in any case. It does. It's proven. It's actual. Alright. It's snowing, that's all I can say.

T. Kinnon: Thank you. Mr. Weston, thank you for your patience.

E. Duvall: Mr. Chairman, am I able to provide any sort of rebuttal to Mr. Wilson's last . . .

T. Kinnon: we can go back and forth all night, I mean.

E. Duvall: to each?

T. Kinnon: could you save it . . .

E. Duvall: one sentence.

T. Kinnon: okay.

E. Duvall: Under the First Circuit, Mr. Wilson is not considered an expert.

T. Kinnon: Thank you.

Chuck Weston.

I have two things to say and part of it is information and part of it is an observation. One is my observation of what was passed at the last meeting and I have no fault with the fact that you granted a variance. I have a concern that you did not recognize that the owner of the property was there it is being leased from and that there was, as I understand it, now I could be wrong, but as I understand it there were several high trees that made the average height a problem and so that you could have asked that property owner, would they cut down those high trees which would have lowered the canopy which would have allowed them to have a lower height than instead of 120 ft, I'm not sure. Is that right?

T. Kinnon: It was.

C. Weston: 120 feet, it would probably have allowed them to have an 80 or 90 ft height and work. So it would have been within the spirit of the ordinance, not necessarily within the letter of the ordinance and as I said, I was a little disappointed about that. But that's all that I can say about that. It was stated here that they want to have their phones also be able to go into homes as well as into cars and a slight observation. It is can penetrate the walls, 6 inch walls, which is the standard now of any new construction in this State, with insulation and many of the insulation, they have aluminum foils sometimes on the siding, if it can penetrate that, how can it not penetrate pine needles. I've got a little bit of concern if that's one of their defense mechanisms. Now, there may be a reason for diffusion of the waves and that's understandable.

Now on to a little piece of information. I don't know if any saw (tape turn over). . . they were talking about towers and it's a Mark Gartley, I believe it is.

K. Kozyra: It's Gartley.

C. Weston: Gartley? Okay Mark Gartley who is the regional construction manager for US Cellular. And one of the, and I don't have this verbatim because it is not on the internet and it's not posted so, to the best of my recollections one of the questions Mr. Coker asked was do you use other than regular towers and he said yes, where towns permit they would use churches and other places of that nature, so that is a possibility in other words it can be done and I think that's an important thing to consider. Another thing that this Mark mentioned was that the older cell phones had up to 5 watts of power and so they had a greater range. As I understand it, the group says that there is no problem health wise by holding a cell phone up to your ear and that no one has proved that a 5 watt or a 1/2 watt or a 1.5 watt cell phone is any different, one from the other. However, a 5 watt phone, between 5 and 3 watts, this is basically a three watt phone. The small razor phones are anywhere from 1/2 watt depending on the length of the battery up to a 1.6 watt. And the reason that they use the lower power is that the battery lasts much longer. You don't have to charge it as long, you've got much more service. However, the antenna has got to be higher and have a better range because of the lower ability of the phone to pick it up. It is not the responsibility of the State, the city or the government to decide what size phones that these people are going to have. All we are saying is that there is coverage. Well is the coverage for a 5 watt which is the old standard the old brick phone or for the 3 watt? Or because of the convenience you want to carry it in your shirt pocket, the razor phone. So I think that that's something that has to be considered. It's not the responsibility of this town and this ordinance to say we're gonna cover the smallest possible phone so that we can have the highest possible tower, because I don't think that's fair to the people and that's not fair to the ordinance that was laid out and I think that that's an important thing that has to be considered when viewing your ordinance. You know, it just makes sense that you have to look at these things and it's interesting that US Cellular, specifically on Sunday said that they would work with towns and that they would try to conceal where possible, as I understood what the man was saying, the segment is usually only about 5-7 minutes long so it's a short segment on that and he may have wanted to say more but that's basically what I gleaned from it. I tried to contact the man via e-mail today, Fred Coker, but did not get an response but I did talk to people at US Cellular who gave me the information on the phones calling their 800 number and I have them here if you want their 800 both their business 800 for business phones as well as for individual phones and ask them specifically about what the outputs of the normal phones that they usually license. They do not build any phones. They license the phones that the various manufacturers make and most of the phones today are 1.6. They are not the 3 or the 5 which are the more powerful that the lower tower, in other words, a tower that would meet say 20 ft about or even 30 ft above the canopy which would be a variance but it would be a variance within the spirit of the ordinance and the location of that tower on the property would also be something that could be stipulated by the Board as I understand the rulings that the Board can make and that's all I have to say. Thank you.

T. Kinnon: Thank you.

K. Kozyra: Mark Gartley is one of my direct reports at US Cellular and he is in charge of all construction throughout the entire East coast region for US Cellular and he's been in this business a lot longer than I have and he was correct in pointing out that when we have the opportunities and there is the ability where it works for the network and for the community that we will locate an alternative structure. Unfortunately, as you have heard from the applicant here, there are no alternative structures and rather than propose our own individual tower we have decided to work with the folks at Industrial Communications to co-locate on their tower. As I stated previously, if there were any existing structures for us to go on a speed our deployment to market, we would have taken that path. That's the path of least resistance. So we did not. In regards to the phones. The 5 watt and 3 watt phones are analog phones that US Cellular no longer sells and neither do any of our competitors. We have not been deploying analog networks for four years and like most carriers, because they are such power hogs and network hogs, and are waiting for the FCC to be able to shut off our analog networks because they are not cost effective for consumers or for ourselves operating them. I can't tell you exactly the specifics of the phones that the networks are designed for because it is constantly changing. If you bought a cell phone, by the time you walk out the door the next big thing is already going in the back door to be sold after you. We design the phones to work. We design the network to work for whatever phones are deployed for now and for the future and we are constantly upgrading the facilities so I'm . . . To really get into discussion of how the phones work is really going to help us in this discussion. The question about the pine needles, and I believe Mark Hutchins said it best, is that radio waves, I'm not an engineer either but I do understand the technology quite well, the radio waves transmitted from the antennas are essentially the same size as a pine needle and that's why it is so difficult for the radio waves to get through the pine needles and past the obstructions and typically when we are covering inside buildings, we are not sending those radio waves through the walls, they are coming in through the glass windows and other easier ways, easier paths for them to get through the same way a stream flows through the low bed in the ground rather than running across the rocky cliffs all the time. It's the path of least resistance for the radio waves and like I said before, any tall man made or natural obstructions block the signal and cause it to bounce off and I think I covered all the issues he had but if there's anything else I can answer your questions.

T. Kinnon: Alright, thank you. Do any members of the Board have any questions at this time? We've heard a few people testify and. . .

S. Hurst: Well just to touch a little bit on this analog business. I work for a Chevrolet dealership and I understand that certain On-Star models are not going to work after a date because they analog service. My question to you is when this analog cell gets shut down is that going to free up more space for digital?

K. Kozyra: Well what happens is typically the analog networks and the digital networks, when with our older facilities, for example, we do have analog technology at Prospect Mountain and currently we have multiple antennas. Some of the antennas transmit the analog signal and some

transmit the digital signal. When the FCC allows us to remove the analog transmission equipment, we will divert all the antennas to transmitting the digital signal. The On-Star network is currently carried by one of our competitors, Verizon and I am not privy to what their plans are to shut off their analog network or what they are planning to do but I would assume it is a very large contract with GM and they would be working diligently to find the technology that would work correctly. The only carrier currently I am aware that's going to be turning off their analog in the future is Cingular and has made overtures to be attempting to turn off some of it next year.

S. Hurst: Will replacing these analog systems with digital increase your coverage?

K. Kozyra: Well what it will do is it will increase the quality of the network for the subscriber. The analog technology, just like if anyone has seen the difference between regular TV and high definition TV. It is similar between the analog phone technology and the digital phone technology. The analog is not a very quality connection. It is very susceptible to interference and can be scratchy and also does not have the abilities to carry the data and email and messaging that the digital does. It does, it's values allow it to be transmitted for a lot greater distances as Mr. Gartley had mentioned and that was the original cellular networks. They were build out with very few towers on large peaks and they could transmit for 10, 15, 20 miles. But then people started using their phones and once you got more than 5 or 6 people using their phones on one of those towers, the signal would just dry up because the phones were grabbing so much of the signal, that's why the engineers created the digital signal and now we can have a lot more people talking on the same area of spectrum than we could on the analog so we can have more users to enjoy next generation services.

S. Hurst: Thank you.

K. Kozyra: Your welcome.

T. Kinnon: Dave, any questions?

D. Schaeffner: No.

T. Kinnon: Please have a seat and state your name.

Betty Sackos. My name is name is Betty Sackos, I live on Eastside Drive at the bottom of Mirimichi Hill. First, I would like to apologize, so of this is going to be repetitious and I am not a public speaker and not am I an expert and I am probably going to be as red as my jacket but that's okay.

T. Kinnon: Take your time.

B. Sackos: Okay, first I want to say that I agree with Mr. Slade that there will be a decrease in property values. The applicant can produce as many surveys as he wants, but I know when I put

my home on Eastside Drive on the market, if I have a three or four hundred thousand dollars housing development across the street I'm going to get higher price than if there is a cell phone tower there. I know that and he can throw as many surveys at me as he wants, I still know what I feel. That's how I feel. The applicant states that he has 28 acres for a substantial buffer of the site. He plans to clear a 100 x 100 fence compound with a 120 ft monopole, two equipment shelters, one 10x12 and the other 11x19 not to mention the access road he will have clear reach that compound. One of the Planning Board members stated at one of our many meetings we have held that the intention of the ordinance was to place towers anywhere in town as long as they were invisible to anyone passing by. This particular site will not be invisible to anyone particularly to those of us who live at the bottom of the hill looking up at the top. The applicant stated that he felt our ordinance was fatally flawed and after sitting here for a year I believe probably it was. I feel it should have been more restrictive than not less. I attempted to obtain a newspaper insert that we all received in our local newspaper around election time and unfortunately the newspaper, the town clerk, I spoke with Monica, no one kept a copy of that insert. The previous, Town Planner, we don't know what he did with it or she did with it. But that particular insert did have a little bit more information for the general public. As a voter, I attempt to be as informed to make an appropriate choice as I can be and during these deliberations I have decided the best thing to do on the ballot is to vote no unless you know every single piece because I voted and had no idea that we were voting to allow cell phone towers at any zoning location. I felt that the zoning laws would stay in effect and that people would have to have a variance. I did not realize that cell phone towers could be built anywhere. Because all of you are town members I know you all saw this lovely ballot and I just want to refresh your memories about Article 7. It states, Are you in favor of the adoption of Amendment Number 6 proposed by the Planning Board as follows: to amend proposed section 2006, section 603, 2005 section-270, wireless telecommunication facilities ordinance with section 603 personal wireless service facility ordinance. Hum, what does that even mean as a voter? You go, you look, you read that, you go what on earth is that? So the Planning Board is so helpful. They give us a rationale and I would like to read to you the rationale that we all got on our ballot. The purpose of this ordinance is to improve wireless service in the area and provide alternatives to all towers with less visual impact upon the town. Upon reading this, ¾ of the voters in Alton voted yes. They colored in the little box and said yes. I was one of them. Believe that or not. I really believed I was protecting my property. Obviously, I wasn't. The applicant stated at the last hearing, what is necessary is not always what the residents want to hear. I sincerely request that this Board uphold the ordinance, deny this variance and provide substantial justice for the residents of the Lakeshore Residential Zone along Eastside Drive. Please hear what the voters of Alton had to say. Thank you.

D. Cody: I would only say that the tower, as you should know if not visible from Eastside Drive.

Tom Hoopes: My name is Tom Hoopes, I am here not as a member of the Planning Board but as a citizen representing myself. I am the vice chairman of the Planning Board and during the time that this new ordinance was adopted I was the chairman, so I will take the brunt of the blame from Mrs. Sackos but I will like to go on and explain a little bit why the town adopted

such an ordinance. We are here because there are four factors. We have an applicant, we've got the ZBA, we've got the town zoning and we've got the FCC regulations. And somewhere in there there needs to be a representative from the town and it bothers me that I have to step down from the Planning Board to present what I think is information that people don't understand. This is a flawed process before the ZBA because there are few here who are fully understand all the new wireless telecommunication ordinance or the need for it. The Planning Board is banned from speaking in public during an ongoing case because to do so would show prejudice to the case. Yet the applicant has been free to give erroneous statements to the press with no potential rebuttal whatsoever. We have been called fatally flawed, we have been called a variety of different things. The flaw is not fatal. The flaw, if you want to call it that, I will explain in a moment. This applicant sees this case as a glass half empty. I see it from the town's point of view as a glass half full. They want more and we have proposed a very reasonable ordinance. When the Planning Board decided to redo its wireless ordinance it did so for several reasons. The old one was outdated and ill-served the town according to the questionnaires, the planning shurets that we held, public hearing and it visually scarred some of the best views in town. I have served on boards for over 25 years in this town, and you cannot help but get input from individuals as you do things around towns, as to "Oh, God, that awful site up on top of the mountain" or whatever. Well the first wireless communication ordinance that we had was adopted right after the ordinance was passed by the FCC and we were reacting at time. I was not a member of the Board at that time but we had to have something in place or there was a wild west, there were no regulations whatsoever. But in talking with town attorney and the Planner and trying to get some of the ordinances that we have in town more up to date, we decided it was time to update the ordinance on the wireless communications. We sought out information from several communication specialists but wound up working with a couple called the Bridges out of Amherst. This model ordinance, which we adopted, we several variations is also one of the main models as listed on the Office of Energy and State Planning, State of New Hampshire. The whole proposal of reasoning was that we wanted to get much better coverage for the town of Alton but at the same time we did not want to give up the vistas and the views. We wanted things to remain as invisible as possible and so that's why we adopted this ordinance. In adapting the model ordinance to the Alton's needs we made one error. I personally feel we made an error and that, as non-experts, we were unaware of. The model originally proposed no tower should extend more than 20 feet above the tree crown and in trying to satisfy the needs and the desires of the citizens of the town of Alton, we thought we'd be more conservative and limit it to 10 feet. So in trying to satisfy their needs we created a problem which is brought out by Mark Hutchins. No here's the one of the problems. Most ordinances are handled and written by voluntary boards. We are not experts. We do run all these by town engineers and also the town attorney. Nothing is put forth that isn't viewed by him. Mark Hutchins felt that 15 feet is the minimum that would afford proper reliability. I personally will concede that 20 feet is not that bad a deal. As long as if you are penetrating, if you're extending above the crown of the forest canopy. Then whatever extends above it, branches of an artificial tree should descend down into the crown so that you don't have a lollipop sticking up into the air; something that would blend in and it would not mar the skyline. So again, I would accept a 20 foot height above the tree crown as established by the town's forester and we would want to avoid that lollipop feature. We wanted the better coverage within

town without the ugly towers that would be visible. Many times I had heard somebody driving through town and saying, Oh, I have a business conference call, where can I get decent reception in town. Well, I would say, go up to Mt. Prospect. It's about the only thing you can do. So that you hear this from people, you want to get better coverage. The ordinance allows for co-location. The location of more than one carrier and encourages it as long as the other requirements of the ordinance are met. So why is the applicant asking for 60 feet above the canopy. They wish to rent out space to other carriers. Our ordinance does not permit that. They are entitled to 10 feet, or I would grant 20 feet over the crown. They wanted as maximum height they could possibly get to be able to rent to as many people as they possibly could. So much so that they didn't like . . . what was it? To get a greater height, the applicants objected to our method of calculation of average tree heights. And they came up with their own method which would say that what they wanted was only a 40 ft difference as opposed to a 60 ft difference or 59 feet. Those who saw the balloon test know how visible the first balloon was which was only 15 feet above the canopy. Would you mind being quiet please over there. To allow it at the highest height would be callous. There would be no way to disguise it. Under the ordinance that we have adopted, section 603.4 under 4.1 location. An applicant shall demonstrate to the Planning Board that their facilities affect has been minimized on the view shed containing the facility and that the facility will not visually dominate any view shed in town. The applicant shall demonstrate visual impact on the proposed facility by using a crane test or balloon test as directed and witnessed by the Board. The said test should be made known to the public. For proposed facility to be accepted such test shall demonstrate that views are not adversely impacted by the facility. Now if you saw the test you know that the lowest balloon which was a 75 feet which is according to town foresters calculations, 14 feet above the crown was plainly visible from many locations. There was no difficulty in seeing the top balloon which was at 120 feet from the vast majority of the entire Bay area. I question whether there is any reason to even consider the concept of 120 foot tower. What we allow is somebody to co-locate if it meets our regulations. If it doesn't meet our regulations, then fine. They cannot co-locate and tuff. The FCC says we cannot prohibit carriers from coverage within our town. It doesn't say that we have to give away the town but giving up 5 different stories to 5 different applicants because they want it. That's not the role that this ordinance is intended for and I see the Zoning Board's role simply as a safety valve to an applicant when there is a problem within the ordinance, not to give everything that they want. They may want to get coverage for the world but that's not what they are entitled to. If there are gaps, there are gaps and the FCC doesn't say we have to fill in every single gap with each applicant. They can get a small amount each time and that's fine. The applicant has been firm and totally unbending. We have been buried in a mass of paper. Much of it unsolicited. From day one they wanted to towers 120 feet high with no regard to our Zoning Ordinance. Repeatedly, the Planning Board had asked for information that would show whether or not a network of many separate towers that were in compliance with the zoning ordinance could give adequate coverage. But they said no. They didn't want to get, they wanted to go for their 120 ft towers. The applicant must show that there are no other locations or combination of locations available to provide the same coverage. This they have not done. They have shown no flexibility to their proposal. Under due diligence where they are required to show that they have checked out all the existing structures and the raw land they had a very short list and it was accompanied by what I would refer to as an

extremely onerous letter that went to the landowners that did not make it appealing, whatsoever for somebody to participate in what they were proposing. Most of the application information that we got from them was dated in 2006. That showed their due diligence in that time period. Early on, Mr. Cody stated, that in 2004 they purchased the property on Route 28-A. Well maybe that might be considered pre-judging and they didn't need to bother looking for other sites because they found a site they thought they could use and didn't bother with their due diligence. I certainly don't believe they did. There is no question in my mind that the location as proposed at 120 feet will have an extremely adverse impact on the vistas of Alton Bay. If they stay with the existing zoning regulations at 10-20 feet it really won't be that noticeable if they have an artificial tree and some of the new trees are very well disguised, it will blend into the terrain. I would like to read a couple of quotes from the Amherst case. These were ones that were provided to us, it's the final decisions that were sent to us from CMA Engineering. On page 4. Towers are very expensive, often costing \$500,000 or so each. Co-location increases tower height but reduces the number of towers and greatly reduces overall costs because fewer towers are needed and because towers costs to increase proportionally with height. On page 13. But it also appears that lower towers could be used (and possibly re-sited). If co-location were sacrificed and more (perhaps many more) towers were added. On page 14. Omnipoint did not present serious alternatives to the town. They proposed one plan as did this applicant. In a conclusion, the State statute of Local Autonomy, subject of Federal limitations does offer a single cookie cutter solution for diverse local situations. It imposes an unusual burden on the courts. But Congress conceived that this course could produce, albeit at some cost and delay to the carriers, individual solutions best adapted to the needs and desires of particular communities. Then in the case of 360 Degrees vs. Albemarle County, Virginia, while Congress sought to limit the ability of state and local governments to frustrate that act's national purpose of facilitating the growth of wireless telecommunication, Congress also intended to also preserve State and local control over the siting of towers and other facilities that would provide wireless service. It struck a balance between the national interest in facilitating the growth of telecommunications and the local interest in making zoning decisions in its own enactment. On page 12. In reference to . . . stated another way, the provision instructs that siting decisions may not be employed to deny wireless telecommunication service. This does not mean that the denial of a permit for a particular site amounts to the denial of a wireless services because service be effective from numerous sites in various combinations. Sometimes not even within the area to be served. I would ask that you look at the zoning ordinance and you request compliance. I don't see a problem with a 20 ft variance, but to me when you go to a 60 ft variance without question and making them justify it I see no reason for it. This town did not vote for that kind of a huge tower. Thank you.

T. Kinnon: Thank you.

E. Duvall: Mr. Chairman, if possible, we've been going for about an hour and a half, do you think that we could take a 5 minute break.

T. Kinnon: Absolutely. We will reconvene at 8:00 p.m.

D. Cody: I apologize for speaking during a proceedings. We are trying to come up with better alternative, if possible.

Break at 7:53 p.m.

Reconvened at 8:03 p.m.

T. Kinnon: Okay, I would like to call this meeting back to order and would like to hear a rebuttal from the applicant.

D. Cody: I think we will allow all the testimonies to be heard. We will simply summarize at the end to be more speedy.

T. Kinnon: Thank you. Okay, is there anyone else that would like to speak, please have a seat and state your name.

Jeanne Crouse. Hi, my name is Jeanne Crouse, I am an abutter. First off I would like to mention to you that in your packets from probably 13 months ago you have a letter from my neighbor, Bob Furini, whose property is directly adjacent to the properly purchased, supposedly purchased by this company and there is also a letter from my husband and I. If you are making a decision on this I hope you read them. Mr. Furini cannot be heard as he lives in Massachusetts. And basically, the essence of what he said was that if he wanted to live . . . if he knew when he was buying his property he would be living in an industrial zone he would have moved to an industrial zone not lakeshore residential in New Hampshire. The other issue I wanted to address, however, was the ordinance. And as, at least the members of the Zoning Board know, I am on the Planning Board. Not only am I on the Planning Board I was the Chairperson of the subcommittee that wrote this ordinance. The committee was comprised of several citizens, one of whom was an engineer, is an engineer. In addition to that we had a local citizen that is a microwave engineer review the ordinance and explain to us the whole concept of cellular towers, how you pick up service and what not. And in preparing this although, for the most part, it is based on ordinances in other towns. I contacted at least 4 different town planners from communities around the Lakes Region plus Amherst to a: find out whether or not the ordinance was enforceable in court, b: if they had any problems with the ordinance, if there was anything they would want to change about the ordinance before the committee re-wrote it and then presented it to the Planning Board, then had the attorney review it, then submit it to the town. The reason this ordinance was re-written was because the existing ordinance was not legal in terms of the Federal law and we knew that sooner or later someone would come and challenge it and it really was so restrictive that it would not, could not possibly provide coverage. However, the ordinance was number one specifically written for the town of Alton. I know, cause I wrote it. But aside from that Amherst does not have a problem with view sheds so there are parts of the ordinance definitely for Alton. Secondly, the ordinance does not address telecommunications developers for the reason that they have no legal standing. It is the carriers. So you will note, first sentence, it is the express purpose of this ordinance to remit carriers to locate personal wireless service facilities. It doesn't say the ordinance allows developers who

are going to build monstrously tall structures. It says carriers. I don't off hand know whereas carriers need to be co-locating, but in the event that they want to be doing that, we allow that. What the ordinance is designed to do as explained to me by an engineer, is that not only is coverage area important, capacity is important. So that as the town grows, as more tourists come into the area, suddenly they don't have the capacity to service, however many calls, I have no clue, I am definitely not an engineer. But that the contemporary thinking is, it is better to have many shorter towers with enough capacity so that as you are driving down the road, you call is picked up here, there another tower here, you are transferred to that one and then the next person on the road goes to the first one, so the ordinance is written essentially as the more towers the better which is why the Planning Board opened the entire town up to facilities. That it would give us the capacity and also the coverage. I have failed to hear the applicant address this at all, ever. Also, new technology is providing better coverage and capacity at lower heights. I have heard, actually a lot of mistruths and fallacious reasoning from the developers in various articles I have read in the paper. I have also heard the same thing from various townspeople. I see the issue not about whether or not people want cellular coverage in town. I really, I know of people who don't have cell phones. I have yet have anyone come to me and say well, I don't think we should have it at all. People either they want to have it or they don't care, but they are not against it. The Planning Board is not against it. I'm not against it but the ordinance was designed to minimize the view, the affects on the view shed and it was designed to provide carrier the ability to come into town and provide the town coverage. But virtue of the fact that developers are not referenced, the ordinance was designed not to allow developers to come in and construct Jersey Turnpike type structures with 10 or 20 feet worth of gobly-gook on the top. That's not the point. I think it's really important for the town to enforce the ordinance that was passed by the voters, because anyone who voted for it hopefully understood what it said, which was that we want coverage but we want it on our terms. So my question to you basically, is whether you want out-of-town developers to come into town and dictate to you what you are going to do in your town with their obsolete technology or whether you want to protect the aspects of Alton that are important to its residents. Thank you.

T. Kinnon: Thank you. Is there anyone else that would like to speak in opposition. Mr. Wentworth. Mr. Slade I will allow you to speak again, as soon as we have gone through everybody that wants to speak.

Ruben Wentworth. Mr. Chairman, Ruben Wentworth. 31 Jesus Valley Road. I am going to do the same thing I did before and if the applicant's don't mind. I can't tell you if I'm in favor or not in favor of this. The only thing is that I will say I heard expertise from the applicants saying they've handed you folk expertise. I have heard testimony from my neighbors, my townspeople about the ordinance and why the six areas that you guys govern on why it shouldn't be allowed. Two things. The applicants say they have given you expertise and also from the FCC memorandum. One of you gentlemen also stated that, you know, some people might not want to buy a house that has a swimming pool, that's true, they might not be. There is a little difference between a cell tower and a swimming pool. 2. Is we have expertise tell us that we had weapons of mass destruction in Iraq, look what happened to us there, and that's politics, and that's getting away from the subject. All I'm saying is we've welcome you into our community with this

ordinance, we haven't kept you out. I was surprised when you guys withdrew and right after town meeting said you would go with the new ordinance because I was telling everybody that it must be an easy ordinance because why would you withdraw after you spent all this time and money on the old ordinance. I still think that's the cause, this is an easy ordinance for you. But we have welcomed you into our community. I'm a businessman in the community. I started out mowing lawns, I own a lumberyard now, so I've worked hard for my money, I have a vested interest in this community. You folks come in, we look at you. You have no vested interest in our community. All you are looking is to putting a tower in, trying to connect to whoever you can to your towers. That's the way I also look at you right now. I look at you as outsiders and once you have that tower in you're gone and also with US Cellular. I used to have you folks years ago when you had the big thing and I had it in my truck but into our community and then you leave. You don't leave anything here except for structure. We don't see you as you go into your business everyday and you come back. We hear you on the radios, that's it. So we are offended by some things when we hear I have an expert testimony here. I don't like hearing my neighbor say it sounds like a snow job, I don't like hearing you guys say it sounds like a snow job. It's getting to a point it's going back and forth and it does need to come to an end. But I would like to see you gentlemen meet the town somewhere because we did, we do this ordinance for you folks and for the people of our community to try to give them service. It might cost a little more money to put up a few more towers, smaller ones, but and if you ask any of them on this Board, I am one of the first ones to buck the government when it comes to ordinances, and I always get myself in trouble with the store with it. Anybody back there can tell you too. But anyway, all I'm asking you is meet us half way, work with us because the only thing I haven't heard from you guys on tonight, and I've seen it on TV. I haven't gone to the meetings cause I've stayed out of them so I can keep my mouth shut, but the only thing I haven't heard from you guys tonight is where is your reasoning. Where's that reasoning for that variance you need tonight. You've wanted to rebuttal but the only thing I have heard you rebuttal is about the pictures. But why do you need that 20 feet. Tell me why you need to have that 1000 calls come in on that one antenna for your applicant, for your customers. I haven't heard that. So I'm not really convinced, so I am going to ask the ZBA hopefully, that they will hold up the ordinance but that you folks will work with us to do that. Thank you.

T. Kinnon: Is there anyone else that would like to speak in opposition? Mr. Slade.

E. Duvall: Mr. Chairman, I guess that I would like to request (tape ended – new tape put in – only a few seconds lapsed) Thank you.

Mr. Slade. (did not address his first name). Mr. Chairman I do intend to make this short and sweet tonight though, rather than the any of the alternatives. The main point I want to make is that this case is completely different from the previous case which you decided on last week on every aspect of the variance test. In regard to public interest this tower will dominate the view shed. The tower you looked at last week will not and this is clearly visible as been noted again tonight, that one was not. As regards, consistency with the spirit of the ordinance, basically, the spirit of the ordinance is compromised. It allows towers to go everywhere but so long as they are short. The reasoning being that you can have, you won't adversely impact where you are

putting them if they are short. It is far more inconsistent with that spirit of the ordinance to put a tower in a residential zone than it is in a commercial zone as you did last week. So, again, on that test this case is different from what you decided last week. On the hardship test, again, this case is very different. The property we talked about last week, they are leasing the property. They have a footprint, a little stamp of property under lease to put the tower on and the lease holders control what they can do on the property. They don't have the freedom, and as we discussed last week, there must be some easement which restricts their freedom to cut trees. In this case, they own the property and they own the whole 28 acre side of the slope and they can cut actually all the trees they want. It's one thing we have to watch out for. This ordinance does not, as it is being misread to do, prohibit them from cutting trees, and in fact, we could do this average tree canopy and they could have a 75 ft tower or whatever it is and then cut trees and get more tower and put more carriers on it and I think it should be a condition to what ever they are allowed to do here, if they are allowed to do anything to cover that point. But the point is they can cut trees so again this property is different and there is no hardship. All the arguments they are making about having to piggy-back off the highest tree don't apply here. The fourth element, diminishment of value. There was no testimony, no evidence at all that there would be property value diminishment at the other property because, in fact, the owner of the property, the lease holder, the lessor, said there wouldn't be. This case is completely different. I hope, I know that I admitted evidence to show this point. You will never see, no matter how many studies you see from the applicant of impact on value. You will never see one that is site specific and applies to this property, and why is that? It's because anyone knows that if you put a tower right 150 ft next to an abutting property in the same location in their view, you're going to damage the value. They will not and cannot present an expert that says that will not be the case so they haven't. None of their studies have or will relate to this property. Mine do. I have perfectly admissible evidence, and I actually sent court cases to prove this to you last week that the opinions I have given you from experts, appraisers, as to this specific property, they have gone and looked at it, two of them and said that this property, the value will be damaged. They haven't given any direct testimony relative to this property at all. I don't know what Mr. Cody is talking about when he says there has been no expert testimony to this affect. The only testimony applying to this property has been given by me. And when they left last week, they dumped four more studies on you and I did, racing against the clock, had my expert William McClain, who is a very respected appraiser in this town, look at those studies, and he has written another letter. I don't, I guess it got into the file today, Monica, but he again says, that he has looked at those studies and there is nothing in those studies that applies to the conditions of this property. Okay, so I have gone through the four, my central point here is that this is a different case on every single aspect of the test. The fifth test is will justice be done and that's basically a function of the other four, really. If, as in this case, the interest of the town, the public interest is going to be damaged, the abutter's value is going to be damaged and one the one hand, and there is no hardship on the other hand to them then the balance of justice is clearly in favor of not granting this variance. Now I just want to say quickly on the subject of whether or not 10 feet is enough. It's nonsense. There is no technical flaw in this ordinance. RCC has admitted that fact by putting up a tower within the 10 ft ordinance right next door. Mr. Cody has admitted that fact by saying, on several occasions, that he can get 6 carriers on this 40 ft space. Someone has got to be in the bottom 10 feet. Mr. Duvall has admitted it in a letter that he submitted on

January 29<sup>th</sup> that 10 ft is enough. Your own expert, despite, I'll explain to you right now, Mr. Duvall is trying to scare you into thinking that you have to follow what your expert has said or you're going to get into trouble in the courts and he tries to concoct this mathematical argument that your expert said that they must have 120 feet. He didn't say that at all. He said in his report that the rule of thumb is 15 feet. Rule of thumb means it could be a little more or a little less but he never said that they need 120 feet. What he said was if you piggy-back off the trees, which you don't have to do because they can cut them down, so you start at roughly 90 feet and you add 10, plus 10, plus 10 you get higher and that gets into the whole co-location question which is not required by the ordinance either. He never said that these applicants need 120 ft. They only need 10 and what I would like to emphasize is that Section 4.1 which Mr. Hoopes was reading from earlier of the ordinance entitled Location says that the applicants, I don't have it with me, I'd just like to grab it, this section says, an applicant shall demonstrate that the facility will not visually dominate any view shed in the town. For a proposed facility to be acceptable such tests shall demonstrate the views are not adversely impacted by the facility. That means if a facility at a particular location would dominate a view shed or would adversely impact the views of the town is not acceptable at that location. So even two feet, never mind ten feet, if it would adversely impact the views is unacceptable so we shouldn't jump to a conclusion that even 10 feet or 20 feet or anything is necessarily acceptable at this site. Finally, I just want to underscore that the ordinance of this town is perfectly constitutionally valid. The town has the right, if it so desires, to have many but shorter towers. The burden again, as I've said before, probably to the point which drilled into your mind, I hope, is a heavy one for this applicant to show from the circumstances not just that an application has been rejected but that further reasonable efforts are so likely to be fruitless that it would be a waste of time even to try. We are so far away from that situation under the Federal law that it's laughable. This town has done everything that it can to cooperate with these applicants. It passed a new ordinance to make it easier. It granted them a variance last week. I'm telling you, no court would ever find that this town is not cooperating. On the other hand, these applicants have done nothing. They opted to proceed under an ordinance that requires many shorter towers and they did nothing after they so opted to change their position at all. Their position was summed up by Mr. Cody last week when he started talking about this case. When he said that because of the topography of Alton Bay on the east side he must put a tower on the ridgeline and then he realized he made a Freudian slip then and said it wasn't a ridgeline, but it is a view shed, a ridgeline. He said he must put it there to cover both sides. But gentlemen, that is proof that he is not understanding what this ordinance is all about. Because what this ordinance says is no way you put two towers on either side of that ridge, one a little bit down further on the property that you own and go find another one on the other side because it's not going to be that tough. That's what the ordinance says, that's what these applicants must do in accordance with that ordinance and there is absolutely nothing in the Federal law that changes that position. So the gaps are narrowing, I am sure you have all noticed it. There are getting smaller and smaller along Route 11. I mean, before you know it, we won't need tall towers anywhere. But if they are given a tower at the top of Mirimichi Hill we will be stuck with that for the rest of our lives here. So please, please, please don't grant this variance so that we all have to sit around here and talk about it and regret it forever. Don't grant a tower at the top of Mirimichi Hill at all. Thank you.

T. Kinnon: Is there anyone else that would like to speak? Okay, I just want to make it clear, folks, that once I close the public input, I am not going to reopen it. I think everybody's had more than sufficient time to speak and I am going to ask one last time, is there anybody else that would like to speak. Two weeks ago there was a portion where you could speak in favor of it. We have already been through that. You can come up and speak.

Roger Sample. Roger Sample, I spoke before. I am in favor of it and I just, you know, a lot of people that do want cell towers in this town and cell service just don't know what's going on. I mean they haven't been to any of these meetings and they just assume that everything is just going through and I really hope you guys take the time to consider what they are going here and get us the service that we need. I don't even have my phone because the life got sucked out of it because it was searching for service all day. Many times, 2:00, 3:00 in the afternoon, I have no service because, you know, it goes on to analog and that just wipes it out. So I just wanted to say that I'm in favor.

T. Kinnon: Thank you. Is there anyone that would like to speak either for or against? Okay the public input is now closed. Mr. Duvall

E. Duvall: Mr. Chairman, I would like to just provide a brief rebuttal and then perhaps a summary.

T. Kinnon: Thank you.

E. Duvall: Well, I would say, Mr. Chairman and members of the Board I say with much respect and significant amount of patience, I submit to you that I am not trying to scare you. We have submitted a significant amount of documents into the record. We have done this to demonstrate our compliance with the ordinance. We have done this to satisfy requests from the Planning Board, the Zoning Board and from the town's own expert. The town's expert has spoken and I submit to you all, the record speaks for itself. That would be my rebuttal to what was just said. With regards to a summary, and I think in the interest of time and the number of times that we have heard again, and again, the issues in this case, I would like to refer each of you the area variance worksheet that we submitted this evening. This worksheet is intended to summarize all those documents and all that information that has been submitted by the applicant, the town's own experts and others regarding this case and I would urge you, during your deliberations to refer to this document, otherwise, perhaps take me greater than an hour to go through each of these and we have heard it again and again. I would, in addition to worksheet for the area variance have submitted a worksheet with regards to the Telecommunications Act and if you believe that we have not satisfied the elements of the area variance, I submit to you that an area variance must still be granted to avoid a prohibition of services under the Telecommunications Act and I think that if you look at the worksheet, I have set forward the two part test with regards to the prohibition and that clearly we have submitted a significant amount of evidence to demonstrate that the variance is warranted and if not, certainly the variance is warranted under the TCA. I would ask if anyone else . . .

K. Kozyra: Mr. Chairman, members of the Board, I just want to reiterate to you that US Cellular has long had an installation here in Alton since 1998 and we would like to continue to provide reliable wireless coverage to our customers now and in the future. That along with Industrial Communications and Unicel we encourage you to approve this application as submitted and we believe that there's a substantial amount of information that has been submitted by ourselves and Industrial Communications and RCC, more than enough to provide you the substantial information you need to approve the variance. As always, we respect your opinions and thank you for your time considering all this information. Thank you.

D. Cody: Let me close, okay. For the record, I am Donald Cody, the Director of Operations for Industrial Communications and ITW. I just want to bring up some points and I know the Board is very well aware of these points but you've had to endure, for some, nearly two years of information and it's gets blurred after a while. I'd ask you to look at the facts and remember the facts not emotions. I think the last individual that spoke perhaps said it more profoundly than all the others. There are only few here that are very opinionated and very vocal. Most of those people in town would want to see this service, sit back, and go about their daily lives. That's the nature of hearings, the nature of voting. I would not report that two or three people in the town represent the entire town's opinion. Please keep in mind that when you changed the ordinance we had originally been before this Board for 120 ft tower with variance for location because 120 ft was allowed. The ordinance changed, it flip-flopped. The location now was allowed but the height was not, so we had to step back, resubmit and now ask for the variance for the height and not location. So keeping that in mind, this location is allowed, just as well as the lot next door or the one down the street or any other location in town. That is not before this Board. There is no variance request for that. What is requested a difference in height. Even when, I think, it's come to the final conclusion that despite the intentions of those who formulated the language of the ordinance, it is fatally flawed in the way it measures the height of trees. That it technically blocks the signals. That if we were to put a tower up at 10 feet above the average height it simply would not work and I think the consensus that's true. 120 feet is not a monstrous tower. It is a fairly short tower. It is shorter than what you would see in most towns. If we could survive on 105 feet, 95 or 75 as some would like us to be at, then we wouldn't be before this Board. We wouldn't be spending two years in the agony and the time to fight for these few feet. It's pretty clear, not by the record but simply by our persistence that it's needed. We are a telecommunications carrier. We are fully FCC licensed. We also develop towers and I remind the Board that there are two other applicants who are clearly in the business for providing cellular service. So the application before this Board is well represented by the carriers. It is valid. It is appropriate. We are, on this particular occasion providing service and we get compensated for that service by the carriers. You would be elude of this for some reason, we only want one tower to save money. Gentlemen, if I could get away with 15 towers I would charge 15 times. So the argument that, I'm simply here because I only want to build one. I'm here simply here because it's the only thing that make sense. We've heard that we haven't looked at alternate sites. The evidence tells you much differently. Repeatedly we have gone back and we've looked again. We've asked again. If there was an alternative site that worked better, I would have sought it out. Yes, I own this property, I had to tie it up because of the long period of time that this town was taking to rewrite it's By-law, put us on hold and I couldn't

hold that property and it was the best property I could find. I could dispose of it, move on if there was a better location, but that location is not available. I think we've brought that evidence to bear. It's not of a matter that I've had this in my family for 50 years and I'm trying to make something out of it. It was bought for a purpose but it also it's real estate value and if I had to buy another piece of property that was available and it was, made this Board's job much easier and made it possible to provide the service, I would have done that. The evidence that is before you in this is very clear. We've done our homework, we have done our due diligence and this is the site that fills the gap and we have no other alternative available. Thank you.

T. Kinnon: Are there any questions from any members of the Board.

S. Hurst: Yes, I have one. Mr. Cody, I don't know if you recall but the last meeting I had asked you why you couldn't put two towers side by side and the answer was because of interference.

D. Cody: There are several reasons in this particular instance. If we went on the premise the trees are 65 feet and we would have a 75 foot tower, neither tower would work because the trees not only on the property, although we are not allowed to cut them down, but even if we did the adjacent properties have trees higher than that. They would block those signals from both towers. The other technical reason behind that and Mark could probably answer that even better than I or Kevin, when the signals are side by side, they bounce into each other and it becomes a problem of balancing those systems without interference and they simply would interfere with each other.

S. Hurst: I guess why I am asking the question. I went down to the southern part of the state this weekend and I was off the highway there in Hooksett where there are two cell towers side by side. . .

D. Cody: Yes, there are.

K. Kozyra: I can take that one Don.

S. Hurst: . . .they were about 75 feet maybe 100 at the most. . .

D. Cody: Go ahead.

S. Hurst: . . . Why can they make it work and you can't.

K. Kozyra: I'll explain that to you. U.S. Cellular owns one of the towers. The other tower is owned by Global Signal that is one of the major tower owners in the U.S. and what you have there is you have 280 lattice towers, each with three carriers located on them. If you were standing in the north bound rest area, which would be on the eastern side of the highway, you could see it quite clearly. It's more difficult to tell from the western side, but on each of those towers the antenna arrays are not mounted at the same height. You have two 180 ft towers that are 75 feet horizontally away but each of the antennas, like we had said before, have 10 feet of

separation so that the antennas are not shooting into each other. With two large towers you can do that with six carriers. You can separate them out so that they are not aiming their signals directly into each other and that's how they were able to overcome that problem because they had two large towers. Also at the time that that Sprint tower was built it was not built with enough structural capacity to hold more than three carriers, so that's why US Cellular subsequently built that second tower to be able to hold additional carriers.

E. Duvall: If I might add we had, and I think we did talk about this before, there is an affidavit submitted by RCC regarding horizontal co-location and also as part of the record is the town's own expert confirmed that report and had stated that it is not a feasible alternative.

T. Kinnon: Any other questions from the Board. You folks all set?

D. Cody: We are all set.

T. Kinnon: Okay, at this point I am going to close the hearing and we will go into deliberations. I might start if nobody objects. I think this has been a long process for a couple of reasons. One is the town is trying to feel its way through the Zoning Ordinances and to come up with something that's going to suit this town both for the tourism that this town depends upon and also to provide those tourists with reliable cellular coverage. I don't believe the new Zoning Ordinance is fatally flawed. I think it's like any Zoning Ordinance that can use adjustment, but that's not our job here. That's something I just wanted to say and I think the Planning Board did a very good job and the committees that worked on that Zoning Ordinance to put it together and I think they spelled out very clearly that the view shed that this town depends upon so greatly for a large source of revenue needs to be protected but at the same time we also need to provide access for companies that want to provide cellular coverage. One of the things that stand out in my mind and keeps coming back to me is the balloon test. I stood on the Mt. Washington dock where a great number of people come to view this lake, to view the surrounding mountains, and I could clearly see all three balloons and then all along the Bay they were very visible. I don't believe it's a monstrous tower. I agree, 120 feet is not extremely tall but relatively speaking and in perspective I think, at this location it is simply too tall.

S. Hurst: I agree. I saw the balloon tests also. The first location we voted on there were a number of spots I couldn't even see the balloons but this location is definitely out in the open and visible from a lot of different locations in town.

T. Morgan: I'd just like to echo something that the Chairman just said and I hope everybody who has been coming to these hearings understands it and that is that the Zoning Board of Adjustment takes an application as it comes to that Board. It's not within our purview to modify the application, we can't say well we don't like this but we would like that, our job is simply to grant or deny the application, so it's an up and down matter, it's not a question of negotiation so we need to deal with the application as it has come to us from the applicant. The Telecommunications Act gives citing authority to the towns and that does not usurp the authority of the Zoning Board. Federal pre-emption under the TCA occurs only when the town

is prohibiting or effectively prohibiting telecommunication services. I think the town is clearly not doing that in this case. Last two weeks ago we granted an exemption and as referred by members of the Planning Board, when they were attempting to write an ordinance which would allow carriers to come in here and provide service. I also don't believe that the Telecommunications Act requires that all carriers have coverage in all places, that is that there be no gaps for any carrier. I think we can have gaps and I think roaming can count against the gaps as well. I do not agree with statements made previously and implications of testimony tonight that we need to have a use variance in accordance with the simplex case. I think clearly, what the applicant has applied for is a use which is appropriate in this area, I do however, believe that we need to have a Boccia area variance consideration because the height is well above the height called for by the ordinance. And just like we were two weeks ago, we are dealing here with that balance between the provision of service to the citizens or Alton and protecting the view shed. The difference here tonight is that we are dealing with one of our most protected and most restricted and most valued pieces of property so the balance is much more tenuous one with regard to the provision of service and so I agree with what's been said so far that from what we saw from the balloon test that the impact on the view shed from a tower of this height overweighs and overshadows the value of the provision of cellular service.

D. Schaeffner: I would fully agree with what the Chairman said as far as when we road up the lake in the boat and I am avid boater, so I'm not saying that I would see that but I mean everybody else is going to see that, especially the Mt. Washington and the tourists. It was clearly, all three were clearly visible.

T. Kinnon: Should we go through the checklist?

T. Morgan: I'm prepared to do that.

T. Kinnon: Before we do though, I would just like to thank the applicant, in my opinion, I think the applicant has presented very professional case. They have not come in here trying to bully us. I think they came in here presenting us with as much evidence and facts as they could without insulting us. I think they realize this Board does think and I want to thank them and I want to thank the public too because the public input is crucial on something like this. I wish this audience was this size at every Zoning Board hearing. You know, everything is passionate to somebody, so I would encourage everybody to please come to every Zoning Board meeting. First one, would you like to start Tim?

T. Morgan: Sure. This variance will be contrary to the public interest. In this particular instance I think the public interest we are protecting is the view shed of the Lakeside residential area and view sheds for the tourists from Alton Bay and I think that that public interest out weights the public interest of the provision of cellular telephone service.

T. Kinnon: I agree.

S. Hurst: I also agree.

D. Schaeffner: I would agree.

T. Kinnon: Spirit of the ordinance. The request is not in harmony with the spirit of the zoning ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed. The district within which it is proposed is one of the most stringent districts that we have in town and because it does impact the view which this town does derive a great deal of revenue from I believe it would not be in the spirit with the ordinance or the Master Plan which was also crafted to protect the view shed.

S. Hurst: I agree also that it is not in harmony with the spirit of the zoning ordinance.

D. Schaeffner: I would agree.

T. Morgan: I agree that it's not in harmony with the spirit of the zoning ordinance. We did have the fire chief and other people come before us and offer testimony with regard to the safety and health of the people in the town and that's an important consideration but in this particular case the overriding interest of the Master Plan and the spirit of the zoning ordinance is the protection of the lifestyle of the town and the townspeople of Alton.

S. Hurst: By granting the variance substantial justice will not be done. I just feel that the town's people have spoken with the ordinance they voted on and would like to uphold it.

D. Schaeffner: I would agree that the substantial justice wouldn't be done.

T. Morgan: I feel that substantial justice will not be done in granting this variance because as we said it's not within the harmony of the spirit of the zoning ordinance and is contrary to the public interest.

T. Kinnon: I also agree that granting the variance substantial justice will not be done. To simply deny requests for a variance because it's negotiable because it goes contrary to the zoning ordinance I don't feel as though, it's a valid reason but the degree to which this goes outside of the zoning ordinance is so great that I feel it would be an injustice to grant it.

D. Schaeffner: Request will diminish the value of surround properties. This is a tough one. Because I have seen places where houses have sold like hotcakes across from a cell phone tower but in this area where the view, the lake, you know you come to Alton Bay but you also come to Lake Winnepesaukee and you do see that around when you do come to a tourist area like this, if you do see someone has bought a place for the view. On the other one I could not see, the only place I could see, and I don't want to relate the cases but the only place I could see it was from off the road in a gravel pit, an operating gravel pit, which no one is going to go to for tourism unless they need beach sand, but in this area, you know, it is going to affect the property values. I believe not so much monetarily but just in sentimental value, I'm using the wrong word I

guess, but just the marketability I guess I would say. So I would have to say that it would diminish the property value.

T. Morgan: I agree that the request would diminish the value of the surround properties. The town of Alton assigns a financial value to view sheds through it's taxing authority and if the view shed is of sufficient value to tax then it is of sufficient value to protect.

T. Kinnon: I also agree that the request will diminish the value of surrounding properties. I once owned a home that was about 400 feet from a 600 foot tower but it was behind my house and it did not affect any view and it was there prior to moving in but I do feel that it diminishes the value and also diminishes the market for which the property would be attracted to.

S. Hurst: I also agree the request will diminish the value of surrounding properties. I'm a licensed real estate broker in the State of New Hampshire. I have my own company with my wife. We have showed many, many properties in the area. The two key things people look for is waterfront property and properties with a view and I just feel that obstructing this view would diminish the desirability of the property.

T. Morgan: Because this is an application for an area variance the Boccia case hardship criteria apply. And those are two fold. The first is that an area variance is not needed to enable the applicant's proposed use of the property given the special conditions of the property or town ordinance would allow them to construct a cell tower that would be 10 feet above the tree canopy and they can do that on this property. The benefit sought by the applicant can be achieved by some other method reasonably feasible. I'm not personally convinced that despite site investigations that a combination of structures or other sites wouldn't accomplish cell phone coverage in the town and I don't think I've heard sufficient testimony that a combination of the structures and potential sites has been investigated.

T. Kinnon: I'll simply agree.

S. Hurst: The same here, I'll agree.

D. Schaeffner: I will agree.

T. Kinnon: Okay, based on the above analysis special conditions do not exist such that the literal enforcement of the zoning ordinance results in unnecessary hardship.

**Motion** by T. Kinnon to deny Case Z05-34. Second by S. Hurst. No discussion. Vote unanimous.

**Motion** by T. Kinnon to adjourn. Second by S. Hurst. No discussion. Vote unanimous.

Respectfully submitted,  
Carolyn Schaeffner, Recording Secretary