

APPROVED by Planning Board 12-19-06  
APPROVED by ZBA 12-07-06  
ALTON PLANNING BOARD and ALTON ZONING BOARD OF ADJUSTMENT  
JOINT PUBLIC HEARINGS

**Meeting Called to Order:** at 7:05 p.m. by Jeremy Dube-Chairman, Alton Planning Board

**Members Present:** Planning Board: Jeremy Dube, Tom Hoopes, Jeanne Crouse, Cris Blackstone, Bonnie Dunbar, James Bureau, Wally Keniston. Zoning Board: Marcella Perry, Tim Kinnon, Timothy Morgan, Paul Monziona, Stephen Hurst, David Schaeffner.

**Also Present for the Town:** Eric Reitter, Mark Hutchins, Monica Jerkins-Planning Assistant, and Carolyn Schaeffner-Recording Secretary.

**Appointment of Alternates:** James Bureau and Bonnie Dunbar. Wally Keniston will not be appointed but noted he may speak.

**Approval of Agenda:**

**Motion** by T. Hoopes to approve the agenda as presented. Second by J. Crouse. No discussion. Vote unanimous.

J.Dube reminded the public to sign in on the sign-in sheet located at the door and reminded the Board members to speak into the microphones for the tape. Discussed mail left on his doorstep and noted this information will not be submitted for the record. J. Dube explained to public how to submit information to be presented to the Board.

M. Perry stated she would be recusing herself from joint hearings only.

**Applications for Public Hearing:**

**Case # P06-41** **Map 14, Lot 21** **Site Plan Review**  
**Industrial Communications & Electronics** **486 East Side Dr. (NH 28A)**  
**Co-applicant: RCC Atlantic, Inc. d/b/a Unicel**  
**and U.S.C.O.C. of New Hampshire RSA #2, Inc., d/b/a U.S. Cellular**  
**Owner of Record: New England Nominee Trust**  
Application submitted by Earl W. Duval, Esq., on behalf of the applicant, Industrial Communications and Electronics, Inc. for review of a site plan for a proposed wireless telecommunications facility consisting of a 120' monopole, a 10' x 12' equipment shelter, an 11' x 19' equipment shelter and a back-up power generator in a 100' x 100' fenced compound. The property is located in the Lakeshore Residential Zone. Continued from the September 12, 2006 hearing.

**Case # P06-42** **Map 19, Lot 8-2** **Site Plan Review**  
**Industrial Communications & Electronics** **1439 Wolfeboro Highway (NH 28)**  
**Co-applicant: RCC Atlantic, Inc. d/b/a Unicel**  
**Owner of Record: Roberts Knoll Campground, LLC**  
Application submitted by Earl W. Duval, Esq., on behalf of the applicant, Industrial Communications and Electronics, Inc. for review of a site plan for a proposed wireless telecommunications facility consisting of a 120' monopole and a 10' x 12' equipment shelter in a 100' x 100' fenced compound. The property is located in the Rural Zone. Continued from the September 12, 2006 hearing.

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Present for this case: Earl Duval, Don Cody, Kevin Delaney, Jacob Warner, and Ken Kazura.

J. Dube felt the balloon test went well with regards to the weather. Regarding the Wolfeboro Highway site, he did not feel this was very visible.

J. Crouse added that she believed the site visit on the boat provided a more prominent view of East Side Drive than even from the road. Felt you could not enter or exit the Bay without seeing the balloons.

J. Dube stated he is still not comfortable with the two sites approached by the applicant as alternatives that had return receipts. Also, the intent of the new ordinance, when adopted by the town, was to minimize tall towers. Feels the intent was to see if a network of smaller towers that would comply with zoning would provide the same coverage.

B. Dunbar agreed this was the intent of the ordinance; to camouflage the towers. Understands that after viewing the tests that some leeway might need to be taken under consideration.

T. Hoopes noted that the purpose or intent of changing the ordinance was due to several of the designated properties that were inaccessible. Feels the intent was to encourage service in the town. Want to try to make these sites as invisible as possible.

D. Cody responded to the Board's comments. Stated they are not here to alter the view in Alton. Feels the test went as well as it possibly could. Felt the balloons were clearly visible. Question at hand is how can we make this the least intrusive as possible while making economical and practical sense. 120 feet is not high; most towers are 180 – 200 ft high. They do need some space to accommodate the carriers. There are not a lot of other sites. This can be hidden as a tree at an additional expense. The new trees look more like trees in comparison to the first ones that came out that looked nothing like trees. If this is what it takes to make the 120 ft work, then they are willing to work on this. Regarding notifying owners of alternative sites, they went through this process several times. They committed to buying 28 acres of land and are committed to protecting the areas around the site. Letters went out to abutters by certified mail. They have looked at alternative sites and there are none that are available. There are not enough lots in the town of Alton to accommodate all the carriers.

K. Delaney spoke regarding looking at all the alternatives in notifying all abutters. The two notifications were to the Catholic Church and Evans Hill. "Raw land" did not get certified letters.

B. Dunbar asked if these notifications were sent out for the larger towers.

K. Delaney stated it was for the existing locations.

B. Dunbar asked what the letter was asking.

K. Delaney stated it was for a wireless communication facility – non-specific.

E. Reitter stated they sent a letter regarding the existing structures. The question goes back to whether a multiple structure network could provide the same coverage as a single tall tower. Individually all of those structures do not work. Town Hall, Catholic Church, Community Church. On composite coverage map what

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happens if you eliminate those two towers.

Jacob Warner addressing question of map 7. Coverage from ICC facilities – report submitted June 12, 2006. Noted the green on the map is for proposed facilities.

M. Jerkins noted the color map is attached to a letter dated August 16, 2006.

E. Reitter asked if the structures were available and a tower installed there, would there still be two holes on 28? Based on the structures they provided there would be complete coverage.

P. Monziona wanted to talk about holes in coverage. Asked about what area is being talked about regarding the holes.

J. Warner indicated an area on Route 28 with no coverage. The coverage gap covered 2.5 miles for thousands of travelers on that particular road.

P. Monziona stated this is approximately approx 17 seconds.

J. Warner noted the sites indicated by Mr. Reitter cover significant areas of coverage.

J. Crouse questioned the number travelers on this road.

E. Reitter stated that the two sites that did not respond should be considered unavailable.

T. Kinnon asked a question how many towers is it going to take for coverage or how far apart.

M. Hutchins stated if limited for the height (20 feet above the treetop) they would need to be approximately 400 feet apart.

T. Kinnon added this could conceivably be 18 structures (6 for three providers).

E. Duval would like to address the existing structures regarding correspondence from September 20, 2006. Noting #5 they believe that they have provided more than sufficient due diligence in investigating those structures and have followed the spirit of the ordinance. Those structures are not available.

J. Dube does not feel the board is stuck and is trying to work with the applicants and following the rules and regulations that the town of Alton has adopted.

E. Reitter added based on the structures the applicant provided, 9 contacted with no response. 4 contacted with affirmative interest. Asked if other areas should be looked at for a final study, seeing if yes the site will work or no the site will not work and be done with that and go on.

C. Blackstone asked if any of these towers would have lights on top.

D. Cody stated no. Noted they have FAA approval on the sites and they do not need to be lit.

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M. Hutchins confirmed this approval.

T. Kinnon asked Mr. Hutchins the difference with the grid tower on Old Wolfeboro Road and these sites and the FAA approval and comparison with the locations.

J. Dube stated the purpose for tonight is to determine if the applicant's have met with the requirements of the Ordinance.

B. Dunbar suggested renotifying with more specifics in keeping with the zoning and suggested home of Dr. Mahoney next proposed area. Asked about using one of the islands (i.e. Barndoor has a house with a tall cupola, Rattlesnake Island).

J. Dube noted anything on islands needs to be 50 feet from the water.

T. Hoopes suggested several locations (Cates Hill, edge of Drew Hill Road). Suggested using local contacts and recontacting.

D. Cody stating with regard to the islands there is concern for source of power, etc. Feels they have done significant due diligence.

K. Delaney added that the Mt. Bett area was looked from a coverage standpoint and it did not work.

M. Hutchins noted he did check the Mt. Bett area and he used Cates Hill as a stand-alone site.

J. Crouse question on number of carriers, would like to see a colored map with more site information.

D. Cody stated that under the regulations, towers are permitted. They are not under restraint to find alternatives. Acknowledged this is very technical and feels the experts have demonstrated what is available does not give adequate coverage at the lower height. Stated the Town expert noted that the ordinance for height does not work.

J. Dube reiterated that they have exhausted all other structures.

M. Hutchins feels they have done so.

J. Dube does not have a problem with the sites but the Board has to follow the rules. Feels the Planning Board has done so.

T. Hoopes would like to hear a definition of adequate due diligence.

J. Dube stated he feels they are past that point and due diligence does not matter and they have indicated they do not want to look at any other sites.

P. Monziona asked if Mr. Dube thinks the Planning Board is done, and the matter will be presented to the ZBA, feels it will be helpful to know, if the applicant is being refused, are they being refused on the lack of due diligence, whether they are being refused that their application exceeds the regulations and therefore they need a variance or what. Wants to make sure the ZBA fully understands the Planning Board's recommendation.

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8:15 p.m. 5 minute recess.

8:25 p.m. resumed meeting.

Open to public input.

David Slade – owner of Miramichi Hill, abutting properties. Noted that even at the lowest heights he could see the balloons from his porch. Respectfully disagrees with what has been proposed. Feels they will all be adversely impacted. The cell tower is being proposed only 150 from abutter property. Noted that he could see the balloons from his porch. Referred to a case in Franklin that denied a site plan approval on the basis of the property being clearly visible by the abutters. Case USCOC vs. Town of Franklin. Feels they have failed and refused to meet the notification requirement. Feels the point is they must give notice regardless of whether this is adequate coverage. States that this ordinance as written is constitutional. Read from several cases supporting his points. Question of whether or not 10 feet above the tree line is enough. Feels this is “hogwash”. Feels that applicant contradicts itself on 10ft limitation. Stated that vertical co-location is not required, as applicant has stated; it is permitted but not required. Stated that case law stated that the burden is strictly on the applicant to prove exhaustive due diligence. Disputed how tree height was calculated. Stated it was selective and not every tree. Feels this ordinance does not have a hope of achieving its purpose unless the boards enforce the ordinance in accordance with its terms. Noted the applicant owns this land and will not look any further.

J. Dube asked Mr. Slade where his residence is with reference to the location of the tower.

Slade explained where his property is located and stated that he intends to rebuild from the site mentioned. This is not his personal residence.

J. Dube noted in response to Mr. Slade’s statements that the applicant was willing to disguise the towers.

Slade added there is no way that this particular location on a ridgeline will not dominate the view shed. He also added that from the stonewall of his property it will be clearly visible.

J. Dube stated that the application process is difficult due to the fact this is the first time an application has come through the Department under this new ordinance. The Board is acting on the advice of Town Counsel.

Slade would like to submit for the record his proposed ruling.

J. Dube informed him to submit it to the Planning Office.

T. Kinnon stated that when this goes to the ZBA for a height variance there will be public input at that hearing as well.

P. Monziona would like case citations from Mr. Slade for those he has mentioned this evening.

Russ Wilson, Alton resident, would like to respond to Mr. Duval’s letter of September 20, 2006. Comments on Mr. Duval’s references of “topping trees” and his conversation with a forestry employee and his opinion of the effect on a tree when topped. Discussed his opinion with the commercial use of putting a cell tower in the middle

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of a campground. Feels there are less conspicuous sites than Miramichi Hill like Alton Mountain Road. Stated that 75% of the voters voted for the 10 ft. over-the-tree-line cell tower ordinance. Feels a denial will not ban service in Alton Bay.

W. Keniston asked Mr. Wilson what his bottom line would be and what would he have the Board do?

R. Wilson said he would just have the Board enforce the ordinance and not go along with Mr. Cody's business plan.

Marilyn Slade would like to see the both Boards find a way to enforce the ordinance and preserve the beauty of Alton Bay.

Ernest Luttig, 9 Peggy's Cove Road, Alton, stated looking at the general symmetry on the tree line you can see where new home construction takes away the tree canopy. Spoke of how the tree canopy has been taken away by Hannaford. Feels that making wireless telecommunication available is important and taking away tree canopy is already occurring from new home construction. Feels it is in the best interest of the consumer to allow competition of coverage. Questioned the Board on if the ordinance is in accordance with FCC regulations.

J. Dube stated yes.

Betty Sackos, East Side Drive, Lakeshore Residential Zone. Voted for the ordinance to protect her view of the land and moved here from Massachusetts with the intent to get away from industry and purposely chose where she and her family lives now because of not seeing towers, buildings etc.

Karen Stacy, Alton Mountain Road. Read her opinion of what she feels of the cell tower placement from the view of her land. Feels it threatens her public rights, family health and hazards from cell towers. Feels the applicant is only here for money and not for the benefit of Alton residents. Asked why additional sites could not be strategically placed with repeaters, camouflaged and in non-residential areas? Micro-cell towers and repeaters can be used to fill in the gaps and has not heard this mentioned by the applicant.

Roger Sample, Rand Hill Road, Alton resident spoke about the view. Felt that eventually the towers will only be noticed when you look for them. Feels you can do what you want with your own property.

Dale Schaeffner, Frank C. Gilman Highway, Alton. Spoke of what technology can do to better serve the town of Alton with better cell service.

Closed public input.

**Motion** by T. Hoopes to continue beyond 10 p.m. Second by C. Blackstone. No discussion. Vote unanimous.

J. Dube wanted the Board to discuss their opinions on due diligence.

J. Crouse recused herself at this time for the East side Drive property.

Case P06-41 findings (East Side Drive property).

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Motion by B. Dunbar that the Alton Planning Board finds that 120 feet is outside the limits of the Town of Alton Ordinance for a ground mounted wireless facility. Second by T. Hoopes. No discussion. All agree.

Motion by B. Dunbar that the Alton Planning Board finds that 120 foot tower would dominate the view shed of Alton Bay which is in violation of the Zoning Ordinance 603:77.6 scenic landscapes and vistas and of section 335 of the Zoning Ordinance, Appearance Review. A. Purpose – to protect significant view sheds and vistas. Second by T. Hoopes. No discussion. All agree.

Motion by B. Dunbar that the Alton Planning Board finds that the Zoning Ordinance 603 is upheld by directives and conformance to the Master Plan and the Future Land Use chapter of the Master Plan, Page 19, adopted in 1999, Action 10 was the creation of specific telecom regulations and Action 11 encourages aesthetically pleasing development. Second by T. Hoopes. No discussion. All agree.

Motion by B. Dunbar that the Alton Planning Board finds that the applicant has not investigated a multiple unit network of 4 to 5 wireless facilities or more as Ordinance 603 envisioned when it provided unlimited sites in the town. Second by T. Hoopes. No discussion. All agree.

Motion by B. Dunbar that the Alton Planning Board finds the applicant has not made inquiry of possible site owners expressing the aesthetic limitations of Ordinance 603 and therefore has limited responses. Second by T. Hoopes. Discussion: W. Keniston asked if this was a motion or finding. J. Dube informed these are all findings. C. Blackstone asked limited what? B. Dunbar answered limited responses. C. Blackstone added due to the nebulous nature of the wording in their letters. T. Hoopes agreed with that statement. 4 in favor, 1 opposed.

**Motion** by B. Dunbar that this application be sent to the ZBA for the request in seeking a variance and the application is tabled until such time as it may appear back on the Planning Board docket. Second by T. Hoopes. Discussion: T. Hoopes stated that the Planning Board has made a finding that 120 feet is too high. The East Side Drive tree canopy is at 61 feet according to the Town Forrester. If they assume that the balloon is at 95 ft plus a little for the wind, which would be 34 feet over the existing canopy. T. Hoopes stated he is not comfortable with simply saying 120 feet is too high.

**Motion rescinded by Bonnie Dunbar.**

Move by T. Hoopes that the Alton Planning Board finds that a height of no more than 75 feet should be considered. (Motion did not receive a second).

General discussion on heights.

J. Dube does not feel specific height should be made.

Motion rescinded by T. Hoopes.

**Motion** by B. Dunbar the Alton Planning Board turn the East Side Drive case P06-41 to the ZBA for further deliberation on a variance per the applicant's request. Second by T. Hoopes. Discussion: J. Bureau asked for clarification of what the Planning Board is doing with the findings. J. Dube stated these are a list of findings for the ZBA. T. Kinnon added the applicant would now need to decide how they want to approach this either as a request for a variance or a request for an administrative appeal. J. Dube asked E. Reitter about a conversation

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with Attorney Sessler regarding this process. E. Reitter confirmed it was his understanding that this would be referred to the ZBA and that it would not be an outright denial. No further discussion. Vote unanimous.

J. Crouse resumed her seat on the Board.

Case P06-42 findings (Robert's Knoll Campground).

Move by J. Dube that the Alton Planning Board finds that from the balloon test the view shed was not tremendously impacted by that site. Second by B. Dunbar. No discussion. 1 abstention. 5 in favor.

Move by B. Dunbar that the Alton Planning Board find that 120 feet is outside the limits of the Town of Alton Ordinance for a ground mounted wireless facility. Second by T. Hoopes. No discussion. All agree.

Move by B. Dunbar that the Alton Planning Board finds that the applicant has not investigated a multiple unit network of 4 to 5 wireless facilities or more as Ordinance 603 envisioned when it provided unlimited sites in the town. Second by T. Hoopes. No discussion. All agree.

Move by B. Dunbar that the Alton Planning Board finds the applicant has not made inquiry of possible site owners expressing the aesthetic limitations of Ordinance 603 and therefore has limited responses. Second by T. Hoopes. No discussion 5 in favor, 1 opposed.

J. Dube asked the ZBA if there is anything that they need clarified by the Planning Board.

T. Kinnon stated the two variances for height restrictions are very clear. Has a question on the findings that the Planning Board has made that are coming to the ZBA.

J. Dube explained findings vs. motions. Findings need variance and hence go to the ZBA.

T. Kinnon feels the findings are unresolved.

J. Dube stated this was how Attorney Sessler advised the board on how to act.

General discussion that this could continue back and forth between the boards.

T. Kinnon stated that until this is denied there is no appeal process. ZBA does not have a process for this. Only for Special Exception, Variances and Appeals.

T. Hoopes stated the idea for making findings was for the ZBA to understand the position of the Planning Board.

C. Blackstone feels that the Town Attorney has said give your opinion.

T. Morgan stated he was confused with the findings in comparison with the two properties.

T. Kinnon asked how the applicant can apply for what they need to apply for unless there is a written decision.

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P. Monziona asked if the applicant has agreed to this process. Noted also that the applicant, Town Counsel and the Boards have all agreed that this is the way it would be handled and with the findings of the Planning Board, the ZBA now knows what variances the applicant may need to seek from the ordinance. Stated the Planning Board has identified certain areas of the ordinance that the applicant has failed to meet. So the applicant can either appeal this or perhaps seek a variance from having to meet those requirements of the ordinance. Typically this would not get to the ZBA until there was a denial and some process. He would think that the applicant would agree to whatever the Boards agree to and everything would be fine. He suggests tabling it, as Counsel has suggested. Another meeting with Town counsel may help to clarify the process and the applicant could have the option of getting a denial or proceeding as Town Counsel has described.

J. Dube suggested for a motion to continue.

D. Cody stated they agreed to the joint hearing. Started this process over a year ago for a location variance before the ZBA. That was modified when the regulations were changed. That is as far as their agreement goes. He feels Town Counsel should give the guidance on the process.

**Motion** by B. Dunbar that the Alton Planning Board turns the Roberts Knoll Campground case P06-42 to the ZBA for further deliberation on a variance per the applicant's request. Second by T. Hoopes. No discussion. Vote unanimous.

General discussion on how to proceed and how to advise the applicant to proceed.

M. Jerkins suggested that the Planning Board continue to a date certain tonight for the joint Boards to meet after discussing this with Town Counsel.

E. Duval would like to understand the difference between the findings of the two properties.

J. Dube noted only difference for the Roberts Knoll was the visual impact difference.

J. Dube noted he would get with Attorney Sessler on the question of new findings, and whether the Planning Board's decision should be the denial or to table the applications.

General discussion on continuing.

J. Dube noted if they can notice for a joint meeting even if what the Planning Board needs to do takes only 5 minutes, at that point the Zoning Board can convene and the Planning Board is out of the picture.

T. Kinnon noted they could not convene at that point; notices would have to be made. They really cannot set a date for the height variance until they know how the Planning Board decision is going to be resolved.

Slade feels the Planning Board needs to make a finding on how the tower will dominate view shed at statutory height.

J. Dube stated this is how they wanted to word this.

General discussion on scheduling a date.

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**Motion** by B. Dunbar to continue the joint meeting of the Planning Board and ZBA for case P06-41 and P06-42 to Thursday, November 2 at 6:30 p.m. Second T. Hoopes. Discussion. J. Dube noted J. Crouse originally thought she was an abutter for Case P06-41. Now she confirms she is not an abutter for the Planning Board cases. After discussion with Attorney Sessler they agreed that she would continue to step down from this case. They are going to revote on the East Side Drive findings. No further discussion. No vote taken.

**Motion** by T. Hoopes to continue the joint meeting of the Planning Board and ZBA for case P06-41 and P06-42 to Thursday, November 2 at 6:30 p.m. Second by C. Blackstone. No discussion. Vote unanimous.

**Motion** by T. Hoopes to adjourn. Second by J. Crouse. No discussion. Vote unanimous.

Respectfully submitted,  
Carolyn Schaeffner, Recording Secretary