



# Lincolnvile citizens absorb legal arguments, prepare for cell-tower debate

By Lynda Clancy

*VillageSoup/Knox County Times Reporter*

LINCOLNVILLE (May 1): For two hours, Lincolnvile's Board of Appeals listened to dueling lawyers debate whether or not the town's planning board erred in denying a cell-tower permit to National Grid Communications.

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By the night's end on April 26, the board's five permanent members, Richard Osgood, Mike Hutchings, Brian Demers, Betty Johnson and Donna Brown, and two alternates, Reed Matthews and Andy Young, gathered their papers and left the Lincolnvile Central School without conversation.

Just minutes before, Chairman Betty Johnson had instructed them not to talk to each other, or anyone else, about the case. Study the material, she advised, and return May 17 ready to deliberate.



GridCom attorney Jonathan Springer, seated, and Lori Londis Dwyer, attorney for Lincolnvile citizens opposing the siting of GridCom's 190-foot telecommunications tower. (Photo by Lynda Clancy)

"The only time to talk to each other is in deliberations," she said. "I hope we would adhere to this. It is not appropriate to go get any other information or visit the site."

The appeals hearing represented the third time National Grid Communications, or GridCom, has appealed a planning board decision in the past year.

GridCom submitted an application in the summer of 2005 to construct a 190-foot monopole on land that lies below Bald Rock summit and Route 1. Owned by James Munroe, the wooded acreage abuts Camden Hills State Park, and since the application first appeared, there has been debate over the tower's impact on the viewshed.

The property lies within a viewshed below the summit of Bald Rock Mountain, as noted on the town's 1989 scenic resources map.

"Please don't send us back to the planning board," said GridCom's attorney, Jonathan Springer of the Portsmouth, N.H. firm Bosen and Springer. "That board is never going to approve this project."

Instead, he urged the board to "promote a rapid deployment without undue delay" of a decision in favor of his company.

Attorney Lori Londis Dwyer of the Portland firm Bernstein Shur represents a group of residents opposing the tower. She argued that the town's planning board had substantial evidence to deny the cell-tower application. But she agreed with Springer that the appeals board need not send the case back to the planning board.



Dwyer confers with orraine Davis, at the photo by Lynda Clancy)



Attorney Lori Londis Dwyer addresses the Lincolnville Appeals Board at the April 26 meeting held at the town's school. From left, board members include Richard Osgood, Mike Hutchings, Brian Demers and Chairman Betty Johnson. (Photo by Lynda Clancy)

"You don't have to remand to the planning board," she said. "You can deny their appeal. It can just stop here."

GridCom is a subsidiary of National Grid Wireless, based in Westborough, Mass., itself a subsidiary of the London-based National Grid Transco. GridCom sites and builds communications infrastructure for businesses and government. In Lincolnville's case, it has teamed up with Unicel, owned by Rural Cellular Corporation, to build a cell tower to provide, it has said, seamless coverage without gaps or dead spots in phone reception.

GridCom and Unicel appealed the planning board's previous two permit denials, decisions based in part on the board's interpretation of ordinances and standards guiding visual impacts on scenic resources. Both times, the planning board voted

against permitting the project under the town's wireless communications rules, which state that a facility "shall not unduly obstruct or have an unreasonably adverse impact upon a scenic view as identified in the Comprehensive Plan Scenic View Map...."

But in November, the town's appeals board voted 2 to 1 in favor of GridCom/Unicel, overturning the planning board vote on the telecommunications requirements of the ordinance. In January, the application again went to the planning board, this time under the town's commercial site plan review rules.

In February, the planning board again denied a permit to GridCom, citing a lack of steps taken by GridCom to maintain and preserve the scenic area to the maximum extent.

GridCom then submitted an appeal of that decision in March, which drew the parties back to the appeals board table on April 26.

This time, however, the town ensured that its board turned out in force, with the board's attorney Terry Calderwood of Gibbons and Calderwood advising its members to concentrate on whether the planning board erred in interpreting the ordinance.

Then the two attorneys launched their arguments, occasionally sparring with each other, and each talking for approximately an hour, while the appeals board remained still and attentive.



The appeals board hearing was held in the Walsh Common at Lincolnville Central School. Also in the dining hall is one of the Vanguard 420s acquired by the Lincolnville Boat Club, which will offer sailing lessons this summer on Norton Pond. (Photo by Lynda Clancy)

"We have been coming up here for almost two years," said Springer, adding that the town has three attorneys working on this particular case, with two lawsuits filed in court (Waldo County Superior Court and U.S. District Court in Bangor).

At the April 26 meeting, he said:

- The proposed project meets all the requirements of the town's telecommunications rules, and the tower would be erected in an area of town allowed by its own ordinance.
- The proposed tower, consisting of Core-Ten steel, would rust on its exterior and blend in with the trees. Furthermore, he said, the tower would not break the tree line when viewed from the summit of Bald Rock.
- The planning board erred in considering the tower under its site plan review regulations because it had already considered the project under the telecommunications section of the ordinance. That eliminated the need for a second review under a second set of requirements, said Springer.

"We met every requirement in Section 19," he said. "Even if you bring in Section 18, we still meet [the requirements]." He said the basic standard of law precludes the application of more detailed ordinance controls. The town did so in applying Section 19, its telecommunications regulations, he said.

- That the proposed spot on Munroe's land does not lie on a hillside.



Lincolnton code enforcement officer Jana Wood and attorney Terry Calderwood at the appeals board hearing. (Photo by Lynda Clancy)

"We're down where it's flat," he said. The hillside provision doesn't say there can't be any visual impact, he said. It says to fit a development in to the maximum extent practical. He emphasized that GridCom has attempted to work with the town.

"We cooperated with the planning board quite well," he said.

Noting that the process began in 2005, "I've never had this length of time," he said, with a project under regulatory review, since he started in 1996. "It's time to bring this to a close."

Attorney Dwyer then rebutted Springer, saying, "The applicant has made quite a big deal about the amount of time this has taken. When you look at this process, everything was done efficiently, promptly and within the ordinance."

She said, "Everyone knows there are pending lawsuits, but that has nothing to do with your proceeding."

Dwyer represents Lincolnton residents Lorraine Davis, Daniel Henry, Will Brown, Susannah Gage, Whitney and Tony Oppersdorf, Cindy and Jim Dunham, Cheryl Cassidy, Ron Pinkham, and Rob Stenger III, who oppose the project and who appealed the previous appeals board decision to Waldo County Superior Court.

She cited a Maine Supreme Court decision that concludes that there is competent evidence in the record to support a decision.

"There is more than competent evidence in the record to support the denial," she said, adding that the planning board was held in its decision making to a high standard in the ordinance to care for the scenic area, which lies next to a state park, itself a public facility.

She said:

- The proposed site is on a hillside -- "This whole thing is about looking down." Route 1 is at an elevation of 100 feet, and the tower site is at 350 feet, she said. "That's uphill."
- GridCom/Unicel never entertained any other tower design modifications or reconsiderations of its height, other than to use Core-Ten steel.
- Town ordinance does not exempt wireless communications towers from site plan review. "If they [ordinance drafters] wanted to exempt cell towers, they would have said so," she said.

Dwyer wrote in a response to GridCom's appeal on April 24 that "GridCom selected the site knowing it was in a designated viewshed; GridCom proposed to build a 190-foot tower in the dead center of that viewshed; GridCom never explained why there is coverage through other carriers in this area where it alleges a 'significant coverage gap' and the source of that coverage; and GridCom never affirmatively demonstrated why no other location or design – one that was less obtrusive – would work."

### **Timeline**

GridCom and RCC Atlantic, doing business as Unicel, arrived in Lincolnville in 2005, officially submitting an application to construct a 190-foot telecommunications monopole on private land that lies between Route 1 and Bald Rock Mountain. What follows is a chronology of meetings and events concerning that application.

- July 27, 2005, GridCom files a pre-application for a 190-foot wireless communication tower with the Lincolnville Planning Board
- Sept. 1, 2005, GridCom files a formal application
- Sept. 14, 2005, GridCom and Lincolnville Planning Board meet
- Oct. 26, 2005, GridCom and Lincolnville Planning Board meet
- Dec. 14, 2005, the planning board holds a public hearing
- March 8, 2006, GridCom application reviewed by Lincolnville Planning Board, denied
- May 25, 2006, Lincolnville Board of Appeals hears GridCom's appeal of planning board denial
- July 24, 2006, Lincolnville receives federal case summons after GridCom files in U.S. District Court
- June 25, 2006, Lincolnville Board of Appeals remands application to planning board, asking board to clarify decision
- Sept. 13, 2006, Planning Board receives remand; makes second denial of GridCom application
- Nov. 2, 2006, Lincolnville Board of Appeals conducts second appeal hearing; two new members join board; hearing continued
- Nov. 16, 2006, Lincolnville Board of Appeals continues hearing; orders planning board to approve
- Dec. 7, 2006, citizens ask board of appeals to reconsider vote; board rejects request by a 2-1 vote
- Jan. 22, 2007, Lincolnville Board of Selectmen votes to reject removal request
- Jan. 10, 2007, Lincolnville Planning Board votes to continue deliberations, closing public comment
- Jan. 31, 2007, planning board accepts proffer from attorney representing plaintiff; does not vote to re-open deliberations
- Feb. 14, 2007, a snowstorm postpones the planning board review until Feb. 28
- Feb. 28, 2007, Lincolnville planning board votes 3 to 1 to deny GridCom a commercial site location permit based on lack of clear representation of how the tower would appear
- March 27, 2007, GridCom appeals the decision to the town's appeals board

- April 26, 2007, Lincolnville appeals board begins the appeals process, hearing from two attorneys
  - May 17, 2007, Lincolnville's scheduled appeals board meeting to resume hearing
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