

**INDUSTRIAL COMMUNICATIONS & ELECTRONICS, INC.**

v.

**Decision #96-12**

**OLD KING'S HIGHWAY REGIONAL HISTORIC  
DISTRICT COMMITTEE FOR THE TOWN OF  
BARNSTABLE**

On Tuesday, January 14, 1997 the Commission held a hearing on Appeal #96-12 filed by Industrial Communications & Electronics, Inc., seeking review of a decision by the Barnstable Historic District Committee which had denied a Certificate of Appropriateness for a radio antenna and support building to be located at 95 Spruce Pond Road, West Barnstable, Massachusetts.

Present were Peter Freeman, Barnstable; Roy Robinson, Brewster; Marian Reilly, Sandwich; Robert Miller, Yarmouth; Chick Craig, Dennis; Christopher Miner, Orleans; Robert G. Brown, Commission Counsel; Michael D. Ford, Attorney for the Appellant; Gordon Clark, Agent for the Appellant; and Frank Dirico, President of Industrial Communications & Electronics, Inc.

The Committee's decision was filed with the Town Clerk on November 21, 1996. The appeal was entered with the Commission on December 3, 1996 within the 10 day appeal period. The 30 day determination period was extended by agreement.

**THE APPELLANT'S PRESENTATION:**

Michael D. Ford, Attorney for the Appellant, addressed the Commission in favor of the appeal. He introduced Gordon Clark, designer of the project, and Frank Dirico, President of Industrial Communications & Electronics, Inc..

Gordon Clark addressed the Commission in favor of the appeal. He displayed renderings of both the original and revised plans of the support building. He said that the building cannot be seen from a public way but, nevertheless, it is appropriate. He said that there are other towers in the general area and that the Appellant's tower is just as appropriate as this tower.

Attorney Ford again addressed the Commission and took issue with the Committee's written decision which stated that the proposed tower would be 300 feet taller than other towers in the area, pointing out the WQRC tower which is 470 feet tall.

Addressing the issues of setting and hardship, Attorney Ford stated that the site is 15.50 acres and is on the edge of the District, abutting Route 6. Also, there is the fire tower on the site. With regard to the issue of hardship, he said that there is hardship to the site and that the Committee did not do justice to the hardship criteria. He said it is impossible to build a radio communications tower to be in conformance with the historic district. He displayed pictures taken from Route 6A in front of the Cape Cod Cooperative Bank which show other communications towers in the general area as the Appellant's proposed tower. He said that the application could be approved without substantial detriment and, due to the height of the proposed tower, could be made available to a number of different users which would negate the need for other towers in the area. He took issue with the Committee's ultimate determination that there was no hardship, claiming that the Committee's statement was a conclusion and not backed with sufficient specific findings.

He distinguished this case from the Sleeper case which had been cited by the Committee, claiming that the Sleeper case involved an amateur ham radio operator who was seeking to pursue a hobby, as opposed to the Appellant who was operating this as a business.

In answer to a question from Robert Miller of the Yarmouth Committee, Attorney Ford said that the site could possibly be utilized for more than one tower but that Mr. Dirico is willing to restrict the use of the site to one tower only.

#### **THE COMMITTEE'S PRESENTATION:**

Peter L. Freeman, representing the Barnstable Committee, addressed the Commission to explain the Barnstable Committee's reasons for denial. He said that use and public policy questions were beyond the scope of review of the Committee pursuant to the Old King's Highway Act. He said that the Appellant had acknowledged in his application to the Committee that the tower was not appropriate to the district and that the application would be based on hardship. He stated that the tower would not only be visible from the Cape Cod Cooperative Bank in West Barnstable, but would also be visible from the Lutheran Church in West Barnstable and from the area of the Jenkins' cranberry bogs in West Barnstable.

With regard to the Appellant's argument that a hardship situation existed in that it was impossible to build a tower that would conform to historic district guidelines, he said that this was a perfect example of setting up a situation where the exception would swallow the rule. In discussing the location of the tower, he acknowledged that the tower is on the edge of the district, but emphasized that it is still in the district and that, if standards are lowered due to the fact that a property is on the edge of the district, it would allow inappropriate structures to slowly creep into the district. He said that the Appellant had admitted to the Committee that the property had never been analyzed to determine its

usefulness and that, as such, no credible argument for hardship can be made. While the Appellant claims there is hardship because he bought the property with the intent of building a communications tower, it is a self-imposed hardship. He read a letter from the Building Commissioner of the Town of Barnstable which stated that the proposed 450 foot tower would be in violation of the zoning by-laws of the Town of Barnstable and would require a variance from the Town of Barnstable Zoning Board of Appeals. He said the Appellant should have made sure a tower was an allowed use prior to buying the property.

**DISCUSSION:**

Michael Ford, representing the Appellant, stated that the local committee had erred in its factual findings and took issue with Peter Freeman's statement regarding the visibility of the proposed tower, stating that the tower had not yet been erected. In addition, the Appellant had offered to fly a balloon over the site to demonstrate the tower's visibility but that offer had been rejected by the Barnstable Committee. He also stated that, in determining hardship, the Committee should not consider the underlying zoning.

In discussion among Commission members there was general agreement among the Commission members that the tower was not appropriate to the historic district and that any hardship claimed by the Appellant was self-imposed and that, as such, the Barnstable Committee had sustainable reasons for denying the Appellant's Certificate of Appropriateness.

**FINDINGS:**

The Commission made the following Findings of Fact:

1. That the Barnstable Committee did not act in an arbitrary, capricious or erroneous manner, or use poor judgment in denying the Appellant's application for a Certificate of Appropriateness. 5-0-1.
2. That the Barnstable Committee had sustainable reasons for acting in denying the Appellant's application for a Certificate of Appropriateness as the tower would not be compatible with or appropriate in the historic district and that any claim of hardship by the Appellant would fail as the claimed hardship was self-imposed. 5-0-1.
3. That the appeal be denied. 5-0-1.

**DETERMINATION:**

Based on the above findings, the appeal is denied.

Any person aggrieved by this decision has a right to appeal to the District Court Department, Barnstable Division, within 20 days of the filing of this decision with the Barnstable Town Clerk.

Christopher R. Miner  
Chairman