

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
DECEMBER 16, 2021
MEETING 7:00 PM**

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board Chair, Mr. Flanagan called the meeting of the Board of Adjustment to order at 7:00 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act and State Executive Order 103.

ROLL

Ms. Taglairino called the roll. It went as follows:

Mr. Cammarata	Present	Mr. Newlin	Present	Mr. Maselli	Present
Mr. Addonizio	Present	Ms. Sovolos	Present	Mr. Boyan	Present
Mr. Rosenbaum	Present	Mr. Symonds	Present	Mr. Flanagan	Present

Mr. Hall, Board Attorney, Mr. Fox, Board Engineer, Ms. Mertz, Board Planner and Ms. Taglairino, Board Secretary were present as well.

REGULAR MEETING

ADMINISTRATIVE

Mr. Flanagan announced the following applications are pending completeness:

<u>Application BOA# 14-20</u>	Donald & Eliza Murphy 49 Meyersville Road, B55/L5
<u>Application BOA# 16-21</u>	Ronald & Judith Preiss 110 Village Road, B15/L10.03, R-1 Zone

Mr. Flanagan announced that the following applications are carried until the January meeting with no further notice:

<u>Application BOA# 02-21</u>	Dr. James Wittig 34 Kitchell Road B1/L5 R-1 Zone
<u>Application BOA# 17-21</u>	Timothy and Rebecca Daniels 10 St.Clair Road, B 26.01/L33
<u>Application BOA# 19-21</u>	Andreas & Wendy Kertesz 19 Wildlife Run, B15/L22.04

MINUTES

Mr. Flanagan tabled the November minutes until the January meeting.

OLD BUSINESS

Application BOA# 17-18

New York SMSA Limited Partnership d/b/a Verizon
Wireless
8 Millbrook Road, B17/L1, PL Zone
Applicant requesting variance relief for use, per NJSA
40:55D-70(d) for a cell tower.

Presenting:

Richard Schneider, Attorney

Mr. Mlenak is acting Board Attorney for this application.(On the phone)

Robert Simon is an objecting attorney for this application.

Dr. Bruce Eisenstein, RFP Specialist

The applicant requested time to consider an amended application.

The application is carried until the January 2022 meeting with an extension of the FCC Shot Clock.

A transcript of the testimony is appended to the minutes.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 10:23

Lori Taglairino

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

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HARDING TOWNSHIP
BOARD OF ADJUSTMENT

IN THE MATTER OF: : TRANSCRIPT
:
CASE: BOA# 17-18 : OF
New York SMSA Limited Partnership:
D/b/a Verizon Wireless : PROCEEDINGS
Millbrook Road :
Block 17; Lot 1; PL Zone :
X

Thursday, December 16, 2021
Municipal Building
21 Blue Mill Road
New Vernon, NJ 07976
Commencing at 7:07 p.m.

BOARD MEMBERS PRESENT:

MIKE FLANAGAN, Chairman
ALF NEWLIN
ELIZABETH SOVOLOS
DAN MASELLI
THOMAS ADDONIZIO
ARIC ROSENBAUM
GEORGE BOYAN
HUGH SYMONDS
MICHAEL CAMMARATA

ALSO PRESENT:
LORI TAGLAIRINO, Board Administrator
PAUL D. FOX, P.E., CME
McKINLEY MERTZ, PP, AICP
DR. BRUCE EISENSTEIN, Cellular Communications
Consultant

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1 A P P E A R A N C E S:

2

3 GREENBAUM, ROWE, SMITH & DAVIS, LLP
BY: STEVEN G. MLENAK, ESQUIRE
Attorneys for the Board

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5 VOGEL, CHAIT, COLLINS & SCHNEIDER, ESQUIRES
BY: RICHARD SCHNEIDER, ESQUIRE
Attorneys for the Applicant

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8 HEROLD LAW, PA
BY: ROBERT F. SIMON, ESQUIRE
Attorneys for the Objectors: SGSL, LLC; Harsh and
Nina Bansal; Michael and Susan Koenke;
David and Eunice Conine; Brian and
Christina McKittrick; Livio Saganic and
Christel Engel; James M. Carifa and
Sarah G. Conine; Ted Cotton

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Page 3

1 I N D E X

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4 Board Member deliberations begin.....page 128

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8 E X H I B I T S

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10 EXHIBIT DESCRIPTION PAGE

11 No Exhibits are marked.

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15 PUBLIC MEMBERS ARE SWORN:

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1 CHAIRMAN FLANAGAN: Good evening ladies and

2 gentlemen. Tonight is December 16th, and this is the

3 Harding Township Board of Adjustment regularly

4 scheduled meeting. Noticed by the New Jersey Open

5 Public Meetings Act. Noticed in the Observer Tribune

6 and other outlets.

7 Tonight we have a few items on the agenda.

8 First, we're going to hear Verizon. Then we have two

9 other applications: One, is Daniels, and the other is

10 -- how do you pronounce that, Lori.

11 SECRETARY TAGLAIRINO: Cortez.

12 CHAIRMAN FLANAGAN: Cortez. And they're

13 going to go in that order. We have a lot of people

14 here tonight. This is -- we expect this to be the

15 final meeting for the Verizon application. It's been

16 three years of meetings and -- how many actual

17 meetings, Mr. Schneider.

18 MR. SCHNEIDER: Twenty-two, give or take.

19 CHAIRMAN FLANAGAN: Twenty-two give or take

20 meetings over the course of three years. We expect to

21 vote on this tonight. I know most people here are

22 probably here for this. We just ask that you please

23 remain quiet as we go through. You'll remember last

24 month we had public comments. We finished up the

25 public comments, we moved onto the closing summary from

<p style="text-align: right;">Page 5</p> <p>1 both the Attorneys. So we're at the point now where 2 the Board is going to deliberate and we're going to 3 vote. 4 So anyway, if you can just please try to 5 keep quiet. And I apologize for the mask, but I guess 6 that's the rule here unless you're speaking. 7 What else? I think that's it. After the 8 Verizon vote we're going to have a five-minute break. 9 Obviously, everyone's welcome to stay for the other 10 applications, but if you plan on leaving after the 11 Verizon vote we would just ask that you please do that 12 during that five-minute break. Then you can go either 13 console each other or celebrate out in the parking lot, 14 whichever side you're voting on or rooting for, I 15 should say. 16 Anyway, with that said, Lori, what else do 17 we have? 18 SECRETARY TAGLAIRINO: We have a couple of 19 applications that you need to announce that we're 20 carrying. 21 CHAIRMAN FLANAGAN: Okay. We have Board of 22 Adjustment 14-20, Donald & Eliza Murphy, pending 23 completeness. And we have Board of Adjustment 16-21, 24 Preiss, also pending completeness. And we have Wittig, 25 which is 02-21, which is carried to the January 22nd</p>	<p style="text-align: right;">Page 6</p> <p>1 meeting. We'll go through the minutes once Gary's with 2 us. 3 SECRETARY TAGLAIRINO: And I'm going to 4 call the roll. 5 CHAIRMAN FLANAGAN: And Lori's going to 6 call the roll. 7 SECRETARY TAGLAIRINO: Ms. Sovolos? 8 BOARD MEMBER SOVOLOS: I'm here. 9 SECRETARY TAGLAIRINO: Mr. Maselli? 10 BOARD MEMBER MASELLI: Here. 11 SECRETARY TAGLAIRINO: Mr. Symonds? 12 BOARD MEMBER SYMONDS: Yes. 13 SECRETARY TAGLAIRINO: Mr. Newlin? 14 BOARD MEMBER NEWLIN: Yes. 15 SECRETARY TAGLAIRINO: Mr. Rosenbaum? 16 BOARD MEMBER ROSENBAUM: Yes. 17 SECRETARY TAGLAIRINO: Mr. Addonizio. 18 BOARD MEMBER ADDONIZIO: Yes. 19 SECRETARY TAGLAIRINO: Mr. Flanagan? 20 CHAIRMAN FLANAGAN: I'm here. 21 SECRETARY TAGLAIRINO: Mr. Cammarata? 22 BOARD MEMBER CAMMARATA: Here. 23 SECRETARY TAGLAIRINO: Mr. Boyan? 24 BOARD MEMBER BOYAN: Here. 25 SECRETARY TAGLAIRINO: Please, everyone on</p>
<p style="text-align: right;">Page 7</p> <p>1 the Board please use your microphones. I'm finding it 2 increasingly hard to hear what the recordings are 3 without them. It really is difficult. 4 And again to the public, please try to 5 refrain from any comments so that we can hear, because 6 we do have our attorney on the phone and we're trying 7 to make it so that everybody can hear. So thank you. 8 CHAIRMAN FLANAGAN: I'm just warning, Lori 9 has the gavel. 10 SECRETARY TAGLAIRINO: I do. If you're 11 talking you're going to get the gavel. I don't mean it 12 to be, but it really -- it's going to mean everything 13 so we can hear what's going on with the attorneys. So 14 thank you very much for your cooperation. 15 CHAIRMAN FLANAGAN: And as Lori mentioned, 16 we have our Board's Attorney for this application, 17 Steve Mlenak is on the telephone. For a good cause he 18 cannot be here in person tonight. So Steve, can you 19 hear us? 20 MR. MLENAK: I can hear everybody. I hope 21 you can hear me. And thank you for accommodating while 22 I've been told I have to quarantine myself. So I can 23 hear everybody. Hope you can hear me. 24 CHAIRMAN FLANAGAN: Can everyone hear that 25 okay? Hey Steve, just say something really quick, if</p>	<p style="text-align: right;">Page 8</p> <p>1 you would. 2 MR. MLENAK: Can you hear me? 3 CHAIRMAN FLANAGAN: Yeah. Okay. 4 SECRETARY TAGLAIRINO: Okay. They're 5 waving in the back row. We're okay. 6 CHAIRMAN FLANAGAN: Okay. Mr. Schneider, 7 Mr. Simon, welcome back. Members of the public welcome 8 back. As I recall last month you both concluded your 9 summaries. And I think at this point the only thing 10 left to do is for the Board to deliberate and take a 11 vote; is that correct? 12 MR. SCHNEIDER: That is correct. Public 13 comment closed. You heard summations from both of us, 14 so after 22 hearings and three years the matter is now 15 in your hands and that of any input, if any, from your 16 experts. 17 CHAIRMAN FLANAGAN: Excellent. So let me 18 start off by saying to both of you, Mr. Schneider, Mr. 19 Simon, you know, it's been three years we have spent 20 together. You know, I appreciate both of you. You've 21 been as professional as one could hope for. I think 22 through all the difficulties we had with the shutdowns 23 being on Zoom, you know, and I know we had several 24 attempts at alternate locations, et cetera, but I think 25 you and Steve, Steve thank you as well, the three of</p>

<p style="text-align: right;">Page 9</p> <p>1 you all worked very well together and for that thank 2 you.</p> <p>3 So with that said, I think we're at the 4 point now where it's up to the Board, and Lori who, is 5 there anyone who cannot vote on this tonight? So all 6 the regular members confirmed --</p> <p>7 SECRETARY TAGLAIRINO: All of their 8 transcripts are up to date. I have certificates for 9 everyone. They have been sent multiple times. The 10 Board has received the transcripts. All the 11 certificates are up to date. At this point because we 12 have a full Board all the regular members will be 13 eligible to vote and the alternates will not. So that 14 will leave off Mr. Cammarata and Mr. Boyan. So the 15 rest of the members are all eligible and ready to go.</p> <p>16 CHAIRMAN FLANAGAN: Good. And obviously 17 Mike and George, you know, same deal. We want to hear 18 your thoughts. You know, you're not going to be voting 19 tonight but -- I don't know, did Phil used to have the 20 alternates vote anyway?</p> <p>21 SECRETARY TAGLAIRINO: No. Only if there 22 was a member not present.</p> <p>23 CHAIRMAN FLANAGAN: Okay. Not that it 24 would count but I think sometimes if you wanted to 25 certainly say your opinions, if you want to cast a vote</p>	<p style="text-align: right;">Page 10</p> <p>1 one way or the other it won't count towards the 2 official vote, but if you want to make your voice heard 3 feel free. With that said, let's open it up for 4 discussion. Who wants to kick it off?</p> <p>5 Let me say, again, to our experts here, Dr. 6 Eisenstein, McKinley, Paul, you know, thank you for 7 three years worth of efforts. I think over the course 8 of the three years I personally feel as if I know what 9 your testimony is. I've heard your testimony and I 10 appreciate it. It's been helpful from all of you. We 11 have seen memos. We have it in the record as to your 12 advice to us. You know, I think if any Board members 13 have any questions of the experts, you know, they're 14 here. That's why they're here, feel free, or questions 15 of whomever. Questions of the attorneys, I think is 16 fair, too. So anyway, feel free. Aric?</p> <p>17 BOARD MEMBER ROSENBAUM: Thanks Mike. 18 Dr. Eisenstein, we've heard a lot about the 19 alternate small cell sites, ODAS sites and stuff like 20 that.</p> <p>21 SECRETARY TAGLAIRINO: Aric. If you're 22 speaking you can take the mask off.</p> <p>23 BOARD MEMBER ROSENBAUM: Thank God. 24 SECRETARY TAGLAIRINO: So if you want to 25 take --</p>
<p style="text-align: right;">Page 11</p> <p>1 BOARD MEMBER ROSENBAUM: I'll start over. 2 So there's been testimony with regard to 3 small cell sites, ODAS sites. So my first question is, 4 is ODAS a type of small cell, is it one in the same, 5 can you just educate me about that?</p> <p>6 DR. EISENSTEIN: So, I think the easiest 7 way to answer that question is there's no hard 8 distinction. The ODAS, Distributed Antenna System, is 9 usually referred to an entire network protocol. 10 Sometimes they use small cells where they're filling 11 in, for example, in a shopping center, or some place 12 where there's a high density of traffic. They may call 13 that a small cell site; whereas, what the ODAS would be 14 would be usually a network that takes the antenna 15 system and distributes it over a geographical area.</p> <p>16 BOARD MEMBER ROSENBAUM: Can you 17 characterize where ODAS in an outdoor setting is 18 appropriate and where it's inappropriate?</p> <p>19 DR. EISENSTEIN: So I heard a lot of the 20 testimony from the residents. I heard the summation 21 statements, and I realized I was quoted a lot in all 22 those things which is always a good thing for a college 23 professor.</p> <p>24 I'd like to make a couple of things clear. 25 Very early in this hearing, which may have been three</p>	<p style="text-align: right;">Page 12</p> <p>1 years ago, I was asked a question can a DAS system or 2 an Outdoor DAS system which is ODAS, could that be a 3 substitute for what amounts to a macro site or an 4 umbrella site, if you want to call it that? And I was 5 asked it in the form of a hypothetical, and I answered 6 in the form of a hypothetical. I said, yes, you can 7 always do that.</p> <p>8 I really would like the opportunity to 9 clarify my remarks just so that the record's clear on 10 my regard and so the Board's clear on my opinion. When 11 you're putting in a cell site what you're trying to do 12 is to cover an area. If you're going to take that area 13 and cover it with antennas that don't have the same 14 propagation what you're doing is it's like tiling a 15 floor. If you tile a floor with tiles that are 16 one-foot-by-one-foot and instead you want to use 17 one-inch-by-inch you can do it but you're going to need 18 144 of them to fill in that one-foot-by-one-foot area.</p> <p>19 So it's the same with an ODAS site. If you 20 looked at what amounts to the umbrella coverage that 21 you would get from a cell site, a macro site, and you 22 said instead let's put a lot of -- a lot of small sites 23 in there that have much more limited coverage 24 obviously, because they're much lower, it would be 25 like, if you could do it in a checkerboard fashion that</p>

<p style="text-align: right;">Page 13</p> <p>1 would be fine. You can just lay the sites along the 2 squares in the checkerboard and essentially instead of 3 covering the checkerboard with one large site that had 4 the propagation you cover it with the case of a 5 checkerboard 64 smaller sites.</p> <p>6 The question that I should have answered 7 when I was asked if ODAS is possible, instead of 8 answering the hypothetical I should have answered a 9 question is it practical for Harding? And since I 10 heard the comments from the residents and the summation 11 of the lawyers, and some of the questions that were 12 asked during the course of the these three years, 13 during the last several months I went back and I looked 14 more carefully at what happens in Harding.</p> <p>15 So typically where you would put ODAS sites 16 would be along the right-of-way, the area along a 17 highway or a street or a road. And if possible put 18 them on top of utility poles, street lamps, existing 19 structures. If not possible put in a pole, a structure 20 that will hold the antenna. You'd like to have, if 21 you're doing something in an area like this you'd like 22 to be able to do it at a 35-foot height. So looking 23 more carefully at Harding I see that going back to my 24 checkerboard analogy there are some roads that run 25 along -- that look like they would be suitable to have</p>	<p style="text-align: right;">Page 14</p> <p>1 ODAS sites along them, but in between in the areas in 2 between are residential streets that are narrow and 3 they're tree lined on both sides. And those trees are, 4 at least according to my eye, more than 30- to 35-feet 5 tall, which would exclude them from having an ODAS site 6 at a 35-foot height. It would not be possible. The 7 antenna would be in the canopy of the trees.</p> <p>8 In the areas that I saw where there were no 9 trees along these residential streets there were lawns 10 that came right down to the street itself. Of course, 11 driveways also came down to the street. There were no 12 trees in the driveways. So as I was looking at it, I 13 was scanning around and also on my trip up here today I 14 looked carefully along Lees Hill Road. To be honest 15 about it, I did not see -- I did not see enough 16 suitable sites to layout a checkerboard pattern or 17 really any kind of pattern that would work for an ODAS.</p> <p>18 Now, that's not an opinion on whether or 19 not an ODAS site is possible. In order to answer that 20 question you'd really have to have a separate proposal 21 in which whoever was making the proposal went out and 22 literally surveyed the area pole by pole by pole in 23 roughly 1,000-foot intervals and determined whether or 24 not it was even feasible to erect new poles or to put 25 antennas on the existing poles.</p>
<p style="text-align: right;">Page 15</p> <p>1 My initial view of this, looking at Harding 2 specifically, is I don't see how it would be possible 3 in the areas between what I would call the major roads. 4 I understand they're not -- we're not talking about 287 5 or anything, but the roads that would be more 6 substantial. And even those roads are tree lined on 7 both sides. And I notice that the utility poles are 8 inside and under the canopy of the tree, the trees.</p> <p>9 BOARD MEMBER ROSENBAUM: So to follow on 10 that, the testimony is with regard to Lavallette. 11 DR. EISENSTEIN: Yes.</p> <p>12 BOARD MEMBER ROSENBAUM: So why is 13 Lavallette different?</p> <p>14 DR. EISENSTEIN: So I'm very familiar with 15 Lavallette. That happened to be one of my clients many 16 years ago. Lavallette is a barrier island. They run 17 the poles parallel to the ocean. You can -- no trees, 18 at least if there was a tree there I never saw it. You 19 just go pole, pole, pole, pole, pole right down the 20 line. It's absolutely perfect for an ODAS site.</p> <p>21 I should also point out that in Lavallette 22 they have coverage. They have umbrella coverage from 23 cell sites. I know because I was the consultant on 24 them and I know Toms River Township is fully covered. 25 But Lavallette has a problem, as all shore resorts do,</p>	<p style="text-align: right;">Page 16</p> <p>1 and that is that they bulk up in the summertime, you 2 know, ten-, 20-to-one in term of the number of users. 3 So these ODAS sites in Lavallette and other beach areas 4 that I'm familiar with in New Jersey, they're putting 5 in these ODAS sites along the ocean or the boardwalk 6 that they have there, the ocean walk to cover the 7 capacity that they need for the summer traffic, and 8 also as a potential fill in for 5G later on.</p> <p>9 Now, I also heard some talk about 10 Bernardsville, and I have to say I did a lot of 11 research and I was unable to find out what, if 12 anything, was put into Bernardsville. I don't know if 13 it's been constructed. I don't know if it's there. I 14 don't know what the specifics are. But I can say that 15 if you're looking at trying to put it along roads or 16 streets that are tree lined on both sides I don't think 17 you can put in an ODAS site.</p> <p>18 BOARD MEMBER ROSENBAUM: I have another 19 question on a different theme, but I would yield to 20 someone else.</p> <p>21 CHAIRMAN FLANAGAN: No, go ahead. You're 22 on a roll.</p> <p>23 SECRETARY TAGLAIRINO: Mic.</p> <p>24 CHAIRMAN FLANAGAN: Yes?</p> <p>25 SECRETARY TAGLAIRINO: No, use the</p>

<p style="text-align: right;">Page 17</p> <p>1 microphone.</p> <p>2 BOARD MEMBER ROSENBAUM: Oh, I'm sorry. I</p> <p>3 was going to say I'll yield to somebody else who has no</p> <p>4 other question.</p> <p>5 CHAIRMAN FLANAGAN: No. Keep going.</p> <p>6 BOARD MEMBER ROSENBAUM: We've heard also</p> <p>7 the residents saying that they have an alternate</p> <p>8 carrier. And that carrier -- they're happy with their</p> <p>9 service. And that carrier is putting something on the</p> <p>10 firehouse that's not 126-feet tall. So why are they</p> <p>11 able to get effective coverage reportedly when someone</p> <p>12 is asking for 126 feet which is far in excess of the</p> <p>13 roof of the firehouse?</p> <p>14 DR. EISENSTEIN: Well, I have three</p> <p>15 answers. It may not be the way you want to hear it.</p> <p>16 BOARD MEMBER ROSENBAUM: Apologies, but --</p> <p>17 DR. EISENSTEIN: First of all, let me just</p> <p>18 go back a minute the. In 1996 when the Congress passed</p> <p>19 the Telecommunications Act we did something in the</p> <p>20 United States that they did not do in Europe and Asia.</p> <p>21 In Europe and Asia who were way ahead of us, by the</p> <p>22 way, maybe 10 years, 12 years ahead of us in terms of</p> <p>23 implementing wireless service, they decided on one</p> <p>24 technology. All through Europe it was GSM, through</p> <p>25 Korea and Japan they each have their own individual</p>	<p style="text-align: right;">Page 18</p> <p>1 system, but there was one technology that was used.</p> <p>2 In passing the 1996 Telecommunications Act</p> <p>3 Congress decided that it would be better for the United</p> <p>4 States to allow competition among the technologies</p> <p>5 since it wasn't clear which technology would prevail,</p> <p>6 if any, or whether all three of them should go. So</p> <p>7 there's a specific provision in the 1996</p> <p>8 Telecommunications Act that forbids a consideration of</p> <p>9 a Board like yours of considering a let's say an AT&T</p> <p>10 site as opposed to a Verizon site. You can't</p> <p>11 discriminate based on their technology or the way</p> <p>12 they've laid their network out.</p> <p>13 So my first answer is it may be a matter of</p> <p>14 academics as to what AT&T has done. But it's not</p> <p>15 really, according to my reading of the 1996 Act, not a</p> <p>16 matter of consideration for this Board.</p> <p>17 The second answer is, I don't know what</p> <p>18 AT&T has done because I haven't seen their propagation</p> <p>19 plots. I don't know what their coverage is. I don't</p> <p>20 know how they're able to do it. And my third answer</p> <p>21 is, as I recall, the firehouse was under consideration</p> <p>22 here. I mean, I remember long discussions about the</p> <p>23 firehouse as a site. And I think the issue had nothing</p> <p>24 to do with radio frequency propagation, it had to do</p> <p>25 with availability. Am I correct?</p>
<p style="text-align: right;">Page 19</p> <p>1 BOARD MEMBER ROSENBAUM: It was</p> <p>2 availability, correct. My question was more about</p> <p>3 really the height difference with the proposed Verizon</p> <p>4 tower 126, and we're hearing testimony from the</p> <p>5 residents that they're happy with the other carrier at</p> <p>6 a much lower height.</p> <p>7 DR. EISENSTEIN: But since we never had a</p> <p>8 chance to consider the firehouse to this application I</p> <p>9 don't know what height they would go on.</p> <p>10 BOARD MEMBER ROSENBAUM: Whether the</p> <p>11 availability or non-availability I'm trying to get to</p> <p>12 the height of --</p> <p>13 DR. EISENSTEIN: So the height would be</p> <p>14 determined by their coverage objectives which I don't</p> <p>15 know. I don't know where their other sites are for</p> <p>16 AT&T.</p> <p>17 BOARD MEMBER ROSENBAUM: Okay.</p> <p>18 CHAIRMAN FLANAGAN: Dr. Eisenstein, let me</p> <p>19 ask you a few questions. Number one, you're the RF</p> <p>20 Expert, not necessarily an expert on law. You may know</p> <p>21 about it, I believe you do, but as it relates to the</p> <p>22 consideration the Board should give to one carrier</p> <p>23 versus the other that's not necessarily your area of</p> <p>24 expertise. Is that fair to say? Are you a lawyer?</p> <p>25 DR. EISENSTEIN: I am not a lawyer.</p>	<p style="text-align: right;">Page 20</p> <p>1 CHAIRMAN FLANAGAN: Okay. We can stop</p> <p>2 there.</p> <p>3 DR. EISENSTEIN: Well, I'm not certain you</p> <p>4 can, if you will. In order for me to advise Boards the</p> <p>5 rules under which you operate are the rules that I have</p> <p>6 to read. The laws that are written in the United</p> <p>7 States are not written for lawyers. They're written</p> <p>8 for the people. And the Telecommunications Act is a</p> <p>9 very important part of my expertise. I've read it back</p> <p>10 and forth. I've studied it. I've gone back as far as</p> <p>11 the 1934 Act.</p> <p>12 CHAIRMAN FLANAGAN: I appreciate your</p> <p>13 technological understanding, but you're not a member of</p> <p>14 the Bar, though, right?</p> <p>15 DR. EISENSTEIN: That's correct.</p> <p>16 CHAIRMAN FLANAGAN: Okay. We can just</p> <p>17 leave it at that.</p> <p>18 Two, now, I forget what two is. Oh, two,</p> <p>19 do you know what technology -- what technology does</p> <p>20 Verizon use, is it GSM --</p> <p>21 DR. EISENSTEIN: Well --</p> <p>22 CHAIRMAN FLANAGAN: Why don't I ask Mr.</p> <p>23 Schneider, what technology are you using?</p> <p>24 MR. SCHNEIDER: They're using four</p> <p>25 different frequency bands. I can go on for two hours.</p>

<p style="text-align: right;">Page 21</p> <p>1 DR. EISENSTEIN: No, no. You don't have to</p> <p>2 go on. Verizon has typically been a CDMA provider.</p> <p>3 MR. SCHNEIDER: As compared to GSM.</p> <p>4 DR. EISENSTEIN: As opposed to GSM.</p> <p>5 However, that's all changed now with the way in which</p> <p>6 the new systems are going. They're all IP based.</p> <p>7 CHAIRMAN FLANAGAN: And what does AT&T use,</p> <p>8 do they use CDMA?</p> <p>9 DR. EISENSTEIN: What's that?</p> <p>10 CHAIRMAN FLANAGAN: Do you know what AT&T</p> <p>11 uses?</p> <p>12 DR. EISENSTEIN: It's GSM.</p> <p>13 CHAIRMAN FLANAGAN: They do use GSM?</p> <p>14 DR. EISENSTEIN: Well, they were originally</p> <p>15 a GSM provider, but as I said right now it's all IP</p> <p>16 based. So the technologies are different. The</p> <p>17 question is the difference between GSM and CDMA is what</p> <p>18 they're doing for the multiple access overlay, not what</p> <p>19 the technologies are inside. The technology inside the</p> <p>20 system, the thing that at all the signals are moving on</p> <p>21 is IP Internet protocol.</p> <p>22 CHAIRMAN FLANAGAN: Okay. Let me ask who I</p> <p>23 think is a member of the bar, Steve.</p> <p>24 MR. MLENAK: Last time I checked.</p> <p>25 CHAIRMAN FLANAGAN: Is your license valid?</p>	<p style="text-align: right;">Page 22</p> <p>1 Is it current?</p> <p>2 MR. MLENAK: It is current.</p> <p>3 CHAIRMAN FLANAGAN: All right. Good. With</p> <p>4 regard to looking at the firehouse with AT&T, you heard</p> <p>5 what Dr. Eisenstein was saying about the 1996</p> <p>6 Telecommunications Act. Do you concur with that or is</p> <p>7 there something else we should know?</p> <p>8 MR. MLENAK: I concur with how Dr.</p> <p>9 Eisenstein described what the 1996 act provides in</p> <p>10 relation to what the Board can consider with respect to</p> <p>11 other carriers. I think Mr. Rosenbaum's question was</p> <p>12 trying to understand how one carrier can have a certain</p> <p>13 height and another cannot, which I don't know is</p> <p>14 necessarily what is prohibited under the 1996 Act. But</p> <p>15 I think Dr. Eisenstein answered that question with</p> <p>16 respect to the it being location specific and needing</p> <p>17 to know where other facilities are to be able to answer</p> <p>18 that question.</p> <p>19 CHAIRMAN FLANAGAN: Okay.</p> <p>20 BOARD MEMBER NEWLIN: I think the answer</p> <p>21 was he didn't know because he doesn't have the</p> <p>22 information.</p> <p>23 SECRETARY TAGLAIRINO: Use your mic, Alf,</p> <p>24 please.</p> <p>25 BOARD MEMBER NEWLIN: I'm sorry. The</p>
<p style="text-align: right;">Page 23</p> <p>1 answer was that he didn't know, because he doesn't have</p> <p>2 the information.</p> <p>3 CHAIRMAN FLANAGAN: Is that correct, Dr.</p> <p>4 Eisenstein?</p> <p>5 DR. EISENSTEIN: I haven't seen the</p> <p>6 propagation plots for AT&T, so I don't know what height</p> <p>7 they found appropriate.</p> <p>8 CHAIRMAN FLANAGAN: Fair enough.</p> <p>9 BOARD MEMBER SOVOLOS: Dr. Eisenstein, I</p> <p>10 have a question for you public safety related to the</p> <p>11 testimony that Chief Heller gave. So one of the</p> <p>12 problems he said that they encountered was the mobile</p> <p>13 data systems in their cars not being able to receive</p> <p>14 the cellular network consistently throughout Harding.</p> <p>15 He also mentioned that one of the remediations for that</p> <p>16 at least could be some sort of antenna system put on</p> <p>17 the car. And there wasn't too much detail about that.</p> <p>18 I was wondering if you could expand on</p> <p>19 what, you know, an alternative option could be.</p> <p>20 DR. EISENSTEIN: So what has happened is,</p> <p>21 as I'm sure everyone in this room knows, for time and</p> <p>22 memorial police use their own frequencies, their own</p> <p>23 police radios for almost all things. Emergency</p> <p>24 services have their own radios and their own</p> <p>25 frequencies. And I should point out these frequencies</p>	<p style="text-align: right;">Page 24</p> <p>1 were very, very much lower than the frequency band</p> <p>2 that's used by the cell phone providers. And as a</p> <p>3 result got much better propagation. You know, we're</p> <p>4 talking about 10,20,30 miles of propagation as opposed</p> <p>5 to one mile that you get out of a cell phone system,</p> <p>6 typically.</p> <p>7 What's happened in recent times is that the</p> <p>8 police are using more computers, laptop computers in</p> <p>9 their car with a plug-in dongle, as it's called, that</p> <p>10 would allow them to use the computer on the cellular</p> <p>11 networks. So if they don't have a good cellular signal</p> <p>12 the computers can't operate.</p> <p>13 The other thing that has happened, and I've</p> <p>14 heard this I have no personal experience with it, but</p> <p>15 I've heard other police testify to this, that often</p> <p>16 they find that they're using their own cell phones, or</p> <p>17 in some cases a municipally issued cell phone to</p> <p>18 communicate. So if they don't have good service then</p> <p>19 that's a problem.</p> <p>20 And then the third thing that I've heard is</p> <p>21 that the United States is trying to establish a</p> <p>22 national network so that all emergency providers</p> <p>23 anywhere in the country would be able to communicate on</p> <p>24 their cell phone with very little, if no problem, with</p> <p>25 the interface. In other words, right now someone from</p>

<p style="text-align: right;">Page 25</p> <p>1 Chicago that comes into New Jersey may have trouble 2 getting on this system here with their particular 3 equipment. So they're trying to keep the cell phone 4 system in such a way that emergency providers can go 5 anywhere in the country and be able to immediately 6 communicate.</p> <p>7 So I don't know specifically what the Chief 8 had in mind, but it's not clear that you can do 9 anything on a car that's going to help the reception 10 for a laptop computer that's inside the car. It's 11 usually essentially functioning like a cell phone.</p> <p>12 BOARD MEMBER SOVOLOS: Thank you.</p> <p>13 CHAIRMAN FLANAGAN: Mr. Schneider, it was 14 said the height of the tower. Remind me, at the last 15 meeting I think you proposed the height. I want to 16 make sure we're all familiar with what the height is. 17 What is the height that you had proposed at the last 18 meeting?</p> <p>19 MR. SCHNEIDER: I had said -- I'll be 20 clear. I had asked that the Board approve a -- that 21 the Applicant was willing to accept as a condition of 22 approval, let me rephrase it, a flagpole at 130 feet 23 subject to the proviso that we would, if so requested 24 by the Board, agree to go to the governing Township 25 Committee to seek their approval not to extend it above</p>	<p style="text-align: right;">Page 26</p> <p>1 the 130.</p> <p>2 The rational, if I can, and I'm trying not 3 to involve myself because I think the case is over, I'm 4 going to have some comments, but the rational for the 5 130 was, while 120 was the proposed height, the basis 6 for seeking 130 was two-fold. If we were going to a 7 flagpole, and you've been the leader in this regard, 8 there was lengthy discussion about the need to take two 9 elevations. So the two elevations that Verizon would 10 take would be 130 and 120. The advantage to that was 11 that it still allows Verizon to meet its technical 12 objectives at 120 and 130. And also then makes 13 available additional space on the flagpole, if you're 14 going with a flagpole design, at 110 and 100, and then 15 90 and 80.</p> <p>16 So you essentially can get three carriers 17 between 80 and 130. And frankly, I'll be an advocate 18 here, for ten more feet on a flagpole you almost 19 completely achieve all of your collocation objectives. 20 And that is exactly what occurred at the Mendham Kings 21 Shopping Center. The ordinance there permitted a 22 height of 120. The Board --</p> <p>23 CHAIRMAN FLANAGAN: Before we get into more 24 testimony, and I appreciate it. Thank you.</p> <p>25 MR. SCHNEIDER: So the answer is 130.</p>
<p style="text-align: right;">Page 27</p> <p>1 CHAIRMAN FLANAGAN: 130. Boy, lawyers can 2 talk. You guys are good.</p> <p>3 So someone said 126. Did I hear that 4 incorrectly?</p> <p>5 BOARD MEMBER ROSENBAUM: I said 126.</p> <p>6 CHAIRMAN FLANAGAN: I thought I heard. So 7 130 is the ask as a condition of approval importantly, 8 and they won't come back to Township looking for more 9 height.</p> <p>10 BOARD MEMBER ROSENBAUM: I have a question 11 for Dr. Eisenstein. So in this instance we're talking 12 about a flagless flagpole. And if it were to look like 13 a tree or something like that does that change anything 14 from a technical point of view? Does it have to be 15 higher, lower?</p> <p>16 DR. EISENSTEIN: You're asking me to 17 compare a flagless flagpole to a tree?</p> <p>18 BOARD MEMBER ROSENBAUM: To a tree 19 configuration. From a technical point does it have to 20 be taller, shorter, anything like that?</p> <p>21 DR. EISENSTEIN: Well, the difference is 22 the following: With a tree configuration Verizon can 23 go at one height. So the height that I thought we -- 24 they originally came in, as I recall, 140 feet. And 25 after I looked over their propagation plots and I had a</p>	<p style="text-align: right;">Page 28</p> <p>1 lot of discussion with their radio frequency engineer 2 and they ran drive tests at my suggestion we came back 3 and in front of this Board they agreed that they can do 4 it at 120.</p> <p>5 So if we did a tree or a let's say a 6 classic monopole configuration it would be at 120 feet 7 one level. And then collocators can go at 110 and 100. 8 But when you go to a flagpole they can't get the radio 9 coverage around the flagpole with their antennas 10 because there's not enough circumference. A flagpole 11 is so much narrower that they need two heights for 12 their antennas. That's why the 130 and the 120 come 13 in.</p> <p>14 So there is a difference in height because 15 of the difference in the way in which the antennas the 16 antennas will be located.</p> <p>17 BOARD MEMBER ROSENBAUM: Does that mean 18 that particularly a tree configuration can be ten feet 19 shorter because you have everything at 120, instead of 20 120 at 130? Did you take a look at that?</p> <p>21 DR. EISENSTEIN: I think so, except I think 22 that there's some issue about the branching of the tree 23 that would go up a little higher. Again, as I recall, 24 the antennas would be here. I'm pointing with my hands 25 and, of course, that's not going to appear in the</p>

<p style="text-align: right;">Page 29</p> <p>1 transcript. But to make it look like a real tree it</p> <p>2 has to go higher than the 120, but I don't know how</p> <p>3 much higher. That may be where your 126 came from.</p> <p>4 BOARD MEMBER ROSENBAUM: Okay. Thank you.</p> <p>5 BOARD MEMBER NEWLIN: Mike, can I --</p> <p>6 CHAIRMAN FLANAGAN: You sure can.</p> <p>7 BOARD MEMBER NEWLIN: So Dr. Eisenstein,</p> <p>8 with regard back to the ODAS just to clarify, you're</p> <p>9 never addressing a scenario of ODAS only configuration</p> <p>10 versus a macro; correct.</p> <p>11 DR. EISENSTEIN: Yes. Well, that's what I</p> <p>12 thought I was asked, yes.</p> <p>13 BOARD MEMBER NEWLIN: I'm just clarifying.</p> <p>14 But having ODAS to supplement a macro tower is</p> <p>15 obviously practical because it's in Verizon's plan;</p> <p>16 right.</p> <p>17 DR. EISENSTEIN: Oh, yes absolutely.</p> <p>18 BOARD MEMBER NEWLIN: So you can manage the</p> <p>19 height to some degree, potentially anyway with ODAS.</p> <p>20 You can supplement coverage issues using ODAS. In</p> <p>21 fact, that's what they're doing I think with their</p> <p>22 plan, true.</p> <p>23 DR. EISENSTEIN: Yes. So my concern was</p> <p>24 that when you're covering -- then I'll go back to my</p> <p>25 analogy of tiling a floor. It's not enough to just</p>	<p style="text-align: right;">Page 30</p> <p>1 tile around the edges you have to tile the middle. And</p> <p>2 when I look at Harding Township in the area around</p> <p>3 where this proposed site is what I see in the middle</p> <p>4 are many residential streets, very beautiful, I might</p> <p>5 point out, but very narrow and tree lined on both</p> <p>6 sides. So there's no place that I was able to see</p> <p>7 where you can put an ODAS site, an ODAS node. It would</p> <p>8 be the trees are more than 30-, 35-foot tall.</p> <p>9 Now, could you get around that with a</p> <p>10 taller ODAS site? Yes, of course. But you might have</p> <p>11 to go to a 50- or 60-foot pole to get above the tree</p> <p>12 canopy. I don't know how tall the trees are in every</p> <p>13 place but they certainly look to be more than 30 or 35</p> <p>14 feet.</p> <p>15 BOARD MEMBER NEWLIN: My question was, I</p> <p>16 think, very simple. It is you can use ODAS units to</p> <p>17 supplement coverage?</p> <p>18 DR. EISENSTEIN: Where you can put the ODAS</p> <p>19 unit. I mean, it's not a -- I want to get away from</p> <p>20 just theoretically. Theoretically isn't correct.</p> <p>21 BOARD MEMBER NEWLIN: I'm sorry --</p> <p>22 DR. EISENSTEIN: But you have to be able to</p> <p>23 put it somewhere.</p> <p>24 BOARD MEMBER NEWLIN: Not to cut you off.</p> <p>25 I understand that you can't just put it wherever you</p>
<p style="text-align: right;">Page 31</p> <p>1 want. Sometimes they're very effective if you have</p> <p>2 them, that's pretty clear, but you can use them as a</p> <p>3 way to manage the height of the tower.</p> <p>4 DR. EISENSTEIN: And it's being used in</p> <p>5 Harding, as I understand it, yes.</p> <p>6 BOARD MEMBER NEWLIN: Mr. Simon, may I ask</p> <p>7 a question.</p> <p>8 MR. SIMON: Can you ask me a question?</p> <p>9 BOARD MEMBER NEWLIN: Yes.</p> <p>10 MR. SIMON: Sure.</p> <p>11 CHAIRMAN FLANAGAN: Mr. Schneider, Mr.</p> <p>12 Simon, when you're speaking you can take your mask off</p> <p>13 just because Lori isn't going to be able to hear. And</p> <p>14 I should turn my mic on.</p> <p>15 BOARD MEMBER NEWLIN: This is very simple,</p> <p>16 but I just want to confirm. We actually found out that</p> <p>17 Verizon was going to use ODAS to supplement the</p> <p>18 coverage through you; is that true.</p> <p>19 MR. SIMON: When you say "through" --</p> <p>20 BOARD MEMBER NEWLIN: The initial</p> <p>21 application that came in did not mention anything about</p> <p>22 ODAS.</p> <p>23 MR. SIMON: Correct.</p> <p>24 BOARD MEMBER NEWLIN: It was not in the</p> <p>25 coverage maps.</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. SIMON: That's right.</p> <p>2 BOARD MEMBER NEWLIN: We found out through</p> <p>3 you.</p> <p>4 MR. SIMON: That's correct. Through my</p> <p>5 cross-examination of Ms. Boschulte I had asked her, I</p> <p>6 think pointedly about --</p> <p>7 BOARD MEMBER NEWLIN: A simple yes would</p> <p>8 do.</p> <p>9 MR. SIMON: Yes.</p> <p>10 BOARD MEMBER NEWLIN: Mr. Schneider, why</p> <p>11 didn't you have your ODAS units in your initial</p> <p>12 application? Because it's clearly material to coverage</p> <p>13 as the -- I'll use the Exhibits, J -- Z-13 and Z-14</p> <p>14 show. Why wasn't it there from the beginning.</p> <p>15 MR. SCHNEIDER: Because the application</p> <p>16 sought approval of the macro site, and the purpose was</p> <p>17 to show what the coverage from the macro site is. And</p> <p>18 then we agreed at your request to show what -- how the</p> <p>19 ODAS would supplement the macro.</p> <p>20 BOARD MEMBER NEWLIN: I'm not trying to</p> <p>21 tussle, I mean it's just, it is relevant to the</p> <p>22 argument on coverage. So I still don't quite</p> <p>23 understand why wasn't it there to begin with, but it</p> <p>24 wasn't.</p> <p>25 Let me go back to the lease thing, because</p>

<p style="text-align: right;">Page 33</p> <p>1 you mentioned me specifically with regard to the lease 2 process. And just for clarification reasons, my 3 dissatisfaction at the time, I still have it, was not 4 with Verizon, it's trying to understand what the 5 Township Committee, what their planning reasons were 6 for approving this lease. And my opinion now, I don't 7 know, I have no idea, I do think it is relevant that 8 they obviously approved the lease because they turned 9 down an alternative site here. I agree with you on 10 that, but beyond that I don't know what else you could 11 say about it.</p> <p>12 Maybe, and I will give you a speculation, 13 maybe they were concerned, because I do think Verizon 14 went after this site. It was really a Verizon issue to 15 get that whole thing going. I think that's probably 16 true. Maybe they were concerned with having an 17 application come in a residential property like they 18 did at the church site. Maybe, I don't know.</p> <p>19 The height of the tower was in the lease 20 originally. The approved lease did specify height 21 tower, true?</p> <p>22 MR. SCHNEIDER: Correct. I just looked at 23 it.</p> <p>24 BOARD MEMBER NEWLIN: Did the approved 25 lease specify a site plan.</p>	<p style="text-align: right;">Page 34</p> <p>1 MR. SCHNEIDER: It had a lease exhibit 2 attached to it which showed the tower at 146 feet 3 inclusive of branching for a tree and a three-page 4 lease exhibit.</p> <p>5 BOARD MEMBER NEWLIN: Did it have the 6 setbacks.</p> <p>7 MR. SCHNEIDER: I don't believe it did; 8 nor, would one have normally been required as part of a 9 exhibit to a lease agreement.</p> <p>10 BOARD MEMBER NEWLIN: Again, I'm just --</p> <p>11 MR. SCHNEIDER: But when you say setback, 12 did it dimension the setback?</p> <p>13 BOARD MEMBER NEWLIN: Yes. One of the real 14 sensitive points is the setback to residential 15 properties, and 59 feet, 59 point something is not a 16 setback. Just a simple factual question: Is that kind 17 of information in the approved lease.</p> <p>18 MR. SCHNEIDER: The actual setbacks are 19 shown on the lease, yes.</p> <p>20 BOARD MEMBER NEWLIN: Yes.</p> <p>21 MR. SCHNEIDER: On the lease exhibit, I'm 22 sorry.</p> <p>23 BOARD MEMBER NEWLIN: Okay. So that was in 24 there as data.</p> <p>25 MR. SCHNEIDER: Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 CHAIRMAN FLANAGAN: Mr. Simon?</p> <p>2 MR. SIMON: I just think the record should 3 be clarified in that the location changed from the time 4 the lease was signed to what you have before you today. 5 And just to clarify that.</p> <p>6 CHAIRMAN FLANAGAN: It's okay. So then at 7 the time the lease was signed what were the setbacks, 8 do you know?</p> <p>9 MR. SCHNEIDER: I'm sorry?</p> <p>10 CHAIRMAN FLANAGAN: At the time the lease 11 was signed what where the setbacks?</p> <p>12 MR. SCHNEIDER: They vary from -- for 13 example, the tree pole was set back 59 feet 6 inches 14 from the adjoining lot line with 9.04. The compound 15 was approximately 50 feet. They're all set forth on 16 Exhibit A-2 Sheet LE-1. But to answer -- I mean, I can 17 go through each one.</p> <p>18 CHAIRMAN FLANAGAN: No, that's fine. But 19 the current proposal is roughly the same setback, is it 20 not, 59-ish feet?</p> <p>21 MR. SCHNEIDER: Correct. If there's a 22 difference. It's not a material -- it's not a material 23 difference, to respond to Mr. Newlin's questions. The 24 setbacks are specifically shown on the exhibit.</p> <p>25 CHAIRMAN FLANAGAN: Mr. Simon, do you think</p>	<p style="text-align: right;">Page 36</p> <p>1 it shows -- so there may have been a change, was it a 2 material change?</p> <p>3 MR. SIMON: If you recall I asked 4 specifically Mr. Masters that question. And the 5 testimony that is in the record that it was moved from 6 the original location. And I believe at least as to 7 one of the residential properties it became closer.</p> <p>8 CHAIRMAN FLANAGAN: Okay.</p> <p>9 MR. SIMON: Because there's two properties.</p> <p>10 CHAIRMAN FLANAGAN: Right. So there's the 11 -- I don't know the lot number -- the O'Donnell 12 property, right. And I think that's a 59-foot setback. 13 And then it moved closer to, I guess, if not the 14 O'Donnell property it must be the property that's on 15 Lees Hill?</p> <p>16 MR. SIMON: As I'm sitting here I don't 17 remember which one, but I know the record shows --</p> <p>18 CHAIRMAN FLANAGAN: Do you think there was 19 a tighter setback, I want to say, a smaller setback 20 from the 59-ish foot setback to the O'Donnell property?</p> <p>21 MR. SIMON: I think there may be. And I 22 think there was also an issue about the associated tree 23 removal. Because I don't believe that on the original 24 lease A-2 that there's any indication as to the extent 25 of the trees that were going to be removed, the</p>

<p style="text-align: right;">Page 37</p> <p>1 diameter breast height of those trees, the tree canopy</p> <p>2 of any of those trees.</p> <p>3 CHAIRMAN FLANAGAN: Okay. Sorry.</p> <p>4 MR. SCHNEIDER: But could I -- so in</p> <p>5 response to Mr. Newlin's question, I think --</p> <p>6 BOARD MEMBER NEWLIN: I think you answered</p> <p>7 it; right.</p> <p>8 MR. SCHNEIDER: Yes.</p> <p>9 CHAIRMAN FLANAGAN: So while we're on the</p> <p>10 topic of the lease, I know there's been a lot of</p> <p>11 discussion and I think some speculation about the exact</p> <p>12 process by which this lease came about. And I know</p> <p>13 there's -- and I think I've heard different things.</p> <p>14 Can you refresh our memory about exactly</p> <p>15 the process? So let me ask, what do I really want to</p> <p>16 know?</p> <p>17 Did the Township Committee out of the blue</p> <p>18 with no prior discussions to -- with Verizon, put out</p> <p>19 that RFP, or was Verizon in discussion with the</p> <p>20 Township Committee and then the Township Committee put</p> <p>21 out the RFP? Do you know which one?</p> <p>22 MR. SCHNEIDER: Very clear. Verizon was in</p> <p>23 discussion with the Township Committee when they put</p> <p>24 out the bid.</p> <p>25 CHAIRMAN FLANAGAN: Maybe swing the boom</p>	<p style="text-align: right;">Page 38</p> <p>1 towards you, the microphone.</p> <p>2 MR. SCHNEIDER: I'm sorry. Verizon</p> <p>3 approached the Township Committee, said there was a --</p> <p>4 I'm going to try to be concise -- that there was a gap</p> <p>5 in coverage. We needed a site in this area of Harding.</p> <p>6 Said DPW property is among the properties that would</p> <p>7 meet our technical needs. Township Committee went out</p> <p>8 to bid.</p> <p>9 CHAIRMAN FLANAGAN: Okay. So it's I think</p> <p>10 important to me at least because we talk about -- what</p> <p>11 should we take away from the fact that the Township</p> <p>12 Committee put a lease out? And in my mind there's a</p> <p>13 difference between the Township Committee of -- without</p> <p>14 any prior discussion deciding, you know what, I really</p> <p>15 want to lease out this property. That's very different</p> <p>16 than if there were discussions with Verizon, all right,</p> <p>17 and then you have to wonder what those discussions</p> <p>18 were. I don't know, I don't know if you know Mr.</p> <p>19 Schneider and we don't need testimony, but there were</p> <p>20 discussions. I'm sure the discussions, well, and I</p> <p>21 think you just said, were you have a gap or there is a</p> <p>22 gap.</p> <p>23 So then what was the reason the Township</p> <p>24 put the bid out, right. Did they feel they needed to?</p> <p>25 Did they -- I don't -- let me say this. I don't think</p>
<p style="text-align: right;">Page 39</p> <p>1 they just said, you know what, I really would like a</p> <p>2 tower here. I think they felt some compulsion to make</p> <p>3 the property available, whether it be to avoid putting</p> <p>4 a tower potentially on a residential site, or what have</p> <p>5 you.</p> <p>6 MR. SCHNEIDER: Or because they recognized</p> <p>7 -- or because they recognized in response to Verizon's</p> <p>8 inquiry that there was a need for a tower to eliminate</p> <p>9 a gap, and determined that if there was going to be one</p> <p>10 it should be on municipal property.</p> <p>11 CHAIRMAN FLANAGAN: Fair enough. That's</p> <p>12 one of the options.</p> <p>13 MR. SCHNEIDER: Could I --</p> <p>14 CHAIRMAN FLANAGAN: Steve, you have --</p> <p>15 MR. SCHNEIDER: Could I --</p> <p>16 MR. MLENAK: I just think it's important</p> <p>17 that the Board, and certainly the public, also</p> <p>18 understand the significance under the law in terms of</p> <p>19 how the lease plays in. Because the Counsel, as has</p> <p>20 been pointed out many times in this case, conditioned</p> <p>21 that lease on this Board approving. So he could have</p> <p>22 changed the zoning as has been pointed out by many</p> <p>23 people, but it is still up to this Board to determine</p> <p>24 whether we -- the Applicant has met its burden under</p> <p>25 all the criteria that we've discussed within my memo.</p>	<p style="text-align: right;">Page 40</p> <p>1 What the case law says is that we're helpful. You</p> <p>2 could consider the lease. So I think it's just</p> <p>3 important to set forth said standard.</p> <p>4 CHAIRMAN FLANAGAN: Yeah. And thank you,</p> <p>5 Steve. You said it much better than I did.</p> <p>6 MR. SCHNEIDER: May I just respond to Board</p> <p>7 Member Rosenbaum's one question?</p> <p>8 CHAIRMAN FLANAGAN: Yes. Mr. Simon, I'll</p> <p>9 get to you.</p> <p>10 MR. SCHNEIDER: With respect to the tree,</p> <p>11 the Applicant only would -- if it was a tree it would</p> <p>12 only be 120. The 126 is a reference to branching on</p> <p>13 the top.</p> <p>14 BOARD MEMBER ROSENBAUM: So it's 120 for</p> <p>15 the actual tree, and six additional feet because of --</p> <p>16 MR. SCHNEIDER: That's correct. Because</p> <p>17 they don't need the two elevations.</p> <p>18 BOARD MEMBER ROSENBAUM: I want to follow</p> <p>19 up on that for a second. So you talked about a</p> <p>20 flagless flagpole you needed two elevations, 120 and</p> <p>21 130 for Verizon. You can do, what was it, a hundred,</p> <p>22 110 for alternate one and 80 or 90 for alternate two.</p> <p>23 So my question would be, so if it's 80, 90</p> <p>24 is good enough for another carrier why can't you make</p> <p>25 this tower 80- or 90-feet tall.</p>

<p style="text-align: right;">Page 41</p> <p>1 MR. SCHNEIDER: It's good enough. It's not 2 as good. 3 BOARD MEMBER ROSENBAUM: Well, a 4 thousand-foot tower would be even better. 5 MR. SCHNEIDER: Well, no, but out of 6 fairness the third collocater either will or won't 7 accept that lower height but -- 8 BOARD MEMBER ROSENBAUM: But you're deeming 9 it acceptable enough. 10 MR. SCHNEIDER: Well, I can't comment on 11 what the third carrier will or won't accept. What I 12 can say is that a design of 130 would advance the 13 collocation and the carrier would -- I can't comment on 14 what the third carrier will or won't accept. They may 15 be willing to accept it because it's better than zero. 16 BOARD MEMBER ROSENBAUM: Right. But if 17 it's technically feasible that someone will accept or 18 not accept 80 or 90, why should we build something for 19 the event that a second carrier or a third carrier will 20 do something? Why not make it lower, make it effective 21 for today, and we deal with it later if somebody wants 22 to -- someone testified you could extend the height 23 taller. So why not deal with that eventuality if it 24 ever happens. 25 MR. SCHNEIDER: Well, there's a couple of</p>	<p style="text-align: right;">Page 42</p> <p>1 reasons, one is, the goal of every planning concept 2 associated with the tower is that if you're going to 3 have a tower that it should be able to accommodate and 4 should be designed and built to accommodate 5 collocation. You wouldn't want a single-user tower. 6 That's consistent with every planning goal, including 7 the goals of your ordinance. You wouldn't -- you 8 wouldn't want there to be a single user lower tower. 9 BOARD MEMBER ROSENBAUM: But someone did 10 testify, correct me if I'm wrong, that a flagless level 11 can be made taller to accommodate another carrier at a 12 later point; correct? 13 MR. SCHNEIDER: Partially correct. If 14 you'll recall there was significant discussion about 15 the difficulties in building a tower to be extendible 16 because then you have to run the cables through the 17 existing carrier. That's why that preference -- 18 BOARD MEMBER ROSENBAUM: Sounds like a 19 problem that money can fix. 20 MR. SCHNEIDER: Well, I don't know that it 21 is money that can fix, but the alternative that seemed 22 to be the focus of the Board was rather than deal with 23 the extension scenario was to build it to a height that 24 met (A) Verizon's objective, (B) encourage collocation, 25 and (C) give protection to the Township to ensure that</p>
<p style="text-align: right;">Page 43</p> <p>1 it doesn't extend in a manner in accordance with 2 Federal law any higher. Those were the three 3 objectives that are sought to be achieved. 4 BOARD MEMBER NEWLIN: I'm sorry. 5 Clarification. But objectives from whom. 6 BOARD MEMBER ROSENBAUM: That's where I'm 7 going. So -- 8 BOARD MEMBER NEWLIN: Who's stating those 9 objectives. 10 MR. SCHNEIDER: In terms of not insuring 11 that there be an extension? 12 BOARD MEMBER NEWLIN: No. You just said 13 three objectives. What's the source of those 14 objectives? This Board didn't say that. 15 BOARD MEMBER ROSENBAUM: Maybe I can jump 16 in. So Verizon is the owner of this tower, right? So 17 Verizon, you know, clearly wants to optimize as the 18 landlord, as the owner of this, their interest. If I 19 was the owner of the interest I'd want to be as tall as 20 possible and put as many antennas as possible on the 21 tower. But we're here to represent the Town's interest 22 and the residents' interest, not Verizon's interest, as 23 I'm sure you're aware. 24 So the question still becomes, why not make 25 it shorter and we'll deal with it being taller if</p>	<p style="text-align: right;">Page 44</p> <p>1 someone else comes along and wants to do something. 2 That's the question I'm asking myself. 3 MR. SCHNEIDER: Well, the first answer to 4 your question is that it wasn't that Verizon just 5 arbitrarily chose the 120. There was testimony about 6 what the difference is between 120, 100 and 80. So it 7 wasn't we just said we're going to pick the highest 8 height. We presented to the Board, I think credible 9 testimony as to what the difference is between 120, 10 100, and 80. It's not to say that there's not coverage 11 at 80. It's not to say there's not coverage at a 12 hundred. 13 By way of example, we discussed what the 14 impacts of the lower height are, by way of example the 15 Harding Township Elementary School. So when you ask me 16 what's the requisite height the answer is 120 allows us 17 to meet our coverage objectives in this area. Can we 18 go lower? Yes, but you then lose coverage in certain 19 areas. 20 BOARD MEMBER ROSENBAUM: And conversely if 21 you put a thousand-foot tower you'd get better 22 coverage. 23 MR. SCHNEIDER: Well, that's not 24 necessarily true. But I guess what I'm trying to 25 convey, and maybe I'm not doing this concisely enough,</p>

<p style="text-align: right;">Page 45</p> <p>1 is that there is differences between 120, 100, and 80. 2 The decision to propose the 120 or 130, let's put aside 3 that 10-foot, is not solely, and I don't want to create 4 this impression to accommodate collocation, there was a 5 technical reason why 120 was proposed verse or sought 6 verse the lower location. 7 Is there not coverage -- is there coverage 8 at 100? Yes. Is there coverage at 80? Yes. But are 9 there still gaps at the lower heights? Yes. 10 BOARD MEMBER NEWLIN: But Rich, if you look 11 at these two Z-13 and Z-14, 100 feet, 120 feet with 12 ODAS, the similarities are very high, and the 13 difference is very small. And the maps you were 14 talking about before didn't have ODAS. 15 CHAIRMAN FLANAGAN: But -- 16 BOARD MEMBER NEWLIN: I mean, we haven't -- 17 I'm sorry. One last thing. We haven't seen one for 18 80 feet, I believe. 19 CHAIRMAN FLANAGAN: We have seen 80 feet, I 20 think. 21 BOARD MEMBER NEWLIN: With ODAS. 22 CHAIRMAN FLANAGAN: Oh, perhaps no with 23 ODAS. But isn't -- and Steve, I'll ask Steve -- and 24 I'll tell what you, I'll remember my question. Go 25 ahead, Mr. Simon.</p>	<p style="text-align: right;">Page 46</p> <p>1 MR. SIMON: Just really quick. I just 2 wanted to so the record is crystal clear in terms of 3 the issue about the lease plan versus the site plan 4 that's before the Board currently, just so the record's 5 straight. 6 With regard to Lot 55, which I believe is 7 the Conine property, the lease had a distance from the 8 actual pole to the lot -- the common lot line of 120.9 9 feet. The current site plan has a setback from the 10 pole to the common lot line to Lot 55 of 93.6 feet. 11 CHAIRMAN FLANAGAN: All right. So still 12 you're talking about nine feet, right? 13 MR. SIMON: No, no, no. I'm talking about 14 almost 30 feet. 15 CHAIRMAN FLANAGAN: I'm sorry. You started 16 at 102.9. 17 MR. SIMON: No. It's 120.9. 18 CHAIRMAN FLANAGAN: Oh, all right. I'm 19 sorry. 20 MR. SIMON: So I'm saying just so the 21 record's clear, for Lot 55 the lease has a setback from 22 the pole of 120.9. The current proposal is 93.6. A 23 difference of approximately 27 feet. With regard to 24 Lot 9.04 the lease had a setback to that lot on the 25 common property line to the pole of 59.6 feet. And</p>
<p style="text-align: right;">Page 47</p> <p>1 it's been reduced only by approximately a foot to 2 58.1 feet. Just so the record's clear. 3 BOARD MEMBER NEWLIN: That's the O'Donnell 4 property. 5 MR. SIMON: Correct. 6 CHAIRMAN FLANAGAN: And can I ask? I see 7 both property owners. Does anyone who 55 is just so we 8 can get a picture? Is that the Conine property? 9 MR. CONINE: Yes. 10 CHAIRMAN FLANAGAN: Is that it? 11 MR. SIMON: That's it. I just wanted to 12 clarify. 13 CHAIRMAN FLANAGAN: So Steve, going back to 14 the previous discussion of the coverage versus the 15 height, right. So in my mind this is the key issue 16 that we're facing, right. There is a tradeoff between 17 I guess the taller the tower at 120 feet Verizon -- or 18 130 feet Verizon, and let me ask Mr. Schneider, sorry. 19 Is Verizon comfortable you get the coverage you need at 20 the height that you propose at 130 feet? 21 MR. SCHNEIDER: Yes. 22 CHAIRMAN FLANAGAN: I know that's one of 23 the questions on the checklist. 24 MR. SCHNEIDER: Yes. And I suggest -- I 25 know you want to move this along. I only suggested 130</p>	<p style="text-align: right;">Page 48</p> <p>1 frankly for a collocation based on what I thought was 2 the objective of the Board. If the Board -- I would 3 accept as a condition 120. I was just throwing out 130 4 only because that's what I thought the Board was trying 5 to achieve. 6 CHAIRMAN FLANAGAN: Okay. So let me ask 7 you this then. So if the Board said, you know what, I 8 don't care about the collocation, let's pretend for a 9 minute, what height would you be happy with then? 10 Would you be happy with a hundred? 11 MR. SCHNEIDER: I would be happen with 120. 12 If the Board accepted -- if the Board conditioned 100 13 that would be a decision that I would have to -- 14 CHAIRMAN FLANAGAN: Understood. Fair 15 enough. So you know, at 130 feet, this is our 16 decision, right. At 130 feet Verizon is comfortably 17 covering, and it's neg 95 dBm whatever, right. And we 18 have had lots of discussion back and forth and I think 19 we've heard that's the standard that people look at. I 20 think there's room for argument and it's been argued 21 that you don't need that strong of a coverage. Mr. 22 Simon I think that covers your argument, right? 23 (Whereupon, Mr. Simon nods in the 24 affirmative.) 25 CHAIRMAN FLANAGAN: So the tradeoff is</p>

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1 coverage versus height.

2 BOARD MEMBER SYMONDS: Excuse me, Mike, but

3 I disagree based on the exhibits that have been

4 provided by Ms. Boschulte and PierCon. If you -- you

5 know, they used for their exhibits they used these, I

6 guess they call them drive tests, and they did -- I

7 looked at six different charts. They did drive tests

8 at 700 megahertz and 2100 megahertz. And they did 80,

9 100, 120. And these are, you know, and then they

10 presented this plot that shows the green dots where

11 there's the coverage that they desire, and the gray

12 dots where it's below the 95. And if you look at

13 the -- you know, and I spent a lot of time flipping

14 back and forth. And if you look at the coverage, if

15 you look at the coverage, you know, 700 at a hundred

16 feet, versus 700 at 80 feet, the difference in the

17 number of green dots is very, very small. It's of the

18 neighborhood of, you know, it looks, you know, if you

19 look at this chart, you come down Millbrook Road --

20 BOARD MEMBER NEWLIN: Can you actually

21 refer to the chart?

22 BOARD MEMBER SYMONDS: I'm sorry. It's

23 Harding-3 Exhibit.

24 BOARD MEMBER NEWLIN: It's on the top.

25 CHAIRMAN FLANAGAN: Well, it may not have

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1 test.

2 CHAIRMAN FLANAGAN: So I think your point

3 is, and I think you agree with me --

4 SECRETARY TAGLAIRINO: Hugh, is that it up

5 this? Is that the report?

6 BOARD MEMBER SYMONDS: Yea, that looks like

7 the report.

8 SECRETARY TAGLAIRINO: March 3rd?

9 BOARD MEMBER SOVOLOS: Is that with or

10 without ODAS?

11 BOARD MEMBER SYMONDS: Not ODAS, this is

12 just propagation, this is the drive test that they used

13 to, you know, it's --

14 CHAIRMAN FLANAGAN: I think that's it,

15 Lori.

16 BOARD MEMBER SYMONDS: If you go further

17 down that's the coverage everywhere.

18 BOARD MEMBER SOVOLOS: Lori, can you use

19 the larger --

20 SECRETARY TAGLAIRINO: Tell me by which one

21 you want. The --

22 BOARD MEMBER SYMONDS: It's called CW Test

23 700 megahertz, 120 feet. That's in the left-hand title

24 block. Keep going. We're getting warm.

25 CHAIRMAN FLANAGAN: Dr. Eisenstein, do you

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1 been marked.

2 BOARD MEMBER SYMONDS: It's CW Test 700

3 megahertz at 80 feet.

4 CHAIRMAN FLANAGAN: Steve, do we need to

5 enter into the record which chart he was looking at?

6 SECRETARY TAGLAIRINO: Steve, do you want

7 me to pull it up?

8 CHAIRMAN FLANAGAN: Can you?

9 SECRETARY TAGLAIRINO: I don't know. I can

10 try.

11 BOARD MEMBER SYMONDS: Well, you're going

12 to have to flip between 700 at 80 feet and 700 at 120

13 feet.

14 MR. MLENAK: I don't know if we need to

15 comment on whether it's in the record or not.

16 CHAIRMAN FLANAGAN: It is. Is it important

17 that we get it on the record which chart he was

18 referring to?

19 MR. MLENAK: If we can identify it I would

20 like that.

21 BOARD MEMBER SYMONDS: It's the PierCon

22 Solutions Exhibit that was prepared on February 28th,

23 2020. I'm going to have to put my glasses on. And

24 again, it was -- I don't think I have the front page

25 but again it's the drive test. They only did one drive

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1 have any idea which Exhibit it is?

2 DR. EISENSTEIN: It's listed on there as

3 D --

4 MR. SCHNEIDER: It might be A-27, but I

5 have to search.

6 BOARD MEMBER SYMONDS: There we go.

7 DR. EISENSTEIN: The previous one "C" is

8 120.

9 BOARD MEMBER BOYAN: Excuse me, are we

10 looking at 80 feet or a hundred feet?

11 BOARD MEMBER SYMONDS: What I'm doing is

12 comparing 80, 100, and 120, but mostly 80 and 120. And

13 if you look at them, the 700 is the first one and the

14 2100, but the -- if you go down any of these particular

15 roads or most of them, you know, if you're at 80 feet

16 it might go down ten dots. If you go to 120 feet you

17 get one more dot and it's literally, you know, the

18 drawing's on scale, but it's a very, very small, I

19 mean, it's 20, 30 yards, it's one house, two houses.

20 That's about it. So for them to say that they have to

21 go to 120 feet to get the coverage they're required I

22 think is in my opinion is not correct.

23 CHAIRMAN FLANAGAN: So let me say, I agree

24 with you a hundred percent, and we're saying the same

25 thing. I may not have said it clearly enough, but you

<p style="text-align: right;">Page 53</p> <p>1 would agree that there is less coverage at 80 than</p> <p>2 there is at 120? Just directionally.</p> <p>3 BOARD MEMBER SYMONDS: Directionally, yes.</p> <p>4 But not a significant difference.</p> <p>5 CHAIRMAN FLANAGAN: Understood. And that's</p> <p>6 what we need to discuss, part of what we need to</p> <p>7 discuss.</p> <p>8 MR. SCHNEIDER: I just -- I'm not, I think</p> <p>9 we're past the point of back and -- that's at the lower</p> <p>10 frequency band, though.</p> <p>11 BOARD MEMBER SYMONDS: That's right. And</p> <p>12 when you go to the upper frequency the upper frequency</p> <p>13 does attenuate more.</p> <p>14 MR. SCHNEIDER: That's my only point for</p> <p>15 this discussion. Out of fairness, that's at the lowest</p> <p>16 frequency band versus the 2100 frequency band.</p> <p>17 BOARD MEMBER SYMONDS: I understand. I</p> <p>18 look at that and yes, but still my feeling is that</p> <p>19 you've got a lot, you've got -- let's put it this way.</p> <p>20 As far as what I can tell by looking at it, I didn't</p> <p>21 count all the dots, but I'll bet you've got 90 percent</p> <p>22 -- at 80 feet you've got 90 percent of the coverage</p> <p>23 that you have -- or possibly higher than 90 percent of</p> <p>24 the coverage that you have -- you know, the difference</p> <p>25 between 80 feet and 120 feet might be ten percent in</p>	<p style="text-align: right;">Page 54</p> <p>1 coverage.</p> <p>2 And so for them to say, well, we've got to</p> <p>3 go to 120 I think that really, if you're going to go</p> <p>4 with a full wrap around array, not a full, you can get</p> <p>5 the required coverage at 80 feet for one carrier. And</p> <p>6 so I think that -- sorry, I'm going to say my peace and</p> <p>7 get done.</p> <p>8 CHAIRMAN FLANAGAN: No, say your peace.</p> <p>9 BOARD MEMBER SYMONDS: You're at 80 feet</p> <p>10 with the first carrier. Then you're going, okay, so,</p> <p>11 you know, apparently we're trying to accommodate</p> <p>12 collocators. In the testimony it was identified that</p> <p>13 there are -- that the current market is there are three</p> <p>14 big carriers. Which one carrier is already across the</p> <p>15 street on the firehouse, so why would they want to</p> <p>16 move. So that leaves us with two carriers that are,</p> <p>17 you know, potential collocators or potential</p> <p>18 cohabitators.</p> <p>19 So my question is, we haven't seen any</p> <p>20 testimony to say, yes, whoever they are, whether it's</p> <p>21 Verizon, Sprint, or whoever it is, we haven't seen</p> <p>22 anybody come up and say, oh, yes, we're ready to jump</p> <p>23 on that tower with Verizon. And yet we're -- but</p> <p>24 they're preparing for three. I think it's much more</p> <p>25 realistic to give them their base and have a plan,</p>
<p style="text-align: right;">Page 55</p> <p>1 possibly. You know, I'd give them the base, the lowest</p> <p>2 range, the 80 feet. Then if somebody comes along then</p> <p>3 they have, you know, the extension, I guess, the</p> <p>4 Federal law allows for an extension of I think it's ten</p> <p>5 percent or 20 feet, whatever it was. It seemed like it</p> <p>6 was sufficient for another collocator. And I think we</p> <p>7 stop right there. I'm done. Thank you.</p> <p>8 MR. SCHNEIDER: Just in case the Board</p> <p>9 wants, the relevant exhibit is A-21. And the -- I'm</p> <p>10 trying to get a page number. If you look at Article or</p> <p>11 Paragraph "V" of A-21 that in Paragraph 16 and 17</p> <p>12 narratively describes the difference at both 700 and</p> <p>13 2100 between 120, 100 and 80. It sets it right --</p> <p>14 CHAIRMAN FLANAGAN: Do you want to -- do</p> <p>15 you want to spare me from reading on the screen? Do</p> <p>16 you want to read it aloud?</p> <p>17 MR. SCHNEIDER: If you give me --</p> <p>18 MR. SIMON: Can I say something?</p> <p>19 CHAIRMAN FLANAGAN: Hold on. Go ahead.</p> <p>20 Sure.</p> <p>21 MR. SIMON: I mean, this is something that</p> <p>22 was presented I don't know how many years ago now, but</p> <p>23 it was subject to extensive cross-examination. So I</p> <p>24 just want the record to be clear that whatever Mr.</p> <p>25 Schneider's reading or about to read is (A) already in</p>	<p style="text-align: right;">Page 56</p> <p>1 the record, and (B) I think this was Ms. Boschulte's</p> <p>2 report and it was subject to dare I say extensive</p> <p>3 cross-examination by me. So I just want you all to</p> <p>4 understand that this isn't -- whatever he's about to</p> <p>5 say isn't necessarily, at least in our opinion, the</p> <p>6 gospel in terms of the record in this case.</p> <p>7 BOARD MEMBER NEWLIN: And there is a later</p> <p>8 report that was done January 18th, 2021, which has a</p> <p>9 lot of the same information, plus ODAS. So I would</p> <p>10 tend to also agree. This whole report, I think Hugh's</p> <p>11 made his point but what else do we need.</p> <p>12 MR. SCHNEIDER: Okay.</p> <p>13 CHAIRMAN FLANAGAN: So let's hold off.</p> <p>14 So, Hugh, I agree, right. And I think this</p> <p>15 is the question before us. How much do they need to</p> <p>16 put it plainly. And if they get, in your estimate, ten</p> <p>17 dots at 120 and it goes down to nine at 80, right, and</p> <p>18 that's been quantified. We've heard lots of testimony</p> <p>19 about what's sufficient -- what sufficient signal</p> <p>20 strength is for in-house service.</p> <p>21 And I think that's part of what we need to</p> <p>22 decide, what we're going to balance -- so let me go</p> <p>23 back. So the taller the tower the stronger the signal.</p> <p>24 Albeit, maybe it's minor. However, the taller the</p> <p>25 tower the more negative impact it has on the</p>

<p style="text-align: right;">Page 57</p> <p>1 aesthetics, right.</p> <p>2 BOARD MEMBER SYMONDS: Exactly.</p> <p>3 CHAIRMAN FLANAGAN: So we're balancing now</p> <p>4 how much signal strength or how much coverage are we</p> <p>5 willing to allow at what cost. That's the decision we</p> <p>6 need to make. Right. I mean, we get into and you can</p> <p>7 talk about the negative criteria -- does it work while</p> <p>8 going through Steve's memo for a minute?</p> <p>9 BOARD MEMBER ROSENBAUM: Can I just ask a</p> <p>10 quick question?</p> <p>11 CHAIRMAN FLANAGAN: Yes.</p> <p>12 BOARD MEMBER ROSENBAUM: SO what's in front</p> <p>13 of us is a request for a variance at a particular</p> <p>14 height. And what the Board is doing is a binary yes or</p> <p>15 no about that height. Am I correct about that?</p> <p>16 CHAIRMAN FLANAGAN: I believe that's --</p> <p>17 BOARD MEMBER NEWLIN: It depends how it's</p> <p>18 -- I mean, Mike, this is where you're polling --</p> <p>19 CHAIRMAN FLANAGAN: Well, I think, and Mr.</p> <p>20 Schneider what I intend to do is I want to have</p> <p>21 finished this discussion. And I think what we're going</p> <p>22 to do is we'll do the straw poll at your ask, which is,</p> <p>23 I believe, is at 130 feet flagless flagpole. Is that</p> <p>24 fair?</p> <p>25 MR. SCHNEIDER: That's fair, but I think</p>	<p style="text-align: right;">Page 58</p> <p>1 the Board I think after three years would also have the</p> <p>2 ability to, if they want, impose, grant the Use</p> <p>3 Variance. If there's not five votes at 130, let's be</p> <p>4 blunt, the Board has the authority to approve it at a</p> <p>5 lower height that might gather five votes and impose</p> <p>6 that as a condition of approval.</p> <p>7 CHAIRMAN FLANAGAN: So, yeah, okay. And</p> <p>8 then interesting. So if -- will you consent to that</p> <p>9 lower height? Why don't we do this. Why don't we see</p> <p>10 what happens at 130. And there's still some things</p> <p>11 that I think we need to discuss before we vote on</p> <p>12 anything, to be honest with you. Mr. Simon?</p> <p>13 MR. SIMON: Yes. I mean, look, I think</p> <p>14 that for the record to be appropriate and complete that</p> <p>15 at a minimum that the Board needs to before talking</p> <p>16 about anything relating to height and things of that</p> <p>17 nature is to go through both the positive and negative</p> <p>18 criteria.</p> <p>19 CHAIRMAN FLANAGAN: I agree.</p> <p>20 MR. SIMON: Because the Applicant has the</p> <p>21 burden of proof to meet both, not just a height issue</p> <p>22 or what have you.</p> <p>23 CHAIRMAN FLANAGAN: And my intention is to</p> <p>24 go through Steve's memo line-by-line and we'll answer</p> <p>25 the questions line-by-line. And frankly, I think we</p>
<p style="text-align: right;">Page 59</p> <p>1 can get through the first page pretty quickly, but</p> <p>2 we're not going to do it right now, right, positive</p> <p>3 criteria.</p> <p>4 But nonetheless, going back, this is a</p> <p>5 tradeoff between signal strength and height of the</p> <p>6 tower. Height of the tower, in my view, and I think</p> <p>7 it's universally acknowledged, well, it's not</p> <p>8 universally, but it has negative impact on the</p> <p>9 Township. Right.</p> <p>10 So how much height is this Board willing to</p> <p>11 offer? Right, and does that give -- in order to give</p> <p>12 coverage -- how much coverage, given how much height of</p> <p>13 the tower. That's what it comes down to.</p> <p>14 I think when we think about that, when we</p> <p>15 ask that question, we do need to consider the impact of</p> <p>16 the ODAS. Right. So we don't have great testimony.</p> <p>17 We have testimony that there is a thing called ODAS.</p> <p>18 We have a two, I think it is RF plots, showing how the</p> <p>19 coverage is supplemented with ODAS based on two tower</p> <p>20 heights.</p> <p>21 Dr. Eisenstein, you know, you've eyeballed</p> <p>22 it, right and I think part of your testimony was it</p> <p>23 would need to be further investigated, right. You have</p> <p>24 an initial view. It would require engineering. We</p> <p>25 don't have that.</p>	<p style="text-align: right;">Page 60</p> <p>1 DR. EISENSTEIN: Correct.</p> <p>2 BOARD MEMBER SOVOLOS: Mike, we also have</p> <p>3 the visual mock-ups that they did at the height, at the</p> <p>4 80-foot level that we were discussing tonight. The</p> <p>5 crane test was at 120. So we don't have complete</p> <p>6 information at these other heights that we're</p> <p>7 discussing.</p> <p>8 CHAIRMAN FLANAGAN: Right. So anyway, in</p> <p>9 my mind the ODAS is an important part of this. I think</p> <p>10 it can clearly help mitigate the tower height which</p> <p>11 helps mitigate the negative impacts of this tower.</p> <p>12 BOARD MEMBER NEWLIN: Just to make sure</p> <p>13 we're not forgetting, this is important but also</p> <p>14 important is the site plan, particularly the setbacks.</p> <p>15 Both those things to me are very important. So if we</p> <p>16 talk about the height of the tower that is important,</p> <p>17 but also dealing with a 59 foot or 58-foot setback.</p> <p>18 CHAIRMAN FLANAGAN: Yeah, and I think in my</p> <p>19 personal view if you're going to, if we're looking at</p> <p>20 130-foot tower to have a 59-foot setback it's far too</p> <p>21 close to the property line, far too close. Even when</p> <p>22 we talk about the Fall Zone. If this thing -- am I</p> <p>23 correct, by the way, the Fall Zone is simply how far</p> <p>24 the tower -- is it the height of the tower, is that the</p> <p>25 radius of the Fall Zone? No? Yes? Dr. Eisenstein?</p>

<p style="text-align: right;">Page 61</p> <p>1 DR. EISENSTEIN: Well, typically what the</p> <p>2 Fall Zone would mean is the tower fell from its base,</p> <p>3 you know, then it would fall down and you can see what</p> <p>4 it would hit.</p> <p>5 CHAIRMAN FLANAGAN: So then for a 130-foot</p> <p>6 tower the radius of the Fall Zone is 130 feet?</p> <p>7 DR. EISENSTEIN: Yes. That would be</p> <p>8 correct.</p> <p>9 CHAIRMAN FLANAGAN: Excellent. So to have</p> <p>10 a Fall Zone on this proposed tower where the majority</p> <p>11 of the tower is going to end up on somebody else's</p> <p>12 property, and I don't know, is it going to hit somebody</p> <p>13 else's house? What's the setback? And I honestly</p> <p>14 don't know the answer.</p> <p>15 BOARD MEMBER NEWLIN: The testimony was</p> <p>16 from Verizon that there's no structures within the Fall</p> <p>17 Zone. I recall that.</p> <p>18 MR. SCHNEIDER: There was a specific --</p> <p>19 BOARD MEMBER ADDONIZIO: That's at the DPW</p> <p>20 site, though?</p> <p>21 BOARD MEMBER NEWLIN: Not including the</p> <p>22 DPW.</p> <p>23 MR. SCHNEIDER: Not including the DPW</p> <p>24 there's a specific exhibit presented which would show</p> <p>25 that there were no structures on adjoining properties</p>	<p style="text-align: right;">Page 62</p> <p>1 within --</p> <p>2 BOARD MEMBER NEWLIN: But nonetheless I</p> <p>3 would never support a Fall Zone twice -- more than half</p> <p>4 is already --</p> <p>5 CHAIRMAN FLANAGAN: You and I are on the</p> <p>6 same page.</p> <p>7 MR. SIMON: Again, so the record's clear,</p> <p>8 by Ordinance, your Ordinance that accessory structures</p> <p>9 are certainly permitted within the Fall Zone as</p> <p>10 identified by --</p> <p>11 CHAIRMAN FLANAGAN: And even without a</p> <p>12 structure there I have an issue with how close this</p> <p>13 tower's proposed to the site line. It's -- like Alf</p> <p>14 said, more than half the tower ends up in somebody</p> <p>15 else's property, potentially.</p> <p>16 BOARD MEMBER NEWLIN: Well, even worse to</p> <p>17 me that it appears to me that whoever did this site</p> <p>18 plan that they tried to make it convenient for the</p> <p>19 Town, and did not take into account the neighboring</p> <p>20 properties. I see no evidence that whoever came up</p> <p>21 with the site plan, the location of the DPW they worked</p> <p>22 as hard as they could to improve the setback. I've</p> <p>23 seen evidence of that. I think residents who complain</p> <p>24 about the Board was too strict about also two other</p> <p>25 conditions were other types of applications, which are</p>
<p style="text-align: right;">Page 63</p> <p>1 very different than this one, but that is correct. I</p> <p>2 would expect to see whoever did this work extremely</p> <p>3 hard to minimize setbacks to neighboring properties</p> <p>4 which are residential, which I think are all of them.</p> <p>5 So that's got to be solved too.</p> <p>6 CHAIRMAN FLANAGAN: All right. Do you guys</p> <p>7 want to go through the memo? I think it's probably the</p> <p>8 best way to make sure we hit all the points.</p> <p>9 BOARD MEMBER CAMMARATA: I have a question.</p> <p>10 How did the 80-foot minimum come about? Did they ever</p> <p>11 -- I mean, is it arbitrary or is it for the collocator?</p> <p>12 CHAIRMAN FLANAGAN: Mr. Schneider, why did</p> <p>13 you -- so we have seen testimony about the 80-foot</p> <p>14 tower. Why did you do the 80-foot, was that at our</p> <p>15 request?</p> <p>16 MR. SCHNEIDER: You asked -- I think you</p> <p>17 asked us to do it at 20-foot intervals.</p> <p>18 CHAIRMAN FLANAGAN: Okay. That make sense.</p> <p>19 It sounds like it was our request.</p> <p>20 BOARD MEMBER CAMMARATA: I was just</p> <p>21 thinking, if it's 80 feet why couldn't it be 70, it</p> <p>22 would be a significant difference.</p> <p>23 CHAIRMAN FLANAGAN: We don't know.</p> <p>24 Could we go through the memo, and if there</p> <p>25 are more questions let's talk, but the positive</p>	<p style="text-align: right;">Page 64</p> <p>1 criteria -- and Steve can you hear us okay?</p> <p>2 MR. MLENAK: I can hear you great.</p> <p>3 CHAIRMAN FLANAGAN: So Step 1: Does the</p> <p>4 proposed wireless communication facility promote the</p> <p>5 general welfare?</p> <p>6 And Steve give us instruction. I believe</p> <p>7 the answer is yes on this. I believe it's a matter of</p> <p>8 law that it does; is that correct?</p> <p>9 MR. MLENAK: Yes. Verizon has an FCC</p> <p>10 license and the frequencies requested. So yes.</p> <p>11 CHAIRMAN FLANAGAN: Okay. So Step 1 the</p> <p>12 answer is, yes, it does promote the general welfare</p> <p>13 because they have an FCC license.</p> <p>14 BOARD MEMBER NEWLIN: Okay. But if we're</p> <p>15 going through this carefully, which Steve has given us,</p> <p>16 under Step 1 is the particularly suited definition,</p> <p>17 which has been much discussed here. And there's a</p> <p>18 number of little romanettes. And I guess this is part</p> <p>19 of Step 1.</p> <p>20 MR. MLENAK: Yes. Those romanettes they're</p> <p>21 in the next couple of steps on the checklist.</p> <p>22 BOARD MEMBER NEWLIN: I'm sorry. Is it</p> <p>23 part of Step 1 or --</p> <p>24 MR. MLENAK: No. That paragraph you can</p> <p>25 read as an introduction to the next couple of steps.</p>

<p style="text-align: right;">Page 65</p> <p>1 MR. SIMON: Well --</p> <p>2 BOARD MEMBER NEWLIN: Okay. I've been</p> <p>3 corrected. Thank you.</p> <p>4 CHAIRMAN FLANAGAN: All right. So step</p> <p>5 two -- Mr. Simon you were going to say something?</p> <p>6 You're okay?</p> <p>7 MR. SIMON: Well, I think that the memo</p> <p>8 speaks for itself, but I think Mr. Newlin's point is</p> <p>9 spot on, which is that part of the positive criteria in</p> <p>10 terms of general welfare is particular site</p> <p>11 suitability. And I don't know if Steps 2 --</p> <p>12 BOARD MEMBER NEWLIN: Steve just told me</p> <p>13 I'm wrong.</p> <p>14 MR. MLENAK: We're getting there, Rob.</p> <p>15 MR. SIMON: Okay. I just want to make sure</p> <p>16 it's covered. That's all.</p> <p>17 CHAIRMAN FLANAGAN: Step 2: Is there a gap</p> <p>18 in the Applicant's wireless service?</p> <p>19 In my opinion is, yes, there is. I think</p> <p>20 we've seen enough testimony. I've lived here long</p> <p>21 enough. I think anybody sitting in the general public</p> <p>22 knows if you have Verizon I think you'd agree there is</p> <p>23 a gap. And forgetting about my personal experience or</p> <p>24 any of our personal experiences I think we have enough</p> <p>25 RF testimony to establish there is a gap. Anyone</p>	<p style="text-align: right;">Page 66</p> <p>1 disagree with that? (No response.)</p> <p>2 No? Okay. Three: What is the signal</p> <p>3 strength level necessary to fill the gap?</p> <p>4 And I'm going to tie that in -- and Steve</p> <p>5 stop me if you need to -- tie that in with number four.</p> <p>6 Will the placement of the wireless</p> <p>7 communication facility at the proposed location at the</p> <p>8 proposed height fill the gap?</p> <p>9 This is why I asked Mr. Schneider. So your</p> <p>10 answer is, yes, to number four. Will the placement of</p> <p>11 this facility at the location you propose at the height</p> <p>12 you propose fill your gap? I don't imagine you would</p> <p>13 have wasted all your time here if you didn't think it</p> <p>14 filled the gap.</p> <p>15 MR. SCHNEIDER: Correct.</p> <p>16 CHAIRMAN FLANAGAN: All right. So Step 4</p> <p>17 we can say yes.</p> <p>18 BOARD MEMBER NEWLIN: Okay. Now it gets</p> <p>19 into --</p> <p>20 CHAIRMAN FLANAGAN: Let's go back to three</p> <p>21 since I skipped it. Steve, what is the signal strength</p> <p>22 level necessary to fill the gap? Let me ask Mr.</p> <p>23 Schneider --</p> <p>24 MR. MLENAK: So the Applicant has proposed,</p> <p>25 designed what we have heard testimony about neg 95.</p>
<p style="text-align: right;">Page 67</p> <p>1 Last hearing we had closing arguments from both</p> <p>2 attorneys who discussed that. We had Mr. Simon who</p> <p>3 discussed -- and there was cross-examination of the</p> <p>4 experts in the past about other signal strengths. You</p> <p>5 had Dr. Eisenstein opine that neg 95 is an appropriate</p> <p>6 design standard. So I believe there are exhibits in</p> <p>7 the record at other signal strengths but it is -- the</p> <p>8 Applicant is designing it at neg 95. Is that correct,</p> <p>9 Mr. Schneider?</p> <p>10 MR. SCHNEIDER: That's correct.</p> <p>11 CHAIRMAN FLANAGAN: Okay. So when we</p> <p>12 answer number three are we -- is three and four in</p> <p>13 combination asking the question, do we think what they</p> <p>14 proposed will fill the gap? Because personally I don't</p> <p>15 know if I know enough to say, yes, neg 95 is the</p> <p>16 minimum strength you can have. Right. And I think</p> <p>17 we've heard testimony -- we have heard testimony that</p> <p>18 it's -- it's an industry standard. It's what everybody</p> <p>19 uses. I think Mr. Simon you've told us neg 95 is not</p> <p>20 necessarily the end-all-be-all with signal strength.</p> <p>21 So do I have to agree that neg 95 is what</p> <p>22 is required for me to say yes to Step 3, Steve?</p> <p>23 MR. MLENAK: Well, to evaluate Step 4</p> <p>24 you're going to have to determine what the signal</p> <p>25 strength is that you'd like to analyze under number</p>	<p style="text-align: right;">Page 68</p> <p>1 four, which is at that signal strength does the</p> <p>2 proposed height fill that gap? And you agreed this.</p> <p>3 CHAIRMAN FLANAGAN: You know what, I'm</p> <p>4 going to say, yes, but does what the Applicant proposed</p> <p>5 fill the gap? And according -- I think the applicant</p> <p>6 will say yes. I think it's a different question,</p> <p>7 though, about whether I think that is necessary; is</p> <p>8 that fair?</p> <p>9 BOARD MEMBER NEWLIN: Well, he says --</p> <p>10 MR. MLENAK: Yes. And that will be</p> <p>11 addressed in your future questions.</p> <p>12 BOARD MEMBER NEWLIN: So and Step 4, just</p> <p>13 going by the memo, Steve, you say, at the bottom of</p> <p>14 Step 4, "If the Board determines, based on substantial</p> <p>15 evidence in the record, that the gap can be filled at a</p> <p>16 lower height than is proposed, it can deny the</p> <p>17 application or condition the approval --" et cetera.</p> <p>18 So is that --</p> <p>19 MR. MLENAK: That's correct, Alf. And that</p> <p>20 would be because of the next step, which is: Could the</p> <p>21 same be achieved by placing it at a different</p> <p>22 structure, different technologies, or a more suitable</p> <p>23 alternative site?</p> <p>24 BOARD MEMBER NEWLIN: So this is kind of --</p> <p>25 the concern is that Step 3 and 4 are kind of trick</p>

<p style="text-align: right;">Page 69</p> <p>1 questions. If you say generally neg 95 we understand</p> <p>2 is acceptable standard. It does not mean, we all</p> <p>3 agree, it has to be neg 95 everywhere. Personally, I</p> <p>4 didn't see it was that high. So we can say Step number</p> <p>5 3 and 4 are more or less satisfied. We don't want to</p> <p>6 get tripped up later.</p> <p>7 CHAIRMAN FLANAGAN: All right. So let's go</p> <p>8 to Step 5 and maybe we can ask for three and four for</p> <p>9 now.</p> <p>10 Step 5: Could the same result be achieved</p> <p>11 by placing the antennas on some other existing</p> <p>12 structure, using different technologies, or by erecting</p> <p>13 the tower in a more suitable alternative site?</p> <p>14 And let's just cut this into pieces. I</p> <p>15 think the last phrase, "by erecting the tower in a more</p> <p>16 suitable alternative site" I think we have lots of</p> <p>17 testimony. There is no other suitable available</p> <p>18 alternative site.</p> <p>19 BOARD MEMBER ROSENBAUM: What if we take a</p> <p>20 broader definition of that and the height is actually</p> <p>21 the suitable alternative? Because we have to factor</p> <p>22 in -- I mean, you know, they proposed a height, but</p> <p>23 isn't Step 5 us considering whether that height is the</p> <p>24 appropriate height?</p> <p>25 BOARD MEMBER NEWLIN: And using different</p>	<p style="text-align: right;">Page 70</p> <p>1 technologies.</p> <p>2 BOARD MEMBER ROSENBAUM: Along with that,</p> <p>3 of course.</p> <p>4 BOARD MEMBER NEWLIN: Together, that whole</p> <p>5 thing.</p> <p>6 BOARD MEMBER SYMONDS: Certainly in the</p> <p>7 summary, the checklist that Steve provided, he</p> <p>8 identifies will placement of the proposed location, you</p> <p>9 know, and proposed height fill the gap? So the height</p> <p>10 is definitely comes into play on this.</p> <p>11 CHAIRMAN FLANAGAN: Yeah. And in my mind</p> <p>12 we can check these off as we go, but my thoughts are</p> <p>13 certainly there's a question, is it the appropriate</p> <p>14 height? And it plays into -- and this is the</p> <p>15 discussion we had, how strong a signal is needed? And</p> <p>16 it is also very important in this discussion is the</p> <p>17 incorporation of ODAS. There's technology out there.</p> <p>18 We have testimony that can supplement the tower. We</p> <p>19 have one or two lots with ODAS.</p> <p>20 I suspect that if the number of ODAS units</p> <p>21 were increased, I don't think I need to suspect, I</p> <p>22 think Dr. Eisenstein even said, as you lower the tower</p> <p>23 height it increases the number of ODAS. Is there a</p> <p>24 need for the number of ODAS cells?</p> <p>25 DR. EISENSTEIN: There are more cell sites</p>
<p style="text-align: right;">Page 71</p> <p>1 required.</p> <p>2 CHAIRMAN FLANAGAN: All right. So say it</p> <p>3 the other way, if one were to increase the number of</p> <p>4 cell sites one could decrease the height of the tower.</p> <p>5 BOARD MEMBER ROSENBAUM: Inverse</p> <p>6 correlation.</p> <p>7 CHAIRMAN FLANAGAN: I'm just saying in</p> <p>8 reverse.</p> <p>9 DR. EISENSTEIN: Can I make one point?</p> <p>10 Because there's some discussion about this. I'm</p> <p>11 looking at Exhibit Z-13 and Z-13 shows the proposed</p> <p>12 tower at 120 feet with the ODAS nodes propagated on</p> <p>13 there. So what it looks like is it looks like, and you</p> <p>14 can make your own judgments on the exhibit, but it</p> <p>15 looks like the ODAS nodes fill in at the fringes of the</p> <p>16 coverage that's proposed, and in the northeast portion</p> <p>17 of the map fills in missing coverage that's up there.</p> <p>18 I don't know this area well enough to know how those</p> <p>19 ODAS nodes are placed, I only see them on the map. I</p> <p>20 don't know if these streets that they're on are tree</p> <p>21 line or not. I don't know anything about that, but I</p> <p>22 think it will be worthwhile for the people to look at</p> <p>23 Z-13 and determine what could be done with the ODAS</p> <p>24 nodes in conjunction with the site, understanding that</p> <p>25 if you pull down from 120 feet the blue area on Z-13</p>	<p style="text-align: right;">Page 72</p> <p>1 shrinks.</p> <p>2 CHAIRMAN FLANAGAN: Let me see if Lori can</p> <p>3 get that up there.</p> <p>4 SECRETARY TAGLAIRINO: Can you tell me</p> <p>5 which one it is -- can you tell me which link it would</p> <p>6 be on here?</p> <p>7 DR. EISENSTEIN: It's the report that came</p> <p>8 on January 18th, 2021.</p> <p>9 SECRETARY TAGLAIRINO: This one?</p> <p>10 DR. EISENSTEIN: I can't read what you have</p> <p>11 up there.</p> <p>12 SECRETARY TAGLAIRINO: Exhibit A-27?</p> <p>13 DR. EISENSTEIN: I did not mark -- on my</p> <p>14 copy I didn't mark exhibit number.</p> <p>15 BOARD MEMBER ROSENBAUM: Lori, it's the one</p> <p>16 January 19th.</p> <p>17 CHAIRMAN FLANAGAN: Guys, while we're --</p> <p>18 can we just take a three-minute break while we're</p> <p>19 looking for that exhibit? Just a three-minute break.</p> <p>20 (Whereupon, a brief recess is taken at 8:25</p> <p>21 p.m.)</p> <p>22 (Back on the record at 8:27 p.m.)</p> <p>23 CHAIRMAN FLANAGAN: Okay. Welcome back.</p> <p>24 Lori, do why don't we do a roll call real</p> <p>25 quick?</p>

<p style="text-align: right;">Page 73</p> <p>1 SECRETARY TAGLAIRINO: Ms. Sovolos?</p> <p>2 BOARD MEMBER SOVOLOS: Here.</p> <p>3 SECRETARY TAGLAIRINO: Mr. Maselli?</p> <p>4 BOARD MEMBER MASELLI: Here.</p> <p>5 SECRETARY TAGLAIRINO: Mr. Symonds?</p> <p>6 BOARD MEMBER SYMONDS: Here.</p> <p>7 SECRETARY TAGLAIRINO: Mr. Newlin?</p> <p>8 BOARD MEMBER NEWLIN: Here.</p> <p>9 SECRETARY TAGLAIRINO: Mr. Rosenbaum?</p> <p>10 BOARD MEMBER ROSENBAUM: Yes, here.</p> <p>11 SECRETARY TAGLAIRINO: Mr. Addonizio.</p> <p>12 BOARD MEMBER ADDONIZIO: Here.</p> <p>13 SECRETARY TAGLAIRINO: Mr. Flanagan?</p> <p>14 CHAIRMAN FLANAGAN: Here.</p> <p>15 SECRETARY TAGLAIRINO: Mr. Cammarata?</p> <p>16 BOARD MEMBER CAMMARATA: Here.</p> <p>17 SECRETARY TAGLAIRINO: Mr. Boyan?</p> <p>18 BOARD MEMBER BOYAN: Here.</p> <p>19 SECRETARY TAGLAIRINO: Thank you very much.</p> <p>20 CHAIRMAN FLANAGAN: Welcome back everybody.</p> <p>21 Thanks for that.</p> <p>22 All right. So we're going through this</p> <p>23 list. Alf, were you speaking when I -- when we left?</p> <p>24 BOARD MEMBER NEWLIN: I did want to make a</p> <p>25 point on the ODAS placement. Mr. Schneider, you had</p>	<p style="text-align: right;">Page 74</p> <p>1 said that these ODAS units are compliant with Harding's</p> <p>2 Ordinance.</p> <p>3 MR. SCHNEIDER: I'm sorry?</p> <p>4 BOARD MEMBER NEWLIN: The placement of</p> <p>5 these ODAS units are compliant with Harding's</p> <p>6 Ordinance. So they're restricted to some degree to be</p> <p>7 consistent with the Ordinance.</p> <p>8 MR. SCHNEIDER: What I think I said was I</p> <p>9 didn't do an analysis of whether the proposed ODAS</p> <p>10 nodes would be fully compliant, and they may require</p> <p>11 relief. And you said we could always grant relief.</p> <p>12 BOARD MEMBER NEWLIN: So they're not</p> <p>13 compliant, or you're not sure.</p> <p>14 MR. SCHNEIDER: I didn't do that analysis</p> <p>15 as to whether they are or they're not. They may</p> <p>16 require relief.</p> <p>17 BOARD MEMBER NEWLIN: As a legal matter</p> <p>18 this Board could grant variances in theory.</p> <p>19 MR. SCHNEIDER: In theory, yes. To the</p> <p>20 extent it comes to this Board, yes.</p> <p>21 BOARD MEMBER NEWLIN: Would it, if you</p> <p>22 wanted to put an ODAS unit and it wasn't compliant.</p> <p>23 MR. SCHNEIDER: The intent of the Ordinance</p> <p>24 is for the matter not to come to this Board.</p> <p>25 BOARD MEMBER NEWLIN: That's the lawyer</p>
<p style="text-align: right;">Page 75</p> <p>1 answer.</p> <p>2 CHAIRMAN FLANAGAN: I think I understood</p> <p>3 what he's saying. I think he's saying if the Ordinance</p> <p>4 --</p> <p>5 MR. SCHNEIDER: If you're compliant you</p> <p>6 don't come to a Board of Adjustment.</p> <p>7 BOARD MEMBER NEWLIN: I'm saying if you</p> <p>8 wanted to place ODAS units and you needed relief you</p> <p>9 would come to this Board; true?</p> <p>10 MR. SCHNEIDER: I believe that's the case.</p> <p>11 MR. SIMON: It's not necessarily true. If</p> <p>12 you look very, very carefully and you read -- I know</p> <p>13 you will or have -- the 2018 Ordinance that deals with</p> <p>14 ODAS installations, the Township specifically provided</p> <p>15 that even if there's deviations from the -- and by the</p> <p>16 way, just you're going to make your own opinions on</p> <p>17 this. What's shown on, I guess whatever, Z-13 and Z-14</p> <p>18 would be fully compliant in term of distances and</p> <p>19 height and things of that nature. But let's assume</p> <p>20 hypothetically that it wouldn't be, the Ordinance</p> <p>21 actually provides that relief can be granted by other</p> <p>22 than the Board of Adjustment. That there's a standard</p> <p>23 that's not a Variance "C" standard, not a Variance "D"</p> <p>24 standard.</p> <p>25 And basically, and you should read it for</p>	<p style="text-align: right;">Page 76</p> <p>1 yourself, that the Applicant for an ODAS network can</p> <p>2 come in, and if they do need some relief in terms of</p> <p>3 poles and distances and things like that, they</p> <p>4 basically -- and these are my terms. You can read it</p> <p>5 for yourself -- can explain why, and I think it's</p> <p>6 either the governing body or the Planning Board can</p> <p>7 just say sure.</p> <p>8 BOARD MEMBER NEWLIN: Planning Board or the</p> <p>9 governing body.</p> <p>10 MR. SIMON: Planning Board or the governing</p> <p>11 body.</p> <p>12 MR. SCHNEIDER: As to those within the</p> <p>13 governing right-of-way.</p> <p>14 MR. SIMON: Yes. That's correct.</p> <p>15 BOARD MEMBER NEWLIN: Thank you.</p> <p>16 MR. SCHNEIDER: Not if it's on private</p> <p>17 property, though.</p> <p>18 CHAIRMAN FLANAGAN: Okay. All right.</p> <p>19 Let's talk about the negative criteria. So we talked</p> <p>20 about using the Sica Balancing Test, and I think</p> <p>21 everyone was in agreement, all the attorneys were in</p> <p>22 the agreement that's the correct way to go about this.</p> <p>23 And let me say for the record, too. So</p> <p>24 both of you have read this memo Steve's prepared. And</p> <p>25 I don't think anyone has any objections to the analysis</p>

<p style="text-align: right;">Page 77</p> <p>1 he laid out? Mr. Simon? Mr. Schneider?</p> <p>2 MR. SCHNEIDER: Correct.</p> <p>3 MR. SIMON: My only two comments, and I</p> <p>4 stated it in my summation, first of all, because you</p> <p>5 have multiple uses on the DPW site. I believe that</p> <p>6 there's an additional analysis that's to be done under</p> <p>7 the Medici test, number one.</p> <p>8 And also for clarity in terms of Step 4 in</p> <p>9 terms of balancing the positive and negative, whether</p> <p>10 on balance there's -- can be granted without causing</p> <p>11 substantial detriment to the public good, and</p> <p>12 substantial impairment of the intent and purpose</p> <p>13 of the Zone Plan and Zoning Ordinance, the plan I made</p> <p>14 in my closing summation is that under any variance,</p> <p>15 whether it's an inherently beneficial use or not</p> <p>16 inherently beneficial that you do need to meet that</p> <p>17 negative criteria, no substantial detriment to the</p> <p>18 public and no substantial impairment to both, not just</p> <p>19 one, both the Master Plan and Zoning Ordinance. But</p> <p>20 that being said --</p> <p>21 CHAIRMAN FLANAGAN: Said with that minor</p> <p>22 detail.</p> <p>23 All right. Four parts of the Sica Test:</p> <p>24 Identify the public interest. All right. The Board</p> <p>25 must identify the public interest at stake and make a</p>	<p style="text-align: right;">Page 78</p> <p>1 finding on how compelling the public interest at issue</p> <p>2 actually is, which would include but not be limited to</p> <p>3 determining what type of wireless communications system</p> <p>4 is being proposed and identifying the proposed user and</p> <p>5 public benefits that flow from the proposed facility.</p> <p>6 Steve, are you back?</p> <p>7 MR. MLENAK: Yes, sir.</p> <p>8 CHAIRMAN FLANAGAN: Step 1 under the</p> <p>9 Negative Criteria, can you tell me help me with that?</p> <p>10 MR. MLENAK: Well, the public interest is</p> <p>11 going to be aligned with the general welfare in the</p> <p>12 Positive Testing in that you have facilities that would</p> <p>13 fill presumably the gap in coverage, and that would</p> <p>14 serve the public interest.</p> <p>15 CHAIRMAN FLANAGAN: All right. So and I</p> <p>16 know -- and this is the public. When we talk about the</p> <p>17 public interest it includes the residents of Harding,</p> <p>18 but does it also include the passers-by, the drivers on</p> <p>19 the road, the commuters?</p> <p>20 MR. MLENAK: Yes.</p> <p>21 CHAIRMAN FLANAGAN: All right. And I think</p> <p>22 you've given this instruction previously. Tell me if</p> <p>23 I'm wrong. That there is a presumption that cell phone</p> <p>24 towers serve the public interest; is that not correct?</p> <p>25 MR. MLENAK: Correct.</p>
<p style="text-align: right;">Page 79</p> <p>1 CHAIRMAN FLANAGAN: So if I was looking at</p> <p>2 Step 1 and I said identify the public interest, I think</p> <p>3 you'd say the answer is it does benefit the public.</p> <p>4 MR. MLENAK: Well, that's what the question</p> <p>5 is is describe this with the benefits to the proposal.</p> <p>6 BOARD MEMBER NEWLIN: And how compelling --</p> <p>7 he has this text. There's a degree. How compelling</p> <p>8 the public interest at issue --</p> <p>9 MR. MLENAK: And the degree becomes</p> <p>10 important in that fourth step which is balancing the</p> <p>11 degree of that benefit versus the degree of the</p> <p>12 negative, the detriment.</p> <p>13 CHAIRMAN FLANAGAN: All right. So let's</p> <p>14 talk about break public interest in pieces now. So I</p> <p>15 think we have heard from many in the public. We have</p> <p>16 testimony from many in the public. They feel this does</p> <p>17 not serve their interest. I don't think -- we did not</p> <p>18 have one member of the public, either residents of the</p> <p>19 Township or residents of adjoining Townships that said</p> <p>20 they didn't think this served their particular</p> <p>21 interest.</p> <p>22 BOARD MEMBER SOVOLOS: Chief Heller.</p> <p>23 CHAIRMAN FLANAGAN: Chief Heller.</p> <p>24 BOARD MEMBER NEWLIN: He's not a member of</p> <p>25 the public. But to be fair, the people that are</p>	<p style="text-align: right;">Page 80</p> <p>1 against this, you know, they live right here and this</p> <p>2 is a huge issue to them. And the people that might</p> <p>3 support this I don't think they'd feel very comfortable</p> <p>4 speaking up. So I would not -- personally, I'm not</p> <p>5 going to assume there's not people, members of the</p> <p>6 Township that would like to have better cell coverage.</p> <p>7 I do not think they would be comfortable in this</p> <p>8 audience speaking up, probably. So just to be cautious</p> <p>9 I wouldn't assume there's zero public support.</p> <p>10 CHAIRMAN FLANAGAN: Okay. All right.</p> <p>11 BOARD MEMBER MASELLI: But aren't we basing</p> <p>12 it on what we have heard?</p> <p>13 BOARD MEMBER NEWLIN: Just my opinion.</p> <p>14 CHAIRMAN FLANAGAN: And I think what Alf</p> <p>15 says is reasonable.</p> <p>16 BOARD MEMBER MASELLI: Yes.</p> <p>17 CHAIRMAN FLANAGAN: I would hope no one</p> <p>18 would feel afraid to speak their views ever, but</p> <p>19 possibly. I think of note, we have at minimum we have</p> <p>20 many members of the Township, many members of the</p> <p>21 public individually they don't want it for a variety of</p> <p>22 reasons. There's certainly a lot testimony that this</p> <p>23 doesn't serve their public good.</p> <p>24 Does it serve the public good of the guy</p> <p>25 who's commuting for Verizon? So the other part of the</p>

<p style="text-align: right;">Page 81</p> <p>1 public is those who don't live here and commute. I 2 think we have to consider them as well, right, Steve? 3 MR. MLENAK: That's correct. They're the 4 public. 5 CHAIRMAN FLANAGAN: Okay. And if I'm fair, 6 if I don't live in a particular town I would like there 7 to be phone service, right. So I think that person 8 who's just commuting through I think it does serve his 9 interest, to be honest with you. 10 BOARD MEMBER ADDONIZIO: Can you consider 11 someone taking an alternate route? 12 CHAIRMAN FLANAGAN: Like a detour? 13 BOARD MEMBER ADDONIZIO: Taking 287 instead 14 of cutting through Town. 15 CHAIRMAN FLANAGAN: Yeah. 16 BOARD MEMBER ADDONIZIO: If it's that much 17 of an issue to the public. 18 BOARD MEMBER SOVOLOS: They shouldn't be 19 using their phone while they're driving anyway. 20 CHAIRMAN FLANAGAN: Well, we joke, but 21 hands free. 22 BOARD MEMBER NEWLIN: I hope that's a joke. 23 CHAIRMAN FLANAGAN: We all have hands -- 24 well, no, we don't. But I think there's enough people 25 who can operate a cell phone safely while driving.</p>	<p style="text-align: right;">Page 82</p> <p>1 That there's certainly a group out there that do. I 2 do. I don't think you can say, well, you know what, 3 they should just take another route. I think all 4 public roads are open to whoever wants to travel. 5 BOARD MEMBER ADDONIZIO: And that's their 6 choice. 7 CHAIRMAN FLANAGAN: The attorneys are 8 laughing. Why are you laughing? 9 I know it sound silly, but we have to 10 discuss it, don't we? 11 MR. SCHNEIDER: Can I say something for one 12 minute? 13 MR. SIMON: No. 14 CHAIRMAN FLANAGAN: Sure. 15 BOARD MEMBER NEWLIN: A full minute or -- 16 MR. SCHNEIDER: You can time me. 17 Secretary TAGLAIRINO: Is it a Lawyer's 18 minute? (Laughter.) 19 CHAIRMAN FLANAGAN: Is it a Mr. Simon 20 minute? 21 MR. SCHNEIDER: A lawyer's minute. How 22 about that. (Laughter.) 23 MR. SIMON: It's like the metric system. 24 MR. SCHNEIDER: Guys, you're using my one 25 minute here. I think for -- three comments. It's fair</p>
<p style="text-align: right;">Page 83</p> <p>1 to say I can tell you that I receive phone calls from 2 people who may have been in favor of this application 3 but chose not to come. 4 (The public comments out loud.) 5 CHAIRMAN FLANAGAN: We're not accepting 6 that testimony. 7 MR. SIMON: Hold on. Come on we can't -- 8 MR. SCHNEIDER: Okay. 9 CHAIRMAN FLANAGAN: Hold on a second. We 10 can't accept -- I understand that can't be accepted as 11 testimony; right? 12 MR. SCHNEIDER: Second of all, I think you 13 have to define the public interest greater than just 14 whether the residents of Harding are opposed or in 15 favor of the application. 16 Point 3, relative to facetiously this 17 alternate route, I think we also have to understand 18 that there is an interest at stake for people who may 19 be traveling through Harding who would receive the 20 benefit of reliable wireless communication services, no 21 different than if you as members or members of Harding 22 go into other towns and wanted to achieve reliable 23 wireless communications services and that particular 24 town says no go. 25 CHAIRMAN FLANAGAN: I agree. I think I</p>	<p style="text-align: right;">Page 84</p> <p>1 made that point. I think we have to consider the 2 person who's commuting to have -- 3 MR. SCHNEIDER: That's my point and I did 4 it in less than a minute. 5 MR. SIMON: In 30 seconds, as Mr. Mlenak 6 will or can instruct you, the law provides that there's 7 a difference in terms of what is the public interest at 8 stake. Whether what we're talking about is 287 that 9 has "X" number of cars a day, or more local roadways 10 that are not state highways that have less number of 11 vehicles per day. That is in the case law and it is an 12 analysis under that first prong of the four-prong test 13 under the Sica Balancing Test. 14 Like what are we talking about here, and 15 you look at what the -- in part, and Mr. Mlenak is more 16 eloquent than I can state it, talks about what kind of 17 roadway are we talking about. So the fact that we're 18 talking about 287 it is under the law a relevant 19 consideration under that first prong of the Sica 20 Balancing Test. 21 CHAIRMAN FLANAGAN: Let me ask, do we have 22 any testimony as to the traffic patterns on whatever, 23 any of the roads? Blue Mill -- well, let me list them. 24 The Village, Blue Mill, Tempe Wick, Lees Hill and Long 25 Hill?</p>

<p style="text-align: right;">Page 85</p> <p>1 BOARD MEMBER BOYAN: No.</p> <p>2 MR. SIMON: No.</p> <p>3 CHAIRMAN FLANAGAN: I'm thinking the county</p> <p>4 roads. I'm thinking the ones with yellow lines down</p> <p>5 the middle.</p> <p>6 MR. SIMON: And, in fact, I asked that</p> <p>7 question of Ms. Boschulte.</p> <p>8 CHAIRMAN FLANAGAN: All right. So then</p> <p>9 Steve, is it fair to consider the volume of traffic --</p> <p>10 so when we consider serving the public good is it fair</p> <p>11 to consider the volume of traffic that we see on these</p> <p>12 roads? It seems reasonable, and I always want to</p> <p>13 answer my own question, but it seems reasonable because</p> <p>14 if we're talking about putting a tower up in the middle</p> <p>15 of nowhere and there's a dirt road I think it would</p> <p>16 tough to argue it serves the public interest of those</p> <p>17 who commute on that road.</p> <p>18 MR. MLENAK: Well, and it may serve the</p> <p>19 public interest for those on those roads, but what it</p> <p>20 does is it affects how compelling that public interest</p> <p>21 is when we go to the later steps in the balancing.</p> <p>22 Again, it goes back to identifying the public interest,</p> <p>23 but what is the degree and how compelling is that</p> <p>24 public interest in terms of the detriment that you'll</p> <p>25 later balance?</p>	<p style="text-align: right;">Page 86</p> <p>1 CHAIRMAN FLANAGAN: So let me say, and Mr.</p> <p>2 Schneider correct me if I'm wrong. We have no</p> <p>3 testimony as to the traffic on any of those roads I</p> <p>4 mentioned? And I'm talking about the county roads.</p> <p>5 MR. SCHNEIDER: That's correct. There's no</p> <p>6 specific traffic testimony. But I also think, with all</p> <p>7 due respect, and I don't want to expand the legal</p> <p>8 argument, I think we're taking a position about the</p> <p>9 public interest that is I think far more limited than</p> <p>10 what's contemplated or specifically provided for under</p> <p>11 the FCC guidelines. I think that we're taking a far</p> <p>12 more limited --</p> <p>13 BOARD MEMBER NEWLIN: Well, give us</p> <p>14 examples.</p> <p>15 CHAIRMAN FLANAGAN: Well, you listed three</p> <p>16 things. Is there more than that? We said the</p> <p>17 residents. We said the commuting public. And who was</p> <p>18 the third? Actually, your first, which was it? What</p> <p>19 else are we missing?</p> <p>20 MR. SCHNEIDER: Well, I think that the fact</p> <p>21 is that under the FCC guidelines it's not just a</p> <p>22 significant gap analysis, it's improvement to service,</p> <p>23 it's efficiency of service. It's improved service.</p> <p>24 It's not just a gap analysis. So to the extent that</p> <p>25 even those who are served are receiving more beneficial</p>
<p style="text-align: right;">Page 87</p> <p>1 enhanced services, that's in the public interest. I</p> <p>2 think the significant gap analysis or whether it covers</p> <p>3 one-half, one-quarter, or one-eighth of a mile is not</p> <p>4 -- is too limiting an inquiry when you determine the --</p> <p>5 CHAIRMAN FLANAGAN: So tell me who, aside</p> <p>6 from the parties we identified, right, residents of the</p> <p>7 Township, passers through, who outside of those --</p> <p>8 MR. SCHNEIDER: Emergency services.</p> <p>9 CHAIRMAN FLANAGAN: Emergency services.</p> <p>10 Fair enough.</p> <p>11 MR. SCHNEIDER: Students at Harding</p> <p>12 Township Elementary School.</p> <p>13 CHAIRMAN FLANAGAN: But wouldn't they</p> <p>14 either be a resident or --</p> <p>15 MR. SCHNEIDER: Well, Rob, I mean, I was</p> <p>16 asked the question. You're getting frustrated.</p> <p>17 CHAIRMAN FLANAGAN: Yeah, this is good.</p> <p>18 All right. So I'm going to throw those into either --</p> <p>19 the students if they're going to Harding Township</p> <p>20 they're residents. So we still have three group so</p> <p>21 far: Passers through, residents, and emergency</p> <p>22 services. Is there anybody else we have to think</p> <p>23 about?</p> <p>24 MR. SCHNEIDER: I think those are all fair,</p> <p>25 relevant.</p>	<p style="text-align: right;">Page 88</p> <p>1 CHAIRMAN FLANAGAN: Okay. So based on</p> <p>2 that --</p> <p>3 MR. SCHNEIDER: But my point is that I</p> <p>4 don't think that the inquiry should be whether it's a</p> <p>5 quarter, an eighth, or a half a mile. I think if</p> <p>6 there's a detriment, if there's a lack of reliable</p> <p>7 service or lack of ability to provide improved service</p> <p>8 to those who are even receiving it within that quarter</p> <p>9 hatch or --</p> <p>10 CHAIRMAN FLANAGAN: All right. I don't</p> <p>11 know if I disagree. What I'm --</p> <p>12 MR. SCHNEIDER: Okay. That was my only</p> <p>13 point in that regard.</p> <p>14 CHAIRMAN FLANAGAN: From the public</p> <p>15 interest we saw from those three groups you identified</p> <p>16 we don't know how many passers through there are. From</p> <p>17 what we heard in testimony from the residents of the</p> <p>18 Township I did not hear one voice in support. I</p> <p>19 acknowledge there may be some but they didn't speak.</p> <p>20 And the third group is emergency services. And Chief</p> <p>21 Heller squarely, clearly said he needs it, right. So</p> <p>22 we've got one who doesn't want it --</p> <p>23 BOARD MEMBER NEWLIN: Actually for that</p> <p>24 issue, Chief Heller said he had a problem. He's not a</p> <p>25 solution expert. I'm sure he's absolutely right, there</p>

<p style="text-align: right;">Page 89</p> <p>1 is a problem with coverage. The school, we can say has 2 an issue. But there at least were some different 3 solutions identified and we certainly did not look at 4 those solutions in detail.</p> <p>5 MR. MLENAK: So Mike, what I would say, 6 with respect to consideration of what the public 7 comment was last month, what we also heard was several 8 of them talk about their service with another carrier, 9 AT&T. And as we have discussed it's not appropriate to 10 view this application in the lens of, well, there's 11 good service by another carrier so we don't need to 12 consider this. Because under FCC every carrier has 13 that right to expand its coverage. So where the 14 comments may be more relevant is in determining the 15 detriments that the tower will impose on that public.</p> <p>16 But to, I think, your point, Mr. Chairman, 17 in response to Rich's comments, I think it is relevant 18 in determining where the gap will be covered, what 19 roadways, how busy they are, certainly because the Sica 20 Test tells us to consider the degree to the public 21 interest. A tower in Times Square is very different 22 than a tower in Harding. Public interest is served in 23 different ways and I think it's fair for the Board to 24 consider that.</p> <p>25 CHAIRMAN FLANAGAN: And in that vein I have</p>	<p style="text-align: right;">Page 90</p> <p>1 to look at this, and we have had discussions on these 2 coverage maps, right. So we're making this distinction 3 between covering 287 versus covering some hypothetical 4 dirt road. Covering 287 is important. Covering the 5 dirt road nobody goes down is less important.</p> <p>6 And again, this is one consideration of 7 many. Steve tell me know if I'm going off the tracks. 8 I think likewise when we look at these coverage plots, 9 and I've said it, personally I think it's far less 10 important that we concern ourselves with covering the 11 hay fields, part of the Great Swamp. You know, Jockey 12 Hollow in a previous application. But those areas 13 where there is nothing along the same line of thinking 14 are far less important to cover than would be the areas 15 where they're more densely populated. That's exactly 16 the logic it just followed.</p> <p>17 So anyway, you guys, I don't mean to --</p> <p>18 BOARD MEMBER ROSENBAUM: I think you're 19 right. It's a typical, you know, cost-base, risk-base 20 analysis. I mean, you know, when we lose power in Town 21 here, we're one of the last ones because we're the 22 least densely populated to get power. So people are 23 making those decisions. So I think it's relevant to 24 use that calculus in this analysis.</p> <p>25 CHAIRMAN FLANAGAN: Okay. Let's identify</p>
<p style="text-align: right;">Page 91</p> <p>1 the detrimental --</p> <p>2 BOARD MEMBER MASELLI: Just on the public 3 interest part, is it just strictly service that we're 4 talking about?</p> <p>5 CHAIRMAN FLANAGAN: Take that mask off.</p> <p>6 BOARD MEMBER MASELLI: Am I not loud 7 enough?</p> <p>8 CHAIRMAN FLANAGAN: No.</p> <p>9 BOARD MEMBER MASELLI: When we talk about 10 public interest are we strictly focused on just service 11 or are we talking about --</p> <p>12 MR. MLENAK: You're not just talking about 13 filling the gap, as Mr. Schneider talked about before. 14 It's about expanding the quality, and expanding the 15 technological capability. Did I miss something, Rich 16 has said it as well. It is important to filling the 17 gap, if that's your question.</p> <p>18 CHAIRMAN FLANAGAN: But in that vain, 19 though.</p> <p>20 BOARD MEMBER NEWLIN: Let him ask.</p> <p>21 BOARD MEMBER MASELLI: We're still talking 22 about just technology at this point. Is that the only 23 thing that's covered on the public interest? Is it the 24 size of the tower? The height of the tower? The 25 weighing that versus, you know, the benefits of -- or</p>	<p style="text-align: right;">Page 92</p> <p>1 is that coverage somewhere else?</p> <p>2 CHAIRMAN FLANAGAN: I think we're going to 3 get into that next, detrimental effect.</p> <p>4 BOARD MEMBER NEWLIN: Those are negative 5 things, right.</p> <p>6 BOARD MEMBER MASELLI: Well, we are on 7 negative things.</p> <p>8 CHAIRMAN FLANAGAN: We're going to get into 9 the next. We're going to talk about it. Again --</p> <p>10 BOARD MEMBER MASELLI: Because going back 11 to everyone who spoke here, and you mentioned them, the 12 opposition wasn't really, you know, if there was a 13 magic somewhere nobody would be opposed to this. It's 14 aesthetics. It's the tower. It's the height. It's 15 proximity to property. So why isn't that discussed 16 under public interest?</p> <p>17 CHAIRMAN FLANAGAN: We're going to discuss 18 that under Step 2.</p> <p>19 And to the point, Steve, and tell me if I 20 have it correct, as Mr. Schneider is saying, it's not 21 simply filling the gaps where there's nothing with 22 something, there is also -- we have to consider that 23 there is a public interest in improving the service 24 where there currently is service. Is that another way 25 of saying what you're trying to say, Mr. Schneider?</p>

<p style="text-align: right;">Page 93</p> <p>1 MR. SCHNEIDER: Correct.</p> <p>2 CHAIRMAN FLANAGAN: But again we've got to</p> <p>3 get back to, great, we're going from some level of</p> <p>4 technology to a better level of technology, but who</p> <p>5 does that help?</p> <p>6 If there's nobody that that helps what's</p> <p>7 the -- I don't think it has any value. Right. Just as</p> <p>8 if there's nobody that drives down that dirt road,</p> <p>9 great, we gave it coverage but nobody cares. I don't</p> <p>10 think it weighs heavily.</p> <p>11 It all comes back to me, how many people</p> <p>12 are driving through Town that are going to benefit from</p> <p>13 this? I honestly don't know.</p> <p>14 BOARD MEMBER NEWLIN: Well, you can say</p> <p>15 county roads are county roads because they have volume.</p> <p>16 So we don't have the numbers but we know that county</p> <p>17 roads would have more volume than the non-county roads.</p> <p>18 CHAIRMAN FLANAGAN: Presumably, but --</p> <p>19 BOARD MEMBER BOYAN: But not every county</p> <p>20 road is the same, right. The county road in Main</p> <p>21 Street in Chatham is the same --</p> <p>22 BOARD MEMBER NEWLIN: But we don't have any</p> <p>23 data whatsoever. Most of them are county roads because</p> <p>24 they are major --</p> <p>25 BOARD MEMBER BOYAN: But without the data I</p>	<p style="text-align: right;">Page 94</p> <p>1 think it's very hard for us to consider that fact.</p> <p>2 There's nothing in the record.</p> <p>3 BOARD MEMBER NEWLIN: I think you can say</p> <p>4 something.</p> <p>5 CHAIRMAN FLANAGAN: Well, I agree with</p> <p>6 George. There is no traffic study. There is nothing</p> <p>7 in the record that says this is how many cars go up and</p> <p>8 down whatever roads we're talking about. I agree with</p> <p>9 you. It's a county road for -- actually, I don't know</p> <p>10 why it's a county road.</p> <p>11 BOARD MEMBER NEWLIN: Paul, why are county</p> <p>12 roads county roads.</p> <p>13 MR. FOX: I apologize. I do not have the</p> <p>14 answer to that question.</p> <p>15 CHAIRMAN FLANAGAN: So we'll bring it back</p> <p>16 to another application. Is it a road or a driveway?</p> <p>17 MR. FOX: It is a road.</p> <p>18 CHAIRMAN FLANAGAN: All right. We have no</p> <p>19 data. We don't know. Do you have a view on how many</p> <p>20 cars go down the roads?</p> <p>21 DR. EISENSTEIN: I have a view on the use.</p> <p>22 Many years ago I was asked to consult for the Pine</p> <p>23 Lands, which is a million acres of wilderness. And</p> <p>24 they wanted to put cell phone sites all through that.</p> <p>25 And the rational that was given was that if someone is</p>
<p style="text-align: right;">Page 95</p> <p>1 hiking in the Pine Lands falls down, breaks a leg, has</p> <p>2 a heart attack or something, they have the right to be</p> <p>3 able to make a phone call and get emergency services.</p> <p>4 The exact analogy could be for the Great</p> <p>5 Swamp as well. Someone could be hiking there, have</p> <p>6 some sort of medical emergency or some other kind of</p> <p>7 emergency and desire to make a call. Under the concept</p> <p>8 of the wireless network serving the public interest, as</p> <p>9 you may know in the new Infrastructure Act they're</p> <p>10 putting wireless services all through rural areas where</p> <p>11 there's even much less population density than you find</p> <p>12 around here because it's found to be in the national</p> <p>13 interest.</p> <p>14 The other point I'd like to make of the</p> <p>15 groups that you were talking about, you ignore people</p> <p>16 that work in the Township. For example, the public</p> <p>17 schools' teachers.</p> <p>18 CHAIRMAN FLANAGAN: Let me put those in the</p> <p>19 category of passers through or commuters. I can</p> <p>20 understand and I appreciate it. And all I'm saying is</p> <p>21 we have no quantification of how many people it is.</p> <p>22 And I think when we need to do this balancing one of</p> <p>23 the things we have to consider is does it serve the</p> <p>24 public interest? And I'm simply saying, I don't know.</p> <p>25 I know there's part of the public that says no. I</p>	<p style="text-align: right;">Page 96</p> <p>1 don't know how many people there are that would say</p> <p>2 yes. Mr. Simon?</p> <p>3 MR. SIMON: Everything that Dr. Eisenstein</p> <p>4 just stated is completely contrary to the case law that</p> <p>5 this Board is bound to comply with in assessing the</p> <p>6 Negative Criteria for this type of application. I'll</p> <p>7 stop there.</p> <p>8 MR. MLENAK: Rob, could you speak up?</p> <p>9 MR. SIMON: Sure. That everything that Dr.</p> <p>10 Eisenstein just said with regard to the negative</p> <p>11 criteria is completely contrary to the applicable case</p> <p>12 law that this Board is bound to in assessing the</p> <p>13 four-part Sica Balancing Test under the negative</p> <p>14 criteria, and I'll stop there.</p> <p>15 MR. SCHNEIDER: And I'll make one comment.</p> <p>16 I think Mr. Simon's argument completely ignores the</p> <p>17 public interest as identified in a series of FCC</p> <p>18 rulings as to the advancement and the encouragement of</p> <p>19 wireless service to any areas. And the FCC order does</p> <p>20 not in any way, shape, or form make any distinction</p> <p>21 whether it's "X" number of users or "Y" number of</p> <p>22 users, but has an overall policy objective of</p> <p>23 encouraging the deployment in a rapid fashion of</p> <p>24 wireless communication services to all areas of the</p> <p>25 country.</p>

<p style="text-align: right;">Page 97</p> <p>1 MR. SIMON: And as I said before last</p> <p>2 month, the FCC order that he's referring to has not</p> <p>3 been adopted by the Federal Court, Third Circuit, New</p> <p>4 Jersey.</p> <p>5 CHAIRMAN FLANAGAN: All right. So Steve,</p> <p>6 we get dueling lawyers here, so you get the final say.</p> <p>7 Mr. Simon says -- you know what, can we move on?</p> <p>8 All right. Let's identify the detrimental</p> <p>9 effects. We're then going to determine what reasonable</p> <p>10 conditions can reduce the detrimental effects. And</p> <p>11 then we're going to go put this all into -- on the</p> <p>12 scale and make a decision.</p> <p>13 What are the detrimental effects?</p> <p>14 BOARD MEMBER NEWLIN: Well, first of all,</p> <p>15 it's with regard to the Master Plan, and the -- and lot</p> <p>16 of this is absolutely contradictory to the points in</p> <p>17 both those documents. So you would have to say I guess</p> <p>18 this is a detrimental fact. This does impair --</p> <p>19 actually it could impair the Master Plan. That's a big</p> <p>20 negative. This would set a precedent that is pretty</p> <p>21 much against many of the points of the Master Plan.</p> <p>22 And you can list them, the historic aspect, not being</p> <p>23 located next to a residence. I'm not going to list</p> <p>24 them all here. But there are some in there which</p> <p>25 says -- which does support, which is minimizing the</p>	<p style="text-align: right;">Page 98</p> <p>1 number of towers. But predominantly it's absolutely</p> <p>2 against the Master Plan and the relevant Ordinance.</p> <p>3 That's one of the biggest problems.</p> <p>4 CHAIRMAN FLANAGAN: So I'll take the next</p> <p>5 easy one. We have testimony from the Applicant's own</p> <p>6 planner who had 30 years of experience, is that right?</p> <p>7 Who had done dozens of applications for Verizon.</p> <p>8 Testimony that never has he seen a tower built in</p> <p>9 either on a historic property or in such close</p> <p>10 proximity to a historic structure. And if I</p> <p>11 mischaracterize it tell me, but that was the gist of</p> <p>12 it. He's never seen it that close to a structure or</p> <p>13 over on a historic property.</p> <p>14 And this is McKinley -- I want to make sure</p> <p>15 I'm clear again. The bow tie, the part with the garage</p> <p>16 on it in some groups view it is historic, in others it</p> <p>17 is not. What is the layout of this? I know you wrote</p> <p>18 a memo, but I forgot.</p> <p>19 MS. MERTZ: Sure. It's the bow tie, the</p> <p>20 whole lot is historic in the eyes of the Township.</p> <p>21 Only the Tunis-Ellicks House is considered historic in</p> <p>22 the yes of the state and the Federal register.</p> <p>23 CHAIRMAN FLANAGAN: So the state and Feds.</p> <p>24 Is it the structure itself the state and Feds consider</p> <p>25 historic, or do they also consider part of the property</p>
<p style="text-align: right;">Page 99</p> <p>1 that that building is on historic, excluding the part</p> <p>2 that is above --</p> <p>3 MS. MERTZ: It's the structure itself.</p> <p>4 CHAIRMAN FLANAGAN: So more or less the</p> <p>5 Applicant's own planner says he has never seen a tower</p> <p>6 built in such close proximity to a structure or on --</p> <p>7 and he can discount the Township's view that that</p> <p>8 property is historical, one. I don't think you can</p> <p>9 discount the state and Feds saying that the</p> <p>10 Tunis-Ellicks House is a historic structure.</p> <p>11 BOARD MEMBER BOYAN: Mike, on that topic I</p> <p>12 agree with you, except with respect to -- I think the</p> <p>13 fact that it's locally designated carries more weight</p> <p>14 with me. People in this room who lived in Harding</p> <p>15 determined that site to be historic, not some</p> <p>16 bureaucrat in Trenton, and not somebody in Washington</p> <p>17 D.C. This is was Harding residents who determined that</p> <p>18 plot of land to be of historic value.</p> <p>19 BOARD MEMBER NEWLIN: It's not even open</p> <p>20 for discussion.</p> <p>21 CHAIRMAN FLANAGAN: You know, George,</p> <p>22 you're absolutely right. You're absolutely right.</p> <p>23 What is more important is people in other towns. In</p> <p>24 either case the Applicant and Planner has never seen</p> <p>25 it. And that carries a lot of weight in my book.</p>	<p style="text-align: right;">Page 100</p> <p>1 What else do we have? What are the other</p> <p>2 negative effects or negative detrimental effects?</p> <p>3 BOARD MEMBER NEWLIN: Steve, do we need to</p> <p>4 read anything into the record about the -- with regard</p> <p>5 to the points in the Master Plan and/or the ordinance</p> <p>6 to rectify that.</p> <p>7 MR. MLENAK: There's been plenty of</p> <p>8 testimony if you'd like to deliberate. If the Board</p> <p>9 would like to discuss them individually you can, you</p> <p>10 don't have to. If I may, just because there's been</p> <p>11 discussion earlier. In other parts of your</p> <p>12 deliberation it may have been more appropriately</p> <p>13 discussed at this juncture. The other points that I</p> <p>14 had written down there had been discussion of the drop</p> <p>15 zone. There had been discussion of the aesthetics.</p> <p>16 CHAIRMAN FLANAGAN: Yeah. Let me throw in</p> <p>17 that other -- and the real -- and thank you, Steve.</p> <p>18 The real issue here is, in my mind, is not</p> <p>19 whether there's a tower there, it's the height of it,</p> <p>20 frankly. And I think this is, Hugh, where you were</p> <p>21 getting in a little bit. It's the visuals of it,</p> <p>22 right, which is brought on by the fact, in part, by the</p> <p>23 height. And we do need to consider it's not beyond</p> <p>24 just the height, you have to consider what it looks</p> <p>25 like on the ground. Frankly, it's a recycling center.</p>

<p style="text-align: right;">Page 101</p> <p>1 I don't think you're going to make it less attractive</p> <p>2 on the ground, right. I mean, it's already a fairly</p> <p>3 unfortunately unattractive site, but when you go</p> <p>4 extend that thing up above the tree line it has a big</p> <p>5 visual impact.</p> <p>6 On the negative thing, it's 59 feet from</p> <p>7 somebody's property line. I would never allow someone</p> <p>8 to build something that close to a property line.</p> <p>9 BOARD MEMBER NEWLIN: A playhouse.</p> <p>10 CHAIRMAN FLANAGAN: We wouldn't allow</p> <p>11 building a swing set that close to a property line.</p> <p>12 That's a fact.</p> <p>13 Drop zone, height, the height which in my</p> <p>14 mind leaves the aesthetics of it. What else did you</p> <p>15 say, Steve?</p> <p>16 MR. MLENAK: Those were my notes that were</p> <p>17 discussed earlier. The drop zone, the aesthetics, and</p> <p>18 I believe Alf discussed the impact to the Master Plan.</p> <p>19 Now, with respect to that, this Board made</p> <p>20 use to the Medici standard with the enhanced quality of</p> <p>21 proof. What we are talking about here is not that,</p> <p>22 this is a lesser burden. But the impact to the Master</p> <p>23 Plan, the impact to the Zone Plan is relevant.</p> <p>24 CHAIRMAN FLANAGAN: All right.</p> <p>25 BOARD MEMBER ROSENBAUM: And Steve's memo</p>	<p style="text-align: right;">Page 102</p> <p>1 as well talks about you counter the neighborhood with</p> <p>2 regard to the South Plainfield Case, with regard to the</p> <p>3 character of the neighborhood. And they found it was</p> <p>4 "not unreasonable for the Township or the Planning</p> <p>5 Board to say no to a 90-foot monopole. And they did</p> <p>6 not abuse its discretion in concluding, among other</p> <p>7 things, that height, visibility of proposed four-story</p> <p>8 nursing home impaired residential character of</p> <p>9 neighborhood." That was significantly shorter than</p> <p>10 that, 120, 130 feet.</p> <p>11 It's the third paragraph on Step 2. So</p> <p>12 what we're saying is, is it in character to what is</p> <p>13 around? And there's certainly no other non-natural</p> <p>14 standings in sightlines there that is of that height.</p> <p>15 CHAIRMAN FLANAGAN: And I think of that</p> <p>16 height is the key phrase there, to be honest with you.</p> <p>17 George?</p> <p>18 BOARD MEMBER BOYAN: Mike, I think I've</p> <p>19 noted two additional detrimental effects that I'd like</p> <p>20 to just put on the record. One are some of the</p> <p>21 hazardous materials housed at this DPW site, mainly the</p> <p>22 gas station and the propane tanks. We have discussed</p> <p>23 the Fall Zone in the context of the residential</p> <p>24 property, but not on the DPW site itself.</p> <p>25 And the second, and I think this is</p>
<p style="text-align: right;">Page 103</p> <p>1 regardless of height, the elimination of probably half</p> <p>2 a dozen mature trees with 2 feet in diameter trunks.</p> <p>3 So again, regardless of the height the elimination of</p> <p>4 those trees I think is contrary to some elements in the</p> <p>5 Master Plan.</p> <p>6 BOARD MEMBER NEWLIN: There's another thing</p> <p>7 we should address, which is the multiple use.</p> <p>8 Certainly, that's the case. I think Mr. Simon says</p> <p>9 there's potentially three -- there will be three or</p> <p>10 four uses on this property. That is one of the</p> <p>11 variances. I believe that's a second "D" Variance.</p> <p>12 And what does the Board think about that? Is that a</p> <p>13 problem? One of the uses is DPW, recycling, what was</p> <p>14 the third one.</p> <p>15 MR. SIMON: Tunis-Ellicks.</p> <p>16 BOARD MEMBER MASELLI: Tunis-Ellicks.</p> <p>17 MR. CORNINE: Sand storage.</p> <p>18 BOARD MEMBER NEWLIN: Yes, the salt domes</p> <p>19 is storage. So lots of uses that's not permitted.</p> <p>20 Typically that's a no-no in zoning. The Town is</p> <p>21 special so it gets to do whatever it wants.</p> <p>22 BOARD MEMBER SYMONDS: It's the "O" Zone.</p> <p>23 BOARD MEMBER NEWLIN: It is, but you should</p> <p>24 address that.</p> <p>25 CHAIRMAN FLANAGAN: It's a concern. You</p>	<p style="text-align: right;">Page 104</p> <p>1 raised it. It is there for a concern.</p> <p>2 BOARD MEMBER NEWLIN: I didn't see the</p> <p>3 public safety problems. I know that was brought up. A</p> <p>4 lot of traffic this, traffic -- other than a drop zone</p> <p>5 I did not see folks' safety issues with it.</p> <p>6 CHAIRMAN FLANAGAN: No. George makes a</p> <p>7 good point. In terms of the additional use, I mean,</p> <p>8 it's a fact they're asking for it. More is not</p> <p>9 necessarily better.</p> <p>10 BOARD MEMBER NEWLIN: And so no public</p> <p>11 safety issues. I doesn't see that. But there's a</p> <p>12 noise concern for generators. And --</p> <p>13 CHAIRMAN FLANAGAN: Okay.</p> <p>14 BOARD MEMBER NEWLIN: --and I guess</p> <p>15 generators are what, these are probably I guess we</p> <p>16 should get some -- whether people have a concern about</p> <p>17 that.</p> <p>18 CHAIRMAN FLANAGAN: I do.</p> <p>19 BOARD MEMBER SOVOLOS: This may be</p> <p>20 redundant to other things that we talked about, but</p> <p>21 what about impact on local property values? I know we</p> <p>22 didn't have clear testimony.</p> <p>23 CHAIRMAN FLANAGAN: Yeah. I don't think --</p> <p>24 MR. MLENAK: Well --</p> <p>25 CHAIRMAN FLANAGAN: Go ahead, Mr. Mlenak.</p>

<p style="text-align: right;">Page 105</p> <p>1 MR. MLENAK: I don't believe there was any 2 testimony in the record regarding impact to property 3 values. And case law is clear that consideration of 4 things such as that should be based on substantial 5 expert testimony. 6 CHAIRMAN FLANAGAN: I do think the 7 generator testing is a potential detrimental effect. 8 BOARD MEMBER NEWLIN: And did we get 9 anything in testimony about the noise level of these 10 generators? Because sometimes bigger generators are 11 not -- 12 CHAIRMAN FLANAGAN: Do we have anything in 13 the record about that? 14 MR. SCHNEIDER: I believe Mr. Maurawski 15 testified as to that. It would comply with NJDEP noise 16 regulations. 17 BOARD MEMBER NEWLIN: Paul, is that 18 something we should have a question or concern about. 19 MR. FOX: No. I think we can accept the 20 testimony we have been provided with. 21 BOARD MEMBER NEWLIN: So these generators 22 would be in excess of what property owners can use. 23 MR. FOX: Correct. It probably would be 24 smaller. The power load from a cell tower site is 25 fairly low.</p>	<p style="text-align: right;">Page 106</p> <p>1 BOARD MEMBER NEWLIN: Is there any other 2 conditional use type things from an engineering 3 perspective we should add on to the record. 4 MR. FOX: No. 5 BOARD MEMBER NEWLIN: I personally don't 6 have a concern about the generator. 7 CHAIRMAN FLANAGAN: And we talked about -- 8 what else? And not to tell you you're baby's ugly, I'm 9 not going to do that, but we talked about additional 10 traffic. And if we just itemize all the negatives, 11 right, there's additional traffic. Personally I don't 12 think this tips -- 13 MR. SCHNEIDER: Are you asking me, Mr. 14 Chairman, or I guess -- 15 CHAIRMAN FLANAGAN: No, I just -- 16 MR. SCHNEIDER: You don't want me to 17 respond then? 18 CHAIRMAN FLANAGAN: About additional 19 traffic? 20 MR. SCHNEIDER: Well, about this whole 21 second principal use in a minute or less. 22 CHAIRMAN FLANAGAN: If you can do it in a 23 minute or less -- 24 BOARD MEMBER MASELLI: It would be a third 25 or a fourth, not a second.</p>
<p style="text-align: right;">Page 107</p> <p>1 MR. SCHNEIDER: I think the second 2 principal use issue is a Red Herring issue, with all 3 due respect. First of all, I disagree vehemently, and 4 you can solicit Steve's opinion, that the Medici 5 enhanced quality of proof applies to a second use. I 6 think that's a Red Herring and a boot-strap argument. 7 Point one. 8 Point two: I cannot think of a second 9 principal use that is more appropriate as a second 10 principal use than a cell tower. The fact is that when 11 you consider second principle uses you assess noise, 12 traffic, lighting, operational interference with the 13 existing use. Aside from visual impact this is 14 essentially a benign operational use. 15 I think you can all reflect on all of the 16 -- a wall of the wireless communication facilities that 17 you're all personally aware. And I'd venture to say 18 that almost every single one of them operates as a 19 second principal use on a piece of property. Think 20 about all of the cell towers you've seen have you ever 21 really seen any that exist as a sole principal use on a 22 piece of property? 23 The fact is that the principal use here and 24 the context of the DPW use is non-operational 25 interfering and doesn't have any of the attributes that</p>	<p style="text-align: right;">Page 108</p> <p>1 Planning and Zoning Boards usually consider when 2 there's a second principal use. 3 BOARD MEMBER NEWLIN: But nonetheless you 4 need a variance with it, right. 5 MR. SCHNEIDER: To the extent it's not 6 subsumed -- I think it's subsumed within the "D" 7 Variance and I certainly don't think the Medici 8 enhancement quality of proof applies. 9 MR. MLENAK: Mike, would you like my 10 opinion? 11 CHAIRMAN FLANAGAN: I'd love your opinion. 12 MR. MLENAK: I agree with Mr. Schneider for 13 a number of reasons. First, if you just look to the 14 positive criteria and what the case law talks about 15 with respect to determining alternative sites it's 16 specific with respect to can it be located on other 17 existing facilities. There's an encouragement there 18 that facilities like this be located in those areas 19 that constitute multiple uses. 20 To the extent there's a variance, there's a 21 "D" Variance. And you have case law which provides the 22 crux of the it's not inherently beneficial, we know 23 that, but there's an independent classification that 24 carries with it some preferential treatment. And that 25 preferential treatment includes not having to be</p>

<p style="text-align: right;">Page 109</p> <p>1 subject to Medici enhanced quality of proof.</p> <p>2 And I can't get myself to rationalize in</p> <p>3 that accord because this is a second use, which many</p> <p>4 cases suggest is more appropriate than a standalone</p> <p>5 site. That they would afford that same benefit to this</p> <p>6 variance than the straight D-1. So for that reason I</p> <p>7 agree.</p> <p>8 CHAIRMAN FLANAGAN: Mr. Simon -- thank you,</p> <p>9 Steve. Mr. Simon, you were going to say something in</p> <p>10 30 seconds or less.</p> <p>11 MR. SIMON: I think with all due respect to</p> <p>12 Mr. Mlenak and Mr. Schneider, you have to take into</p> <p>13 consideration two things that are of utmost importance</p> <p>14 here. Number one, a number of principal uses that it</p> <p>15 is allegedly going to share with, number one. And</p> <p>16 number two, you must look at your ordinance regarding</p> <p>17 the Historic District and how the Historic District and</p> <p>18 the fact that this is located in the Historic District,</p> <p>19 multiple principal buildings and uses in the Historic</p> <p>20 District, and how that is treated both under the</p> <p>21 Ordinance and the Master Plan.</p> <p>22 CHAIRMAN FLANAGAN: All right. I think we</p> <p>23 have a litany of detrimental effects. I'm not sure</p> <p>24 that's the one that pushes me one way or the other. I</p> <p>25 think there are others in my mind personally that --</p>	<p style="text-align: right;">Page 110</p> <p>1 BOARD MEMBER NEWLIN: Are you talking about</p> <p>2 multiple uses.</p> <p>3 CHAIRMAN FLANAGAN: Well, yes. I don't</p> <p>4 think that multiple uses is my key consideration.</p> <p>5 Could be others.</p> <p>6 All right. Any other things that anybody</p> <p>7 wants to point out? Boards members have any</p> <p>8 detrimental effects? I think we have a pretty good</p> <p>9 list, right. And it's not a good list, but I think</p> <p>10 it's a pretty exhaustive list, I should say.</p> <p>11 So let's talk about whether those --</p> <p>12 whether reasonable conditions can be -- can reduce the</p> <p>13 detrimental effects. All right. So let's look at</p> <p>14 everything we just listed out.</p> <p>15 BOARD MEMBER MASELLI: One more thing.</p> <p>16 When you said tree lined, how do we capture that it's</p> <p>17 above the tree line?</p> <p>18 CHAIRMAN FLANAGAN: What do you mean?</p> <p>19 BOARD MEMBER MASELLI: Like, that's a</p> <p>20 little -- tree line can be 40 feet, 70 feet. Like,</p> <p>21 it's considerably higher than the tallest tree that</p> <p>22 could grow in the area.</p> <p>23 So is that bordering a skyline kind of line</p> <p>24 item? I mean, is it a tree line or skyline?</p> <p>25 CHAIRMAN FLANAGAN: I think --</p>
<p style="text-align: right;">Page 111</p> <p>1 BOARD MEMBER MASELLI: Because it does</p> <p>2 change the skyline.</p> <p>3 CHAIRMAN FLANAGAN: It changes the skyline.</p> <p>4 I think I'd probably throw that in. I have listed</p> <p>5 height which plays into the aesthetics, because it</p> <p>6 affects the skyline I think we can say that. In terms</p> <p>7 of the tallest trees, I think we have testimony, don't</p> <p>8 we? Or was it at the height inspection we discussed</p> <p>9 how tall those trees were? Who asked that? Alf, were</p> <p>10 you --</p> <p>11 BOARD MEMBER NEWLIN: Yes. I had asked.</p> <p>12 Paul can give us an estimate.</p> <p>13 CHAIRMAN FLANAGAN: Paul, did he give us an</p> <p>14 estimate of the height of the trees around the DPW?</p> <p>15 BOARD MEMBER NEWLIN: He's going to use a</p> <p>16 boy scout counting stick.</p> <p>17 MR. FOX: We used an estimate of 60 to 70</p> <p>18 feet.</p> <p>19 BOARD MEMBER BOYAN: But nonetheless I</p> <p>20 think it's a technical requirement -- Dr. Eisenstein</p> <p>21 can confirm this. It's a technical requirement that</p> <p>22 the tower be above the tree line; is that right?</p> <p>23 DR. EISENSTEIN: Right.</p> <p>24 BOARD MEMBER BOYAN: So by default it must</p> <p>25 be above the line.</p>	<p style="text-align: right;">Page 112</p> <p>1 CHAIRMAN FLANAGAN: Okay. How can we</p> <p>2 mitigate these detrimental effects? One, noise. Just</p> <p>3 going left to right on my page. I think that could be</p> <p>4 mitigated to be honest with you. I think one could go</p> <p>5 set time. So the generator has to be run. It has to</p> <p>6 be tested. We've discussed this with others before.</p> <p>7 BOARD MEMBER ROSENBAUM: I think we heard</p> <p>8 it was an hour a week?</p> <p>9 MR. SCHNEIDER: It's a half hour to an hour</p> <p>10 a week on Tuesdays, weather permitting, and we control</p> <p>11 the time.</p> <p>12 CHAIRMAN FLANAGAN: And if I'd say you'd be</p> <p>13 willing to do it in the middle of the afternoon --</p> <p>14 MR. SCHNEIDER: We do it Tuesday a eleven</p> <p>15 o'clock.</p> <p>16 CHAIRMAN FLANAGAN: All right. So in my</p> <p>17 mind you can mitigate that.</p> <p>18 BOARD MEMBER SYMONDS: Also, it would be --</p> <p>19 the fact that it's limited it complies with the state</p> <p>20 and noise ordinance. That's a pretty low, you know,</p> <p>21 that will have sound. So it will require that it has a</p> <p>22 sound proof enclosure, sound attenuating enclosure.</p> <p>23 CHAIRMAN FLANAGAN: The elimination of</p> <p>24 trees. I think we spoke about this. I think Mr.</p> <p>25 Schneider, you would say you'd be willing to move the</p>

<p style="text-align: right;">Page 113</p> <p>1 site plan or move the equipment to a place that would 2 require less knocking down of trees?</p> <p>3 MR. SCHNEIDER: If there's an ability to 4 slightly modify the locations, as long as it doesn't 5 affect the operability, then yes. And for the same 6 reason I think I said in my summation I'd be the worst 7 attorney ever if I ever lost a case based on 8 landscaping.</p> <p>9 CHAIRMAN FLANAGAN: Right.</p> <p>10 BOARD MEMBER NEWLIN: But it is true that 11 there has been no analysis -- there's been no analysis 12 on the landscape plan at this point.</p> <p>13 MR. SCHNEIDER: I think we provided some 14 detail. And I think we stipulated that if there was 15 supplemental landscaping that would be required we 16 would agree to comply with your Planner's 17 recommendations.</p> <p>18 CHAIRMAN FLANAGAN: So now we get to the 19 tough ones, right. The effect of this on the Master 20 Plan. How do we mitigate that?</p> <p>21 BOARD MEMBER NEWLIN: The height is a 22 certain size that makes it look like a commercial area. 23 That's the impact to the Master Plan. It's a height 24 issue. And then secondly there's a setback.</p> <p>25 CHAIRMAN FLANAGAN: Oh, I'm sorry. Can</p>	<p style="text-align: right;">Page 114</p> <p>1 I -- and I'm going to go back. I'm going to add the 2 setback issue to the detrimental effects, right?</p> <p>3 BOARD MEMBER NEWLIN: The landscape plan is 4 not -- I wouldn't spend any time on landscape plan to 5 the setbacks.</p> <p>6 CHAIRMAN FLANAGAN: So fine. So you think 7 addressing the height of the tower could help offset 8 the negative detrimental effects of the Master Plan?</p> <p>9 BOARD MEMBER NEWLIN: I do.</p> <p>10 BOARD MEMBER MASELLI: And the trees 11 specifically.</p> <p>12 CHAIRMAN FLANAGAN: Let's talk, you know, 13 the fact that it's on a historic property for the 14 Township and within a stone's throw of a historic 15 structure for everybody else. How do you mitigate 16 that?</p> <p>17 BOARD MEMBER NEWLIN: That's the balancing 18 issue. They need further coverage versus the cost 19 of -- we would never put it here if --</p> <p>20 BOARD MEMBER MASELLI: You can't mitigate 21 that.</p> <p>22 CHAIRMAN FLANAGAN: And Steve, it's 23 possible that some of these simply cannot -- some of 24 the detrimental effects cannot be mitigated, right?</p> <p>25 MR. MLENAK: Right. The step three is to</p>
<p style="text-align: right;">Page 115</p> <p>1 just identify all conditions that can lessen those 2 detriments. Not eliminate, but lessen, because step 3 four presumes you're still going to have detriments 4 that you need to balance.</p> <p>5 CHAIRMAN FLANAGAN: Okay. So the danger of 6 the tower falling on the service -- on the fuel tanks, 7 on the propane tanks. How do you mitigate that? 8 Height is one thing, I guess. You can put it in a 9 central location and make it of such a height that it 10 couldn't reach.</p> <p>11 BOARD MEMBER NEWLIN: Is that I danger? We 12 know that.</p> <p>13 CHAIRMAN FLANAGAN: I don't know. George 14 brought it up.</p> <p>15 Hey Steve, can we consider as a detrimental 16 effect the possibility of the tower, and we talked 17 about Fall Zones, right, so someone must be thinking 18 about these things possibly falling. Could we consider 19 the fact that within the Fall Zone are the diesel and 20 the gasoline pumps for the Township, as well as maybe 21 propane? Are there outdoor propane tanks there, Paul.</p> <p>22 MR. FOX: No. There's propane tanks stored 23 -- portable propane tanks stored in one of the sheds 24 there.</p> <p>25 CHAIRMAN FLANAGAN: So Steve, can we</p>	<p style="text-align: right;">Page 116</p> <p>1 consider as a possible detrimental effect the fact that 2 there's a gas station effectively within the Fall Zone?</p> <p>3 MR. MLENAK: I believe you can.</p> <p>4 MR. SCHNEIDER: There is no Fall-Down Zone 5 in your ordinance I would just note that.</p> <p>6 CHAIRMAN FLANAGAN: Say that again. So the 7 ordinance don't the have any reference to requirements 8 of the a Fall Zone.</p> <p>9 MR. SCHNEIDER: That's correct.</p> <p>10 CHAIRMAN FLANAGAN: Why were we discussing 11 it then?</p> <p>12 MR. SCHNEIDER: Mr. Simon brought it up.</p> <p>13 BOARD MEMBER BOYAN: Because it's a 14 detrimental effect. A consideration of the location.</p> <p>15 MR. SIMON: It's a site plan issue. It's a 16 public safety issue. And the Applicant actually 17 provided an exhibit to show where their Fall Down Zone 18 would be and I pointed out the problems associated.</p> <p>19 CHAIRMAN FLANAGAN: Steve, can we consider 20 as a possible detrimental effect that the thing could 21 fall on something?</p> <p>22 MR. MLENAK: Of course. But like anything 23 else, part of that consideration is likely budget and 24 where it would fall and things like that.</p> <p>25 CHAIRMAN FLANAGAN: Mr. Schneider, can you</p>

<p style="text-align: right;">Page 117</p> <p>1 give us any statistics of how often towers fall over?</p> <p>2 MR. SCHNEIDER: I'm not aware. I can't</p> <p>3 tell you that there hasn't been one. Let's deal with</p> <p>4 the reality. The tower's going to be designed in</p> <p>5 strict compliance with specific code provisions.</p> <p>6 There's a specific code provision that's applicable to</p> <p>7 wireless communication facilities that's updated on a</p> <p>8 very frequent basis. I think we're up to rev G or rev</p> <p>9 H.</p> <p>10 CHAIRMAN FLANAGAN: And who puts that</p> <p>11 standard out?</p> <p>12 MR. SCHNEIDER: A National Safety Board.</p> <p>13 And we're up to I think it's IEEE. I think it's rev G</p> <p>14 or rev H now we're up to. And it accommodates the</p> <p>15 initial structural integrity and any time anybody</p> <p>16 collocates and adds loading it has to be updated to</p> <p>17 confirm compliance.</p> <p>18 CHAIRMAN FLANAGAN: And, Paul, if the tower</p> <p>19 is built to specifications should we be overly</p> <p>20 concerned that the thing's going to fall over?</p> <p>21 MR. FOX: I would not be. No.</p> <p>22 CHAIRMAN FLANAGAN: So can we call that</p> <p>23 mitigated? That it's going to be structured and built</p> <p>24 in the fashion that it likely will not fall over?</p> <p>25 BOARD MEMBER ADDONIZIO: I disagree.</p>	<p style="text-align: right;">Page 118</p> <p>1 People build bridges with safety standards and codes,</p> <p>2 that, you know -- people pave roads that they're not</p> <p>3 going to cave in. So I think it should be left. I</p> <p>4 think the Fall Zone should be left in.</p> <p>5 The Applicant provided, you know, the</p> <p>6 testimony. Mr. Simon talked to that as well. And I</p> <p>7 think it should be considered.</p> <p>8 CHAIRMAN FLANAGAN: Let me say, as I go</p> <p>9 through this, I'm not saying that this is the Board's</p> <p>10 view on whether these can or cannot be mitigated. I'm</p> <p>11 just trying to snuff that out. You know, as we go</p> <p>12 through we're all going to have to make our own</p> <p>13 decisions. Do you think it has been mitigated? Maybe</p> <p>14 you don't, maybe I do, but those are all going into our</p> <p>15 own decisions.</p> <p>16 BOARD MEMBER NEWLIN: To the extent that</p> <p>17 the Fall Zone is on somebody else's property we</p> <p>18 shouldn't neglect that.</p> <p>19 CHAIRMAN FLANAGAN: Okay. What else do we</p> <p>20 have? Aesthetics. Can it be mitigated? In my view</p> <p>21 the aesthetics are -- they have been to some extent.</p> <p>22 And I think the flagless flagpole has mitigated the</p> <p>23 negative facts. I think -- and we say this. I presume</p> <p>24 that means that all of the cables and antennae will be</p> <p>25 inside.</p>
<p style="text-align: right;">Page 119</p> <p>1 MR. SCHNEIDER: Correct.</p> <p>2 CHAIRMAN FLANAGAN: We don't have to say</p> <p>3 the cables will be inside. That's a presumption.</p> <p>4 MR. SCHNEIDER: Correct.</p> <p>5 CHAIRMAN FLANAGAN: So that's partially</p> <p>6 mitigated. And we talk about painting it a color that</p> <p>7 will be whatever, mat gray or something to that effect.</p> <p>8 Something that's -- you must have a color that --</p> <p>9 MR. SCHNEIDER: Usually it's an off-white</p> <p>10 but --</p> <p>11 BOARD MEMBER NEWLIN: Your Planner said, I</p> <p>12 remember from the testimony, your Planner actually had</p> <p>13 experience with colors and he was the one that</p> <p>14 represented sky gray or something like that.</p> <p>15 CHAIRMAN FLANAGAN: All right.</p> <p>16 BOARD MEMBER ADDONIZIO: Is it tall enough</p> <p>17 to have a light on top of it?</p> <p>18 MR. SCHNEIDER: There is no light required,</p> <p>19 based on its height and location.</p> <p>20 CHAIRMAN FLANAGAN: So those --</p> <p>21 MR. SCHNEIDER: And that's -- if I can,</p> <p>22 just for informational purposes. That's in large</p> <p>23 measure why most Boards prefer no flag. If there was a</p> <p>24 flag on the top the flag under the Code of Federal</p> <p>25 regulations would be required to be lit. But based on</p>	<p style="text-align: right;">Page 120</p> <p>1 the absence of the flag that's why the facility does</p> <p>2 not have to be lit.</p> <p>3 CHAIRMAN FLANAGAN: Got it.</p> <p>4 BOARD MEMBER ROSENBAUM: And if we were to</p> <p>5 approve this, you know, I mean, do we approve a</p> <p>6 flagless flagpole? Do we approve a fake tree? If it's</p> <p>7 a fake tree someone might think that's a mitigation to</p> <p>8 the visual aesthetics.</p> <p>9 CHAIRMAN FLANAGAN: So let's get that</p> <p>10 hashed out. Does anybody -- would anybody prefer the</p> <p>11 tree over the flagless flagpole?</p> <p>12 BOARD MEMBER ROSENBAUM: I think I would.</p> <p>13 They look stupid, but maybe they look less stupid than</p> <p>14 a flagless flagpole.</p> <p>15 BOARD MEMBER SYMONDS: You're also using a</p> <p>16 tree design, it reduces the height. Because instead of</p> <p>17 requiring two 10-foot sections per carrier you get it</p> <p>18 in one 10-foot section. So you go from 80 to 90, as</p> <p>19 opposed to 80 to a hundred to accommodate one carrier.</p> <p>20 BOARD MEMBER NEWLIN: At that would be the</p> <p>21 only reason I would support a tree.</p> <p>22 CHAIRMAN FLANAGAN: I think they look</p> <p>23 completely artificial. I think it makes them stick</p> <p>24 out. It makes them more noticeable than if there was</p> <p>25 just nothing.</p>

<p style="text-align: right;">Page 121</p> <p>1 BOARD MEMBER ROSENBAUM: I respectfully</p> <p>2 disagree. I think it looks stupid, but I was driving</p> <p>3 passed Mendham's Kings the other day and the flagless</p> <p>4 flagpole was there and it looked pretty stupid.</p> <p>5 CHAIRMAN FLANAGAN: Okay. So I don't know</p> <p>6 how we're going to do that, but I think you may be on</p> <p>7 the island by yourself on that one.</p> <p>8 BOARD MEMBER ROSENBAUM: That's fine. It</p> <p>9 won't be the last.</p> <p>10 CHAIRMAN FLANAGAN: So what else about</p> <p>11 aesthetics, right, it's the height. So what can be</p> <p>12 done from an aesthetic perspective which we have in a</p> <p>13 couple of other categories in my mind it's about how</p> <p>14 tall. In addition to other stuff.</p> <p>15 So could we help mitigate the aesthetics?</p> <p>16 Yeah, we did a few things. Another thing we can do is</p> <p>17 reduce the height. So there's your options, I think.</p> <p>18 BOARD MEMBER NEWLIN: So that's the number</p> <p>19 one.</p> <p>20 CHAIRMAN FLANAGAN: That's the number one.</p> <p>21 All right. What else? So now go balance</p> <p>22 the positive and negative.</p> <p>23 BOARD MEMBER NEWLIN: Well, on the setback</p> <p>24 side, to get that out, I understand there's been no</p> <p>25 engineering on this, but there does appear to be sites</p>	<p style="text-align: right;">Page 122</p> <p>1 that can get that setback up to a hundred feet. I'm</p> <p>2 sure it's inconvenient to the Town. It might cost the</p> <p>3 Town money, but it does look like to me this was placed</p> <p>4 at the Towns convenience, at the detriment to the</p> <p>5 residents. So I think that's very important and it's</p> <p>6 probably not easy, but I didn't see anything that says</p> <p>7 it's not doable. The height as a setback that's going</p> <p>8 to eliminate the Fall Zone on the residents on the</p> <p>9 properties.</p> <p>10 CHAIRMAN FLANAGAN: I agree. Can I say, I</p> <p>11 don't know whose idea it was -- and I think it was</p> <p>12 probably well intentioned to go hide the equipment and</p> <p>13 hide the base of the tower from -- what they ultimately</p> <p>14 did is they hid it from the center of the recycling</p> <p>15 yard. Right. And between you, when I go to bring my</p> <p>16 old cans up to the recycling center I'm not expecting</p> <p>17 it to be beautiful. Right. And there's nothing else</p> <p>18 up there that is beautiful. So to go -- I appreciate</p> <p>19 the effort they made, well, let's put it here so no one</p> <p>20 has to look at it. In turn they put it on the</p> <p>21 O'Donnell's property, right. That's the wrong way.</p> <p>22 They should have gone and put it in the middle of the</p> <p>23 yard. I don't care about seeing it when I'm doing my</p> <p>24 recycling.</p> <p>25 BOARD MEMBER MASELLI: There's a pole in</p>
<p style="text-align: right;">Page 123</p> <p>1 the middle of the yard now.</p> <p>2 CHAIRMAN FLANAGAN: And whether</p> <p>3 logistically it would work or not I don't think the</p> <p>4 visuals -- I think it could be moved.</p> <p>5 All right. Is that it? Balance the</p> <p>6 positive and negative now. So this is the -- hey,</p> <p>7 Steve, I think this is the fun part, right? So we have</p> <p>8 to take all that stuff we just discussed and figure out</p> <p>9 yes or no. Is that kind of what we're doing here?</p> <p>10 MR. MLENAK: You're going to put all those</p> <p>11 detriments as they were met by the conditions in Step 3</p> <p>12 on one side, and you're going to take the public</p> <p>13 interest on the other side and determine which side</p> <p>14 outweighs the other, correct.</p> <p>15 CHAIRMAN FLANAGAN: But when we consider</p> <p>16 the conditions it's got to be conditions we discussed</p> <p>17 so far. So we're considering a 130-foot flagless</p> <p>18 flagpole in its location with -- with what, are we</p> <p>19 considering if there's a setback or not, or are we</p> <p>20 considering where it is?</p> <p>21 MR. MLENAK: Well, you're considering where</p> <p>22 it's located. That's going to dictate its relation to</p> <p>23 the other property lines.</p> <p>24 CHAIRMAN FLANAGAN: How about we do this.</p> <p>25 Let's talk about it, because we have to base it on</p>	<p style="text-align: right;">Page 124</p> <p>1 something. And the only thing that we have in front of</p> <p>2 us is the location we talked about, right. The style</p> <p>3 we've talked about. The height we've talked about. I</p> <p>4 don't think we can make assumptions when we balance</p> <p>5 this that it's going to be someplace else that it's</p> <p>6 going to be a different height, right?</p> <p>7 MR. MLENAK: Well, you can have the</p> <p>8 analysis as proposed, and then have the same analysis</p> <p>9 as -- with a condition that the height be lowered to a</p> <p>10 different height. And if that changes the balancing</p> <p>11 you can have that discussion.</p> <p>12 CHAIRMAN FLANAGAN: So let's start off as</p> <p>13 it's proposed. A one-hundred-thirty foot flagless</p> <p>14 flagpole in the location they're talking about. How do</p> <p>15 we think? Does that -- how do we balance that with</p> <p>16 everything we just discussed?</p> <p>17 SECRETARY TAGLAIRINO: Mike, I just want to</p> <p>18 remind you we do have two other Applicants tonight.</p> <p>19 And that's not to rush us, but if you don't think</p> <p>20 that's going to get to them in the next hour, they've</p> <p>21 been waiting and waiting.</p> <p>22 CHAIRMAN FLANAGAN: What time are we done</p> <p>23 tonight?</p> <p>24 SECRETARY TAGLAIRINO: 10:30. I know,</p> <p>25 weighing out whether they want to be heard. At least</p>

<p style="text-align: right;">Page 125</p> <p>1 give them the option.</p> <p>2 CHAIRMAN FLANAGAN: Mr. Schneider, could we</p> <p>3 take a moment here so I can talk to these other</p> <p>4 applicants?</p> <p>5 MR. SCHNEIDER: Sure.</p> <p>6 SECRETARY TAGLAIRINO: Let me go get -- one</p> <p>7 is there.</p> <p>8 (Whereupon, the Board discusses other</p> <p>9 Agenda items at 9:32 p.m.)</p> <p>10 (Back on the record at 9:38 p.m.)</p> <p>11 SECRETARY TAGLAIRINO: Ms. Sovolos?</p> <p>12 BOARD MEMBER SOVOLOS: Here.</p> <p>13 SECRETARY TAGLAIRINO: Mr. Maselli?</p> <p>14 BOARD MEMBER MASELLI: Here.</p> <p>15 SECRETARY TAGLAIRINO: Mr. Symonds?</p> <p>16 BOARD MEMBER SYMONDS: Here.</p> <p>17 SECRETARY TAGLAIRINO: Mr. Newlin?</p> <p>18 BOARD MEMBER NEWLIN: Here.</p> <p>19 SECRETARY TAGLAIRINO: Mr. Rosenbaum?</p> <p>20 BOARD MEMBER ROSENBAUM: Yes, here.</p> <p>21 SECRETARY TAGLAIRINO: Mr. Addonizio.</p> <p>22 BOARD MEMBER ADDONIZIO: Here.</p> <p>23 SECRETARY TAGLAIRINO: Mr. Flanagan?</p> <p>24 CHAIRMAN FLANAGAN: Here.</p> <p>25 SECRETARY TAGLAIRINO: Mr. Cammarata?</p>	<p style="text-align: right;">Page 126</p> <p>1 BOARD MEMBER CAMMARATA: Here.</p> <p>2 SECRETARY TAGLAIRINO: Mr. Boyan?</p> <p>3 BOARD MEMBER BOYAN: Here.</p> <p>4 CHAIRMAN FLANAGAN: All right. Mr. Simon,</p> <p>5 Mr. Schneider, apologize for that but I just wanted to</p> <p>6 --</p> <p>7 All right. Anyway so we're back for this.</p> <p>8 And so the question I think we need to go balance these</p> <p>9 two. I want to share the thoughts, everybody's</p> <p>10 thoughts on where we stands.</p> <p>11 We need something to look at and I think</p> <p>12 what we're looking at is a 130-foot flagless flagpole</p> <p>13 -- stop me when I'm wrong -- in the site you proposed</p> <p>14 or slightly modified, I guess, right. Painted a</p> <p>15 certain color. What else do we have there for</p> <p>16 restrictions? I don't remember.</p> <p>17 MR. SCHNEIDER: Could I throw one thing</p> <p>18 out? I proposed 130 for the reasons relative to</p> <p>19 collocation, not for the specific benefit for Verizon.</p> <p>20 If the 10 feet is of a material concern to the Board</p> <p>21 certainly the Applicant will not go down in flames on</p> <p>22 120. I only propose 130 from a collocation</p> <p>23 perspective. I hope you don't take it the wrong way.</p> <p>24 CHAIRMAN FLANAGAN: No. I appreciate that.</p> <p>25 So for purposes of discussion --</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. SCHNEIDER: I'm trying to guess where</p> <p>2 you are. And I thought based on what I heard over 21</p> <p>3 hearings was discussions about collocation. We all</p> <p>4 went back and forth with Dr. Eisenstein. If the Board</p> <p>5 doesn't believe that advancing that for the extra 10</p> <p>6 feet is of a benefit relative to the detriment the</p> <p>7 Applicant certainly would agree to 120.</p> <p>8 CHAIRMAN FLANAGAN: So my --</p> <p>9 MR. SCHNEIDER: That's all I was trying to</p> <p>10 clarify.</p> <p>11 CHAIRMAN FLANAGAN: Understood. So for</p> <p>12 purposes of this discussion when we to this balancing</p> <p>13 test, let us talk 130 knowing the Applicant will be</p> <p>14 willing to do 120. So whatever number you want. I</p> <p>15 think once we get everybody's thoughts I think Mr.</p> <p>16 Schneider we'll do a straw poll if that works for you.</p> <p>17 I think they'll probably know before we straw poll, but</p> <p>18 we'll do it. And then we can decide what we do from</p> <p>19 there. Sound good?</p> <p>20 BOARD MEMBER NEWLIN: Why don't we say 120.</p> <p>21 CHAIRMAN FLANAGAN: Okay. Let's say 120.</p> <p>22 So everybody has 120 in their mind.</p> <p>23 BOARD MEMBER NEWLIN: That's okay. It's</p> <p>24 been 120 for a long time.</p> <p>25 CHAIRMAN FLANAGAN: Okay. Who want wants</p>	<p style="text-align: right;">Page 128</p> <p>1 to balance first? I think we should go actually in</p> <p>2 this order.</p> <p>3 BOARD MEMBER ROSENBAUM: George first.</p> <p>4 CHAIRMAN FLANAGAN: George, I'm teasing.</p> <p>5 BOARD MEMBER BOYAN: I can speak.</p> <p>6 CHAIRMAN FLANAGAN: Whoever wants to go</p> <p>7 first. If want to go first, George, go ahead. Don't</p> <p>8 feel --</p> <p>9 BOARD MEMBER BOYAN: In my mind, first of</p> <p>10 all, this balancing test has largely been done by three</p> <p>11 other entities in Town: Bob Falzarano, who not only is</p> <p>12 the Township Administrator, he also is the OEM Manager,</p> <p>13 the Office of Emergency Management, has a fiduciary</p> <p>14 obligation to public safety.</p> <p>15 The Board of Education, Dr. Spelker, he</p> <p>16 sent an email tonight to the parents. He said students</p> <p>17 safety is his number one concern.</p> <p>18 And third is the Fire Department and the</p> <p>19 Emergency First Aid Squad.</p> <p>20 They've effectively done this balancing</p> <p>21 test, and all three of them have said we don't want it</p> <p>22 and we don't want anything to do with it. So I would</p> <p>23 argue that that fact needs to weigh in on our</p> <p>24 conversation. It's not dispositive, but it's something</p> <p>25 that we need to consider.</p>

<p style="text-align: right;">Page 129</p> <p>1 And when I hear the positive and the</p> <p>2 negative criteria as we've laid out, which by the way I</p> <p>3 completely agree with the I think excellent list that</p> <p>4 we have laid out. One is, relatively weigh the public</p> <p>5 safety issue. And we have a laundry list of</p> <p>6 detrimental impacts.</p> <p>7 So in my opinion the negatives outweigh the</p> <p>8 positives and as a result the Applicant would fail the</p> <p>9 negative criteria.</p> <p>10 CHAIRMAN FLANAGAN: That was such an</p> <p>11 excellent summary. And not because of the answer, but</p> <p>12 because it was so succinctly said.</p> <p>13 BOARD MEMBER BOYAN: And my New Jersey Bar</p> <p>14 is still active.</p> <p>15 CHAIRMAN FLANAGAN: And your New Jersey --</p> <p>16 (Laughter.) My license is still active too, but not</p> <p>17 that guy.</p> <p>18 All right. Who wants to go next?</p> <p>19 BOARD MEMBER ROSENBAUM: I guess I'll jump</p> <p>20 in. We're going right to left?</p> <p>21 So this has certainly been over, I guess,</p> <p>22 three years, 23 sessions, certainly very interesting,</p> <p>23 very educational. I think it's great that we can bring</p> <p>24 this here. We have real good civil conversation.</p> <p>25 People are passionate about this Town. People love</p>	<p style="text-align: right;">Page 130</p> <p>1 this Town. So I applaud everyone who has come and sat</p> <p>2 through this process and presented their views.</p> <p>3 This is challenging. I mean, they clearly</p> <p>4 have a license. They clearly show they have a gap in</p> <p>5 coverage. Okay. There are, I would argue, significant</p> <p>6 at 120 feet or whether it's 130 feet significant visual</p> <p>7 impacts to site-scape of the Town and so on and so</p> <p>8 forth. When you balance it with use points with regard</p> <p>9 to what is the difference in coverage between 120 feet</p> <p>10 and a hundred feet. I would argue it's fairly nominal.</p> <p>11 So in that respect, yes, there's a strong positive</p> <p>12 criteria. Let me get to back to that for a second.</p> <p>13 Just public safety in Town. I mean, school</p> <p>14 for example. I have kids at that school. It's a dead</p> <p>15 zone. No doubt about that. They can cover that</p> <p>16 through ODAS or IDAS or whatever, but if something were</p> <p>17 to happen at the school, fire whatever, that may or may</p> <p>18 not operate. They need coverage that's there. But</p> <p>19 from a visual impact point of view I fail to see at 120</p> <p>20 or 130 feet, I think that negative criteria outweighs</p> <p>21 the positive criteria. So I would be a no at 120, 130.</p> <p>22 CHAIRMAN FLANAGAN: Dan, take your mask</p> <p>23 off.</p> <p>24 BOARD MEMBER MASELLI: I think we're all</p> <p>25 going to start repeating what everyone's saying from</p>
<p style="text-align: right;">Page 131</p> <p>1 right to left. I'm part of the Historic Commission in</p> <p>2 this Town for a long time. I might be one of the</p> <p>3 longest tenured members. We try to protect this Town</p> <p>4 with streetscape. And for me, you know, I understand</p> <p>5 the school and public safety, I mean, combined I have</p> <p>6 18 years -- 18 years between my two boys going to the</p> <p>7 school. I personally never had a problem where I</p> <p>8 couldn't communicate with my kids if there was a</p> <p>9 problem, or whether they got in trouble and the</p> <p>10 teachers communicated with me. The latter was probably</p> <p>11 more of the communication part.</p> <p>12 And aesthetics is a really, really big deal</p> <p>13 to me. And it's not just in the Historic District</p> <p>14 itself, it's just driving through this town. And at</p> <p>15 120 feet seeing that tower in the skyline and the</p> <p>16 setback issue is a really big deal for me. You might</p> <p>17 think it's just one property, but it is somebody's</p> <p>18 personal property. The Fall Zone, you know, going over</p> <p>19 somebody's personal property is a big issue for me.</p> <p>20 I think there might be a way to mitigate</p> <p>21 that setback. I mean, I keep staring at that pole in</p> <p>22 the middle of the DPW, whether it's possible or not.</p> <p>23 As a builder I know everything is possible, it just</p> <p>24 takes money and ideas, and implementing ideas and not</p> <p>25 taking the easy way out.</p>	<p style="text-align: right;">Page 132</p> <p>1 So I use the recycling center a lot. And</p> <p>2 the Officer Heller probably doesn't want to hear this</p> <p>3 but I go through the gate when it's closed. I just</p> <p>4 don't have the time to go -- sorry to the neighbors if</p> <p>5 you hear the extra clanking. But when I see that pole</p> <p>6 in the middle it's like why don't we consider putting</p> <p>7 the pole in the middle of the property so it mitigates</p> <p>8 some of the adjoining neighbors' issues. And why does</p> <p>9 the support system for the tower need to be adjacent to</p> <p>10 the tower? Why can't it be hidden underneath one of</p> <p>11 the sheds? Why do we even need to landscape around it?</p> <p>12 And it's beyond my level of expertise, but</p> <p>13 I just think there's a better solution. If we're just</p> <p>14 looking at this tower at 120 feet and 59 feet away from</p> <p>15 -- it's just too negative of an issue for me. And the</p> <p>16 negatives definitely outweigh the positives for me.</p> <p>17 That's it for me.</p> <p>18 CHAIRMAN FLANAGAN: You'd be a no at 120?</p> <p>19 BOARD MEMBER MASELLI: Yes.</p> <p>20 CHAIRMAN FLANAGAN: This is our straw poll,</p> <p>21 Mr. Schneider.</p> <p>22 MR. SCHNEIDER: And I'm trying to --</p> <p>23 CHAIRMAN FLANAGAN: I'm just saying if you</p> <p>24 want to go through it again we can, but I'm just going</p> <p>25 to ask people just to say yes or no.</p>

<p style="text-align: right;">Page 133</p> <p>1 MR. SCHNEIDER: That's fine.</p> <p>2 CHAIRMAN FLANAGAN: Hugh, what do you</p> <p>3 think?</p> <p>4 BOARD MEMBER SYMONDS: Again, I've made it</p> <p>5 clear that I think that the height of the tower exceeds</p> <p>6 the need for the -- to provide the coverage, to provide</p> <p>7 an adequate level of coverage. And that coupled with</p> <p>8 the fact that, again, the setback's using PL, but I</p> <p>9 think having it -- we deal with setbacks all the time,</p> <p>10 even though it's the PL Zone, but I think having it --</p> <p>11 you know, I'd say the same thing if it was any</p> <p>12 Applicant.</p> <p>13 The Applicant has made no attempt to</p> <p>14 minimize the impact on our zoning table by centrally</p> <p>15 locating it, adjusting it, putting it -- there's a</p> <p>16 number of things that I think could be done to minimize</p> <p>17 the impact. So the plan as it's proposed I cannot</p> <p>18 support.</p> <p>19 CHAIRMAN FLANAGAN: All right. We don't</p> <p>20 have to go over --</p> <p>21 BOARD MEMBER NEWLIN: I've said most of the</p> <p>22 points, but I certainly equally agree with Dan on the</p> <p>23 location. You have to have substantial setbacks. And</p> <p>24 that pole, one point about that pole you mentioned,</p> <p>25 there is actually a wireless pole right there. And the</p>	<p style="text-align: right;">Page 134</p> <p>1 pole actually has the information. You can guess at</p> <p>2 how tall that is. What is that, Paul?</p> <p>3 MR. FOX: Fifty-eight feet.</p> <p>4 BOARD MEMBER NEWLIN: And with a --</p> <p>5 MR. FOX: With a 10-foot whip on top of it.</p> <p>6 BOARD MEMBER NEWLIN: So 68 feet total.</p> <p>7 And it's interesting, and of course that's not a tower</p> <p>8 but it is a wireless pole, and I've heard nobody</p> <p>9 complain about that as an eyesore. That thing is ugly.</p> <p>10 It's beautiful it's so ugly. And I do think it's the</p> <p>11 height. If the height is minimized the residents I</p> <p>12 realize is -- that's easy to say, but it will go a long</p> <p>13 way to addressing the concerns.</p> <p>14 And secondly, there's a hundred-foot tower</p> <p>15 at Green Village. It's not the same. The houses are</p> <p>16 -- it is a little bit residential, but the setbacks are</p> <p>17 probably a couple hundred feet, so it's not all the</p> <p>18 same, but I have not heard any complaints about that</p> <p>19 tower. So I think a tower could be accommodated if</p> <p>20 it's in the center of the property. And yeah the Town</p> <p>21 would have to sweat to make it work. They have to</p> <p>22 spend money. Who cares. They didn't do that. I mean,</p> <p>23 that's, they should to that on behalf of the residents.</p> <p>24 And I think it's got to be low. And I think the tough</p> <p>25 thing is how low. I don't know how we get to that one.</p>
<p style="text-align: right;">Page 135</p> <p>1 And next on public safety aspect, I can see</p> <p>2 just looking at my phone, the coverage here is negative</p> <p>3 70, negative 70dB. I guess that's because we have</p> <p>4 something in -- right?</p> <p>5 MR. FOX: Right. There's actual</p> <p>6 transmitters in the building.</p> <p>7 BOARD MEMBER NEWLIN: A couple of years ago</p> <p>8 this place was dead. We couldn't get anything. It was</p> <p>9 great. Nobody could text me from home. And now it's</p> <p>10 shockingly strong. So obviously there are solutions</p> <p>11 that you can put in the school with regard to the</p> <p>12 public safety aspect. And Mr. Schneider noted that</p> <p>13 that's largely in the building. Perhaps not out in the</p> <p>14 ball fields, that's true, but there are things that can</p> <p>15 be done for public safety. So I wanted to get that in.</p> <p>16 CHAIRMAN FLANAGAN: So you'd be a no at</p> <p>17 120?</p> <p>18 BOARD MEMBER NEWLIN: Correct. And the</p> <p>19 59-foot setbacks. 120.</p> <p>20 CHAIRMAN FLANAGAN: Yeah, I mean, so on the</p> <p>21 package in front of us which is 120 and all the other</p> <p>22 setbacks as it was proposed.</p> <p>23 BOARD MEMBER NEWLIN: I will say one thing.</p> <p>24 I do think some accommodations should be made to get a</p> <p>25 cell tower, a small footprint at the DPW site.</p>	<p style="text-align: right;">Page 136</p> <p>1 BOARD MEMBER MASELLI: I agree.</p> <p>2 CHAIRMAN FLANAGAN: I think I've said</p> <p>3 enough tonight. I'm going to echo what everyone else</p> <p>4 has said. So I think there is something that could be</p> <p>5 done. I think there's clearly a need. There's clearly</p> <p>6 a gap. I think as we do the balancing test I think the</p> <p>7 negatives outweigh the positives on this, right.</p> <p>8 And one of the things is we discussed it</p> <p>9 all night long. I would be open to something much less</p> <p>10 visually impactful at the DPW site, but at 120 I'm</p> <p>11 definitely a no. And the side-yard setback. That's a</p> <p>12 big hang-up for me. So I would be no as proposed.</p> <p>13 BOARD MEMBER SOVOLOS: I don't have too</p> <p>14 much new to add. On the one side the public safety</p> <p>15 issue was a big concern to me having two children in</p> <p>16 the school and thinking about that community. And also</p> <p>17 being married to a law enforcement officer I understand</p> <p>18 the need for that issue, but I do think that as Alf</p> <p>19 mentioned there are solutions that won't completely</p> <p>20 solve it, but will mitigate it enough to, you know,</p> <p>21 alleviate the majority's concerns.</p> <p>22 And I just think, as some of the residents</p> <p>23 said, this Board and all of the other volunteer Boards</p> <p>24 in Town spent so many hours trying to preserve what is</p> <p>25 beautiful and special about Harding, and to plop</p>

<p style="text-align: right;">Page 137</p> <p>1 something that is a direct opposite to what is in our</p> <p>2 Master Plan at this site at such a height and such a</p> <p>3 negative visual impact I can't vote yes for it. So I</p> <p>4 would be a no at 120, as well.</p> <p>5 BOARD MEMBER ADDONIZIO: Where do I begin?</p> <p>6 Three years waiting for this. I would reiterate what</p> <p>7 everyone else has said. I think the biggest thing for</p> <p>8 me was just flat out land use. I mean, specifically</p> <p>9 Steve talks about a cell tower a thousand feet from a</p> <p>10 Historic District. That's verbatim, I think that's</p> <p>11 setting a precedent. Even at 60, 70, 80 feet is just</p> <p>12 going against what -- what us taxpayers pay to talk</p> <p>13 about our Town and keep the Town the way that it's</p> <p>14 meant to be, you can, just go through the Master Plan</p> <p>15 Land Use and it doesn't work in this area, in this</p> <p>16 specific location.</p> <p>17 So that's beyond what everyone else said.</p> <p>18 That's all I wanted to add. So I would be a no.</p> <p>19 BOARD MEMBER NEWLIN: So it's not just the</p> <p>20 height?</p> <p>21 BOARD MEMBER ADDONIZIO: It's everything</p> <p>22 about it. I think, you know --</p> <p>23 BOARD MEMBER NEWLIN: Is it about putting</p> <p>24 any type of tower in that --</p> <p>25 BOARD MEMBER ADDONIZIO: Yea. I think that</p>	<p style="text-align: right;">Page 138</p> <p>1 when you read what the plan that's put together, the</p> <p>2 land use book, everything, I mean, it just spews a no.</p> <p>3 You know, I understand that there's a gap.</p> <p>4 I understand. But at the same time, you know, people</p> <p>5 in Town know it. It's just -- and putting it in the</p> <p>6 intersection of Village and Lees Hill and Blue Mill</p> <p>7 right there, it's just, it's yes, it's setbacks, but</p> <p>8 overall it's a no for me.</p> <p>9 BOARD MEMBER CAMMARATA: I don't think you</p> <p>10 need any additional straws, but --</p> <p>11 CHAIRMAN FLANAGAN: I don't want you to sit</p> <p>12 through three years of testimony.</p> <p>13 BOARD MEMBER CAMMARATA: I have no new</p> <p>14 points that has been stated, but I would say no at 120.</p> <p>15 I'd be -- I would be, I think a lower height that is</p> <p>16 workable, especially with the ODAS system. If it's</p> <p>17 something that's there that we can accomplish it I'd be</p> <p>18 all for it.</p> <p>19 CHAIRMAN FLANAGAN: So the good news is</p> <p>20 next time we're going to go this way.</p> <p>21 BOARD MEMBER CAMMARATA: George, you sit</p> <p>22 here.</p> <p>23 CHAIRMAN FLANAGAN: Mr. Schneider, so you</p> <p>24 heard the Board. Effectively, that's our straw poll.</p> <p>25 What would you like to do?</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. SCHNEIDER: Here's what I would like to</p> <p>2 do. I'm smart enough to read the tea leaves in the</p> <p>3 straw poll, but here's what I would like to do after</p> <p>4 three years and I think this is only fair and</p> <p>5 reasonable.</p> <p>6 Let's put aside the setback issue for a</p> <p>7 moment. I don't control that, but what I do have the</p> <p>8 ability to seek input from is the issue of height.</p> <p>9 So what I would ask is you (A) defer taking</p> <p>10 formal action. But (B) I would like a straw poll or at</p> <p>11 least some consensus that I can take back to my client.</p> <p>12 That's putting aside the distance, is there</p> <p>13 a height in the form -- whether it be a flagpole or a</p> <p>14 tree -- that the Board would be willing to approve so</p> <p>15 that I don't have the ability to make that decision as</p> <p>16 I think you can appreciate tonight, but I think if I</p> <p>17 can get a consensus that the Board is willing to</p> <p>18 approve a 100 blank -- whatever the number is, I can</p> <p>19 take that back to my clients.</p> <p>20 CHAIRMAN FLANAGAN: So let me ask this --</p> <p>21 MR. SCHNEIDER: And we would then, if</p> <p>22 that's acceptable, before Mr. Simon jumps in, we would</p> <p>23 agree to amend the application if I get the approval of</p> <p>24 my client to do that. So there's no issue about the</p> <p>25 formalization of that.</p>	<p style="text-align: right;">Page 140</p> <p>1 CHAIRMAN FLANAGAN: So here's my problem.</p> <p>2 Mr. Simon, I'll get to you. I've spoken with the</p> <p>3 attorneys enough to know that we need to have a record</p> <p>4 if we're going to vote on something. So I look at this</p> <p>5 and I say we have no testimony? And I think I</p> <p>6 understand where you're going, but I want to understand</p> <p>7 how we do this without running afoul on some issue.</p> <p>8 All right. We have no testimony on</p> <p>9 anything under 80 feet. Right? And I guess what we</p> <p>10 could find -- so as we sit here and speak about it, I</p> <p>11 don't know -- maybe what we need to do is as we do have</p> <p>12 testimony at 80 feet ask the Board members if they'd be</p> <p>13 happy at that level.</p> <p>14 I suspect some are going to be below that</p> <p>15 level. Does that make sense, though? Because I don't</p> <p>16 want to start -- because we can't say do it at 50 feet</p> <p>17 because we have no testimony on whether that would</p> <p>18 be --</p> <p>19 MR. SCHNEIDER: I understand, but I think</p> <p>20 it's reasonable -- the record is comprehensive, I</p> <p>21 think, as to at least 100 and 80 feet.</p> <p>22 CHAIRMAN FLANAGAN: 80 feet --</p> <p>23 MR. SCHNEIDER: And a hundred. You can</p> <p>24 draw your own conclusions. I may disagree with them,</p> <p>25 but you can draw your own conclusions.</p>

<p style="text-align: right;">Page 141</p> <p>1 BOARD MEMBER NEWLIN: But not with the</p> <p>2 ODAS, right?</p> <p>3 MR. SCHNEIDER: So the point is if there is</p> <p>4 a consensus, let's put aside the site plan distance for</p> <p>5 an issue, that there would be five affirmative votes to</p> <p>6 approve it at 80 feet or a hundred feet, I can take</p> <p>7 that back to my client.</p> <p>8 CHAIRMAN FLANAGAN: Understood.</p> <p>9 MR. SCHNEIDER: In the interest of honesty</p> <p>10 I don't think that my client is willing to accept</p> <p>11 anything lower than 80 feet.</p> <p>12 CHAIRMAN FLANAGAN: Fair enough.</p> <p>13 MR. SCHNEIDER: But I think out of three</p> <p>14 years I at least --</p> <p>15 CHAIRMAN FLANAGAN: You do deserve that. I</p> <p>16 agree.</p> <p>17 MR. SCHNEIDER: And if the concern is</p> <p>18 height, and the Board -- I'm putting words in your</p> <p>19 mouth -- believes that the balancing test tips in favor</p> <p>20 of the Applicant at a height of 80 feet then I need to</p> <p>21 know that and take that back to my client.</p> <p>22 CHAIRMAN FLANAGAN: So Steve, what if the</p> <p>23 answer is -- what if a Board member looks at this and</p> <p>24 says, you know, I'm not comfortable at 80 feet, but</p> <p>25 maybe I'd be comfortable at something less than that.</p>	<p style="text-align: right;">Page 142</p> <p>1 Is there any harm in putting that out there? And I ask</p> <p>2 because we have no testimony as to what it will look</p> <p>3 like below 80 feet.</p> <p>4 MR. MLENAK: Well, I'd like to first get</p> <p>5 there because we can spend all night talking about how</p> <p>6 we could practically do that. But it would certainly</p> <p>7 have to be an amendment of the application. A</p> <p>8 discussion with the Applicant with respect to what</p> <p>9 they're amenable to and then discuss what needs to be</p> <p>10 in the record for that. So let's get there.</p> <p>11 CHAIRMAN FLANAGAN: Okay. Mr. Simon, you</p> <p>12 had a question?</p> <p>13 MR. SIMON: Well, just a comment. First of</p> <p>14 all, Boards are not to provide advisory opinions for an</p> <p>15 Applicant. The Applicant has a burden of proof. The</p> <p>16 Applicant presented their testimony. They rested their</p> <p>17 case. They left it to the Board to deliberate and</p> <p>18 vote. That's how it works.</p> <p>19 With regard to straw poll, fine with that.</p> <p>20 But to start taking polls about, well, what would you</p> <p>21 approve? I think is contrary to law, and I think it's</p> <p>22 very, very dangerous in terms of I'll approve 60, I'll</p> <p>23 approve 70. So let's take a vote and take a straw poll</p> <p>24 at 50 or 60, and then they're going to go back and</p> <p>25 they're going to see. That's not the way it happens.</p>
<p style="text-align: right;">Page 143</p> <p>1 They have to -- and I understand in terms of where we</p> <p>2 are after three years. And I do respect that, and I</p> <p>3 acknowledge it. But I believe that the Applicant to</p> <p>4 the point that Mr. Schneider made, has ample</p> <p>5 information. Including a very, we're now over three</p> <p>6 hours of, in essence, deliberation by the Board and</p> <p>7 asking some excellent questions along the way. And I</p> <p>8 think Mr. Schneider has a sense or should have a sense</p> <p>9 certainly as to where the Board is or is not at this</p> <p>10 point, and shouldn't be asking for additional straw</p> <p>11 polls as to how low can you go, so to speak.</p> <p>12 I think that they have the burden of proof.</p> <p>13 Mr. Mlenak is a hundred percent right. It's very</p> <p>14 uncommon after a deliberation to suddenly amend a</p> <p>15 development application, because the record is closed</p> <p>16 and it's up to the Board to deliberate and vote.</p> <p>17 But certainly I think that it runs afoul of</p> <p>18 the Municipal Land Use Law to start asking the Board</p> <p>19 for advisory opinions as to, you know, what would you</p> <p>20 like to see, and then I'll go back to my client and if</p> <p>21 they're okay with it then we'll amend our application.</p> <p>22 And then look what happens. Then what's going to</p> <p>23 happen is they're going to go ahead. They're going to</p> <p>24 amend their application based on a straw poll as not</p> <p>25 seeing anything, no evidence other than what's in the</p>	<p style="text-align: right;">Page 144</p> <p>1 record so far. And then, you know, is the Board going</p> <p>2 to be stuck in a corner like to say, well, we did say</p> <p>3 on a straw poll that we would be okay with this, this</p> <p>4 and this without seeing it. And now they're going to</p> <p>5 show it and you might look at it and say, well, I don't</p> <p>6 like this, or we have to hear now from the public</p> <p>7 because they're going to cross-examine. They're going</p> <p>8 to bring in their own witnesses as to that new plan and</p> <p>9 we're going on and on.</p> <p>10 So that's the only reason -- I apologize</p> <p>11 for raising the issues, but I think it's really</p> <p>12 important. And I think that the most important thing</p> <p>13 is the integrity of the record, you know, regardless of</p> <p>14 what side you're on and how things come out. And I</p> <p>15 think that providing advisory opinions with additional</p> <p>16 straw polls to the Applicant, and if you think about</p> <p>17 this, and does this happen for any other type of</p> <p>18 application? Any other application you've heard</p> <p>19 basically we get to this appoint, deliberate, you vote</p> <p>20 --</p> <p>21 CHAIRMAN FLANAGAN: So I hear you. So to</p> <p>22 respond to you, yes, we do it all the time. I can't</p> <p>23 recall an instance where we had an applicant come in</p> <p>24 where we outright denied it, or where we did a straw</p> <p>25 poll and the answer to the straw poll is no or would</p>

<p style="text-align: right;">Page 145</p> <p>1 have been no, and then we just sent the applicant away</p> <p>2 to go guess as to what they need to change. That</p> <p>3 doesn't seem fair.</p> <p>4 I'll ask Steve. Steve, if that's against</p> <p>5 the Municipal Land Use Law, Gary we have to have a</p> <p>6 conversation. So to answer your question, we do it all</p> <p>7 the time.</p> <p>8 I don't think, and it's a legal question at</p> <p>9 the end of the day, but personally I don't think it's</p> <p>10 unreasonable the question Mr. Schneider is asking. We</p> <p>11 spent three years. I think it's a fair question. All</p> <p>12 right. If we don't like it at 120 -- I think he's</p> <p>13 trying to gauge -- I don't want to guess, but if I were</p> <p>14 in his shoes I would try to estimate, well, what is</p> <p>15 going to pass? And he has no idea right now. All he</p> <p>16 knows is 120 is not going to work. So I don't know.</p> <p>17 Steve are we running afoul --</p> <p>18 MR. MLENAK: What I would suggest we do is</p> <p>19 we have, as Mr. Schneider points out, a record based on</p> <p>20 more than one height. We do have it at 80. We do have</p> <p>21 it at 100. And I would think the record would support</p> <p>22 the Board have a discussion about those heights,</p> <p>23 because I don't find that discussion with to be</p> <p>24 advisory in nature. It's a discussion of appropriate</p> <p>25 height of an application approval.</p>	<p style="text-align: right;">Page 146</p> <p>1 CHAIRMAN FLANAGAN: So can I do this one</p> <p>2 more time? And I'm going to ask the Board --</p> <p>3 BOARD MEMBER NEWLIN: I'm sorry. I do</p> <p>4 agree with Mr. Simon, strongly, about the part of</p> <p>5 giving hypotheticals. And often we are conservative</p> <p>6 about that. I think we have got to be very careful</p> <p>7 about that aspect. I myself am not going to give a</p> <p>8 hypothetical. I'm not going to do it.</p> <p>9 CHAIRMAN FLANAGAN: And I won't either.</p> <p>10 BOARD MEMBER NEWLIN: But I also want to</p> <p>11 point in contradiction to Steve, we do not have</p> <p>12 adequate data at 80 feet. There's nothing at 80 feet</p> <p>13 that I've seen with ODAS. We do not have that. And we</p> <p>14 certainly don't have anything less than that.</p> <p>15 But the third thing I would like to say is,</p> <p>16 I would like the Applicant to come back with a revised</p> <p>17 plan. I would like to see something happen. I think</p> <p>18 this is important. But you should have enough data I</p> <p>19 think from what we have said.</p> <p>20 CHAIRMAN FLANAGAN: All right. What about</p> <p>21 this then.</p> <p>22 BOARD MEMBER NEWLIN: That's speaking for</p> <p>23 me.</p> <p>24 CHAIRMAN FLANAGAN: Can we, to have an</p> <p>25 informed discussion would you be willing to come back</p>
<p style="text-align: right;">Page 147</p> <p>1 with RF maps at different heights -- at lower heights f</p> <p>2 or coverage maps, whatever we call them? I think</p> <p>3 that's an important consideration, right.</p> <p>4 I don't necessarily want to see photo</p> <p>5 simulations of the tower. I don't need to see all that</p> <p>6 other stuff. I think it's a simple question of what</p> <p>7 the coverage is at a given height, and it will be below</p> <p>8 120 with ODAS incorporated.</p> <p>9 MR. SCHNEIDER: I would have to discuss</p> <p>10 that with my client, but what I would do is ask that</p> <p>11 the Board defer formal action on the application as</p> <p>12 submitted, carry it to the Board's January meeting, and</p> <p>13 I will advise the Board in advance of that. That's</p> <p>14 about all I can do.</p> <p>15 CHAIRMAN FLANAGAN: And I absolutely am</p> <p>16 going to carry this to January. This is carried to</p> <p>17 January.</p> <p>18 MR. SCHNEIDER: I don't have the authority</p> <p>19 to say yes or no, as I'm sure you can appreciate.</p> <p>20 CHAIRMAN FLANAGAN: Understood. And I'm</p> <p>21 going to respect your wish to not take formal action.</p> <p>22 We're going to extend the Shot Clock. It's carried to</p> <p>23 January. No further notice required. And I think it's</p> <p>24 the only -- it's a reasonable thing to do.</p> <p>25 Steve, tell me if I'm doing an unreasonable</p>	<p style="text-align: right;">Page 148</p> <p>1 thing here.</p> <p>2 MR. MLENAK: I think this is reasonable.</p> <p>3 This is the Board's wish. Yes.</p> <p>4 CHAIRMAN FLANAGAN: I'll tell you what,</p> <p>5 does anyone on the Board disagree?</p> <p>6 BOARD MEMBER SYMONDS: I do have a</p> <p>7 question. Are we at this point talking solely of</p> <p>8 height or are we, you know -- you know, is the</p> <p>9 expectation that the Applicant is going to come back</p> <p>10 with a different height and try to build out, or are we</p> <p>11 saying you've now heard what we said about, you know,</p> <p>12 proximity, property line proximity, height, et cetera.</p> <p>13 Are we expecting them to just address one of those</p> <p>14 issues or are we expecting them to address to the best</p> <p>15 of their ability all of those issues?</p> <p>16 BOARD MEMBER ROSENBAUM: All one package.</p> <p>17 MR. MLENAK: Mike, just to be clear. What</p> <p>18 I understand you're suggesting is if Verizon would be</p> <p>19 amenable to put that they would come back with different</p> <p>20 exhibits, at different heights, which would undoubtedly</p> <p>21 require new testimony, new cross-examination, new</p> <p>22 closings, and a new deliberations based on those</p> <p>23 heights under all of the criteria we have lectured for</p> <p>24 three hours tonight.</p> <p>25 CHAIRMAN FLANAGAN: And so would you</p>

<p style="text-align: right;">Page 149</p> <p>1 suggest we vote this up or down at 120? I mean, 2 because -- so we can't have an informed discussion 3 about a lower height without seeing some data. I mean, 4 that's, I think, has lacked. 5 And I agree that then opens testimony, 6 cross-examination, all of that good stuff. It does. 7 The alternative, I think, is we take a vote 8 of no. You know, and I think that this Applicant needs 9 to be treated as any other applicant that comes before 10 this Board and be given an opportunity to amend an 11 application. 12 MR. SCHNEIDER: And that's all I'm asking, 13 but let me respond to Mr. Simon's question. 14 There may be a lower height that's 15 unacceptable to Verizon. I don't know the answer to 16 that. So I don't want to -- the issue of height is 17 something that I have the ability to internally 18 address. The ability to potentially relocate the site 19 is not within the sole purview of my client, as I'm 20 sure you can appreciate. 21 So I think it's only fair to at least come 22 back in January, I'm assuming January that I can have a 23 determination by then, with a review of the lower 24 heights and a height that we would be willing to 25 accept, whether that's acceptable to five members of</p>	<p style="text-align: right;">Page 150</p> <p>1 the Board to be determined, and then we can go from 2 there. 3 CHAIRMAN FLANAGAN: So you agree then that 4 one of two things are going to happen. You're going to 5 speak to your client and say that you would not get a 6 yes at 120, or you don't feel you would or whatever -- 7 MR. SCHNEIDER: It seems pretty clear, but 8 yes. 9 CHAIRMAN FLANAGAN: Right. You're then 10 going to discuss a lower -- so then you're going to 11 discuss a possibility of a lower height tower. 12 MR. SCHNEIDER: That would either be 13 acceptable or not acceptable. 14 CHAIRMAN FLANAGAN: And importantly your 15 client is either going to say forget it. It's 120 or 16 I'm not interested. At which point you're going to 17 call me up and say take a vote, or you're going to call 18 Steve and say just take a vote. We have nothing else 19 to present. 20 Or your client is going to say, well, maybe 21 I'd be willing to do it at a lower height. 22 BOARD MEMBER ROSENBAUM: Not a lower 23 height, at a specific height. 24 CHAIRMAN FLANAGAN: Yes. At a specific 25 height.</p>
<p style="text-align: right;">Page 151</p> <p>1 MR. SCHNEIDER: A specified lower height. 2 CHAIRMAN FLANAGAN: A specified lower 3 height. Thank you. At which time you're going to 4 present testimony again and we're going to open this up 5 to cross-examination again, right? Those are the two 6 paths. 7 MR. SCHNEIDER: Agreed. 8 CHAIRMAN FLANAGAN: Steve, what should we 9 do here? Is it okay to send them off under this 10 structure? 11 MR. MLENAK: Well, the Board can certainly 12 carry the application on consent of the Applicant that 13 it can be carried and report back. And if they want to 14 open it up and amend the application and the Board is 15 amendable to that, and certainly what we have heard 16 tonight is the Board has a history of allowing that, 17 then provided the record is supplemented to support 18 that amendment that's what needs it happen. 19 BOARD MEMBER BOYAN: Mike, if I may. I 20 would hate to so do this if it would be for naught. 21 And the reason it may be for naught is it's possible 22 the Board feels that regardless of height a setback of 23 68 feet is unacceptable. So I'd hate to have 24 additional studies done if the Board feels as if -- 25 BOARD MEMBER NEWLIN: But I think Mr.</p>	<p style="text-align: right;">Page 152</p> <p>1 Schneider understands that that's also required, but 2 it's not under his control. And I think the way he 3 looks at it is, well, if we can't agree on the height 4 then it's moot. If we can agree on the height then 5 it's a setback issue to be worked on, but that can 6 worked in conjunction with the Town. 7 BOARD MEMBER BOYAN: Well, why not do those 8 things simultaneously? 9 CHAIRMAN FLANAGAN: I think we should. So 10 I think, Mr. Schneider, you're going to go away and 11 talk to your client to see if you can reduce the height 12 of it. And you're going to have a conversation with 13 whomever about moving it to another location. 14 MR. SCHNEIDER: I don't know about the 15 second part because -- well, let me take that under 16 advisement, because there may be a height that Verizon 17 is not willing to accept. And maybe at 80 feet -- 18 because now we're getting into the hypotheticals that 19 Mr. Newlin wanted to avoid. 20 So if it's at a lower height maybe the 59 21 feet is not -- I'm throwing -- I don't want to go every 22 if, and, or but, but my intention is to come back 23 relative to height, let's assume January, but -- 24 CHAIRMAN FLANAGAN: So I would say, and so 25 it's not a waste of your time, that there's two things</p>

<p style="text-align: right;">Page 153</p> <p>1 that have to happen here from what I've heard, and</p> <p>2 Board members stop me. But it's the height, and it's</p> <p>3 the proximity of the sideline. And I think if both</p> <p>4 cannot be addressed --</p> <p>5 BOARD MEMBER NEWLIN: Well, what's wrong</p> <p>6 with having -- I suspect there's a cost issue here.</p> <p>7 And why can't he deal with it in two parts: First deal</p> <p>8 with the height, and then --</p> <p>9 CHAIRMAN FLANAGAN: You know what, I'm</p> <p>10 trying to save you time and money saying don't do it</p> <p>11 one at a time, but do whatever you'd like.</p> <p>12 MR. SCHNEIDER: The first decision is one I</p> <p>13 have the ability to control. The second one is not one</p> <p>14 that I have the ability --</p> <p>15 CHAIRMAN FLANAGAN: Who controls that then?</p> <p>16 So your client and --</p> <p>17 MR. SCHNEIDER: Well, the Township. I</p> <p>18 don't have the ability -- it's not like I can go to a</p> <p>19 private property owner --</p> <p>20 CHAIRMAN FLANAGAN: I understand. I</p> <p>21 suspect that.</p> <p>22 MR. SCHNEIDER: That has to have a not</p> <p>23 insignificant discussion with the Township.</p> <p>24 BOARD MEMBER NEWLIN: Wouldn't that take --</p> <p>25 I don't want to put words -- is it more work and time</p>	<p style="text-align: right;">Page 154</p> <p>1 to do that? Can you get a quicker answer with the</p> <p>2 height? Is that the issue?</p> <p>3 MR. SCHNEIDER: That's exactly the issue.</p> <p>4 That's exactly the issue. I have the ability to</p> <p>5 control completely the first. I don't have the ability</p> <p>6 to control the second completely. And I think you can</p> <p>7 appreciate that. The Township may have a lot of</p> <p>8 questions, answers --</p> <p>9 CHAIRMAN FLANAGAN: Totally appreciate it.</p> <p>10 And I was taking it from the perspective I don't want</p> <p>11 you to spend a lot of time and effort to go get a</p> <p>12 height approval then find out --</p> <p>13 MR. SCHNEIDER: Let me phrase it this way.</p> <p>14 You've made clear the Board's concerns whether there's</p> <p>15 a tipping point at a certain lower height that the</p> <p>16 setback doesn't become an issue. I don't know. I</p> <p>17 understand the Board's concerns, but it may -- in the</p> <p>18 interest of full disclosure it may be that -- and I</p> <p>19 don't know the answer to this so I don't want to</p> <p>20 suggest that I'm saying this. It may be that at a</p> <p>21 lower height they're unwilling to accept that and that</p> <p>22 further efforts relative to relocating it are for</p> <p>23 naught for everybody's benefit and then we'll come back</p> <p>24 in January so advise you and let the process unfold in</p> <p>25 other forums. That's, you know, that's the reality.</p>
<p style="text-align: right;">Page 155</p> <p>1 CHAIRMAN FLANAGAN: Mr. Schneider -- Mr.</p> <p>2 Simon?</p> <p>3 MR. SIMON: I just want the record to be</p> <p>4 clear, and Mr. Mlenak will of course advise you on</p> <p>5 this, that any decision by this Board --</p> <p>6 MR. MLENAK: I can't hear you, Rob.</p> <p>7 MR. SIMON: I'm sorry, Steve. Any decision</p> <p>8 by this Board to carry this formal vote and allow the</p> <p>9 Applicant to come back or not come back, as the case</p> <p>10 may be, in January does not prejudice the Board in</p> <p>11 terms of any of its deliberations to date.</p> <p>12 In other words, that by carrying the</p> <p>13 application to January I don't believe that this Board</p> <p>14 intends, and Steve will instruct you on this, intends</p> <p>15 to say to the Applicant, in essence, well, if you come</p> <p>16 back with an 80-foot height and you increase the</p> <p>17 setback we're going to approve this application. I</p> <p>18 don't think that that's what's Steve said.</p> <p>19 CHAIRMAN FLANAGAN: Let me say it</p> <p>20 explicitly. We have no guarantees on anything. No</p> <p>21 guarantees. And it's explicitly why I didn't want to</p> <p>22 discuss the height because I have no idea what height</p> <p>23 is going to be acceptable. And I don't want to discuss</p> <p>24 heights that we have no testimony on.</p> <p>25 So at your own risk, right, talk to your</p>	<p style="text-align: right;">Page 156</p> <p>1 client, come back, and the answer may still be no. I</p> <p>2 don't know. I honestly don't know. But the only way</p> <p>3 we're going to find out is if you do it.</p> <p>4 MR. SCHNEIDER: Understood. So I'm not</p> <p>5 being disrespectful looking at my phone. I'm just</p> <p>6 looking at the calendar for your January meeting and</p> <p>7 whether that would be ready or not. That would be</p> <p>8 January 20th?</p> <p>9 SECRETARY TAGLAIRINO: Yes. There's a lot</p> <p>10 already there for the January meeting.</p> <p>11 MR. SCHNEIDER: And Mr. Chairman, I don't</p> <p>12 know that I will be ready, but at least I can carry it</p> <p>13 to the 20th.</p> <p>14 CHAIRMAN FLANAGAN: Understood. We'll</p> <p>15 carry it again, if need be.</p> <p>16 MR. SIMON: Given what Lori just said in</p> <p>17 terms of your calendar, just because of selfless with</p> <p>18 my calendar, is it okay -- because if the Applicant is</p> <p>19 going to present something new obviously that requires</p> <p>20 ten days prior. I might have to get experts, et</p> <p>21 cetera, et cetera. Can we maybe just carry it to</p> <p>22 whatever the date it is even if January 20th just as</p> <p>23 a -- what I call typically a placeholder just in terms</p> <p>24 of -- so that Rich does not need to renote. So that</p> <p>25 at that point the Board can find out ten days before,</p>

<p style="text-align: right;">Page 157</p> <p>1 you know, we're not going to, you know, provide</p> <p>2 anything new, or I talked to my client and we're going</p> <p>3 to present X, Y and Z, whatever it is, and then come up</p> <p>4 with another date. I'm not trying to kick the can, I'm</p> <p>5 just thinking scheduling-wise.</p> <p>6 CHAIRMAN FLANAGAN: Well, it's getting</p> <p>7 late. Are you suggesting that he would not present on</p> <p>8 the 20th of January?</p> <p>9 MR. SIMON: Right. If you have a heavy --</p> <p>10 cause look, the reality, if he is going to present it's</p> <p>11 not going to be 15 minutes of, you know --</p> <p>12 CHAIRMAN FLANAGAN: If he presents I</p> <p>13 suspect it's going to be hours.</p> <p>14 MR. SIMON: Right.</p> <p>15 MR. SCHNEIDER: Why don't we maintain the</p> <p>16 date. It may be (A) that I'm not ready, or (B) that</p> <p>17 I'll have everything in advance and we'll deal with it</p> <p>18 like we dealt with it for three years.</p> <p>19 CHAIRMAN FLANAGAN: And Steve, help me</p> <p>20 here. Mr. Simon's confusing it. So why don't we carry</p> <p>21 it to January 20th.</p> <p>22 MR. SCHNEIDER: And we'll deal with it</p> <p>23 scheduling-wise.</p> <p>24 CHAIRMAN FLANAGAN: Then we'll it carry</p> <p>25 again to February.</p>	<p style="text-align: right;">Page 158</p> <p>1 MR. MLENAK: I think that's what all</p> <p>2 parties want. I don't understand -- Rob, if you're</p> <p>3 proposing something else I'm not following either.</p> <p>4 MR. SIMON: No. The only thing I'm saying</p> <p>5 is that if you are already have a heavy calendar for</p> <p>6 January 20th, are you -- and this is for the benefit of</p> <p>7 the public as well, so that the public should know, you</p> <p>8 know, hey, if they present something and amend their</p> <p>9 application by January 10th, then we're going to hear</p> <p>10 this on January 20th, you know, substantively, and</p> <p>11 you're going to be the first on the agenda. And then</p> <p>12 probably those other applicants would need to know</p> <p>13 that, because it's going to take a while. Just</p> <p>14 thinking scheduling.</p> <p>15 CHAIRMAN FLANAGAN: So you're one step</p> <p>16 ahead of me. I don't know what we have coming up for</p> <p>17 January.</p> <p>18 SECRETARY TAGLAIRINO: Well, we have two</p> <p>19 for sure.</p> <p>20 CHAIRMAN FLANAGAN: Why don't we just --</p> <p>21 MR. SCHNEIDER: We'll carry it to</p> <p>22 January 20th and we'll deal with it like we've dealt</p> <p>23 with it for three years.</p> <p>24 CHAIRMAN FLANAGAN: Okay. So Steve, I'm</p> <p>25 carrying it to January 20th. Any argument? Any issue?</p>
<p style="text-align: right;">Page 159</p> <p>1 MR. MLENAK: None from me.</p> <p>2 CHAIRMAN FLANAGAN: Okay. Carried to</p> <p>3 January 20th, no further notice.</p> <p>4 BOARD MEMBER NEWLIN: But I would like to</p> <p>5 ask in terms of experts. So if you're going to come</p> <p>6 back with more exhibits like this, I will tell you,</p> <p>7 your ODAS -- that your expert was not persuasive. And</p> <p>8 did not have confidence that she knew the work involved</p> <p>9 with ODAS. I thought she was very evasive to Mr.</p> <p>10 Simon's. Admittedly, very I could not handle Mr.</p> <p>11 Simon's cross-examination for sure.</p> <p>12 But that being said, she was not persuasive</p> <p>13 as an expert to me. Dr. Eisenstein had to correct her</p> <p>14 quite a bit. Please make sure you come with somebody</p> <p>15 that is good on an ODAS side. Maybe I'm wrong, but</p> <p>16 maybe it's a little unfair, but it was a little bit</p> <p>17 frustrating.</p> <p>18 DR. EISENSTEIN: I suggest that since</p> <p>19 they're planning on coming back with some additional RF</p> <p>20 testimony that they run this by me before they present</p> <p>21 it to the Board.</p> <p>22 CHAIRMAN FLANAGAN: That sounds reasonable</p> <p>23 to me. Mr. Schneider, does that sound --</p> <p>24 MR. SCHNEIDER: We have done that</p> <p>25 consistently. I have no issue doing that.</p>	<p style="text-align: right;">Page 160</p> <p>1 CHAIRMAN FLANAGAN: There we go. Is that</p> <p>2 it?</p> <p>3 MR. SCHNEIDER: From my perspective, yes.</p> <p>4 CHAIRMAN FLANAGAN: All right. Then we'll</p> <p>5 see new January. Wait a minute everybody, we're not</p> <p>6 done. Only kidding.</p> <p>7 (Whereupon, the hearing on this application</p> <p>8 adjourns at 10:23 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

CERTIFICATE

I, IRIS LA ROSA, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a true
and accurate transcript of the testimony as taken
stenographically by and before me at the time, place,
and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither a
relative nor employee of such attorney or counsel, and
That I am not financially interested in the action.

IRIS LA ROSA, CSR, RPR
Certificate No. 30XI 00162800

Dated: _____

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