

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES  
REGULAR MEETING  
MARCH 18, 2021  
7:30 PM**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Board Chair, Mr. Flanagan called the regular meeting of the Board of Adjustment to order at 7:30 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	Excused	Mr. Symonds	Present	Mr. Flanagan	Present

**REGULAR MEETING**

**MINUTES**

Mr. Flanagan made a motion to approve the February 18, 2021 minutes as written. It was seconded by Mr. Symonds. On a voice vote all eligible members voted to approve the February 18, 2021 minutes.

**ADMINISTRATIVE—Mr. Flanagan**

Mr. Newlin discussed a previously created zoning requirement chart and possible revisions to the chart.

Mr. Symonds suggested an ongoing training on the role of the Planner in applications.

**RESOLUTIONS—Mr. Flanagan**

<u>Application BOA# 15-20</u>	Joseph Ginarte
	2 Welsh Lane, B49/L42, R-1 Zone

Mr. Flanagan made a motion to adopt Resolution BOA#15-20 Ginarte as written. Mr. Newlin seconded the motion. A roll call vote went as follows:

For: Mr. Addonizio, Mr. Newlin, Mr. Symonds, Mr. Maselli, Mr. Flanagan, and  
Mr. Boyan  
Against: None

**OLD BUSINESS**

Presenting:

David Scalera, Attorney

Richard Schommer, Engineer

Art Palumbo, Architect

Gregory and Christine Ihnken, Owners

Mr. Hall swore in Mr. Schommer for testimony.

- Mr. Scalera presented a proposal for revised plans including the removal of the showering facilities, deed restricting the space to a one bedroom dwelling for use by a family member only.
- Mr. Ihnken opined about the purpose and proposed use of the space for his mother-in-law.
- Mr. Ihnken noted that he would like to make the second floor space into a gym
- Mr. Schommer noted that the property is just over 5 acres and 6 acres is required for an accessory dwelling.
- Mr. Schommer presented Exhibit A-1, the existing and proposed conditions on the property.
- Mr. Schommer noted the historical significance of the property though the state and township reports were conflicting for the barn.
- Mr. Schommer presented testimony noting that accessory dwelling use is permitted in the zone and that the property meets most of the criteria, just not the acreage.
- Mr. Newlin noted that it will no longer be a functioning barn.
- Mr. Hall noted the discrepancy of the HPC report and the planner testimony.
- Mr. Hall noted that the 6 acre requirement is not arbitrary even though the genesis is unknown.
- Mr. Flanagan polled the Board regarding the “use” variance on this application with the lot being less than 6 acres.
- The Board was split on their view of this application. While mostly positive, they had conditions to impute to be comfortable with a possible approval.
- Mr. Maselli noted specifically that there are possible adaptive re-uses for accessory structures other than an accessory apartment.
- Mr. Hall noted that a deed restriction could control limitations of the use.
- Mr. Newlin noted the planning importance of keeping families together. He does not see impact on the neighbors or septic. He noted that no Affordable Housing affect from this application. He would want tight controls on this if approved.

- Mr. Symonds noted the environmentally area but see the Historic Preservation element of the application.
- Mr. Flanagan questioned whether there was another re-use of the space other than an apartment.
- Mr. Cammarata was concerned about the precedent but if this was deed restricted he could be more comfortable with an approval.

A motion was made by Mr. Newlin to approve the application subject to the following conditions:

1. Removal of the shower on the 2nd floor.
2. 70 years or older family member only with deed restriction with no rental monies for occupant.
3. Deed notice of the resolution to alert future owners.
4. 1 bedroom unit only.
5. No expansion of the living space.
6. Revised plans showing the elimination of the shower.

The motion was seconded by Ms. Sovolos. A roll call vote went as follows:

For: Mr. Addonizio, Mr. Newlin, Mr. Symonds, Ms. Sovolos, Mr. Cammarata and  
Against: Mr. Flanagan and Mr. Maselli

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There was a break hearing from 8:58 to 9:02.

Ms. Taglairino called the roll for the Board Members after the break and the following were present:

Mr. Boyan, Mr. Newlin, Mr. Flanagan, Mr. Maselli, Mr. Addonizio Mr. Symonds, and Mr. Cammarata.

Ms. Sovolos rejoined the meeting at 9:18.

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

William F. Masters Jr., Planner

Dr. Eisenstein, RF Specialist

Mr. Mlenak is acting Board Attorney for this application.

Robert Simon is an objecting attorney for this application.

There was a computer glitch from 10:03 to 10:08. Recording was halted during that time frame but the call continued and there is a transcript for that period.

The application is carried to the April 15, 2021 meeting with no further notice.

A transcript of the testimony is appended to the minutes.

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## **OTHER BUSINESS**

None

## **ADJOURNMENT**

Mr. Flanagan adjourned the meeting at 10:50

*Lori Taglairino*

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

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### **HARDING TOWNSHIP BOARD OF ADJUSTMENT RESOLUTION**

**Joseph Ginarte - Application No. BOA 15-20  
2 Welsh Lane - Block 49, Lot 42  
Adopted March 18, 2021**

WHEREAS, Joseph Ginarte applied to the Harding Township Board of Adjustment for variances from Section 225-122(F)(1) of the Land Use and Development Ordinance, which requires minimum front setbacks of 150' when total building area exceeds 3,920 square feet, Section 225-122(F), which requires other setbacks to be a minimum of 100', and Section 225-122(H), which limits the maximum lot coverage ratio to 10%, to permit installation of a replacement swimming pool and patio on the residential property located in a R-1 Zone at 2 Welsh Lane and designated on the Township Tax Map as Block 49, Lot 42; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a virtual meeting on February 18, 2021, for which public notice and notice by applicant were given as required by law; and

WHEREAS, the Board of Adjustment conducted a site inspection at a noticed special meeting on February 27, 2021; and

WHEREAS, the Board of Adjustment considered the testimony and exhibits presented during the public hearing; and

WHEREAS, at the special meeting on February 27, 2021, the Board of Adjustment adopted an oral resolution approving the variance application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 18th day of March 2021, that approval of the variance application of Joseph Ginarte is hereby memorialized as follows:

#### **Findings of Fact and Statement of Reasons**

1. The applicant's property is located in a R-1 Zone at 2 Welsh Lane. It is a corner lot with the residence facing Welsh Lane and additional frontage on Morgan Drive.
2. The property has a lot size of 3.95 acres that exceeds the 3 acre minimum.
3. The property is improved with a single-family residence, detached garage, swimming pool and patio improvements that are nonconforming due to the front setbacks (117.6' from Welsh Lane and 118.1' from Morgan Drive vs. 150' enhanced minimum), east setback (93.3' vs. 100' minimum), building area ratio (5.75% vs. 3% maximum), and lot coverage ratio (14.06% vs. 10% maximum), as shown on plans prepared by Thomas W. Skrable, P.E., P.P., C.M.E., initially dated December 21, 2020 and revised January 4, 2021.
4. The applicant requested variance approval to permit installation of a replacement swimming pool and patio improvements in the same area as the current pool and patio area, as shown on the plans.
5. The proposed replacement pool and patio improvements would maintain the nonconforming lot coverage ratio of 14.06%, requiring a variance from the 10% maximum in Section 225-122(H).
6. The proposed pool patio would have a minimum front setback from Morgan Drive of 113.5', requiring a variance from the 150' enhanced minimum under Section 225-122(F)(1).
7. The proposed replacement pool improvements would include a water slide with a minimum east side setback of 92.0', requiring a variance from the 100' minimum in Section 225-122(F).
8. The applicant was represented in proceedings before the Board of Adjustment by Robert E. Dunn, Esq. of Hanlon Dunn Robertson.
9. Testimony at the hearing indicated that the existing pool had been installed in 1996, several years after the residence was constructed. The pool had been maintained and repaired over the years, but further repair work would not be appropriate, and the pool was now in need of replacement. Continued use of the same area would obviate the need to replace and relocate an adjacent patio area.

10. No neighbor or member of the public expressed concerns or otherwise participated in the public hearing.
11. The need for variance relief is attributable to the existing nonconforming lot coverage ratio and setbacks associated with improvements constructed prior to adoption of the current requirements.
12. The nonconforming lot coverage ratio will be maintained, and it would not be practical or appropriate to eliminate any existing lot coverage or reduce the proposed lot coverage.
13. Two of the nonconforming setbacks will be only slightly reduced.
14. The current pool location is screened by landscaping and the improvements are compatible with the topography, thus making it appropriate to use the same area for the replacement pool and patio.
15. It was noted that steps accessing the proposed slide were not shown on the plans, and the applicant agreed to submit revised plans showing the steps for review and approval.
16. The proposed replacement pool and patio will enhance continued residential use of the applicant's property.
17. Under these particular circumstances, granting variance relief for the proposed replacement pool and patio will not result in any adverse impacts on adjacent properties.
18. In the case of this specific property, and the location and characteristics of the existing nonconforming improvements and proposed similar improvements, and also the surrounding land use context, strict application of the lot coverage ratio and setback requirements would impose exceptional practical difficulties on the applicant by precluding the proposed replacement pool and patio, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).
19. The variance relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

#### **Description of Variances**

1. A variance is hereby granted from the 10% maximum lot coverage ratio limit in Section 225-122(H) of the Land Use and Development Ordinance to allow installation of a replacement swimming pool and patio on the applicant's property that will maintain the current nonconforming ratio of 14.06%, as shown on plans prepared by Thomas W. Skrable, P.E., P.P., C.M.E, initially dated December 21, 2020, revised January 4, 2021, and required to be further revised as a condition of this approval.
2. A variance is hereby granted from the enhanced 150' front setback requirement in Section 225-122(F)(1) to permit installation of a replacement swimming pool and patio with a minimum front setback from Morgan Drive of 113.5', as shown on the plans as required to be revised.
3. A variance is hereby granted from the 100' setback requirement in Section 225-122(F) to permit installation of a replacement swimming pool and patio with a minimum east side setback for a pool slide of 92.0', as shown on the plans as required to be revised.

#### **Variance Conditions**

These variances are granted subject to the following conditions:

1. Any outstanding property taxes, application fees and technical review fees shall be paid prior to the start of any site work.
2. The applicant shall obtain any other necessary approvals.
3. These variances are based on and authorize only the specific replacement pool and patio proposed by the applicant as set forth in the testimony, application and plans. New or amended variance approval may be required for any materially different improvements.
4. These variances are granted subject to the express condition that prior to issuance of a building permit the applicant shall submit revised plans showing the steps for the proposed slide, subject to review and approval by the Board Attorney.
5. In accordance with Section 225-35(C)(1) of the Ordinance, these variances shall expire unless the authorized construction is commenced within one year from the date of this resolution and is subsequently pursued in a reasonably diligent manner.

#### **Vote on Resolutions**

For the Oral Resolution: Boyan, Flanagan, Newlin, Maselli, Rosenbaum & Symonds.

Against the Oral Resolution: None.

For the Form of the Written Resolution: Boyan, Flanagan, Newlin, Maselli & Symonds.

Against the Form of the Written Resolution: None.

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">HARDING TOWNSHIP BOARD OF ADJUSTMENT</p> <p>IN THE MATTER OF: : TRANSCRIPT : CASE: BOA# 17-18 : OF New York SMSA Limited Partnership: d/b/a Verizon Wireless : REMOTE PROCEEDINGS 8 Millbrook Road : Block 17; Lot 1; PL Zone : _____X</p> <p style="text-align: center;">Thursday, March 18, 2021 Zoom Remote Videoconference Commencing at 9:02 p.m.</p> <p>BOARD MEMBERS PRESENT: MIKE FLANAGAN, Chairman ALF NEWLIN DAN MASELLI HUGH SYMONDS ELIZABETH SOVOLOS THOMAS ADDONIZIO ARIC ROSENBAUM GEORGE BOYAN MICHAEL CAMMARATA</p> <p>ALSO PRESENT:</p> <p>LORI TAGLAIRINO, Board Administrator PAUL D. FOX, P.E., CME JOHN BARREE, PP, AICP DR. BRUCE EISENSTEIN, Cellular Communications Consultant</p> <p style="text-align: center;">PRECISION REPORTING SERVICE Certified Shorthand Reporters (908) 642-4299</p>	<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 GREENBAUM, ROWE, SMITH &amp; DAVIS, LLP BY: STEVEN G. MLENAK, ESQUIRE Attorneys for the Board 4 5 VOGEL, CHAIT, COLLINS &amp; SCHNEIDER, ESQUIRES BY: RICHARD SCHNEIDER, ESQUIRE Attorneys for the Applicant 6 7 8 HEROLD LAW, PA BY: ROBERT F. SIMON, ESQUIRE Attorneys for the Objectors: SGSL, LLC; Harsh and 9 Nina Bansal; Michael and Susan Koenke; David and Eunice Conine; Brian and 10 Christina McKittrick; Livio Saganic and Christel Engel; James M. Carifa and 11 Sarah G. Conine; Ted Cotton 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 3 WITNESS: PAGE 4 WILLIAM F. MASTERS..... 7 5 6 7 8 EXHIBITS 9 IN EVD. DESCRIPTION PAGE 10 A-28 Google Image aerial photograph 47 11 A-29 Photo simulation of a tree pole 47 12 A-30 Photo simulation of a flagpole 47 13 14 15 16 17 NO PUBLIC MEMBERS ARE SWORN 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 CHAIRMAN FLANAGAN: All right. 9:02. 2 Who's back? 3 SECRETARY TAGLAIRINO: So let's -- Mr. 4 Mlenak, where are you? Are you there? 5 MR. MLENAK: I am right here. 6 SECRETARY TAGLAIRINO: Oh, there you are. 7 Okay. You can be anywhere. I am going to take the 8 roll. We already know that Elizabeth needed to take an 9 extended break, but she will be with us shortly. 10 So, second roll call -- and I just want to 11 make sure that we're recording -- Mr. Boyan? 12 BOARD MEMBER BOYAN: Here. 13 SECRETARY TAGLAIRINO: Mr. Maselli? 14 He always takes a little longer. We'll 15 come back to him. 16 SECRETARY TAGLAIRINO: Mr. Symonds? 17 BOARD MEMBER SYMONDS: Here. 18 SECRETARY TAGLAIRINO: Mr. Newlin? 19 BOARD MEMBER NEWLIN: Here. 20 SECRETARY TAGLAIRINO: Mr. Addonizio? 21 BOARD MEMBER ADDONIZIO: Here. 22 SECRETARY TAGLAIRINO: Mr. Flanagan is 23 here? 24 CHAIRMAN FLANAGAN: Here. 25 SECRETARY TAGLAIRINO: Mr. Cammarata? (No</p>

<p style="text-align: right;">Page 5</p> <p>1 response.) Okay. So we have one, two, three four --</p> <p>2 we have five members.</p> <p>3 CHAIRMAN FLANAGAN: All right. We have a</p> <p>4 quorum to get started here?</p> <p>5 SECRETARY TAGLAIRINO: Yes. I'll just look</p> <p>6 for Mr. Maselli, Mr. Cammarata, and Ms. Sovolos.</p> <p>7 CHAIRMAN FLANAGAN: Mr. Schneider, up to</p> <p>8 you. If you want to wait a moment for these guys to</p> <p>9 come back. Here's Mr. Cammarata. Ms. Sovolos is going</p> <p>10 to be a few minutes. She has to take care of something</p> <p>11 she told me about. She's willing to read the</p> <p>12 transcript for whatever she misses when she gets back,</p> <p>13 if that's okay by you, or perhaps we can give her a</p> <p>14 brief summary of whatever we discussed, but either way.</p> <p>15 I understand you have planning testimony</p> <p>16 for us tonight. Welcome back everybody. Mr. Simon,</p> <p>17 welcome back.</p> <p>18 You have your Planner to begin tonight, Mr.</p> <p>19 Schneider?</p> <p>20 MR. SCHNEIDER: I do, Mr. Chairman. And in</p> <p>21 the interest of time I have no problem with proceeding.</p> <p>22 And to the extent any absent Board member misses a</p> <p>23 couple of minutes they can certainly read that limited</p> <p>24 portion of the transcript. So in the interest of time</p> <p>25 I'm prepared to proceed.</p>	<p style="text-align: right;">Page 6</p> <p>1 CHAIRMAN FLANAGAN: Great. Thank you. And</p> <p>2 I apologize. We ran a little bit longer tonight than I</p> <p>3 expected we would. I know we had discussed you thought</p> <p>4 it would take about two hours for your planning</p> <p>5 testimony. I promise you we'll go till 11:04, if we</p> <p>6 need.</p> <p>7 MR. SCHNEIDER: That's fine. We'll assess</p> <p>8 as we approach the eleven o'clock hour where we are.</p> <p>9 And I appreciate it.</p> <p>10 Once again for the record, Richard</p> <p>11 Schneider of the law firm of Vogel, Chait, Collins and</p> <p>12 Schneider on behalf of the Applicant, Verizon Wireless.</p> <p>13 As you indicated, Mr. Chairman, my</p> <p>14 intention is to proceed with our planning testimony.</p> <p>15 And I have with me this evening Mr. William F. Masters,</p> <p>16 Jr. So unless there's any housekeeping items, which I</p> <p>17 don't believe that there are any if we can proceed with</p> <p>18 Mr. Masters' testimony and have him sworn.</p> <p>19 CHAIRMAN FLANAGAN: That would be great.</p> <p>20 Mr. Mlenak?</p> <p>21 MR. MLENAK: I'm looking for Mr. Masters.</p> <p>22 There he is.</p> <p>23 Mr. Masters, do you swear to tell the</p> <p>24 truth, the whole truth, and nothing but the truth?</p> <p>25 MR. MASTERS: I do.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. MLENAK: Can you state your full name</p> <p>2 and spell your last name?</p> <p>3 THE WITNESS: William F. Masters, Jr.,</p> <p>4 M-a-s-t-e-r-s.</p> <p>5 MR. MLENAK: Thank you.</p> <p>6 W I L L I A M F. M A S T E R S, J R.,</p> <p>7 having been duly sworn, testifies as</p> <p>8 follows:</p> <p>9 MR. SCHNEIDER: Chairman, I'll take a</p> <p>10 couple of moments to qualify Mr. Masters for purposes</p> <p>11 tonight's proceedings.</p> <p>12 EXAMINATION BY MR. SCHNEIDER:</p> <p>13 Q. Welcome, Mr. Masters. What is your</p> <p>14 profession?</p> <p>15 A. I'm a professional planner licensed in the</p> <p>16 state of New Jersey.</p> <p>17 Q. And can you provide the Board with the</p> <p>18 benefit of your education and experience, including</p> <p>19 specifically any municipal experience you may have?</p> <p>20 A. Yes. I have a Bachelor of Science Degree</p> <p>21 in Landscape Architecture from Rutgers University. I'm</p> <p>22 a licensed Professional Planner in the state of New</p> <p>23 Jersey. I have been continuously licensed for the past</p> <p>24 40 years.</p> <p>25 For 13 years I was the planning director</p>	<p style="text-align: right;">Page 8</p> <p>1 for the Township of Parsippany Troy Hills. For the</p> <p>2 past 27 years I've been involved in my own private</p> <p>3 practice concentrating on applications pertaining to</p> <p>4 wireless telecommunications facilities.</p> <p>5 I previously -- I've been qualified as an</p> <p>6 expert in the field of Land Use Planning before</p> <p>7 numerous Planning Boards, Zoning Boards --</p> <p>8 CHAIRMAN FLANAGAN: Thank you, Mr. Masters.</p> <p>9 Mr. Schneider, Mr. Masters is clearly an</p> <p>10 expert, so thank you.</p> <p>11 MR. SCHNEIDER: Thank you, Mr. Chairman.</p> <p>12 THE WITNESS: Thank you, Mr. Chairman.</p> <p>13 BY MR. SCHNEIDER:</p> <p>14 Q. Mr. Masters, can you take a couple of</p> <p>15 moments to articulate for the record what you have done</p> <p>16 in preparation for your testimony here this evening?</p> <p>17 A. Yes. In order to prepare for my testimony</p> <p>18 this evening I reviewed the application, reviewed the</p> <p>19 zoning drawings that were submitted as part of the</p> <p>20 application. Those zoning drawings, most recent</p> <p>21 drawings containing a revision date of March 4, 2019.</p> <p>22 Reviewed the supporting documentation that was included</p> <p>23 with the application, the radio frequency reports.</p> <p>24 I've attended all of the hearings of the</p> <p>25 Harding Township Zoning Board of Adjustment regarding</p>

<p style="text-align: right;">Page 9</p> <p>1 this application, either in person or virtually.</p> <p>2 I've reviewed the Harding Township</p> <p>3 comprehensive zoning ordinance and zoning map.</p> <p>4 Reviewed the Harding Township Wireless</p> <p>5 Telecommunications Tower Ordinance, Ordinance number</p> <p>6 8-99, specifically Section 225-175 of the Land Use and</p> <p>7 Development Ordinance.</p> <p>8 Reviewed the Harding Township Master Plan,</p> <p>9 original adoption December 17, 1984. I've reviewed the</p> <p>10 Land Use Plan Element of the Harding Township Master</p> <p>11 Plan which was adopted on April the 23rd, 2007, and</p> <p>12 amended November 27th, 2017.</p> <p>13 Reviewed the Historic Preservation Plan</p> <p>14 Element dated March 14th, 2005.</p> <p>15 Reviewed the 2013 Master Plan</p> <p>16 Re-Examination report, which was adopted on April the</p> <p>17 22nd, 2013.</p> <p>18 Reviewed the New Vernon Village</p> <p>19 Redevelopment Plan adopted May 7th, 2003, by Ordinance</p> <p>20 number 6-03.</p> <p>21 Reviewed Ordinance number 10-05, which</p> <p>22 amended the New Vernon Redevelopment Plan with regard</p> <p>23 to the B-1 zone. That was adopted on June 15th, 2005.</p> <p>24 Also reviewed Ordinance number 13-11, which</p> <p>25 was adopted on November 16th, 2011, again, pertaining</p>	<p style="text-align: right;">Page 10</p> <p>1 to revisions to the B-1 component of the New Vernon</p> <p>2 Redevelopment Plan.</p> <p>3 Reviewed the report of the Village Plan</p> <p>4 Study Committee dated March 17th, 2006, prepared by</p> <p>5 Kimball and Kimball.</p> <p>6 I've reviewed Ordinance number 18-03 of the</p> <p>7 New Vernon Redevelopment Plan Implementation Program</p> <p>8 and Policies dated November 19th, 2003.</p> <p>9 I reviewed the Harding Township planner's</p> <p>10 report dated January 10, 2019, prepared by M. McKinley</p> <p>11 Mertz, Professional Planner.</p> <p>12 I reviewed the Harding Township Zoning</p> <p>13 Board of Adjustment engineering consultant's report</p> <p>14 dated January 15th, 2019, prepared by Paul D. Fox,</p> <p>15 Professional Engineer.</p> <p>16 I've reviewed the bid specifications for</p> <p>17 the wireless communications facility dated November 22,</p> <p>18 2016.</p> <p>19 And I reviewed the Land Lease Agreement</p> <p>20 between the Township of Harding and Verizon Wireless</p> <p>21 dated June 14th, 2018.</p> <p>22 Q. Thank you, Mr. Masters. Did you also have</p> <p>23 occasion -- and we'll get to this hopefully during</p> <p>24 tonight's proceedings. Did you also have occasion to</p> <p>25 prepare, both as part of the original application</p>
<p style="text-align: right;">Page 11</p> <p>1 submission and subsequent thereafter a series of visual</p> <p>2 analysis in conjunction with this matter?</p> <p>3 A. I did. I attended a crane test that was</p> <p>4 conducted back on February the 27th, 2018, of which</p> <p>5 several members of the Zoning Board of Adjustment were</p> <p>6 also in attendance that day for the crane test.</p> <p>7 Based upon the crane test I prepared a</p> <p>8 series of photo simulations of the proposed tree pole</p> <p>9 at its original height of 140 feet with a</p> <p>10 top-of-branching height of 146 feet.</p> <p>11 Subsequent to that based upon developments</p> <p>12 that occurred during the course of the application,</p> <p>13 predominantly the result of prior testimony from the</p> <p>14 Applicant's radio frequency expert, I prepared</p> <p>15 supplemental photo simulations depicting a tree</p> <p>16 monopole at a height of 120 feet with a top-branching</p> <p>17 height of 126 feet. Photo simulations of a tree pole</p> <p>18 at 100 feet, with top of branching height of 106 feet.</p> <p>19 Photo simulations of a flagless flagpole at 120 feet,</p> <p>20 and photo simulations of a flagless flagpole at 100</p> <p>21 feet.</p> <p>22 Q. And we're going to get into a little more</p> <p>23 detail on that hopefully in the not too distant future.</p> <p>24 With that comprehensive background in terms</p> <p>25 of all that you've done in preparation for your</p>	<p style="text-align: right;">Page 12</p> <p>1 testimony let me start by asking you from a planning</p> <p>2 process, or a planning perspective more appropriately,</p> <p>3 can you initially comment on the background as it</p> <p>4 specifically relates to the actions of the Township</p> <p>5 Committee to make available the lease rights for this</p> <p>6 facility for the siting of a wireless communications</p> <p>7 facility?</p> <p>8 A. Yes. The Township Committee of Harding</p> <p>9 Township issued bid specifications for the lease of</p> <p>10 township owned property, specifically at the location</p> <p>11 of this subject application. The date of that bid was</p> <p>12 November 22, 2016. The property was for, or I should</p> <p>13 say the bid was issued for property located at 8</p> <p>14 Millbrook Road, commonly referred to on the official</p> <p>15 tax maps of the Township of Harding as Block 17, Lot 1.</p> <p>16 I also reviewed the Land Lease Agreement</p> <p>17 between Harding Township and Verizon Wireless, which</p> <p>18 was signed on June the 14th or 2018.</p> <p>19 Q. Okay. And as you understand it, based on</p> <p>20 the prior testimony of Ms. Boschulte specifically, it</p> <p>21 was Verizon Wireless who, in fact, pursued the siting</p> <p>22 of a wireless communication facility and requested that</p> <p>23 the township issue a bid for the lease rights for this</p> <p>24 property. Is that your understanding?</p> <p>25 A. Yes. That is my understanding.</p>



<p style="text-align: right;">Page 13</p> <p>1 Q. And while you're certainly not an attorney,  2 is it correct or consistent with your understanding  3 that the township would have had the authority, had  4 they so chosen, not to make this a property available  5 for the potential siting of a wireless communication  6 facility; correct?</p> <p>7 A. Yes. I think that's apparent that that was  8 a decision that was ultimately decided by the Township  9 Committee of Harding Township.</p> <p>10 Q. In its discretion, and in fact in that  11 context Verizon Wireless would have had no legal  12 ability to compel the Township of Harding to make  13 available this particular property; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And the Township of Harding in its  16 discretion has the right to either make available this  17 property or any other property, whether it's the  18 municipal building or any other municipal property, for  19 the siting of a wireless communication facility;  20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So that leads us to the application  23 having been filed. And while it is obvious, and I say  24 it with great confidence, that the Board certainly, and  25 I'm sure any interested members of the public, are very</p>	<p style="text-align: right;">Page 14</p> <p>1 familiar with the subject property all being Harding  2 Township residences, we're on the record. So for the  3 purposes of that understanding, let's take some  4 hopefully substantial time here, because I think it's  5 important, to make some observations about the  6 description of the property from a planning  7 perspective.</p> <p>8 So let me ask you to comment, if you can,  9 and describe what do you believe are the relevant  10 characteristics of the subject property, specifically  11 from a planning perspective as distinct from a radio  12 frequency or other perspective?</p> <p>13 A. Okay. The property which is the subject of  14 the application again is the DPW yard, the Department  15 of Public Works for Harding Township, their existing  16 facilities located there. That particular property  17 also serves as the Township's Recycling Center. It's a  18 4.2134-acre parcel of property.</p> <p>19 In addition to the portion of the property  20 that is utilized for the Department of Public Works and  21 for recycling, it is also the site of a historic  22 structure, the Tunis-Ellicks property, which is located  23 to the eastern portion of the property. The property  24 is an extremely irregularly configured piece of  25 property, kind of an hour-glass figure. And I think</p>
<p style="text-align: right;">Page 15</p> <p>1 it's worthwhile pointing out that in reviewing the  2 title work associated with this property it was  3 actually conveyed to the township by two separate  4 entities as two separate parcels of land, and  5 ultimately as it exists today is a single block and lot  6 comprising of 4.2134 acres or 183,537-square feet.</p> <p>7 I think it's also important to take note of  8 the irregular shape of the property, and in reviewing  9 the redevelopment plan for this property as the subject  10 property itself is located in the New Vernon Village  11 Redevelopment Plan. It's important to note on page ten  12 of the redevelopment plan the plan makes an observation  13 that the lot is very irregularly shaped, somewhat like  14 an hour glass, which provides the opportunity to  15 consider the two development areas, Tunis-Ellicks and  16 DPW, as somewhat separate entities. And if you look at  17 the property survey you can see that at the midpoint of  18 the property it practically comes to a point. It's  19 that dramatic of a separation between what I'll call  20 the easterly portion of the property and the westerly  21 portion of the property.</p> <p>22 The DPW portion of the property houses  23 various structures. It houses the recycling shed, the  24 municipal garage buildings. More recently an  25 additional building was added at the site which</p>	<p style="text-align: right;">Page 16</p> <p>1 provides for the offices of the Director, as well as a  2 lunch room for the public works employees, a locker  3 room with a bathroom, as well as the ability to house  4 workers there overnight during emergency situations  5 such as snowstorms.</p> <p>6 There is a vehicle fueling facility on the  7 premises. There are several storage sheds. There is a  8 salt containment facility on the property, as well as  9 future plans to build a salt dome on the public works  10 property.</p> <p>11 CHAIRMAN FLANAGAN: For the record, Ms.  12 Sovolos joined us at 9:18.</p> <p>13 BOARD MEMBER SOVOLOS: Thank you.</p> <p>14 MR. SCHNEIDER: Thank you.</p> <p>15 BY MR. SCHNEIDER:</p> <p>16 Q. I want to go back to two of the comments  17 that you made in describing the subject property,  18 because I think it's important. You discussed your  19 description of the property as an hour-glass shape, and  20 in doing so relying on that specific reference in the  21 redevelopment plan that you referenced. And you  22 referenced specifically the location of the historic  23 structure on the property. And you made additional  24 reference to the, I think you used the phrase "separate  25 entities."</p>

<p style="text-align: right;">Page 17</p> <p>1 Did you happen to have occasion to review</p> <p>2 the physical distance of the historic structure from</p> <p>3 where the proposed wireless facility is proposed to be</p> <p>4 located in the DPW portion of the property?</p> <p>5 A. I did. The proposed monopole or tree pole,</p> <p>6 which is part and parcel of this application, is</p> <p>7 situated 609 feet from the Tunis-Ellicks House. The</p> <p>8 compound, the 30-foot-by-60-foot proposed equipment</p> <p>9 compound of which the monopole would be situated in the</p> <p>10 center portion of that compound at its closest point is</p> <p>11 570 feet to the Tunis-Ellicks House.</p> <p>12 Q. Do those distances support your -- not only</p> <p>13 your conclusion, but the reference within the</p> <p>14 redevelopment plan as to the effective segregation of</p> <p>15 the historic structure from that of the DPW use?</p> <p>16 A. They do. The DPW related activities,</p> <p>17 infrastructure of the buildings, the parking associated</p> <p>18 with the DPW is all consolidated within that portion of</p> <p>19 the overall property situated to the west; whereas, the</p> <p>20 museum and historical house, the Tunis-Ellicks House is</p> <p>21 at the extreme eastern extent of the property along</p> <p>22 with the associated out-building of the parking for</p> <p>23 that facility.</p> <p>24 Q. Okay. You did spend some time describing</p> <p>25 the physical improvements associated with the DPW</p>	<p style="text-align: right;">Page 18</p> <p>1 property. Let's just take a couple of brief moments to</p> <p>2 describe the use that's there. Obviously the Board is</p> <p>3 familiar with it, but I want to get a sense from a</p> <p>4 planning perspective of how you view that use in terms</p> <p>5 of intensity and your overall perspective about it from</p> <p>6 a planning perspective.</p> <p>7 And let me go back, if I can, before you</p> <p>8 answer that question. Did you have the recent</p> <p>9 opportunity to speak with a representative of the DPW</p> <p>10 to confirm your observations and gather some additional</p> <p>11 information concerning the current operation of the DPW</p> <p>12 facility?</p> <p>13 A. I did. I spoke to the Director.</p> <p>14 Q. And that was very recently?</p> <p>15 A. It was. It was earlier this week.</p> <p>16 Q. So I was asking you for your perspective</p> <p>17 from a planning perspective of the use of the DPW in</p> <p>18 terms of its operation and type of activity that are</p> <p>19 conducted there?</p> <p>20 A. The use and activities at the DPW, again,</p> <p>21 consist of activities related to the road department,</p> <p>22 the maintenance of roads, of township owned facilities,</p> <p>23 snow removal. There are currently eight employees who</p> <p>24 work at the township DPW facility, that's including the</p> <p>25 Director. They maintain approximately 40 pieces of</p>
<p style="text-align: right;">Page 19</p> <p>1 rolling stock to conduct the various services that they</p> <p>2 provide for the township.</p> <p>3 As I mentioned earlier the site is also the</p> <p>4 location of the Township's Recycling Center.</p> <p>5 Currently, the Recycling Center is open on Wednesday</p> <p>6 mornings from 7:00 a.m. till Noon time, and alternating</p> <p>7 Saturdays from 9:00 a.m. till Noon time.</p> <p>8 Q. Okay. That gives us for the purposes of</p> <p>9 the record, I think, a comprehensive understanding of</p> <p>10 the nature of the current use and the segregated uses</p> <p>11 that are conducted on that property.</p> <p>12 Let's segue, if we can, to somewhat of a</p> <p>13 description from a planning perspective of the nature</p> <p>14 of the surrounding land uses?</p> <p>15 A. Yes. The surrounding land uses to the DPW</p> <p>16 facility, the property's bounded to the south and west</p> <p>17 to residential properties. Those properties are</p> <p>18 situated within the R-1 Residential Zone District,</p> <p>19 that's a three-acre minimum lot area, residential zone</p> <p>20 district.</p> <p>21 To the east within the subject property</p> <p>22 itself, the municipal property it is occupied by the</p> <p>23 Tunis-Ellicks House. Beyond that across Millbrook you</p> <p>24 have at the corner of Millbrook and Village Road you</p> <p>25 have the New Vernon Firehouse, the New Vernon Volunteer</p>	<p style="text-align: right;">Page 20</p> <p>1 First Aid Squad.</p> <p>2 Along Village Road itself which is situated</p> <p>3 within a B-1 Historic Village Business Zone you have a</p> <p>4 mix of single-family residential uses, as well as</p> <p>5 commercial uses. You have the New Vernon Post Office</p> <p>6 immediately to the north of the DPW property. On that</p> <p>7 same property you have a restaurant. I'm not sure if</p> <p>8 it's currently open. You have a parking lot that</p> <p>9 services both the post office and the restaurant.</p> <p>10 Across the street is currently a vacant</p> <p>11 store deli. Previously there was a bank located on the</p> <p>12 north side of Village Road. And you have, again,</p> <p>13 intermixed with those commercial uses single-family</p> <p>14 residential uses.</p> <p>15 Q. And you have in relative close proximity,</p> <p>16 if you haven't mentioned, the Harding Township</p> <p>17 Municipal Building and the Harding Township elementary</p> <p>18 school?</p> <p>19 A. You have the elementary school up on Lees</p> <p>20 Hill Road. You have two houses of worship: You have</p> <p>21 the Presbyterian Church on Lees Hill Road. You have</p> <p>22 Christ the King Catholic Church down at the corner of</p> <p>23 Millbrook Road and Blue Mill Road. You have the Kirby</p> <p>24 Municipal Complex and the library across the street.</p> <p>25 Q. Is it relevant to you that in addition to</p>

<p style="text-align: right;">Page 21</p> <p>1 the obvious description of the surrounding land uses in  2 part being residential that you have what I would  3 consider a number of uses that involve public assembly;  4 i.e., a municipal building; i.e., a school; i.e.,  5 houses of worship, post office and things of that  6 nature?</p> <p>7 A. Clearly. Absolutely. As it's noted in  8 several master plan documents, the redevelopment plan,  9 the historic plan element, historically New Vernon is  10 the focal point, or focus, central hub, if you will, of  11 Harding Township. It's where the primary roads of the  12 township interconnect: Village Road; Glen Alpin Road;  13 Lees Hill Road; Blue Mill Road; Millbrook Road. And  14 again you've got the only school in the township is  15 located there. The only public school in the township  16 is located there. You've got the post office. Two  17 churches. It's the center of municipal government.  18 It's clearly the center focal point of Harding  19 Township.</p> <p>20 Q. Okay. With that background let's start to  21 segue into some of the relevant planning documents, and  22 in some sequential order let's discuss the relevant  23 provisions, if there are, in both first the Master  24 Plan; (B), the significance, if any, of the  25 redevelopment plan that you referenced; and third and</p>	<p style="text-align: right;">Page 22</p> <p>1 perhaps most significantly the relevant provisions of  2 Harding Township's ordinance, specifically its wireless  3 communications ordinance.</p> <p>4 Let's start with the relevant discussion as  5 it relates to any provisions of the Harding Township  6 Master Plan, including specifically to the extent that  7 the Master Plan may refer to how it should encourage or  8 treat wireless communications?</p> <p>9 A. Okay. And what I'd like to do in  10 conjunction with that would basically be follow  11 McKinley Mertz's report of January the 10th, 2019. On  12 the first page she discusses the property -- well,  13 first the materials that were reviewed as part of the  14 preparation of the report. The property and project  15 description. Notes that the subject property is  16 located at 8 Millbrook Road in the PL Public Lands Zone  17 District.</p> <p>18 I would note that the subject property,  19 Block 17, Lot 1, is the only PL Zoned property within  20 the New Vernon Redevelopment Plan area, and as well as  21 the Historic District, the portion that's in the  22 Historic District. The property is owned by the  23 Township of Harding, currently used by the department  24 of public works.</p> <p>25 In looking at the -- it's important to note</p>
<p style="text-align: right;">Page 23</p> <p>1 I think that the PL Zone in and of itself there's not  2 really bulk standards associated with that zone  3 district. It lists a number of permitted uses, but  4 there are no bulk standards associated with the Public  5 Land Use Zone District.</p> <p>6 She notes on page three that the variance  7 relief that's required here is a D-1 Use Variance, that  8 being because of the fact that the proposed use, a new  9 monopole wireless communication tower is not a  10 permitted use within the PL Zone District, and then  11 talks about the special considerations within the  12 various elements of the Township's Master Plan.</p> <p>13 First one being objective number nine of  14 the Master Plan. This is the 1994 Master Plan. It was  15 reorganized on February 25th, 2008, and this appears on  16 page 1-1. And that is objective number nine: "To  17 promote the maintenance and protection of the high  18 quality visual environment of Harding Township through  19 creative development techniques and protection and  20 enhancement of the unique physiographic and rural  21 historical features."</p> <p>22 Again, references to the visual  23 environment, as well as the rural characteristics of  24 the township are repeated often in the township master  25 plan documents.</p>	<p style="text-align: right;">Page 24</p> <p>1 What the Applicant is attempting to do here  2 is to offer some alternative antenna support structures  3 in order to try to mitigate some of the visual impact  4 associated with this type of a use. Visual impact from  5 a planning perspective is in most instances if not all  6 instances the primary focus relative to the issue of  7 detrimental impact, wireless telecommunications being  8 dependent upon a line-of-sight technology requires  9 their antennas to be up in the air in order to be able  10 to see, in order to propagate radio signal.</p> <p>11 So the first consideration is objective  12 number nine. And again, the Applicant's attempt here  13 to address that particular master plan objective is to  14 offer something other than a conventional monopole at  15 this location.</p> <p>16 She then turns to the Land Use Element of  17 the Master Plan most recently amended on November 27th  18 of 2017. Objective number one, which is, "To preserve  19 and perpetuate the township's rural historic character  20 in high quality natural environment preserving the  21 township's traditional historic and rural character is  22 the essential objective of the Master Plan."</p> <p>23 Talks about the curve linear nature of the  24 road constructed to serve new development. Creative  25 development techniques should be employed, so the</p>

<p style="text-align: right;">Page 25</p> <p>1 subdivision layout promotes the township to rural 2 character.</p> <p>3 While we're not proposing a subdivision 4 here, again this particular location is where the 5 primary roads in Harding Township converge. The 6 location here is set back from the road system situated 7 on the DPW property, and again the attempt here is to 8 try to mitigate impacts associated without objective.</p> <p>9 The second objective noted in the Land Use 10 Plan Element is number seven on page 11-2 of the Land 11 Use Plan Element, which is, "To perpetuate the 12 established patterns of development the zone plan 13 should reflect and perpetuate the established land uses 14 and lot patterns, and manage development compatible 15 with the established low density -- low residential 16 density in the small scale and limited extent of 17 commercial development."</p> <p>18 Again, I would submit to the Board by 19 locating this at a DPW facility the attempt here is to 20 locate it at a site where the existing patterns of 21 development are not adversely impacted by its location.</p> <p>22 I would note another objective of the Land 23 Use Element is the one before that, item number six, 24 which is, "To maintain New Vernon as the center of 25 community interaction and focal point for the</p>	<p style="text-align: right;">Page 26</p> <p>1 community. Future development/redevelopment policies 2 should promote the continuation of the Village of New 3 Vernon as a focal point and gathering place for the 4 Harding community. The pedestrian scale of the village 5 with small-scale commercial uses, banks and 6 professional offices, surrounded by low-density 7 residential uses should be maintained. The 8 reestablishment of the Post Office in the village core 9 has been essential to this objective."</p> <p>10 Again, a component of maintaining that 11 central community focal point is to have reliable 12 uninterrupted wireless telecommunications service, and 13 as such is important that that such service be 14 maintained in that location.</p> <p>15 The report then moves on to the wireless 16 telecommunications ordinance itself where it states, 17 "To minimize the use of large towers, small antennas 18 should be encouraged whenever they can be located on or 19 in existing structures, particularly public or 20 quasi-public property, school, churches, firehouses, et 21 cetera, subject to reasonable standards and site plan 22 review."</p> <p>23 The wireless ordinance of Harding Township 24 provides for freestanding wireless telecommunications 25 locations, but only located in zoning districts that</p>
<p style="text-align: right;">Page 27</p> <p>1 are essentially along the Route 202 and 287 corridors 2 of which Verizon Wireless already maintains a facility. 3 They have three facilities that currently service off 4 the 202 and the 287 corridors. It's simply not 5 practical, as based upon Ms. Boschulte's testimony, to 6 provide testimony to the New Vernon Village area from 7 those locations.</p> <p>8 The other policy when large towers are 9 necessary they should be located in commercial areas. 10 They should not be located in areas where they will 11 have a substantial negative impact on the character of 12 historic districts or sites and/or residential areas.</p> <p>13 Again, the attempt here was based upon the 14 bid that was awarded by the township to locate this at 15 the public works facility, which is a location -- 16 public works facilities are common locations in terms 17 of municipal property for these types of uses. In 18 fact, two of the municipalities which border Harding 19 Township, Chatham Township and Long Hill Township, each 20 maintain wireless telecommunication towers at their 21 respective DPW facilities.</p> <p>22 So the master plan, again, in terms of its 23 objectives, goals, policies, focuses on these various 24 aspects. The redevelopment area also indicates that 25 the New Vernon crossroads area is the focal point of</p>	<p style="text-align: right;">Page 28</p> <p>1 the community. I would note in the most recent Master 2 Plan re-examination report that was adopted on October 3 26th of 2020 on page 20 it discusses the DPW site. It 4 says, "Consideration should be given to developing a 5 specific plan for the reconfiguration of DPW facilities 6 in New Vernon Village to enhance the efficient 7 utilization of the site and allow for future 8 improvements, if needed. Such a plan would be 9 beneficial for long-term planning to ensure that the 10 facilities at this location continue to meet Harding's 11 current and future needs."</p> <p>12 Again, a recent building was added to the 13 facility. There are plans -- I'm told that there are 14 plans to still construct a salt dome at the facility. 15 And it notes that the facilities were recently 16 renovated to include sleeping quarters at the property. 17 So those are some of the Master Plan Land Use Element 18 considerations pertaining to this particular property 19 location.</p> <p>20 Q. Mr. Masters, in addition to the Master 21 Plan, at least from my perspective there's a what I 22 consider to be somewhat of a unique planning document, 23 that being the redevelopment plan. And it's a 24 redevelopment plan, at least as I understand it, it's 25 not a redevelopment plan in the sense that there was a</p>

<p style="text-align: right;">Page 29</p> <p>1 determination by the Planning Board and/or the --</p> <p>2 referred to the Township Committee where the property</p> <p>3 was somehow blighted and in need of redevelopment, but</p> <p>4 as I read the redevelopment plan, I'm not going to ask</p> <p>5 you to go through all of the things that you reviewed</p> <p>6 at the beginning of your testimony, but it's a unique</p> <p>7 document in a couple of senses.</p> <p>8 And I want to ask you a series of questions</p> <p>9 about that to the extent that people, Board members or</p> <p>10 others may have some questions about the applicability</p> <p>11 of the redevelopment plan. The redevelopment plan as I</p> <p>12 understand it, and you'll correct me if I'm wrong, did</p> <p>13 not in either its original form or in its subsequent</p> <p>14 amendments, contain any essential revisions to the</p> <p>15 underlying zoning in terms of the permitted uses either</p> <p>16 within the B-1 zone or the PL Zone, those being the two</p> <p>17 zones that I'll reference within the redevelopment</p> <p>18 plan; is that correct?</p> <p>19 A. That's basically correct. There were some</p> <p>20 tweaks to the B-1 zone portion of the redevelopment</p> <p>21 plan area; however, there were no changes made to the</p> <p>22 public land regulations contained in Section 225-151 of</p> <p>23 the Land Use and Development Ordinance which pertains</p> <p>24 to the Public Land Zone District. Again, there are no</p> <p>25 bulk regulations in the PL Zone. The initial New</p>	<p style="text-align: right;">Page 30</p> <p>1 Vernon Village Redevelopment Plan was adopted back in</p> <p>2 2003, May 7th, 2003 by Ordinance 6-03. It was updated</p> <p>3 a few months later by Ordinance 18-03 on December 17th,</p> <p>4 2003. But again, those changes predominantly pertain</p> <p>5 to the B-1 zone property.</p> <p>6 That is the document, by the way, that</p> <p>7 again notes on page ten the very irregularly shaped</p> <p>8 hour-glass configuration of Block 17, Lot one, and the</p> <p>9 fact that they afford the opportunity to consider that</p> <p>10 the two development areas, the DPW and the</p> <p>11 Tunis-Ellicks House, as somewhat separate entities.</p> <p>12 After the December amendment to the</p> <p>13 redevelopment plan it was again amended in June,</p> <p>14 June 15th of 2005 by ordinance 10-5. That particular</p> <p>15 amendment provided for a greater flexibility in the</p> <p>16 arrangement of the residential component of the</p> <p>17 mixed-use developments in the B-1 Zone in the New</p> <p>18 Vernon redevelopment area, and provided for an</p> <p>19 exclusion of basement space in the calculation of the</p> <p>20 floor area ratio in that zone. Again, silent with</p> <p>21 regard to the PL Zone portion of the New Vernon</p> <p>22 Redevelopment Area.</p> <p>23 Subsequent to that there was an analysis</p> <p>24 undertaken by the Village Plan Study Committee to the</p> <p>25 Planning Board under the, I guess, the direction of the</p>
<p style="text-align: right;">Page 31</p> <p>1 Township Planners at that time, Kimball and Kimball,</p> <p>2 and on March the 17th of 2006 that report was presented</p> <p>3 to the Planning Board recommending various enhancements</p> <p>4 and so forth, again, to the B-1 Zone portion of the</p> <p>5 redevelopment plan area.</p> <p>6 And then most recently on November 16th of</p> <p>7 2011 by way of ordinance number 13-11 the redevelopment</p> <p>8 area was once again modified with respect to the B-1</p> <p>9 Historic Village business zone. The redevelopment plan</p> <p>10 was amended to encourage but not mandate the</p> <p>11 redevelopment area as to allow greater flexibility in</p> <p>12 developing sites within the redevelopment area</p> <p>13 restaurants should be permitted in the B-1 Historic</p> <p>14 Village Business Zone. The scale of that type of</p> <p>15 development would be limited by the small lot size, as</p> <p>16 well as being able to accommodate parking, as well as</p> <p>17 on-site wells and waste water disposal facilities.</p> <p>18 Two-family dwellings should be allowed in the B-1 zone.</p> <p>19 Again, its purpose of focus was totally</p> <p>20 with respect to the B-1 Zone portion of the</p> <p>21 redevelopment area.</p> <p>22 Q. And not the PL Zone?</p> <p>23 A. Correct. Not the PL Zone. The PL Zone</p> <p>24 continued to exist as it had since March 17th of 2004</p> <p>25 under Article 32 the Public Land Zone it specifically</p>	<p style="text-align: right;">Page 32</p> <p>1 allowed for the following uses: "Administrative</p> <p>2 buildings, and installations, libraries, historical</p> <p>3 buildings, cultural or community centers, public</p> <p>4 schools, parks, play fields, playgrounds, conservation</p> <p>5 purposes, recreation uses, educational facilities,</p> <p>6 garages to house municipal equipment, or any other</p> <p>7 public uses, buildings and structure in order to</p> <p>8 preserve historic structures on sites of the Public</p> <p>9 Land Zone. The Township Committee may authorize the</p> <p>10 renovation and adaptive reuse of existing buildings or</p> <p>11 properties, office space, museums, or for hosting</p> <p>12 social functions, cultural or community events and may</p> <p>13 arrange for a resident caretaker.</p> <p>14 "In authorizing such renovation or reuse of</p> <p>15 buildings or properties the Township Committee should</p> <p>16 ensure that adequate arrangements are made for</p> <p>17 off-street parking, on-site traffic circulation and</p> <p>18 security."</p> <p>19 Q. And in large measure, Mr. Masters, as I</p> <p>20 read through the redevelopment plans and its various</p> <p>21 incantations, a lot of the focus of that was to discuss</p> <p>22 more from a larger planning perspective the potential</p> <p>23 siting options of importance land uses as they relate</p> <p>24 to the Post Office and library. Is that consistent</p> <p>25 with your understanding?</p>

<p style="text-align: right;">Page 33</p> <p>1 A. One of the primary original focuses of the</p> <p>2 creation of the New Vernon Village Redevelopment Plan</p> <p>3 was to provide for a newly relocated Post Office, as</p> <p>4 well as a library. Of course we know that now that the</p> <p>5 library is at the municipal complex on Blue Mill Road,</p> <p>6 but in fact the post office is now located across the</p> <p>7 street from where it originally was located on Village</p> <p>8 Road.</p> <p>9 Q. So you've given us, I think, or at least</p> <p>10 me, an important perspective in terms of the Master</p> <p>11 Plan, but I think also importantly in terms of the</p> <p>12 redevelopment. The fact that it's not a redevelopment</p> <p>13 plan as others may perceive it in terms of either</p> <p>14 implementing new land uses or resulting from some</p> <p>15 determination that the property is blighted, it was</p> <p>16 intended to be on a larger scale a planning guide to</p> <p>17 attempt to address potential siting options for some of</p> <p>18 the uses that you just discussed.</p> <p>19 Let's then, with that understanding let's</p> <p>20 discuss a little bit about the PL Zone and segue into</p> <p>21 the implications of the permitted uses in the PL Zone</p> <p>22 and how it affects the need for a use variance in this</p> <p>23 case. I'm not going to ask you to repeat yourself, but</p> <p>24 essentially there are -- you've indicated there are no</p> <p>25 bulk requirements in the PL Zone and you indicated and</p>	<p style="text-align: right;">Page 34</p> <p>1 reviewed in some level of detail the permitted uses in</p> <p>2 the PL Zone. Suffice it to say in the interest of time</p> <p>3 that I'm correct that wireless telecommunication uses</p> <p>4 are not a permitted use in the PL Zone; correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. So that then segues us into the</p> <p>7 relevant provisions of the Harding Township Wireless</p> <p>8 Communications Ordinance. And what I found interesting</p> <p>9 as I started to review this application back in I hate</p> <p>10 to say it 2017, is that the Harding Township Wireless</p> <p>11 Ordinance is, like in three or four is different</p> <p>12 sections, depending on whether you're attempting to</p> <p>13 locate on an existing structure and then there's</p> <p>14 separate bulk regulations, but let's focus if we can on</p> <p>15 how the Harding Township Wireless Communications</p> <p>16 Ordinance attempts to regulate new towers such as the</p> <p>17 one proposed here.</p> <p>18 Can you review for us what the relevant</p> <p>19 provision of the Harding Township ordinance is as it</p> <p>20 relates to the proposed construction of a new wireless</p> <p>21 communication tower?</p> <p>22 A. Okay. And as you indicated, there are</p> <p>23 various sections of the comprehensive Land Use and</p> <p>24 Development Ordinance that deal with the placement of</p> <p>25 antennas, wireless telecommunications facilities within</p>
<p style="text-align: right;">Page 35</p> <p>1 Harding Township on existing structures, specifically</p> <p>2 those sections of the Ordinance would be Sections</p> <p>3 225-161, 162, 163, and 164.</p> <p>4 The specific section of the Harding</p> <p>5 Township Land Use and Development Ordinance that deals</p> <p>6 with wireless telecommunications towers is Section</p> <p>7 225-175. That particular section was added by</p> <p>8 ordinance number 8-99 on July the 12th, 1999, and it</p> <p>9 states that, "Notwithstanding the provisions of</p> <p>10 Section 225-116C, towers supporting wireless</p> <p>11 telecommunications antennas and associated equipment</p> <p>12 shall be permitted as a conditional use on any lot in</p> <p>13 the OB Zone and the B-2 Zone, only on the eastern side</p> <p>14 of Route 202 subject to the provisions and standards</p> <p>15 enumerated below.</p> <p>16 "The provisions of this section and</p> <p>17 standards herein shall also apply to the installation</p> <p>18 of more than one antenna or more than one antenna array</p> <p>19 on existing or proposed buildings and structures in</p> <p>20 these zones."</p> <p>21 That's because if we look at the section,</p> <p>22 the previous sections that I just cited they</p> <p>23 specifically in terms of locating towers on existing</p> <p>24 structures they limit the number of antennas to three</p> <p>25 antennas grouped together on a single mounting bracket.</p>	<p style="text-align: right;">Page 36</p> <p>1 So the section of the ordinance that deals</p> <p>2 with wireless telecommunications towers, as I</p> <p>3 indicated, is Section 225-175 limited to two-zone</p> <p>4 districts, and within those zone districts limited to</p> <p>5 the eastern side of Route 202 within those zone</p> <p>6 districts, which would effectively be that portion of</p> <p>7 202 that's sandwiched between 202 and Interstate Route</p> <p>8 287. That would be the eastern side of 202.</p> <p>9 As I indicated earlier Verizon Wireless</p> <p>10 already has facilities at three locations that</p> <p>11 essentially service the Route 202 and the I-287</p> <p>12 corridor. One being at the extreme southern end of the</p> <p>13 township just before you cross over into Bernards</p> <p>14 Township on the eastern side of 202 there's a monopole.</p> <p>15 The rest stop on Interstate 287, the tree pole. And</p> <p>16 then there's a cluster-mounted monopole up at the</p> <p>17 Harter Road ramp of Interstate 287, which is actually</p> <p>18 in Morris Township. But those are the three, as you</p> <p>19 heard in Ms. Boschulte's testimony, that cover that</p> <p>20 particular area.</p> <p>21 So here we are at the Harding DPW obviously</p> <p>22 not in either an OB Zone or a B-2 Zone, but in the PL</p> <p>23 Public Land Zone.</p> <p>24 Q. So the -- let's talk about the ordinance</p> <p>25 interpretation in that regard. My understanding from a</p>

<p style="text-align: right;">Page 37</p> <p>1 legal sense is that if you are not located in the OB or</p> <p>2 B-2 Zone on the eastern side of Route 10 you are not a</p> <p>3 conditional use, and therefore as this application has</p> <p>4 been filed a D-1 use variance for a use not permitted</p> <p>5 in the PL Zone is the required variance relief; is that</p> <p>6 correct?</p> <p>7 Is that consistent with your understanding</p> <p>8 and interpretation of the ordinance?</p> <p>9 A. It is. And as I indicated earlier, that</p> <p>10 point was -- was very clearly made in McKinley Mertz's</p> <p>11 planning report of January 10th, 2019.</p> <p>12 Q. And in fact, if one takes that argument to</p> <p>13 its reasonable interpretation the provisions of Section</p> <p>14 225-175, and specifically Subsection C of that</p> <p>15 contained -- and I emphasize conditional use standards.</p> <p>16 So all of those standards that are contained within C</p> <p>17 -- Subsection C-1 through seven are only conditional</p> <p>18 use standards if you're in either the OB or B-2 Zone</p> <p>19 district; is that correct?</p> <p>20 A. In my opinion, yes, that is correct.</p> <p>21 Q. Okay. So the nature, as a result of that</p> <p>22 interpretation Section 225-175 does not apply, and the</p> <p>23 nature of the required variance relief is a use</p> <p>24 variance, obviously together with site plan approval.</p> <p>25 And in the context of determining the relief you have</p>	<p style="text-align: right;">Page 38</p> <p>1 mentioned probably on no less than two occasions that</p> <p>2 there are no bulk standards in the PL Zone, so to that</p> <p>3 extent there are no "C" Variances or setback standards</p> <p>4 that govern this application; is that a fair statement?</p> <p>5 A. Fair statement. Again, mentioned in Ms.</p> <p>6 Mertz's report.</p> <p>7 Q. Okay. Let's now turn our attention, if we</p> <p>8 can, to an understanding from you of what you view as</p> <p>9 the relevant aspects of the application -- relevant</p> <p>10 aspects of the application from a planning perspective?</p> <p>11 (Dog barking)</p> <p>12 A. That's not me. I'm sorry, what?</p> <p>13 Q. I'm sorry. That was my puppy. I</p> <p>14 apologize.</p> <p>15 If you can just take a moment just to</p> <p>16 review for the Board what you believe to be the</p> <p>17 relevant characteristics of the application from a</p> <p>18 planning perspective?</p> <p>19 A. Okay. The planning issues here, again,</p> <p>20 we're seeking D-1 variance relief, although we are not</p> <p>21 specifically governed by the conditional use standards</p> <p>22 set forth in 225-175 of the Harding Land Use and</p> <p>23 Development Ordinance, it may perhaps be worthwhile to</p> <p>24 go through those conditional use standards.</p> <p>25 Q. Before -- Mr. Masters, before we do that I</p>
<p style="text-align: right;">Page 39</p> <p>1 want to take one step back, if we can.</p> <p>2 We have had over the time period of two,</p> <p>3 three years, and I hope to think that it's a productive</p> <p>4 discussion, we've had a lot of discussions about tower</p> <p>5 design, height, some of the operational aspects of the</p> <p>6 matter, of the application, the use of the tower for</p> <p>7 collocation. There's been extensive discussions, I</p> <p>8 think, in part led by the Chair and others about how we</p> <p>9 design this to maximize collocation.</p> <p>10 So I want to see if we can just focus</p> <p>11 before we get into some of the specific standard and</p> <p>12 statutory criteria. I want to see if we can -- because</p> <p>13 the application has evolved over a significant period</p> <p>14 of time, and we've spent the more recent time on RF</p> <p>15 issues, I want to try to refocus what that discussion</p> <p>16 has entailed in terms of the various tower</p> <p>17 alternatives, and some of the operational aspects that</p> <p>18 we discussed early on through the testimony of Mr.</p> <p>19 Marowski. And then obviously in terms of the design we</p> <p>20 sought the input of Dr. Eisenstein, and everyone's had</p> <p>21 their certainly fair amount of discussion about tower</p> <p>22 design.</p> <p>23 So let's see if we can refresh our</p> <p>24 recollection about where we are and what the various</p> <p>25 design alternatives that have been discussed from a</p>	<p style="text-align: right;">Page 40</p> <p>1 planning perspective?</p> <p>2 A. Okay. The tower design and height which</p> <p>3 really followed the guidelines and directions set forth</p> <p>4 in the bid documents, the bid specifications, as well</p> <p>5 as the lease agreement between Verizon Wireless and</p> <p>6 Harding Township, set forth a tree pole at a height of</p> <p>7 140 feet, exclusive of branching.</p> <p>8 As the drawings indicated the top of</p> <p>9 branching extended to a height of 146 feet. Obviously</p> <p>10 during the course of the public hearings, specifically</p> <p>11 the extensive radio frequency testimony that was</p> <p>12 provided by the applicant, it was determined that the</p> <p>13 height of 120 feet would be sufficient for the</p> <p>14 applicant to meet their coverage objectives, also,</p> <p>15 still essentially following the guideline of the bid</p> <p>16 specifications still as a tree pole.</p> <p>17 Obviously, located at the DPW, which again</p> <p>18 was the location specified in the bid documents, during</p> <p>19 the course of Mr. Marowski's testimony the Board was</p> <p>20 reminded of the fact that we're dealing here with an</p> <p>21 unmanned, unoccupied facility. It's a use that from a</p> <p>22 planning perspective is in the nature of a utility.</p> <p>23 Again, no employees involved --</p> <p>24 CHAIRMAN FLANAGAN: Mr. Masters, I</p> <p>25 apologize to interrupt. Mr. Schneider, I apologize,</p>

<p style="text-align: right;">Page 41</p> <p>1 but I believe that Lori's computer just died and that</p> <p>2 is our recording device.</p> <p>3 Lori, can you hear us or hear me? (No</p> <p>4 response.) And does anybody have -- she sent me a text</p> <p>5 message and my phone just died. Alf, or does anybody</p> <p>6 else have Lori's phone number where they can text her</p> <p>7 to see what she's doing?</p> <p>8 MS. MERTZ: I just texted her, Mike.</p> <p>9 CHAIRMAN FLANAGAN: Okay. Thank you.</p> <p>10 THE WITNESS: Do you want me to hold?</p> <p>11 CHAIRMAN FLANAGAN: Please do for one</p> <p>12 second. I just want to make sure we have the record.</p> <p>13 I guess the official record, Mr. Schneider and Steve,</p> <p>14 is the transcript you have, right, it's the</p> <p>15 Stenographer? It is not her recording; is that</p> <p>16 correct?</p> <p>17 MR. MLENAK: The recording that we're doing</p> <p>18 is the official record, unless we make note that it's</p> <p>19 going to be the transcript. We've done that -- Mr.</p> <p>20 Schneider and I have talked about that previously when</p> <p>21 we were in discussion to hold this in an alternative</p> <p>22 venue when that wasn't available, and I'd ask Mr.</p> <p>23 Schneider now if we have to continue would he consent</p> <p>24 to the same being used as the official record?</p> <p>25 MR. SCHNEIDER: I have no objection to</p>	<p style="text-align: right;">Page 42</p> <p>1 that. That's why we bring the Shorthand Reporter. I'm</p> <p>2 assuming -- I didn't check to see if she's doing this,</p> <p>3 but Bridget or Iris, are you on? I assume you are</p> <p>4 recording or transcribing?</p> <p>5 COURT REPORTER: Yes, Mr. Schneider, I am</p> <p>6 online. I have been throughout.</p> <p>7 CHAIRMAN FLANAGAN: Okay. Then it's okay</p> <p>8 then Steve or Mr. Schneider to proceed without Lori</p> <p>9 back on; is that correct?</p> <p>10 MR. MLENAK: That's right. This transcript</p> <p>11 will now serve in lieu of the audio recording as the</p> <p>12 official record.</p> <p>13 MR. SCHNEIDER: And we do obviously have</p> <p>14 the video so everyone is still able to see all of the</p> <p>15 exhibits and presentations.</p> <p>16 CHAIRMAN FLANAGAN: All right. Sounds</p> <p>17 good. Sorry about that, but go ahead, please.</p> <p>18 MR. SCHNEIDER: By the way, Iris, if for</p> <p>19 some reason you need a break just jump in. Maybe we'll</p> <p>20 be able to get you through eleven o'clock, but I'll</p> <p>21 just offer that as a courtesy.</p> <p>22 COURT REPORTER: Thank you, Mr. Schneider.</p> <p>23 BY MR. SCHNEIDER:</p> <p>24 Q. Mr. Masters, you were -- let me just</p> <p>25 refresh your recollection. We were talking about the</p>
<p style="text-align: right;">Page 43</p> <p>1 tower design and you also were referring to the</p> <p>2 testimony of Mr. Marowski as to the unmanned facility,</p> <p>3 its operational issues and matters of that.</p> <p>4 Let me follow up with a couple of questions</p> <p>5 in that regard. Let me go back to the tower design.</p> <p>6 You have referenced the fact that the bid contemplated</p> <p>7 -- not contemplated -- specified a what I'll call a</p> <p>8 tree monopole, a stealth tree monopole with the</p> <p>9 branching. We'll get to this in a little further</p> <p>10 detail.</p> <p>11 But in that regard, I think it's reasonable</p> <p>12 to indicate that during the course of the public</p> <p>13 hearing there has been extensive discussion, and</p> <p>14 frankly inquiry by the Board as to whether the</p> <p>15 applicant would consider for the Board's consideration</p> <p>16 the use of an alternate stealth-type structure, that</p> <p>17 being the flagpole, whether it be a flagless flagpole</p> <p>18 or one with a flag. You're aware of that; correct?</p> <p>19 A. I am.</p> <p>20 Q. Okay. And that in part was -- I don't want</p> <p>21 to speak for the Board -- occasioned by their general</p> <p>22 familiarity with similar designs that have been</p> <p>23 deployed at the Green Village Fire Company, as well as</p> <p>24 the King Shopping Center; correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. You discussed, and you made</p> <p>2 reference in large measure to some of the operational</p> <p>3 or benign operational aspects of the facility. You</p> <p>4 referred to Mr. Marowski's testimony about the periodic</p> <p>5 maintenance visits.</p> <p>6 Just for purposes of the record and without</p> <p>7 repeating that, there was extensive testimony all the</p> <p>8 way back in April and May of 2019, in the course of his</p> <p>9 testimony relative to the design of the compound and</p> <p>10 supplemental landscaping; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Now, the tower as proposed, whether</p> <p>13 it be a flagpole or a tree monopole it's irrelevant in</p> <p>14 most material aspects, will be designed to accommodate</p> <p>15 future collocators; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. And the tower has similarly been offered by</p> <p>18 the Applicant to be made available free of charge to</p> <p>19 any township or other emergency service entities that</p> <p>20 require free use of the tower; is that correct?</p> <p>21 A. Yes. That is my understanding.</p> <p>22 Q. Okay. Let's talk about the, for a moment,</p> <p>23 the location without rehashing the site plan. The</p> <p>24 location of the compound vis-a-vis the DPW facility, do</p> <p>25 you have a thought in terms of its -- whether the</p>



<p style="text-align: right;">Page 45</p> <p>1 location of the compound in any way has the potential</p> <p>2 to operationally interfere with any ongoing aspects of</p> <p>3 the DPW property?</p> <p>4 A. I do. It's location will not in any way</p> <p>5 interfere with the operational aspects of the DPW use</p> <p>6 either for the primary functions of the department of</p> <p>7 public works in terms of maintenance of public</p> <p>8 facilities, or for the operation of the Township</p> <p>9 Recycling Center.</p> <p>10 The compound is proposed to be located at</p> <p>11 the rear portion of the recycling shed, and it will be</p> <p>12 out of the way both in terms of pedestrian traffic, as</p> <p>13 well as vehicular traffic.</p> <p>14 Q. The compound as I recall it comprises only</p> <p>15 of 1800-square feet to include both the proposed tower,</p> <p>16 the equipment of Verizon, and the ability to</p> <p>17 accommodate a collocator.</p> <p>18 So you have a thought in terms of the</p> <p>19 significance of the 1800-square foot compound on a</p> <p>20 4.21-acre piece of property?</p> <p>21 A. I do. The 1800-square foot equipment</p> <p>22 compound area, 30-feet-by-60-feet on the 4.21-acre</p> <p>23 piece of property translates into an increase in</p> <p>24 impervious coverage of 35 one-hundredths of one</p> <p>25 percent, a .35 -- excuse me, a .35 percent increase in</p>	<p style="text-align: right;">Page 46</p> <p>1 the overall impervious coverage from an existing</p> <p>2 coverage of 42.65 percent, to an impervious coverage of</p> <p>3 43 percent, which I believe constitutes an</p> <p>4 insignificant increase in the overall impervious</p> <p>5 coverage.</p> <p>6 Q. Okay. You had mentioned right from the</p> <p>7 beginning of your testimony that you had undertaken a</p> <p>8 visual analysis at various specific designs and</p> <p>9 heights. You've also just moments ago briefly</p> <p>10 discussed at least two of the design alternatives.</p> <p>11 Perhaps now having gone over -- with that</p> <p>12 background and gone over some of the operational</p> <p>13 aspects now might be -- just checking the time here --</p> <p>14 the appropriate time to present the benefits of your</p> <p>15 visual analysis.</p> <p>16 MR. SCHNEIDER: And let me just refresh</p> <p>17 everybody's recollection. We did have a specific</p> <p>18 discussion a number of meetings ago about what the</p> <p>19 Board's specific request was relative to the types of</p> <p>20 design and we have followed those and have, as I</p> <p>21 promised, submitted those in advance. I don't know</p> <p>22 whether the Board has seen them in advance but they are</p> <p>23 posted on the website. But based on Lori's computer</p> <p>24 issues I think Mr. Masters can share that with you.</p> <p>25 Mr. Chairman, we can proceed on that basis?</p>
<p style="text-align: right;">Page 47</p> <p>1 CHAIRMAN FLANAGAN: Yes. That would be</p> <p>2 great. And Lori, are you back up and running? You're</p> <p>3 on mute. You're okay? Okay.</p> <p>4 Mr. Masters, if you can share your screen</p> <p>5 that probably would be easiest.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. SCHNEIDER: So what I've done, Counsel</p> <p>8 and Mr. Chairman, is I have submitted what I'll just</p> <p>9 for organizational purposes, three different proposed</p> <p>10 exhibits. The first one I don't think we need to spend</p> <p>11 a lot of time on, but I've premarked them as -- let me</p> <p>12 pull it up here, Exhibits A-28, A-29 and A-30, which</p> <p>13 are being screen shared by Mr. Masters at this time for</p> <p>14 the benefit of the public.</p> <p>15 (Exhibit A-28, A-29, and A30, was received</p> <p>16 and marked.)</p> <p>17 BY MR. MASTERS:</p> <p>18 Q. Mr. Masters, I see that the first thing</p> <p>19 that you have displayed, which technically is part of</p> <p>20 A-28, is what I'll generically call, essentially, a key</p> <p>21 map from where you've taken certain photographs; is</p> <p>22 that correct?</p> <p>23 A. That is correct.</p> <p>24 Q. Okay. And before we -- I may have made an</p> <p>25 erroneous assumption that the Board is very familiar</p>	<p style="text-align: right;">Page 48</p> <p>1 with how these visual analyses are conducted, so for</p> <p>2 the benefit of the both the Board and members of the</p> <p>3 public, before we get into the specific visual</p> <p>4 analysis, can you describe how the visual analysis is</p> <p>5 undertaken, when you undertook the visual analysis, and</p> <p>6 the respective viewpoints from where you took the</p> <p>7 visual analysis?</p> <p>8 A. Yes. The visual analysis was prepared with</p> <p>9 the assistance of a crane, what we commonly refer to as</p> <p>10 a crane test. That test was conducted back on</p> <p>11 February 27th, 2018. Although the aerial photograph</p> <p>12 that's being used, which happens to be a Google Image</p> <p>13 aerial photograph, shows lush green trees and full</p> <p>14 vegetation, I would like to point out that the time of</p> <p>15 the year when the visual impact analysis was conducted</p> <p>16 was done in February when the deciduous trees had no</p> <p>17 vegetation.</p> <p>18 So from a visual impact perspective it's</p> <p>19 the -- depending on your perspective I guess -- the</p> <p>20 best or the worst time to do a visual impact analysis.</p> <p>21 It's certainly the time of the year where there is the</p> <p>22 greatest viewshed of the proposed facility, as opposed</p> <p>23 to the summertime when the trees are in full leaf.</p> <p>24 Q. So largely from the Applicant's perspective</p> <p>25 it's akin to more of a worst-case scenario?</p>

<p style="text-align: right;">Page 49</p> <p>1 A. Correct.</p> <p>2 Q. Okay. Go ahead. I'm sorry. And just take</p> <p>3 a moment, if you can, you reference the crane test, and</p> <p>4 how do you utilize the crane as distinct from a</p> <p>5 balloon? The crane obviously being the more definitive</p> <p>6 way of undertaking. How does that transform itself</p> <p>7 into the visual analysis that you did?</p> <p>8 A. There are generally two methods to perform</p> <p>9 the analysis: One, is a balloon test where you inflate</p> <p>10 a 4-foot diameter, usually red balloon, and float it at</p> <p>11 the height of the proposed tower. The difficulty --</p> <p>12 the practical difficulty with that methodology is that</p> <p>13 you have to have ideal weather conditions, specifically</p> <p>14 ideal wind conditions, because especially the higher</p> <p>15 you go the greater the wind turbulence.</p> <p>16 So the preferred method of doing this is</p> <p>17 with a crane where you have a stationary crane mast</p> <p>18 where you can put the top of the mast up at the top</p> <p>19 height of the proposed installation, in this case it</p> <p>20 was at 146 feet. That was at the top of the crane</p> <p>21 mast.</p> <p>22 The exhibit here, which is an aerial photo</p> <p>23 location exhibit, the yellow numbered circles depict</p> <p>24 the various vantage points. The red circle depicts the</p> <p>25 approximate area of the location. It's not the precise</p>	<p style="text-align: right;">Page 50</p> <p>1 area, but it's obviously the property which is the</p> <p>2 subject of the installation. The pole itself is just</p> <p>3 to the left of the "S" in "site," if you see that at</p> <p>4 the center portion of the image.</p> <p>5 You can see the white roof there to the</p> <p>6 left of the word "site" is the roof of the recycling</p> <p>7 shed. The municipal garages to the north, obviously</p> <p>8 the newer building which I believe was constructed</p> <p>9 sometime in 2019 did not exist at the time this crane</p> <p>10 test was done, or when this image was flown, which was</p> <p>11 August 27, 2016.</p> <p>12 I think that's -- just to give a quick</p> <p>13 oversight, you've got major east-west road, Village</p> <p>14 Road, Lees Hill Road, to the left right above the word</p> <p>15 "Lees" would be the Presbyterian Church. The school</p> <p>16 would be up to the left just outside the edge of the</p> <p>17 image. Millbrook Road running diagonally across</p> <p>18 Village Road. The New Vernon Firehouse and volunteer</p> <p>19 ambulance squad facility to the extreme right or</p> <p>20 eastern portion of the image.</p> <p>21 You can see the access driveway kind of</p> <p>22 curve, a linear access driveway coming in off of</p> <p>23 Millbrook Road right about where the number one is on</p> <p>24 the image, and that obviously circles around to the</p> <p>25 DPW, the Tunis-Ellick House just to the northeast of</p>
<p style="text-align: right;">Page 51</p> <p>1 the number seven on the image. The parking lot area's</p> <p>2 there. The parking lot next to the Tunis-Ellicks</p> <p>3 House. The other parking lot further to the west.</p> <p>4 Sandwiched between numbers six, two and</p> <p>5 three is the New Vernon Post Office, restaurant</p> <p>6 facility and parking lot. Across the street where the</p> <p>7 deli building is located at the corner of Millbrook</p> <p>8 Road and Village Road, approximately midway between the</p> <p>9 numbers two and three on the north side of Village Road</p> <p>10 would be where the Chase Bank used to be. I think we</p> <p>11 can move on to the next image.</p> <p>12 Q. Mr. Masters, I don't want to spend a lot of</p> <p>13 time on A-28, but I want to present A-28 just for the</p> <p>14 purpose of showing what the original design was as</p> <p>15 contemplated by the public bid at the higher height and</p> <p>16 the tree pole; is that correct?</p> <p>17 A. That's correct. And the reports do, of</p> <p>18 course, of this exhibit is that it establishes the</p> <p>19 eight vantage points, in other words, the before shots,</p> <p>20 the pictures of the crane as it existed on February the</p> <p>21 27th, 2018.</p> <p>22 Image one, this is the view from Millbrook</p> <p>23 Road at the entry driveway to the Harding Township</p> <p>24 Department of Public Works and Recycling Center.</p> <p>25 The next image 1A, this would be the tree</p>	<p style="text-align: right;">Page 52</p> <p>1 monopole at the top-of-branching height of 126 feet.</p> <p>2 Q. One hundred twenty-six or 146?</p> <p>3 A. I'm sorry. 146 feet. Top of pole 140</p> <p>4 feet; top of branching 146 feet.</p> <p>5 Image two, this is a view from Village Road</p> <p>6 at number 17 in front of the entrance to the New Vernon</p> <p>7 Post Office. That was the restaurant The LaDiDa, which</p> <p>8 was the predecessor to the cafe. You can see the crane</p> <p>9 in the center portion of the image. Image 2A, the</p> <p>10 simulation of the 146-foot tall tree pole.</p> <p>11 Image three, this is a view taken from</p> <p>12 Village Road kind of in the heart of the Historic</p> <p>13 District between numbers eight and ten, eight being on</p> <p>14 the left, and ten on the right, I think. Looking</p> <p>15 towards the DPW property you can see the crane in the</p> <p>16 center portion of the property.</p> <p>17 This particular vantage point was taken</p> <p>18 from in front of number 9 Village Road, which was at</p> <p>19 one time known as The Academy, which is one of the four</p> <p>20 contributing factors to the New Vernon Village Historic</p> <p>21 District.</p> <p>22 3A, the simulation showing the 146-foot</p> <p>23 tree pole.</p> <p>24 Image four, this is taken from Copper Tree</p> <p>25 Lane at number six, in front of number 6 Copper Tree</p>

<p style="text-align: right;">Page 53</p> <p>1 Lane. The corresponding photo simulation 4A showing</p> <p>2 the tree pole in the center portion of the image.</p> <p>3 Five, this is a view that was taken from</p> <p>4 the backyard of number 7 Lees Hill Road. You can see</p> <p>5 the crane in the center portion of the photograph. The</p> <p>6 corresponding photo simulation 5A of the tree pole.</p> <p>7 Image six, taken from the backyard of</p> <p>8 number 14 Village Road. This is the house that is</p> <p>9 immediately east of the post office restaurant property</p> <p>10 on Village Road. You can see the crane there in the</p> <p>11 center portion. Simulation 6A of the 146-foot version</p> <p>12 of the tree pole.</p> <p>13 Image seven, taken from the parking lot at</p> <p>14 the Tunis-Ellicks House and museum. You can see the</p> <p>15 crane, the top of the crane in the very center portion</p> <p>16 of the photograph, image 7A with the tree pole.</p> <p>17 And the last view, view eight was taken</p> <p>18 from the common driveway that services 28 and 32</p> <p>19 Millbrook Road, which is to the -- kind of to the south</p> <p>20 of the DPW property. The crane in the center portion,</p> <p>21 the photo simulation 8A below.</p> <p>22 Q. Do you want to go on to Exhibit A-29 now,</p> <p>23 Mr. Masters?</p> <p>24 A. We can do that.</p> <p>25 So the numbering, you know, system there,</p>	<p style="text-align: right;">Page 54</p> <p>1 one through eight corresponds with the previous</p> <p>2 exhibit, obviously, the same vantage points. What we</p> <p>3 do here is we interpolate using the crane. We knew the</p> <p>4 crane height. We had an established height of 146</p> <p>5 feet. We know -- we established where the ground</p> <p>6 elevation is. There's no significant terrain issues</p> <p>7 here, either undulating terrain or severe differences</p> <p>8 in terrain.</p> <p>9 The area of the DPW and the surrounding</p> <p>10 viewshed is relatively flat in nature. So it becomes</p> <p>11 fairly easy to establish the ground plain. And with</p> <p>12 some computer applications we interpolate down. You</p> <p>13 can do this effectively, as long as you're</p> <p>14 interpolating downward. Doesn't work so well going in</p> <p>15 the opposite direction, because obviously if you have a</p> <p>16 crane at a fixed height, say 146 feet, and you want to</p> <p>17 do photo simulations of what a pole would look like at</p> <p>18 166 feet you have no way of really determining what the</p> <p>19 effect is in terms of the outward expansion of the</p> <p>20 viewshed by increasing 20 feet up in the air because</p> <p>21 you haven't driven that outer perimeter of the viewshed</p> <p>22 to be able to make that calculation or determination.</p> <p>23 But going in the opposite direction you're going at a</p> <p>24 lower height, so it's simply -- the computer simply</p> <p>25 tells you the percentage difference in the height.</p>
<p style="text-align: right;">Page 55</p> <p>1 And here what we did was we simulated, and</p> <p>2 the "B" versions in this exhibit are all tree poles</p> <p>3 with a top-branch height of 126 feet. Top-of-pole</p> <p>4 height of 120 feet. And all of the "C" images are tree</p> <p>5 poles at 106-foot top of branch height, a hundred foot</p> <p>6 top-of-pole height.</p> <p>7 So here again we have the first image from</p> <p>8 the entrance drive coming into the DPW the 126 version.</p> <p>9 We move to the "C" image, the 106 version.</p> <p>10 Image 2B from Village Road at the post</p> <p>11 office, 126 feet. Image 2C, 106 feet at the same</p> <p>12 vantage point.</p> <p>13 Image 3B from between 8 and 10 Village</p> <p>14 Road, opposite number 9 Village Road at 126 feet. 3C</p> <p>15 106 feet.</p> <p>16 4B from the Copper Tree Lane with 126-foot</p> <p>17 top-of-branch height of the following image with</p> <p>18 106-foot height.</p> <p>19 5B from the rear of 7 Lees Hill Road at 126</p> <p>20 feet. 5C at 106 feet.</p> <p>21 View six from the backyard of 14 Village</p> <p>22 Road at 126 feet. 6C at 106 feet.</p> <p>23 Seven, from the parking lot at the</p> <p>24 Tunis-Ellicks House and Museum at 126 feet. 7C at</p> <p>25 106 feet.</p>	<p style="text-align: right;">Page 56</p> <p>1 And from the driveway at 28 and 32</p> <p>2 Millbrook Road at 126 feet. And the final 8C at</p> <p>3 106 feet.</p> <p>4 Q. Mr. Masters, can I just ask you one</p> <p>5 question about the tree pole design? Was there a</p> <p>6 specific tree pole design that you modeled the visual</p> <p>7 analysis after?</p> <p>8 A. There was. It's a tree pole that actually</p> <p>9 exists and it's not all that far away from Harding</p> <p>10 Township. It's located at the Delbarton School. You</p> <p>11 can go up there and it's 300 Mendham Road, Morris</p> <p>12 Township mailing address, but it's in Morris Township.</p> <p>13 If you take the east gate entrance and go up around to</p> <p>14 the right there's a little parking area, and you can</p> <p>15 walk up to see what that tree pole looks like. I</p> <p>16 personally, not because I worked on it, but I</p> <p>17 personally think that tree pole it's definitely the</p> <p>18 best looking or most realistic looking tree pole that I</p> <p>19 have seen in New Jersey.</p> <p>20 Q. Okay. Thank you. Let's turn our attention</p> <p>21 to the next Exhibit, I guess A-30?</p> <p>22 A. Okay. All right. So now we have switched</p> <p>23 to the flagpole option. And again same goes for this.</p> <p>24 Obviously, the same eight vantage points. Each vantage</p> <p>25 point has an image "D" as in David, and an image "E" as</p>

<p style="text-align: right;">Page 57</p> <p>1 in Edward. The "D" version is the 120-foot flagpole.  2 The "E" version is the 100-foot flagpole.  3 This is a flagpole that as Mr. Schneider  4 briefly mentioned earlier it's similar to the one  5 behind the King Supermarket in Mendham. I would note  6 that that particular flagpole is 130-feet tall. Of  7 course, the "D" version here we're proposing is 120.  8 We moved to the "E" version and it's 100.  9 Next image out on Village Road the 120-foot  10 flagless flagpole. I would note that -- and it can  11 vary, but I would note that normally the upper --  12 approximately, the upper 50 feet is what's referred to  13 as the radome, r-a-d-o-m-e, which is the portion of the  14 flagpole that actually houses the antennas. You'll  15 note that the difference between this type of  16 alternative structure and most of the others, including  17 the tree pole is that you don't see the antennas.  18 They're internal to the structure.  19 The radome can accommodate a cluster of  20 three antennas. Most of the carriers today find the  21 need to have to utilize two radomes to stack so that  22 they can install six antennas in order to meet their  23 radio frequency requirements.  24 So that the -- the 2D is the 122E. Here is  25 the 100-foot version. 3D out on Village Road 120 feet.</p>	<p style="text-align: right;">Page 58</p> <p>1 3E a hundred feet.  2 4D Copper Tree Lane the 120-foot. 4E the  3 100 foot which effectively disappears from view.  4 5D, from the backyard of 7 Lees Hill Road,  5 the 120-foot flagpole version. 5E, the 100-foot  6 flagpole version.  7 Six, 14 Village Road, 120 feet. 6D is  8 120 feet. 6E is a hundred feet.  9 Seven, back at the Tunis-Ellicks House. D,  10 just happens to be there was nothing done on purpose  11 there, it just happens to be that the pole is located  12 behind that scraggly deciduous tree there in the  13 foreground. 7E at 100 feet. Again, the flagpole  14 becomes somewhat difficult to see because of the trees  15 in the foreground.  16 Eight, at 120 feet. 8D at 120 feet. And  17 8E at 100 feet.  18 The other distinction that I would point  19 out to the Board, because the other flagpole that Mr.  20 Schneider mentioned earlier this evening was the  21 existing flagpole at the Green Village Firehouse in  22 Chatham Township. The only -- well, there's two  23 differences: That flagpole is a hundred feet in  24 height; whereas, the King Supermarket flagpole is  25 130 feet.</p>
<p style="text-align: right;">Page 59</p> <p>1 The other notes that I would make is, at  2 least the observation that I made, the Green Village  3 flagpole was one of the projects that I worked on. I  4 was not involved in the Kings Supermarket flagpole  5 project. The Kings Supermarket -- I noticed the Kings  6 Supermarket flagpole has a rather shiny, or I dare say  7 glossy white exterior paint finish to the pole;  8 whereas, the Green Village Flagpole is more of a flat  9 or slightly off-white color flagpole, which I  10 personally seem to think, especially when the sun is  11 shining in the cloudless sky, tends to work better.  12 Certainly works better when it's a cloudy sky, but also  13 works better in a full sun sky because the glossiness  14 of the white is not reflecting from the sun.  15 The other distinguishing factor between the  16 Green Village flagpole and the Kings Supermarket  17 flagpole, is that the Green Village flagpole has a gold  18 finial on the top of the flagpole; whereas, the Kings  19 Supermarket flagpole is flat as it appears in these  20 particular photo simulations.  21 Again, only personal preference. I just  22 think the finial tends to make the structure look more  23 like a flagpole than just a stack extending up in the  24 air. I think even though it may be just a somewhat  25 minor appurtenance, I think it distinguishes the pole</p>	<p style="text-align: right;">Page 60</p> <p>1 as a flagpole as opposed to what is just essentially a  2 pole sticking up in the air.  3 MR. SCHNEIDER: Mr. Chairman, if I can,  4 it's -- I'll ask for your input. It's a quarter to  5 eleven. We have been going at it. I'm happy to  6 continue, but I'm about to enter with the discussion of  7 the statutory criteria. That's going to take I'm  8 estimating at least a half hour to 40 minutes. Mr.  9 Masters, do you think about a half hour to 45 minutes,  10 you think?  11 THE WITNESS: That sounds about right.  12 MR. SCHNEIDER: So I'd rather not -- I'm at  13 a point where we either break or I'd like to go  14 forward. You're volunteers. If you prefer to break at  15 this point that's okay. I just don't want to break up  16 while I'm in the middle of the statutory criteria, if  17 you can appreciate that.  18 CHAIRMAN FLANAGAN: Understood. And I  19 apologize for running late with the previous  20 application. I would say if we were going to go a  21 little past eleven let's continue, but I think the  22 chance that we end up going to 11:30 it's frankly just  23 too late. I think --  24 MR. SCHNEIDER: And I don't want to go to  25 11:04 and then right in the middle of that</p>

<p style="text-align: right;">Page 61</p> <p>1 discussion -- of that discussion. So now would be, I  2 want to say call it an early evening, but now would be  3 probably the time to break with the obvious commitment  4 that we'll come back at a date, whether it's special or  5 otherwise depending on your agenda, to complete Mr.  6 Master's testimony and proceed with the Board and/or  7 public and/or Mr. Simon's questions at that time.  8 CHAIRMAN FLANAGAN: Yes. So why don't we  9 break now. We will be back -- or this application will  10 be heard at the next regular meeting on the Thursday  11 night.  12 MR. SCHNEIDER: I don't know if Lori's  13 available. Given the importance and probably not --  14 some significant questioning by either the Board, or  15 certainly from Mr. Simon based on past experience,  16 would we anticipate having a good portion of that  17 evening?  18 CHAIRMAN FLANAGAN: Yes. As it stands it  19 looks like we have four other applications that will be  20 coming before the Board for next month. I believe  21 they're ready to go. And if that's the case I'll hold  22 a special meeting for those other applications keeping  23 this application on a regular night which will afford  24 you probably the entire night.  25 MR. SCHNEIDER: That would be appreciated.</p>	<p style="text-align: right;">Page 62</p> <p>1 So just for purposes of the record I'm going to quickly  2 look at my calendar here just to make sure I carry it  3 to the right date. Well, the old tax date, April 15th  4 -- oh, no, I'm sorry.  5 CHAIRMAN FLANAGAN: No, that's correct.  6 MR. SCHNEIDER: April 15th?  7 SECRETARY TAGLAIRINO: Yes.  8 MR. SCHNEIDER: So we'll grant an extension  9 of time both under the MLUL and the Shot Clock to  10 April 15th. No further notice will be required of the  11 public. The public can access the meeting in the same  12 way as we've done with the posting on the website, if  13 that's all acceptable to you and Counsel?  14 CHAIRMAN FLANAGAN: Yes. The Board accepts  15 the extension, or I'm still not sure, Mr. Schneider,  16 exactly what we do here, but we extend it as well.  17 MR. SCHNEIDER: We're cooperating, I guess,  18 is what I would say.  19 CHAIRMAN FLANAGAN: There we go.  20 MR. SCHNEIDER: So we will see you on the  21 old tax date then on April 15th at 7:30.  22 CHAIRMAN FLANAGAN: Yes. And let me just  23 ask very quickly. I want to get a sense for this  24 application going forward. We're going to have Mr.  25 Masters back at next meeting. Mr. Simon I think said,</p>
<p style="text-align: right;">Page 63</p> <p>1 you know, taking a guess you thought two hours, maybe  2 two and a half of cross. What would the next witness  3 be for you, Mr. Schneider?  4 MR. SCHNEIDER: At this point that would be  5 probably be my last witness.  6 CHAIRMAN FLANAGAN: Okay. And Mr. Simon,  7 do you expect you're going to present any witnesses?  8 MR. SIMON: I will present witnesses. Good  9 evening.  10 CHAIRMAN FLANAGAN: Good evening. How are  11 you?  12 MR. SIMON: I'm well. So I will definitely  13 present at least probably two witnesses, maybe more,  14 and in fairness to the Board and certainly the  15 Applicant, Mr. Schneider, I will try certainly my best  16 by the next meeting to at least be in a position that  17 as we get closer to the end of that meeting and talk  18 about scheduling and housekeeping that I'll try to give  19 the Board certainly, you know, my best estimate, if not  20 expectation, in terms of timing and witnesses going  21 forward.  22 CHAIRMAN FLANAGAN: Yes, I would appreciate  23 it, because it sounds like the next meeting we'll  24 conclude not only the Applicant's witnesses, but I  25 think -- I hope your cross-examination of the</p>	<p style="text-align: right;">Page 64</p> <p>1 Applicant's witnesses. So at that point the next  2 meeting will either be your witnesses or we'll be ready  3 to vote.  4 MR. SIMON: Like I said, I'm going to  5 definitely have two witnesses at a minimum.  6 CHAIRMAN FLANAGAN: All right. Fair  7 enough.  8 All right. So then we're carried till next  9 month. Is there anything else Mr. Schneider, Mr.  10 Simon? Is that it for this application for the night?  11 MR. SCHNEIDER: None for me. Thank you,  12 Mr. Chairman. Thank you all.  13 MR. SIMON: That's it for me.  14 CHAIRMAN FLANAGAN: All right. Thank you.  15 Is there any other business before the Board.  16 (Whereupon, the Board discusses other  17 Agenda business at this time.)  18 (The hearing on this application concludes  19 at 10:53 p.m.)  20  21  22  23  24  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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