

HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
MEETING
July 15, 2021
SPECIAL MEETING TIME 6:30 PM

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board Vice-Chair, Mr. Newlin called the meeting of the Board of Adjustment to order at 6:30 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	Excused	Mr. Newlin	Present	Mr. Maselli	Excused
Mr. Addonizio	Present	Ms. Sovolos	Present	Mr. Boyan	Present (Late)
Mr. Rosenbaum	Present	Mr. Symonds	Present	Mr. Flanagan	Present(Late)

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

REGULAR MEETING

ADMINISTRATIVE—Mr. Newlin

Mr. Newlin noted that the Wittig and Wade applications are carried until the August meeting.

MINUTES

Mr. Symonds made a motion to approve the May 20, 2021, the May 27, 2021 and June 17, 2021 meeting minutes. It was seconded by Ms. Sovolos. On a voice vote all eligible members voted to approve the minutes.

RESOLUTIONS

<u>Application# BOA# 09-21</u>	Chester & Amanda Van Doren
	37 Long Hill Road, B17/L41, RR Zone

Mr. Symonds made a motion to adopt Resolution BOA# 01-21 Van Doren. Ms. Sovolos seconded the motion. On a voice vote eligible members, Mr. Addonizio, Ms. Sovolos, Mr. Symonds and Mr. Rosenbaum voted in favor of the adoption.

The above resolution is appended to the minutes.

<u>Application BOA# 14-21</u>	Charles Kilgore and Victoria Hawbecker
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82 Sand Spring Road, B22/L1

Applicant is requesting variance relief for a front and side setback and for an accessory structure setback as per N.J.S.A.40:55D-70(c).

Presenting:

Nicole Magdziak, Attorney

Richard Schommer, Engineer

Mr. Schommer was sworn in for testimony.

- Ms. Magdziak presented a proposed plan for a demolition and a new build at 82 Sand Spring Road.
- The applicant is seeking setback relief.
- Mr. Schommer presented the existing and proposed conditions on the property.
- Mr. Schommer drew attention to the wetlands on the property.
- The Board set a site inspection for July 24, 2021 at 9:00 a.m.

Application BOA# 11-21

William Lewis

523 Van Beuren Road, B5/L2, RR Zone

Applicant is requesting an amendment to a prior variance for modification of a non-conforming use as per N.J.S.A.40:55D-70(d) 2.

Presenting:

Will Lewis, Owner

Mr. Lewis was sworn in for testimony.

- Mr. Lewis presented proposed plans for a pool house for a modification of a non-confirming use.
- Mr. Lewis presented the variance plan of the property and identified the location of the proposed structure.
- Mr. Lewis presented Exhibit A-1, photos of the proposed pool house.
- Mr. Hall noted that this is an amendment to a prior approval.

Mr. Symonds made a motion to approve the amended application as presented. It was seconded by Ms. Sovolos. A roll call vote went as follows:

For: Mr. Newlin, Mr. Addonizio, Mr. Symonds, Ms. Sovolos, and Mr. Rosenbaum

Against: None

Application BOA# 13-21

Morris Home Builders, LLC

604 Spring Valley Road, B 3/L3,

Applicant is requesting variance relief for a front and side setback and for lot coverage as per N.J.S.A.40:55D-70(c).

Presenting:

Nicole Magdziak, Attorney

Spencer Natunen, Contractor

Michael Anderson, Contract Purchaser

Mr. Natunen was sworn in for testimony.

- Ms. Magdziak presented the existing conditions on the property.
- Ms. Magdziak stated that the applicant is proposing to build a deck to the rear of the property and is asking for setback and lot coverage relief.
- Ms. Magdziak noted that the lot is an undersized lot for the zone.
- Mr. Hall noted a stream in between 2 parts of the property.
- Ms. Magdziak noted that the contract purchaser has contacted the owner and has proposed to subdivide and adjust the lot line to create one lot.
- Ms. Magdziak presented Exhibit A-1 (10 sheets), a packet of photos depicting conditions on the property.
- Mr. Natunen described the deck details and the architect plans.
- The Board proposed a deed restriction to prevent further development on the lot north of the stream.
- The Board authorized Mr. Hall to draft a conditional resolution subject to the terms of the deed restriction for a possible vote at the August meeting.

Mr. Newlin made a motion to authorize the drafting of a resolution for this application subject to deed restriction verbiage be submitted for review for the August meeting. It was seconded by Mr. Rosenbaum. On a voice vote all were in favor.

Application BOA# 15-21

Michael Hofmann

34 Blue Mill Road, B16/L26 R-3 Zone

Applicant is requesting variance relief for a front setback as per N.J.S.A.40:55D-70(c).

Presenting:

Michael Hofmann, Owner

Mr. Hofmann was sworn in for testimony.

- Mr. Hofmann presented proposed elevations plans for front stair replacement with a widening them and the covered entryway from 5 ft. to 8 ft. in a front setback.

- Mr. Hofmann presented a site map and noted where the stairs are on the plan.
- Mr. Hall noted the positive advisory response from the Historic Preservation Commission.

Mr. Rosenbaum made a motion to approve the application as presented. It was seconded by Mr. Symonds. A roll call vote went as follows:

For: Mr. Newlin, Mr. Addonizio, Mr. Symonds, Ms. Sovolos, and Mr. Rosenbaum
Against: None

Mr. Flanagan joined the meeting at 8:10

Application BOA# 08-21

Steve & Rachel Fleming

508 Spring Valley Road, B11/L5.01, R-1 Zone

Applicant is requesting variance relief for frontage, front and side setbacks and undersized building envelope as per N.J.S.A.40:55D-70(c).

Presenting:

Nicole Magdziak, Attorney

- Ms. Magdziak noted that the Fleming's have revised plans that incorporate a revised rear elevation and an adjustment to the floor plan as per the Board's direction.
- Mr. Fox reviewed the plans and found them acceptable.
- Ms. Magdziak presented the prior and present plans for comparison.

Mr. Flanagan made a motion to approve the application as revised. It was seconded by Mr. Newlin. A roll call vote went as follows:

For: Mr. Flanagan, Mr. Newlin, Mr. Addonizio, Mr. Symonds, Ms. Sovolos, and Mr. Rosenbaum
Against: None

The Board took a break from 8:23 to 8:30.

There was a discussion about a Special Meeting date. The Board agreed upon August 30, 2021 at 7:00 p.m.

Resolution BOA# 06-2021 Return to In-Person Meetings

Mr. Newlin made a motion to approve Resolution BOA# 06-2021 Return to In-Person Meetings. It was seconded by Mr. Flanagan. On a voice vote all were in favor of returning to in-person meeting with a new start time of 7:00 p.m.

BOA Annual Report Resolution BOA# 07-2021

Mr. Flanagan made a motion to approve Resolution BOA# 07-2021 BOA Annual Report Resolution. It was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Mr. Flanagan, Mr. Newlin, Mr. Addonizio, Mr. Symonds, Ms. Sovolos, and Mr. Rosenbaum

Against: None

The above resolutions are appended to the minutes.

All of the evening's prior applications are carried until the August 30, 2021 meeting with no further notice.

There was a break from 8:54 p.m. to 9:00 p.m.

Application BOA# 17-18

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

Presenting:

Richard Schneider, Attorney

Mr. Mlenak is acting Board Attorney for this application.

Robert Simon is an objecting attorney for this application.

Dr. Bruce Eisenstein, RFP Specialist

Peter Steck, Objector Planner

Mr. Steck gave Planning testimony for the Objectors.

Mr. Simon presented Exhibit O-4, a packet of photo simulations.

A transcript of the testimony is appended to the minutes.

Note that due to a technical glitch the recording ceased at 9: 24.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 11.02.

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

JULY 15, 2021

REVISED REGULAR MEETING SCHEDULE FOR AUGUST 2021 THROUGH JANUARY 2022

WHEREAS, the "Open Public Meeting Act" R.S. 10:4-6 and following, requires that public bodies provide adequate notice of meetings; and

WHEREAS, that due to termination of the recent state of emergency and public health emergency declared by Governor Phil Murphy, Board of Adjustment meetings will no longer be held via Zoom and in-person meetings will resume at Kirby Hall, 21 Blue Mill Road in New Vernon NJ on the same dates as set forth in the annual meeting resolution adopted on January 21, 2021; Whereas, the Board of Adjustment has also determined to change the starting time for meetings for the remainder of the year from 7:30 to 7:00 p.m.,

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Harding, in the County of Morris, New Jersey, that the annual meeting resolution adopted on January 21, 2021 is hereby revised and superseded as follows:

1. From August 2021 through January 2022, meetings open to the public will be held by the Board of Adjustment at Kirby Hall, 21 Blue Mill Road in New Vernon, NJ to discuss or act upon public business at 7:00 p.m., on the following dates:

AUGUST 30, 2021 (new date)

SEPTEMBER 16, 2021

OCTOBER 21, 2021

NOVEMBER 18, 2021

DECEMBER 16, 2021

JANUARY 20, 2022

2. Certified copies of this Resolution shall be (a) mailed to the OBSERVER-TRIBUNE, (b) mailed to the DAILY RECORD, (c) filed with the Clerk of the Township of Harding, (d) posted on Township webpage and the bulletin board in the main hallway of the Township Hall and, (e) mailed to any person requesting notices of meeting of the Board of Adjustment pursuant to R.S. 10:4-19 who has paid \$15.00 for agendas and \$25.00 for agendas and minutes, which sum is hereby fixed to cover the costs of providing notice of all meetings of this body during 2021 and January 20, 2022. The foregoing shall be accomplished within seven (7) days of the adoption of this Resolution.

I hereby certify this is a true copy of a Resolution approved by the Board of Adjustment of the Township of Harding at a meeting held on July 15, 2021.

RESOLUTION

Chester & Amanda Van Doren - Application No. BOA 9-21

37 Long Hill Road - Block 17, Lot 41

Adopted July 15, 2021

WHEREAS, Chester and Amanda Van Doren applied to the Harding Township Board of Adjustment for a variance from Section 225-122(H) of the Land Use and Development Ordinance, which allows a maximum lot coverage ratio of 10%, to allow installation of a pool house, pool patio and related lot coverage to the rear of a recently constructed residence on property located in a RR Zone at 37 Long Hill Road and designated on the Township Tax Map as Block 17, Lot 41; and

WHEREAS, the Board of Adjustment conducted an initial public hearing on the application at a virtual meeting using the Zoom platform on May 27, 2021, for which public notice and notice by applicants were given as required by law; and

WHEREAS, the applicants submitted revised plans that reduced the extent of requested variance relief in response to comments provided at the initial hearing; and

WHEREAS, the Board of Adjustment conducted a public hearing on the revised plans at a virtual meeting using the Zoom platform on June 17, 2021; and

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

WHEREAS, at the meeting on June 17, 2021, the Board of Adjustment adopted an oral resolution granting the requested variance relief for the revised proposal, 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 15th day of July 2021, that approval of the amended variance application of Chester and Amanda Van Doren is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The applicants' property is located at 37 Long Hill Road in a RR Zone. It has a lot size of 3.0022 acres, which is nonconforming in relation to the current 5 acre minimum.

2. The property is improved with a recently constructed single family residence and related improvements that replaced an older single-family residence that was nonconforming due its location in close proximity to the front road line. Temporary variance relief to allow the applicants to reside in the prior residence while the new residence and related improvements were being constructed was granted by the Board of Adjustment by resolution adopted on August 16, 2018 on Application No. BOA 8-18.

3. The northern part of the applicants' property is traversed by an easement containing a segment of the driveway serving the residence on the abutting parcel to the north and east that is designated as Lot 41.01. The lot coverage for the driveway segment in the easement is required to be included in the lot coverage calculation for the Van Doren property. Abutting Lot 41.01, owned by Mark Rolland and Kevin Roberts, was the subject on a development application approved by the Harding Township Planning Board by resolution adopted on April 2, 2020 that granted conditional use and minor site plan approvals and (c) variance relief to permit construction of an accessory dwelling and significant renovation and enlargement of the existing residence. Due to the size of the expanded building footprint, the driveway was required to be widened for fire safety access absent installation of

an internal sprinkler system. The owners of Lot 41.01 determined that the requisite driveway widening could not be achieved for the driveway segment in the easement on the Van Doren property and thus proposed to relocate that driveway segment onto the adjacent flag staff for Lot 41.01, thus permitting removal of existing lot coverage on that portion of the Van Doren property. The driveway relocation was a condition in the Planning Board approval resolution, which was required to be recorded.

4. Elimination of the lot coverage in the driveway easement was factored into a plan for installation of pool and patio improvements on the Van Doren property in connection with construction of the new residence. However, the owners of Lot 41.01 have not implemented the Planning Board approval and are not obligated to do so notwithstanding recording of the resolution.

5. Based on the anticipated elimination of the lot coverage in the driveway easement, installation of the proposed pool house, pool patio and related improvements would result in a lot coverage ratio of 10.5%, for which a variance was requested from the 10% maximum in Section 225-122(H). If the lot coverage in the driveway easement is not eliminated, the lot coverage ratio for the initial proposal would be 12.0%. These proposed improvements were shown on plans prepared by Ferriero Engineering, Inc., dated April 1, 2021.

6. The applicants were represented in proceedings before the Board of Adjustment by John R. Dusinberre, Esq.

7. Testimony in support of the application was provided by applicant Chester Van Doren, who described the plan preparation timing in relation to anticipated removal of lot coverage in the driveway easement.

8. The applicants' development proposal was revised in response to comments and concerns expressed at the initial public hearing to reduce the extent of requested variance relief by eliminating the proposed pool house and reducing the pool patio area. These changes reduced the proposed lot coverage ratio absent removal of the driveway easement coverage from 12.0% to 11.2%. The lot coverage ratio will be 9.7% if the driveway easement lot coverage is removed.

9. The revised proposal was shown on plans with a revision date of June 3, 2021 that were filed with the Board of Adjustment and discussed at the second public hearing session on June 17, 2021.

10. The Board concludes that under the unusual particular circumstances, it was not unreasonable for the applicants to prepare plans premised on implementation of the Planning Board approval for abutting Lot 41.01 that would result in removal of lot coverage in the driveway easement that traverses the applicants' property. Under the applicants' revised proposal, if the occurs in the future the applicants' property will have a conforming lot coverage ratio of less than 10% based on implementation of the revised proposal.

11. In the case of this specific property, the location and characteristics of the existing and proposed improvements, and the potential removal of the lot coverage in the driveway easement, strict application of the zoning requirements based on possible abandonment of the neighbors' proposal would impose peculiar and exceptional practical difficulties on the applicants by precluding the proposed pool patio and related lot coverage related improvements under the revised proposal, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

12. The variance relief requested by the applicants 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 Variance

1. A variance is hereby granted from the 10% maximum lot coverage ratio restriction in Section 225-122(H) of the Land Use and Development Ordinance to allow installation of pool patio improvements that will result in a maximum ratio of 11.2% in the event that lot coverage in the driveway easement is not removed, as shown on plans prepared by Ferriero Engineering, Inc., dated April 1, 2021 and revised June 3, 2021.

Variance Conditions

1. This variance is based on and authorizes only the specific revised proposal presented by the applicants as set forth in the testimony, application and revised plans. New or amended variance relief may be required for any materially different improvements.

2. The applicants shall pay any outstanding taxes, technical review fees and other fees.

3. This variance shall expire in the event that the lot coverage in the driveway easement is removed, thus eliminating any deviation from the 10% maximum.

4. This variance shall expire in the event that work on the authorized improvements is not commenced within one year of the date of this resolution and subsequently pursued in a reasonably diligent manner.

Vote on Resolutions

For the Oral Resolution: Addonizio, Rosenbaum, Sovolos, Symonds, Flanagan, Cammarata & Boyan.

Against the Oral Resolution: None.

For the Form of the Written Resolution: Addonizio, Rosenbaum, Sovolos & Symonds.

Against the Form of the Written Resolution: None.

HARDING TOWNSHIP BOARD OF ADJUSTMENT

BOA# 07-2021 ANNUAL REPORT FOR 2020

ADOPTED JULY 15, 2021

WHEREAS, in accordance with N.J.S.A. 40:55D-70.1, the Harding Township Board of Adjustment conducted a review of its decisions on applications for variances during calendar year 2020 and discussed recommendations to the Township Committee and Planning Board concerning potential amendments to the Township Land Use and Development Ordinance;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 15th day of July 2020, as follows:

1. The Board of Adjustment hereby adopts as its annual report for calendar year 2020 the attached Memorandum prepared by Gary T. Hall, Esq., Board of Adjustment Attorney, dated February 22, 2021, and after due deliberation and discussion presents the recommendations articulated below.
2. The Board of Adjustment acknowledges that consideration was given to zoning regulations applicable to children's play equipment structures, as recommended last year by the Board of Adjustment.
3. The Board of Adjustment acknowledges adoption of updated use regulations for the B-2 Zone in response to prior recommendation the Board of Adjustment.

4 The Board of Adjustment repeats its prior recommendation that consideration be given to review and potential update of the zoning regulations applicable to wireless telecommunications facilities to ensure that they are consistent with current technology and wireless telecommunications business practices.

5. The Board of Adjustment recommends that consideration be given to the zoning regulations for accessory residences.

6 The Secretary of the Board of Adjustment is hereby directed to transmit copies of this Resolution, including the attached Memorandum, to the Township Committee and Planning Board.

<div> <div>Page 1</div> <div> <div>HARDING TOWNSHIP BOARD OF ADJUSTMENT</div> <div> <div>IN THE MATTER OF: : TRANSCRIPT</div> <div>: CASE: BOA# 17-18 : OF New York SMSA Limited Partnership: D/b/a Verizon Wireless : PROCEEDINGS Millbrook Road : Block 17; Lot 1; PL Zone : X</div> <div> <div>Thursday, July 15, 2021 Zoom Remote Videoconference Commencing at 8:32 p.m.</div> <div>BOARD MEMBERS PRESENT: MIKE FLANAGAN, Chairman ALF NEWLIN ELIZABETH SOVOLOS THOMAS ADDONIZIO ARIC ROSENBAUM GEORGE BOYAN HUGH SYMONDS</div> <div>ALSO PRESENT: LORI TAGLAIRINO, Board Administrator PAUL D. FOX, P.E., CME McKINLEY MERTZ, PP, AICP DR. BRUCE EISENSTEIN, Cellular Communications Consultant</div> <div>PRECISION REPORTING SERVICE Certified Shorthand Reporters (908) 642-4299</div> </div> </div> </div> </div>	<div> <div>Page 2</div> <div> <div>1 APPEARANCES:</div> <div>2</div> <div>3 GREENBAUM, ROWE, SMITH & DAVIS, LLP BY: STEVEN G. MLENAK, ESQUIRE Attorneys for the Board</div> <div>4</div> <div>5 VOGEL, CHAIT, COLLINS & SCHNEIDER, ESQUIRES BY: RICHARD SCHNEIDER, ESQUIRE Attorneys for the Applicant</div> <div>6</div> <div>7</div> <div>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</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> </div>
<div> <div>Page 3</div> <div> <div>1 INDEX</div> <div>2</div> <div>3 WITNESS: PAGE</div> <div>4 PETER STECK</div> <div>5 By Mr. Simon..... 20</div> <div>6 By the Board..... 39</div> <div>7</div> <div>8</div> <div>9 EXHIBITS</div> <div>10</div> <div>11 IN EVD. DESCRIPTION PAGE</div> <div>12 O-4 Six-page packet of photo</div> <div>13 Simulations..... 27</div> <div>14</div> <div>15</div> <div>16</div> <div>17 PUBLIC MEMBERS ARE SWORN:</div> <div>18 No public members are sworn</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> </div>	<div> <div>Page 4</div> <div> <div>1 CHAIRMAN FLANAGAN: So we want to speak</div> <div>2 about scheduling for August and September. Is that the</div> <div>3 administrative discussion we want to have, Lori?</div> <div>4 SECRETARY TAGLAIRINO: Yes.</div> <div>5 CHAIRMAN FLANAGAN: And I don't know where</div> <div>6 it left off. Mr. Simon asked that we move the regular</div> <div>7 scheduled meeting. I know a bunch of dates went around</div> <div>8 as possible date. The last e-mail I saw was about the</div> <div>9 30th of August. But I didn't receive any confirmation</div> <div>10 if that worked for everybody. So where do we stand on</div> <div>11 that?</div> <div>12 MR. SIMON: So I'm sorry. Do you want to</div> <div>13 go first?</div> <div>14 SECRETARY TAGLAIRINO: No.</div> <div>15 MR. SIMON: From my perspective I'm</div> <div>16 definitely available that night. I sent an e-mail to</div> <div>17 Mr. Steck about it and I didn't hear back from him one</div> <div>18 way or another. I'm assuming it's okay. We'll find</div> <div>19 out in 20 minutes if it's not, but that would be great</div> <div>20 and appreciated.</div> <div>21 CHAIRMAN FLANAGAN: And that works for you</div> <div>22 Mr. Schneider?</div> <div>23 MR. SCHNEIDER: My words were to Lori that</div> <div>24 it's perfect. And in fact if I have to re-call the one</div> <div>25 witness she's off that week, but she said she would</div> </div> </div>

<p style="text-align: right;">Page 5</p> <p>1 make it available for that Monday. It works perfectly</p> <p>2 because it's the fifth Monday of the month. So there</p> <p>3 should be lack of any conflict. The bottom line is,</p> <p>4 both Mr. Simon and I are available.</p> <p>5 If I can just take a sneak peek ahead. So</p> <p>6 what I would contemplate is for a variety of reasons I</p> <p>7 think we'll complete the direct of Mr. Steck tonight,</p> <p>8 and we will not probably for a variety of reasons</p> <p>9 proceed with cross. So the intention would be to</p> <p>10 proceed with direct with Mr. Steck. Not carry the</p> <p>11 matter to the Board's regular meeting, carry it to the</p> <p>12 August 30th meeting, assuming we have a quorum. And</p> <p>13 then you will respectfully let me know how much time</p> <p>14 you have allotted on August 30th, at which time we'll</p> <p>15 proceed with the cross-examination of Mr. Steck. If</p> <p>16 time permits and I can bring back another witness</p> <p>17 you'll let me know if there's time, if not we will</p> <p>18 proceed in September. Does that sound reasonable?</p> <p>19 CHAIRMAN FLANAGAN: It does. And I think</p> <p>20 when we last spoke it was your estimate that you would</p> <p>21 need two hours?</p> <p>22 MR. SCHNEIDER: Well, I think -- honestly,</p> <p>23 I haven't heard Mr. Steck, and out of fairness I just</p> <p>24 got some new exhibits, or at least one new exhibit</p> <p>25 presented at 6:30 or 7:00. I haven't had a chance to</p>	<p style="text-align: right;">Page 6</p> <p>1 review that. But in rough numbers I would say, I don't</p> <p>2 even know that it would be two hours, that might be,</p> <p>3 but whatever time at least we'll probably may have a</p> <p>4 cleanup witness or two. So depending on what else you</p> <p>5 put on for August 30th we can plan accordingly and then</p> <p>6 we can -- Mr. Simon and I have some meeting conflicts</p> <p>7 for the third Thursday in September due to --</p> <p>8 CHAIRMAN FLANAGAN: Okay. The Holiday,</p> <p>9 right?</p> <p>10 MR. SCHNEIDER: Yes.</p> <p>11 CHAIRMAN FLANAGAN: All right. So let's</p> <p>12 finish August then. So it works for you, Mr. Mlenak?</p> <p>13 MR. MLENAK: It works for me.</p> <p>14 CHAIRMAN FLANAGAN: Does it work for</p> <p>15 McKinley or Paul?</p> <p>16 MR. FOX: It does.</p> <p>17 MS. MERTZ: Yes.</p> <p>18 CHAIRMAN FLANAGAN: Does it work for Dr.</p> <p>19 Eisenstein?</p> <p>20 SECRETARY TAGLAIRINO: We have not heard</p> <p>21 from Dr. Eisenstein.</p> <p>22 BOARD MEMBER ROSENBAUM: I probably can.</p> <p>23 BOARD MEMBER SOVOLOS: I can't do it.</p> <p>24 BOARD MEMBER ROSENBAUM: I said probably.</p> <p>25 Probably can.</p>
<p style="text-align: right;">Page 7</p> <p>1 CHAIRMAN FLANAGAN: Who else said they</p> <p>2 could not do it?</p> <p>3 SECRETARY TAGLAIRINO: It might be George.</p> <p>4 CHAIRMAN FLANAGAN: And, you know, we're</p> <p>5 trying to juggle a lot of calendars here. And</p> <p>6 Elizabeth, don't be upset with me, but what I would</p> <p>7 like to do is, it seems like this is the one day that</p> <p>8 we can accommodate the vast majority of people. Would</p> <p>9 you be okay to listening to the transcript to catch up?</p> <p>10 BOARD MEMBER SOVOLOS: Yea. Absolutely.</p> <p>11 CHAIRMAN FLANAGAN: Aric, same thing. If</p> <p>12 you're not able to make it --</p> <p>13 BOARD MEMBER ROSENBAUM: Yes, absolutely.</p> <p>14 MR. SCHNEIDER: And I have at every meeting</p> <p>15 provided a transcript, so we can continue.</p> <p>16 CHAIRMAN FLANAGAN: So I think the big open</p> <p>17 question is, Mr. Steck and Dr. Eisenstein.</p> <p>18 MR. SCHNEIDER: Let me make a suggestion on</p> <p>19 Dr. Eisenstein.</p> <p>20 SECRETARY TAGLAIRINO: Dr. Eisenstein is</p> <p>21 walking in.</p> <p>22 MR. SCHNEIDER: Okay. What I was going to</p> <p>23 say is even if Dr. Eisenstein is not available I don't</p> <p>24 know if he would necessarily be necessary for Mr.</p> <p>25 Steck's cross. If I decide to bring back an RF witness</p>	<p style="text-align: right;">Page 8</p> <p>1 then we would be, but we will play it by ear in that</p> <p>2 regard.</p> <p>3 SECRETARY TAGLAIRINO: Good evening.</p> <p>4 DR. EISENSTEIN: Thank you all for waiting</p> <p>5 for me. Someone said you weren't starting until nine</p> <p>6 o'clock on Verizon.</p> <p>7 CHAIRMAN FLANAGAN: Alf did such a good job</p> <p>8 in getting through the earlier applications.</p> <p>9 DR. EISENSTEIN: We shouldn't have gone to</p> <p>10 the movie that we went to. Can I sit over here?</p> <p>11 MR. SIMON: I was going to, but --</p> <p>12 DR. EISENSTEIN: Is it okay if I sit next</p> <p>13 to you?</p> <p>14 MR. SIMON: I would like you to.</p> <p>15 CHAIRMAN FLANAGAN: Dr. Eisenstein, we were</p> <p>16 looking to move the regular scheduled meeting in August</p> <p>17 to another date.</p> <p>18 DR. EISENSTEIN: Which date?</p> <p>19 CHAIRMAN FLANAGAN: The 30th, which is a</p> <p>20 Monday, I think. Are you free on Monday the 30th?</p> <p>21 BOARD MEMBER SYMONDS: So we're moving and</p> <p>22 not a special?</p> <p>23 (Whereupon, Board Member George Boyan</p> <p>24 enters the Board room.)</p> <p>25 CHAIRMAN FLANAGAN: George, come on up.</p>

<p style="text-align: right;">Page 9</p> <p>1 DR. EISENSTEIN: The 30th is okay.</p> <p>2 CHAIRMAN FLANAGAN: We're talking about</p> <p>3 scheduling of the August meeting. Are you available?</p> <p>4 BOARD MEMBER BOYAN: I responded I'm not</p> <p>5 available.</p> <p>6 CHAIRMAN FLANAGAN: Elizabeth's not. It</p> <p>7 looks like we have all the professionals except for you</p> <p>8 and Elizabeth. Would you mind?</p> <p>9 BOARD MEMBER BOYAN: Go ahead.</p> <p>10 DR. EISENSTEIN: So we're not doing the</p> <p>11 19th? The 19th is moving to the 30th.</p> <p>12 CHAIRMAN FLANAGAN: That's the other part</p> <p>13 of the --</p> <p>14 MR. HALL: I'm fine if you're splitting.</p> <p>15 CHAIRMAN FLANAGAN: So my plan is, for the</p> <p>16 Board we're not going to have two meetings in August.</p> <p>17 We're going to have one meeting. It would be on the</p> <p>18 30th.</p> <p>19 DR. EISENSTEIN: And that would be at 7:30?</p> <p>20 SECRETARY TAGLAIRINO: Maybe not.</p> <p>21 CHAIRMAN FLANAGAN: I guess we're free to</p> <p>22 start at an earlier time, if we want.</p> <p>23 MR. HALL: We're at a consensus earlier</p> <p>24 going forward that seven was fine.</p> <p>25 CHAIRMAN FLANAGAN: Does that work?</p>	<p style="text-align: right;">Page 10</p> <p>1 MR. HALL: For all meetings.</p> <p>2 MR. SIMON: I can do it any time.</p> <p>3 MR. SCHNEIDER: That's good enough.</p> <p>4 CHAIRMAN FLANAGAN: Is there anyone here</p> <p>5 who cannot do 7:00 p.m. on the 30th? Anyone who can do</p> <p>6 the 30th but cannot do the seven? (No response.) All</p> <p>7 right. So let's do seven.</p> <p>8 So Gary, let's talk about that. We're</p> <p>9 moving all of the applications to the 30th, because I</p> <p>10 don't want to do two meetings.</p> <p>11 MR. HALL: Right. And you were still here.</p> <p>12 We said on the Morris thing we carried it to August</p> <p>13 date to be announced. So if we're doing that we'll</p> <p>14 announce it now. And there was one other one. Oh, the</p> <p>15 site visit.</p> <p>16 SECRETARY TAGLAIRINO: There was Kilgore.</p> <p>17 MR. HALL: Kilgore we do a site visit. So</p> <p>18 we can announce it at the site. So that's coming back.</p> <p>19 That will come back on the 30th also.</p> <p>20 SECRETARY TAGLAIRINO: And we have Wittig.</p> <p>21 MR. HALL: Wittig and Wade were not on</p> <p>22 tonight. We'll carry them to August, date to be</p> <p>23 announced.</p> <p>24 CHAIRMAN FLANAGAN: So we're okay to move</p> <p>25 all the applications?</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. HALL: Assuming you officially say it's</p> <p>2 August 30th, I think we're covered.</p> <p>3 CHAIRMAN FLANAGAN: So we'll just wait for</p> <p>4 Mr. Steck and we'll make that announcement.</p> <p>5 MR. FOX: What time? Just to verify.</p> <p>6 CHAIRMAN FLANAGAN: Seven o'clock. But</p> <p>7 we're going to wait for Mr. Steck. With the intention</p> <p>8 of ending a half hour earlier.</p> <p>9 MR. SCHNEIDER: It's not my business, but</p> <p>10 are you going to have the third Thursday in August</p> <p>11 meeting?</p> <p>12 CHAIRMAN FLANAGAN: No. We're going to</p> <p>13 move the entire meeting to the 30th.</p> <p>14 MR. HALL: It's being canceled and</p> <p>15 substituted by the August 30th meeting.</p> <p>16 CHAIRMAN FLANAGAN: And I know you're an</p> <p>17 estimate, but two hours or whatever you need.</p> <p>18 MR. SCHNEIDER: We can -- I will let the</p> <p>19 Board know in advance of August 30th based on tonight's</p> <p>20 proceeding how much time we need, so you can plan or we</p> <p>21 can plan our agenda accordingly.</p> <p>22 CHAIRMAN FLANAGAN: Yes. That works.</p> <p>23 MR. SIMON: And I think as I mentioned at</p> <p>24 the site visit when we were talking about this,</p> <p>25 typically, after Mr. Schneider's two hours of cross I</p>	<p style="text-align: right;">Page 12</p> <p>1 would probably have a few hours of cross.</p> <p>2 MR. SCHNEIDER: I assure you it won't be</p> <p>3 two hours.</p> <p>4 CHAIRMAN FLANAGAN: And we had spoken, and</p> <p>5 your associate was there when we spoke, Steve. So your</p> <p>6 plan is August you're going to do your --</p> <p>7 MR. SCHNEIDER: I will do the cross of Mr.</p> <p>8 Steck, possibly another witness, depending on your</p> <p>9 agenda. If not then the hope would be, key word "to</p> <p>10 be," hope that we can conclude the matter by the end of</p> <p>11 September.</p> <p>12 My own gut tells me two meetings after that</p> <p>13 depending on if I have to re-call a witness, but maybe</p> <p>14 one meeting. But if it is going to be one meeting then</p> <p>15 it would have to be the whole meeting, because we'll</p> <p>16 have to hear from the public, summations,</p> <p>17 deliberations.</p> <p>18 CHAIRMAN FLANAGAN: Two meetings after</p> <p>19 August?</p> <p>20 MR. SCHNEIDER: Yes. That's, I think,</p> <p>21 reasonable. I think we'll be overly optimistic to have</p> <p>22 one. Just on experience, I'm not ruling that out,</p> <p>23 depending on what we accomplished in August. Does that</p> <p>24 seem --</p> <p>25 CHAIRMAN FLANAGAN: Yes. I'd like to get</p>

<p style="text-align: right;">Page 13</p> <p>1 this application done in as timely a fashion as we can, 2 making sure we address or everyone has an opportunity 3 to comment. I don't know if anyone knows how long that 4 will take, but that can take some time. I don't know 5 if I can say the entire September meeting will be 6 Verizon, if that's what's going to be necessary, or we 7 may -- it's two months out, so -- you know, but -- 8 MR. SCHNEIDER: If I -- the one witness who 9 I may re-call would be Ms. Boschulte. I haven't made 10 that determination. That may in part be based on what 11 Mr. Steck testifies to this evening. If she can get on 12 in August then I'm thinking we could wrap it up in one 13 meeting in September. But that will be out of fairness 14 to be determined. 15 CHAIRMAN FLANAGAN: All right. 16 MR. SIMON: I may have questions, 17 obviously. 18 MR. SCHNEIDER: I understand. So that 19 would be the game plan. 20 CHAIRMAN FLANAGAN: All right. So we have 21 a goal, I guess. 22 MR. SCHNEIDER: I guess the only other 23 thing between now and August 30th, I would just ask 24 that maybe tonight we can think about what meetings, 25 what dates you're going to talk about in September.</p>	<p style="text-align: right;">Page 14</p> <p>1 CHAIRMAN FLANAGAN: Have we started in 2 September? 3 SECRETARY TAGLAIRINO: No. I got so lost 4 in the weeds with August. 5 CHAIRMAN FLANAGAN: So it looks like we may 6 have August figured out. The fact is in September we 7 scheduled the regular meeting for a holiday. So we're 8 going to move it off of that date. 9 BOARD MEMBER NEWLIN: It is suggested that 10 we have a meeting the Thursday after. 11 SECRETARY TAGLAIRINO: September 23rd. 12 BOARD MEMBER NEWLIN: We decided to wait 13 because we didn't know. 14 SECRETARY TAGLAIRINO: Gary, September 15 23rd? Paul, McKinley, Dr. Eisenstein? 16 DR. EISENSTEIN: I'm sorry? 17 CHAIRMAN FLANAGAN: Would September 23rd 18 work for you? We're going to move the September 19 meeting off the 16th to another date. The Jewish 20 Holiday falls on that date. 21 MR. MLENAK: Obviously, if this is the 22 meeting we're going to have a vote we need all members. 23 MR. SCHNEIDER: That works for me, Mr. 24 Chairman. 25 CHAIRMAN FLANAGAN: So we have --</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. SIMON: I can -- 2 DR. EISENSTEIN: September 23rd is okay for 3 me. 4 CHAIRMAN FLANAGAN: All right. So I guess 5 it comes down, Lori -- well, let me ask. Do we have 6 the room for that night? 7 SECRETARY TAGLAIRINO: Yes. September 23rd 8 is fine. 9 CHAIRMAN FLANAGAN: So then we just need to 10 poll the entire Board. Is there anyone here who cannot 11 do it on September 23rd? (No reply.) Okay. That's 12 good. So I guess we have to e-mail the Board members 13 that cannot be present that night. 14 SECRETARY TAGLAIRINO: So Resolution number 15 two, remember I sent out two Resolutions for meeting 16 dates and time, we can put these two new dates in that 17 Resolution on these two dates as meeting dates moving 18 forward. And the time, we agreed -- well, with or 19 without you, to start all future meetings at seven and 20 ending at 10:30. 21 CHAIRMAN FLANAGAN: For the Resolution 22 you're suggesting we pass it tonight? 23 SECRETARY TAGLAIRINO: Yes. They were in 24 the packets. 25 CHAIRMAN FLANAGAN: So we can do August</p>	<p style="text-align: right;">Page 16</p> <p>1 depending on Mr. Steck, but we can't do September 2 because of the Board members not present. So we can do 3 August on the books, if you want. 4 SECRETARY TAGLAIRINO: All right. We'll 5 put August in the books and September can be a Special 6 Meeting. But we're going to go forward with a 7 seven o'clock start time going forward. 8 CHAIRMAN FLANAGAN: For every meeting. 9 SECRETARY TAGLAIRINO: Until 10:30. 10 CHAIRMAN FLANAGAN: Seven to 10:30. 10:30 11 sharp. 12 MR. HALL: That doesn't have to be in the 13 Resolution certainly, but it can be on your agenda. 14 It's not required. The start time is. 15 MR. SCHNEIDER: Mr. Chairman, just assuming 16 Mr. Steck is available on August 30th, just so I'm 17 clear, we're going to start at 7 p.m. So we should 18 probably carry it tonight to August 30th at seven. If 19 you want to approximate the Verizon thing first, that 20 way we don't have to wait until 8:30 or nine to let the 21 public start. 22 CHAIRMAN FLANAGAN: Yes. 23 MR. SIMON: Let's just make sure -- 24 MR. SCHNEIDER: I said assuming Mr. Steck. 25 CHAIRMAN FLANAGAN: I was pessimistic</p>

<p style="text-align: right;">Page 17</p> <p>1 getting through the agenda tonight. Now we have seven</p> <p>2 minutes.</p> <p>3 BOARD MEMBER NEWLIN: With no attorneys and</p> <p>4 no extras.</p> <p>5 CHAIRMAN FLANAGAN: Mr. Simon, Mr. Steck is</p> <p>6 with us?</p> <p>7 MR. SIMON: Couple of things. First, he's</p> <p>8 checking the date on the 30th.</p> <p>9 CHAIRMAN FLANAGAN: All right. Mr. Simon,</p> <p>10 it is all up to you.</p> <p>11 MR. SCHNEIDER: So most importantly in</p> <p>12 terms of the date, so Mr. Steck does have another</p> <p>13 matter on the 30th; however, I was able to use my power</p> <p>14 of persuasion that successfully led to Mr. Steck</p> <p>15 reluctantly agreeing to be available between 7 and</p> <p>16 9 p.m. on the 30th.</p> <p>17 CHAIRMAN FLANAGAN: All right. So we would</p> <p>18 have Verizon first.</p> <p>19 MR. STECK: Recognize that I've been</p> <p>20 pressured.</p> <p>21 MR. SCHNEIDER: Fine. We'll start earlier</p> <p>22 and I'm appreciative of Mr. Steck doing that. And if</p> <p>23 we get done before nine he can go onto his next</p> <p>24 assignment.</p> <p>25 CHAIRMAN FLANAGAN: Good.</p>	<p style="text-align: right;">Page 18</p> <p>1 MR. SCHNEIDER: And I too am appreciative</p> <p>2 not only of Mr. Steck, but also to the Board to</p> <p>3 accommodate us. That's very nice.</p> <p>4 MR. HALL: I think I will say good night</p> <p>5 now. I will get out of here while I can. I think,</p> <p>6 Lori, the August date, is that going to go On that</p> <p>7 Resolution?</p> <p>8 SECRETARY TAGLAIRINO: Yes. The August</p> <p>9 date.</p> <p>10 MR. HALL: September is still will be</p> <p>11 handled at the next meeting.</p> <p>12 SECRETARY TAGLAIRINO: Yes.</p> <p>13 CHAIRMAN FLANAGAN: So August 30th, 7 p.m.</p> <p>14 Great. All right. Gary, thank you very much. Ms.</p> <p>15 Mazniak, thank you.</p> <p>16 MR. SIMON: Can we just take it for what</p> <p>17 it's worth. I'm fairly sure, Rich and I was talking</p> <p>18 about this, that whether it was scuttlebutt or</p> <p>19 otherwise, I think at some point during the site visit</p> <p>20 it was stated that we were going to start Verizon at</p> <p>21 9 p.m. So to the extent that there may be public, just</p> <p>22 a couple more minutes.</p> <p>23 CHAIRMAN FLANAGAN: All right. Then we'll</p> <p>24 start --</p> <p>25 MR. SCHNEIDER: So nine o'clock sharp.</p>
<p style="text-align: right;">Page 19</p> <p>1 CHAIRMAN FLANAGAN: Nine o'clock sharp.</p> <p>2 Okay. Mr. Schneider, Mr. Steck, welcome</p> <p>3 back. Tonight we hope to hear testimony from Mr.</p> <p>4 Simon's planner and we're going to take it from there.</p> <p>5 Is there anything to add to this?</p> <p>6 MR. SCHNEIDER: No. And we'll return on</p> <p>7 August 30th for cross.</p> <p>8 CHAIRMAN FLANAGAN: And for those who just</p> <p>9 joined us in the gallery, our August meeting is going</p> <p>10 to take place on the 30th at 7 p.m., as opposed to the</p> <p>11 regular scheduled night of the 19th. So we're moving</p> <p>12 around to accommodate. Instead of the 19th it will be</p> <p>13 on the 30th at seven rather than 7:30. And going</p> <p>14 forward it is our intention to start these meetings at</p> <p>15 7 p.m. every night.</p> <p>16 Mr. Simon, welcome back. Mr. Steck,</p> <p>17 welcome back. Mr. Simon?</p> <p>18 MR. SIMON: Lori, are we good? Ready?</p> <p>19 SECRETARY TAGLAIRINO: Do you want to</p> <p>20 continue that way?</p> <p>21 MR. SIMON: Meaning what?</p> <p>22 SECRETARY TAGLAIRINO: We're on the record.</p> <p>23 MR. SIMON: No. I understand that. Both</p> <p>24 red lights are on. We're good.</p> <p>25 SECRETARY TAGLAIRINO: We are recording.</p>	<p style="text-align: right;">Page 20</p> <p>1 Anything else?</p> <p>2 MR. SIMON: This is it.</p> <p>3 SECRETARY TAGLAIRINO: I've got an answer</p> <p>4 for everything.</p> <p>5 MR. SIMON: And keys.</p> <p>6 SECRETARY TAGLAIRINO: Not a solution, but</p> <p>7 I have answers. (Laughter.)</p> <p>8 MR. SIMON: Ladies and gentlemen, Robert</p> <p>9 Simon from Herald Law. We are here with regard to the</p> <p>10 Verizon application tonight. I brought with me the</p> <p>11 client's Professional Planner, Peter Steck, that is</p> <p>12 prepared to provide professional planning testimony.</p> <p>13 So I would ask that Mr. Steck be sworn.</p> <p>14 MR. MLENAK: Mr. Steck, can you raise your</p> <p>15 right hand? Do you swear to tell the truth, the whole</p> <p>16 truth, and nothing but the truth?</p> <p>17 MR. STECK: I do.</p> <p>18 MR. MLENAK: Please state your full name</p> <p>19 and spell your last name.</p> <p>20 P E T E R G. S T E C K, 80 Maplewood</p> <p>21 Avenue, Maplewood, New Jersey, having been duly sworn,</p> <p>22 testifies as follows:</p> <p>23 MR. MLENAK: And for the Board and purpose</p> <p>24 of transparency, Mr. Steck and I worked on the same</p> <p>25 matter for a client in Edgewater. It's been disclosed</p>

<p style="text-align: right;">Page 21</p> <p>1 to both Counsel. There is no conflict. Mr. Simon?</p> <p>2 EXAMINATION BY MR. SIMON:</p> <p>3 Q. Thank you. Mr. Steck, why don't you</p> <p>4 provide the Board with your credentials, occupation,</p> <p>5 affiliation, areas of expertise, licenses and</p> <p>6 experience in the field of professional planning?</p> <p>7 A. By way of education, I have a Bachelor's</p> <p>8 Degree in Civil Engineering from Marquette University,</p> <p>9 and a Masters in City and Regional Planning from</p> <p>10 Rutgers.</p> <p>11 I was first plans licensed as a planner in</p> <p>12 1976. I've worked for two consulting firms: Malcolm</p> <p>13 Kasler and Associates, and Alvin Gershen Associates</p> <p>14 (sic). I was the planning director for the Township of</p> <p>15 Montclair.</p> <p>16 CHAIRMAN FLANAGAN: Mr. Steck, is your</p> <p>17 license current?</p> <p>18 THE WITNESS: It is.</p> <p>19 CHAIRMAN FLANAGAN: You're an expert.</p> <p>20 Thank you.</p> <p>21 MR. SIMON: Thank you, Mr. Chairman.</p> <p>22 BY MR. SIMON:</p> <p>23 Q. Mr. Steck, what have you reviewed in</p> <p>24 connection with this application?</p> <p>25 A. I have read all of the transcripts that</p>	<p style="text-align: right;">Page 22</p> <p>1 have led up to this evening. And I did also witness</p> <p>2 the video recording of Mr. Masters' testimony. I've</p> <p>3 looked at the materials that are on the websites. I</p> <p>4 believe I've looked at all of the exhibits that were</p> <p>5 presented. And I've viewed the subject property on</p> <p>6 three occasions. And I was also present during the</p> <p>7 July 10th crane test.</p> <p>8 Also, reviewed the land development</p> <p>9 ordinance, the Master Plan, the Re-Examination Report,</p> <p>10 the Redevelopment Plan that includes the subject</p> <p>11 property, as well as the historic preservation element</p> <p>12 of the Master Plan.</p> <p>13 Q. And in the context of your review of the</p> <p>14 exhibits you also reviewed the application and the</p> <p>15 supporting materials that were submitted?</p> <p>16 A. Yes. And I have seen the latest plans, as</p> <p>17 well as the application submitted by the Applicant.</p> <p>18 Q. And I know you stated this, just so we're</p> <p>19 clear. You were present during the entire site visit</p> <p>20 that was conducted by the Board this past Saturday?</p> <p>21 A. That is correct.</p> <p>22 Q. And with regard to this application, why</p> <p>23 don't you start by providing an overview or foundation</p> <p>24 as to the surrounding site, and I don't know if you</p> <p>25 want to refer to an exhibit at this time or whether you</p>
<p style="text-align: right;">Page 23</p> <p>1 want to wait on that?</p> <p>2 A. Let me start and then we'll introduce the</p> <p>3 exhibits. I know the Board is intimately familiar with</p> <p>4 this, but just to lay some foundation I first want to</p> <p>5 describe the subject property.</p> <p>6 It's a one tax map lot. It's 4.21 and a</p> <p>7 fraction acres. As the Board is aware it's irregular</p> <p>8 in size. It's been referred to as an hour glass shape</p> <p>9 and there is a narrower section toward the center. It</p> <p>10 has frontage on Millbrook, which is not one of the</p> <p>11 major roads, not -- but it is -- that's the one way in</p> <p>12 and out of the property, although as the Board is aware</p> <p>13 there's a secondary access both for pedestrians and</p> <p>14 vehicles across the so-called post office property.</p> <p>15 When you first enter the property there's a</p> <p>16 sign that indicates what it's used for. It's the</p> <p>17 Public Works facility for Harding Township. And when</p> <p>18 you first -- and a recycling center. When you first</p> <p>19 enter on the right-hand side is a historic building and</p> <p>20 a recognized museum. It's the Tunis-Ellicks House</p> <p>21 thought to be constructed in 1795. It's in -- it's</p> <p>22 basically a one-and-a-half-story house. There is grass</p> <p>23 around it and a small parking area, and a small stone</p> <p>24 outbuilding.</p> <p>25 As you further enter the property there's a</p>	<p style="text-align: right;">Page 24</p> <p>1 parking area, gravel parking area adjacent to the</p> <p>2 roadway. And then some 500 to 600 feet in you have the</p> <p>3 former public works yard, which includes a number of</p> <p>4 sheds, buildings, typically one-and-a-half stories or</p> <p>5 one-story in height. Two of the sheds are used for</p> <p>6 recycling. The recycling center is opened two days a</p> <p>7 week on Wednesday mornings, and then on Saturday</p> <p>8 mornings starting rather than at seven, at nine</p> <p>9 o'clock.</p> <p>10 It looks like a Department of Public Works</p> <p>11 facility. There are areas where mulch or gravel are</p> <p>12 stored. There are buildings that house equipment. And</p> <p>13 they're kind of clustered around the center of it.</p> <p>14 That part of the property is fairly well developed, and</p> <p>15 again it's -- I would estimate maybe half of the</p> <p>16 acreage of the total four and a fraction acres is on</p> <p>17 that one portion of the property, but it's more</p> <p>18 intensively developed than the other part of the</p> <p>19 property.</p> <p>20 It is -- it is somewhat unique in that it</p> <p>21 happens to be in its own zone, which is a PL, a Public</p> <p>22 Land Use Zone that concentrates pretty much on the uses</p> <p>23 that are there, although it does recognize, and I'll go</p> <p>24 about -- into it in more detail later, but it does</p> <p>25 recognize different types of public uses in buildings,</p>

<p style="text-align: right;">Page 25</p> <p>1 as well as historic buildings.</p> <p>2 It is in an area that's fairly well</p> <p>3 developed, and it's somewhat unusual in the range of</p> <p>4 land uses. And probably now it makes sense to</p> <p>5 introduce my exhibit.</p> <p>6 Q. Sure. So I provided copies to Lori and Mr.</p> <p>7 Mlenak and Mr. Schneider by e-mail. I've also brought</p> <p>8 numerous duplicate copies.</p> <p>9 Lori, do you want to put it up on the</p> <p>10 screen?</p> <p>11 SECRETARY TAGLAIRINO: I can. I'm going to</p> <p>12 give you one of these -- who's got the working</p> <p>13 pointers? Are they down there? Okay. It's over</p> <p>14 there. I will put them up and I'm going to let you --</p> <p>15 where do you want to start with the photo sims or do</p> <p>16 you want to start --</p> <p>17 MR. SIMON: No, no, no. Why don't we start</p> <p>18 with the other one, please. And what I'm going to do</p> <p>19 is --</p> <p>20 MR. SCHNEIDER: Just for the record, Rob,</p> <p>21 we're talking about the exhibit that you e-mailed at</p> <p>22 6:00 tonight? I just want to make sure that we're</p> <p>23 talking about the same exhibits.</p> <p>24 MR. SIMON: We are. And one of those</p> <p>25 exhibits is Mr. Schneider's own witness' exhibit.</p>	<p style="text-align: right;">Page 26</p> <p>1 MR. MLENAK: So Lori, what are we up to?</p> <p>2 SECRETARY TAGLAIRINO: You know what, these</p> <p>3 are --</p> <p>4 MR. SIMON: I believe these should all be</p> <p>5 O-4, or this pack should be O-4.</p> <p>6 MR. SCHNEIDER: The only thing I would say</p> <p>7 is that, we haven't resolved the admissibility of O-1.</p> <p>8 MR. SIMON: I'm aware of that. And we're</p> <p>9 either going to resolve it or we're not going to</p> <p>10 resolve it.</p> <p>11 MR. SCHNEIDER: Okay. That's fine.</p> <p>12 MR. MLENAK: There either will or will not</p> <p>13 be an O-1. This is O-4, regardless.</p> <p>14 MR. SIMON: Correct.</p> <p>15 SECRETARY TAGLAIRINO: There's a pointer</p> <p>16 here just in case anybody needs to have something</p> <p>17 pointed out. So the little yellow dot.</p> <p>18 CHAIRMAN FLANAGAN: Are there copies for</p> <p>19 the gallery? Are there extras?</p> <p>20 MR. SIMON: That's why I submitted to Lori.</p> <p>21 Can any everyone see?</p> <p>22 BOARD MEMBER ROSENBAUM: There's extras</p> <p>23 here.</p> <p>24 CHAIRMAN FLANAGAN: Can you zoom in on</p> <p>25 that, Lori? Can you maximize the -- can you even make</p>
<p style="text-align: right;">Page 27</p> <p>1 the browser take up most of the screen? There we go.</p> <p>2 MR. SIMON: And this by the way is the only</p> <p>3 exhibit, at least that I anticipate right now, that</p> <p>4 we're going to be marking, other than another exhibit</p> <p>5 which is Mr. Masters' former exhibits that I've</p> <p>6 compiled together.</p> <p>7 (Exhibit O-4 is received and marked.)</p> <p>8 BY MR. SIMON:</p> <p>9 Q. Mr. Steck, so I am showing you what is up</p> <p>10 on the screen and what has been passed out to the Board</p> <p>11 Members, and has been marked O-4 for Identification.</p> <p>12 Can you first describe what O-4 is?</p> <p>13 A. Okay. O-4 is, in real life, an</p> <p>14 eight-and-a-half-by-11 packet that consists of six</p> <p>15 pages. They were all prepared by me. And I'll just</p> <p>16 briefly go through it to identify the pages, and in</p> <p>17 more detail I'll talk about it as we get further into</p> <p>18 the evening.</p> <p>19 The first page has on the left-hand side a</p> <p>20 reproduction of your zoning map, and I've -- to the</p> <p>21 left or west on that along the Interstate Highway you</p> <p>22 see the B-2 and the OB office Zones that we'll refer to</p> <p>23 later, because they're a prime location for cellular</p> <p>24 towers.</p> <p>25 To the right is a blowup of the subject</p>	<p style="text-align: right;">Page 28</p> <p>1 area, which is the village area. And I've highlighted</p> <p>2 the zones that are in the area, as well as the</p> <p>3 approximate location of the cell tower. So as you see</p> <p>4 here the cell tower is in a Public Land Zone. It abuts</p> <p>5 a B-1 Historic Village Business Zone that straddles the</p> <p>6 street. And then it immediately on the south side of</p> <p>7 the public land zone is one of your lower density</p> <p>8 residential zones, the R-1 Residential Zone. I believe</p> <p>9 it's a three-acre minimum lot size. And then there are</p> <p>10 denser residential zones that straddle some of the</p> <p>11 crossroads in the area.</p> <p>12 The second page in the upper left-hand</p> <p>13 corner I arbitrarily numbered these P-1 and P-2, et</p> <p>14 cetera.</p> <p>15 Q. So the six pages of this document O-4</p> <p>16 consists of pages identified as P-1 through P-6?</p> <p>17 A. That's correct.</p> <p>18 Q. Please proceed.</p> <p>19 A. So this document was secured from your</p> <p>20 website, more particularly from your Master Plan that</p> <p>21 was most recently amended on January 25th of 2021. And</p> <p>22 I have added some notations to it, but the colored area</p> <p>23 is the historic district.</p> <p>24 Q. So let me back up just for a second, Mr.</p> <p>25 Steck. Just so we're clear before we get through this</p>

<p style="text-align: right;">Page 29</p> <p>1 page P-2.</p> <p>2 In terms of what you just added to this,</p> <p>3 why don't we just go through what you added so the</p> <p>4 Board can understand?</p> <p>5 A. I added the words "New Vernon Historic</p> <p>6 District." On the website they appear on top of the</p> <p>7 map and I simply put them in red and shifted them down.</p> <p>8 And then I indicated the approximate location of the</p> <p>9 proposed cell tower.</p> <p>10 I also added at the bottom of the page an</p> <p>11 excerpt from the individual listing of properties, and</p> <p>12 it references the subject property which is Lot 1 Block</p> <p>13 17 at 8 Millbrook Road as a key contributing property</p> <p>14 in the New Vernon Historic District.</p> <p>15 Q. NV standing for New Vernon?</p> <p>16 A. Yes. And there's a table in the historic</p> <p>17 preservation element of the Master Plan that lists all</p> <p>18 the lot and block numbers and indicates whether it's</p> <p>19 contributing or a key contributing property. The</p> <p>20 subject property happens to be labeled as a key</p> <p>21 contributing property.</p> <p>22 Q. And we're going to go back to discussing</p> <p>23 this later?</p> <p>24 A. Yes. The next page, P-3, has a rendition</p> <p>25 of the site plan, a portion of it where I've darkened</p>	<p style="text-align: right;">Page 30</p> <p>1 the buildings and labeled them.</p> <p>2 Q. So when you talk about the site plan, Mr.</p> <p>3 Steck, is it the site plan that was previously</p> <p>4 submitted by the Applicant with the most recent</p> <p>5 revision date of March 4th, 2019?</p> <p>6 A. That's correct. And that references on the</p> <p>7 top of that diagram. So what I did is I darkened the</p> <p>8 buildings, darkened the property line, and again this</p> <p>9 is the western part of Lot 1. On the upper right-hand</p> <p>10 corner I've reproduced a portion of the plan, and</p> <p>11 that's Sheet SB-2, which indicates the removal of</p> <p>12 trees. There were some trees there that didn't have Xs</p> <p>13 on them but they clearly needed to be removed. And I'm</p> <p>14 not sure why the drafter didn't put Xs on them, but</p> <p>15 there are, as I count them, 12 trees that are going to</p> <p>16 be removed in order to construct both the cell tower as</p> <p>17 well as the 30-by-60 equipment area.</p> <p>18 Q. Before you go on, just in terms of the Xs</p> <p>19 that you're showing on P-3 that you are superimposing</p> <p>20 based on the most recent site plan for this</p> <p>21 application. My recollection is that the trees that</p> <p>22 have Xs through them that were on the site plan that</p> <p>23 were identified as to be removed were not identified on</p> <p>24 the site plan in terms of the type of trees that they</p> <p>25 were or are at the time; correct?</p>
<p style="text-align: right;">Page 31</p> <p>1 A. That's correct.</p> <p>2 Q. And they also do not identify those trees</p> <p>3 by diameter breast height, or height?</p> <p>4 A. That's correct. The two Xs furthest to the</p> <p>5 left or west, red Xs did not have Xs on them although</p> <p>6 there were dots indicating that there were trunks</p> <p>7 there.</p> <p>8 Below that, so the lower right-hand corner</p> <p>9 is a picture that I took on July 10th of this year, and</p> <p>10 it shows the wooded nature mostly deciduous of the area</p> <p>11 behind the recycling shed. So this is the area that is</p> <p>12 going to be cleared in order to have the equipment</p> <p>13 compound as well as the tower itself.</p> <p>14 Q. So you took this photograph, Mr. Steck?</p> <p>15 A. Yes.</p> <p>16 Q. And where did you take this photo from?</p> <p>17 A. I took it from, I'll say, the diagram in</p> <p>18 the upper right-hand corner shows a fence opening to</p> <p>19 get to the compound. I was probably 20 feet to the</p> <p>20 left of that, again, looking back behind the recycling</p> <p>21 shed. And in my opinion it fairly accurately depicts</p> <p>22 the existing conditions at that time.</p> <p>23 Q. Thank you.</p> <p>24 A. I did also darken in pink or transparent</p> <p>25 pink the compound.</p>	<p style="text-align: right;">Page 32</p> <p>1 The next page is just some descriptions --</p> <p>2 Q. So when you talk about the next page we're</p> <p>3 now up to P-4?</p> <p>4 A. We are. And here starting from the</p> <p>5 right-hand side, the second diagram in is from the</p> <p>6 Applicant's plans that shows the stealth tree</p> <p>7 originally proposed at a structure height of 140 feet,</p> <p>8 and again faux branches an additional 6 feet. As the</p> <p>9 Applicant has -- the application has proceeded there</p> <p>10 has been an indication that the Applicant is willing to</p> <p>11 do, for example, a 120-foot structure with I presume</p> <p>12 another 6 feet of branching. And what I simply did was</p> <p>13 manipulate that diagram to drop it down.</p> <p>14 It's not clear whether the Applicant in</p> <p>15 reducing it to 120 feet would reduce the amount of</p> <p>16 branching. So there's a section below that where I</p> <p>17 simply have a question mark.</p> <p>18 Most of these faux trees are in wooded</p> <p>19 areas and that's why they work. They kind of blend in</p> <p>20 to a certain degree, and so they're often times hard to</p> <p>21 get an individual picture of. I happen to be driving</p> <p>22 for another project and if you drive north on Route 17</p> <p>23 through a corner of Ridgewood in Bergen County there's</p> <p>24 a faux tree that's out in the open without any trees</p> <p>25 around it. So I happen to take a photograph of it and</p>

<p style="text-align: right;">Page 33</p> <p>1 called the municipality and said that that cell 2 structure was approved at 136 feet. So I'm presuming 3 that it was built as it was approved. And then the 4 bottom of that I indicate where that is. And I 5 estimate that the photo I took, and it happen to be 6 from my car, was about 350 feet away. And it just 7 shows you that depending upon the lighting, where the 8 sun is, the density of these structures can change. 9 And it also can change based on the number of carriers 10 that are on it. This appears to have four carriers on 11 it.</p> <p>12 The Applicant has volunteered, I guess 13 what's referred to as the Delbarton Tree. And that is 14 at the Saint Mary's Abbey Campus, which is at 230 15 Mendham Road in Morris Township. I happen to be 16 involved with an application there. And so as part of 17 my previous work I took a photograph on November 28th 18 of that faux tree that's there. And reading the 19 Resolution, that was approved at 110 feet, and after it 20 was built a second carrier came in. These involved use 21 variances in Morris Township. But I generally labeled 22 the top as 110 feet and a second carrier at 82 feet. 23 And this is taken along a driveway that 24 approaches the property. It was taken on April 28th of 25 this year. And it shows you how the context is</p>	<p style="text-align: right;">Page 34</p> <p>1 important when you have a plastic and metal tree, or a 2 fiberglass and metal faux tree. If it's in a woodsy 3 area you can potentially overlook it. If it's out in 4 the open most people recognize it as a cell tower 5 because it just -- it oftentimes they have unnatural 6 appearances. Most natural trees don't have cellular 7 panels stuck in them. So the point I'm going to refer 8 to later is that the context of where the faux tree is 9 is important in terms of its visual impact.</p> <p>10 The next page is P-5, and these last two 11 pages are simply --</p> <p>12 SECRETARY TAGLAIRINO: Oh, oh. 13 (Whereupon, the projection of the slides 14 turned off.)</p> <p>15 MR. SIMON: Wait. Hold on. The slides 16 disappeared.</p> <p>17 CHAIRMAN FLANAGAN: Well, for members of 18 the gallery, would you like to grab a copy of the 19 exhibits?</p> <p>20 SECRETARY TAGLAIRINO: I am trying to --</p> <p>21 CHAIRMAN FLANAGAN: All right. Well, then 22 try to restart then. Oh, you do the record. Well, we 23 have the transcript. So can we proceed until that 24 starts up again?</p> <p>25 MR. SCHNEIDER: It must be that bad</p>
<p style="text-align: right;">Page 35</p> <p>1 wireless service in the building.</p> <p>2 CHAIRMAN FLANAGAN: I thought we had that 3 temporary -- all right. We will --</p> <p>4 MR. SCHNEIDER: We'll agree to provide the 5 transcript. Are we okay, Steve?</p> <p>6 MR. MLENAK: Yes.</p> <p>7 CHAIRMAN FLANAGAN: Okay. Good.</p> <p>8 THE WITNESS: So the next page is labeled 9 P-5. And as the Board members that were on the site 10 inspection on July 10th of this year know we went to a 11 number of properties in the area. Because it is in the 12 summertime and the trees are in full leaf you don't 13 have the view that you would have in the wintertime, 14 but I picked properties that were very close to the 15 proposed cellular tower. And what is shown on P-5 is a 16 view from the O'Donnell property. And that's the 17 closest property to the subject location, and that 18 happens to be in, again, one of the more low density 19 zones, the R-1 Zone. So --</p> <p>20 BY MR. SIMON:</p> <p>21 Q. With regard to -- before you go on here. 22 When you're talking about the site visit, that's the 23 site visit that took place this past Saturday 24 July 10th, 2021?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. And the photos that are shown on P-5, as 2 well as what's going to be on P-6, those were taken by 3 you?</p> <p>4 A. Yes.</p> <p>5 Q. And the photos show a crane; correct?</p> <p>6 A. Yes.</p> <p>7 Q. That was erected from what you understand 8 to be at a height of 120 feet?</p> <p>9 A. Yes. The top of the boom, so the very 10 tallest part of the boom is at 120 feet above the 11 ground.</p> <p>12 Q. And your understanding also is that the 13 boom was centered so to be directly over the proposed 14 location of the cell tower per the Applicant's most 15 recently submitted site plan?</p> <p>16 A. That's correct. So what you see hanging 17 from the top of the boom there happens to be a cable 18 and a hook. And if you follow that straight down you 19 would presumably land in the location that the towers 20 are proposed.</p> <p>21 So the very top of the tower would be at 22 120 feet. Again, there are several renditions of what 23 the Applicant is offering. That would be the top of 24 the structure in one of the alternatives that are 25 proposed, and then the branching, if the Applicant</p>

<p style="text-align: right;">Page 37</p> <p>1 settled on a faux tree, would be 6-feet taller.</p> <p>2 So on the left-hand side some of the</p> <p>3 participants are standing at the back fence of the</p> <p>4 O'Donnell property. And so that's a fairly close</p> <p>5 location to the crane. I happen to then move to the</p> <p>6 other side of the O'Donnell property and took a</p> <p>7 photograph. And now because I'm a further distance</p> <p>8 away you get a better sense of the tree height.</p> <p>9 So first of all, the tree on the right-hand</p> <p>10 side that's in the -- just right of center, those are</p> <p>11 the areas that are going to be cleared in order to put</p> <p>12 the compound in.</p> <p>13 Q. When you say "The area that is going to be</p> <p>14 cleared," you mean the trees that you see on P-5 are</p> <p>15 going to be removed?</p> <p>16 A. Yes.</p> <p>17 Q. And which are the trees that are over or in</p> <p>18 the location of the proposed tower?</p> <p>19 A. Yes. Again, on the left-hand side you see</p> <p>20 a number of participants that are standing at a fence,</p> <p>21 and that's the property line. And then as you see</p> <p>22 there's a -- a whitish area which is the roof of the --</p> <p>23 one of the recycling sheds. And then behind that you</p> <p>24 see some deciduous trees. That's in the area that's</p> <p>25 going to be cleared for the compound.</p>	<p style="text-align: right;">Page 38</p> <p>1 So moving from that property further</p> <p>2 away --</p> <p>3 Q. When you say "that property"?</p> <p>4 A. Excuse me, the O'Donnell property, and</p> <p>5 moving further away would be P-6. So P-6 is from the</p> <p>6 Saganic property, which is further to the south. And</p> <p>7 so you see a hedgerow in the front, and that hedgerow</p> <p>8 is approximately on the property line of the O'Donnell</p> <p>9 property. So you see there's a label there "O'Donnell</p> <p>10 property," which refers to the house on the O'Donnell</p> <p>11 property, and then to the left or west of the house you</p> <p>12 see the upper story of a barn. And there you see again</p> <p>13 the same boom at 120 feet.</p> <p>14 Now, what is helpful about this to me is</p> <p>15 the fact that -- and again I'll repeat, the trees that</p> <p>16 are just right of the boom are going to be removed.</p> <p>17 But you see the tree line there that is substantially</p> <p>18 lower than 120 feet. So one might estimate that those</p> <p>19 tree heights are maybe 65-feet tall. I'll talk about</p> <p>20 this later, but there was some testimony -- there was</p> <p>21 no testimony about the height of the trees, but there</p> <p>22 was an estimate of something like 80 to a hundred feet</p> <p>23 in the record. I remember 80 feet specifically. None</p> <p>24 of those trees in that area are 80-feet tall. They are</p> <p>25 in my opinion closer to 65 feet.</p>
<p style="text-align: right;">Page 39</p> <p>1 Now, there's some trees you see without</p> <p>2 leaves which are probably Ash Trees that are going to</p> <p>3 disappear anyway, and most of the trees there are -- in</p> <p>4 that immediate area are just deciduous.</p> <p>5 BOARD MEMBER NEWLIN: Can you say why you</p> <p>6 think the height is 60 feet?</p> <p>7 THE WITNESS: Excuse me?</p> <p>8 BOARD MEMBER NEWLIN: You did an estimate</p> <p>9 of the tree heights?</p> <p>10 THE WITNESS: Yes.</p> <p>11 BOARD MEMBER NEWLIN: So can you explain?</p> <p>12 THE WITNESS: Just graphically looking at</p> <p>13 the photograph. Again, when you're further and further</p> <p>14 away the line-of-sight between the base and the top</p> <p>15 gets closer and closer together. So it's impossible to</p> <p>16 judge the height when you're at the fence line, but</p> <p>17 when you go away it's a little better.</p> <p>18 BOARD MEMBER NEWLIN: And you're just using</p> <p>19 the proportion of the height as you compare to the top</p> <p>20 of the crane, is that what you're doing?</p> <p>21 THE WITNESS: Yes. And again the -- on</p> <p>22 P-5, the left photograph, you don't even see yet the</p> <p>23 cab of the crane truck. That's down below the fence</p> <p>24 line. But, again, just proportionally on the</p> <p>25 right-hand side I think the best example because I'm</p>	<p style="text-align: right;">Page 40</p> <p>1 the furthest away is P-6. And again, I'll return to</p> <p>2 this theme, but if this faux tree were in a wooded area</p> <p>3 where there were trees that were 80-, 85-foot tall it</p> <p>4 would be less apparent, but because this is going to be</p> <p>5 sticking out in a sense like a sore thumb it could be</p> <p>6 very apparent, and it will be in my opinion very</p> <p>7 apparent that it's not a natural tree. There's a</p> <p>8 geometry to it. You will see some of the panels there</p> <p>9 if more than one cellular provider mounts equipment</p> <p>10 there. So it will appear more and more unnatural as</p> <p>11 cellular providers attach themselves.</p> <p>12 BOARD MEMBER NEWLIN: Are you able to -- as</p> <p>13 you put up this exhibit, are you able to in your</p> <p>14 opinion say which are the trees that are going to be</p> <p>15 removed on P-6?</p> <p>16 THE WITNESS: Clearly the --</p> <p>17 CHAIRMAN FLANAGAN: If you can use the</p> <p>18 pointer.</p> <p>19 THE WITNESS: Yes. On P-6 there is --</p> <p>20 Mr. SIMON: Paul, can you use the pointer?</p> <p>21 THE WITNESS: I'm putting the pointer to</p> <p>22 the right of the boom, and there is a deciduous tree,</p> <p>23 which in my opinion is in the area that's going to be</p> <p>24 removed. So you're going to see more of this facility.</p> <p>25 Now, what is unresolved is --</p>

<p style="text-align: right;">Page 41</p> <p>1 BOARD MEMBER NEWLIN: I'm sorry. Are there</p> <p>2 any other trees in this picture that are going to be</p> <p>3 removed?</p> <p>4 THE WITNESS: It is -- I can't tell -- let</p> <p>5 me just look at another photo.</p> <p>6 BOARD MEMBER NEWLIN: Only if you know for</p> <p>7 sure. It's not that important, I just want to know.</p> <p>8 THE WITNESS: If you look on P-5 on the</p> <p>9 right-hand photograph you see quite above the fence</p> <p>10 line, and that's the roof of the recycling shed. If</p> <p>11 you'll then flip to P-3 you'll see in the upper</p> <p>12 right-hand corner you'll see, first of all, there's a</p> <p>13 rough line of where the recycling shed is, and then</p> <p>14 you'll see some of the Xs extend further to the</p> <p>15 northeast of even the edge of the shed. So anything</p> <p>16 that is in front of the shed is going to be -- or let's</p> <p>17 say to the southeast of the shed is going to be removed</p> <p>18 in my opinion.</p> <p>19 And you can get a sense of that again from</p> <p>20 the white roof, but again the Applicant has not</p> <p>21 identified the nature of the trees, the diameter, you</p> <p>22 know, the height of those trees. So this is the best I</p> <p>23 have to indicate how the view is going to change. And</p> <p>24 again it's a fairly dense area, and I think the, you</p> <p>25 know, the best view is on P-3 the lower right-hand</p>	<p style="text-align: right;">Page 42</p> <p>1 photo. So I, again, I took it straight into the area</p> <p>2 where there were going to be trees removed. And again,</p> <p>3 that's a 30-by-60-foot area. But the Applicant is</p> <p>4 proposing to plant a so-called buffer to the southeast</p> <p>5 of that compound. And in order to plant there you have</p> <p>6 to remove the existing trees that are there. What I</p> <p>7 also want --</p> <p>8 BY MR. SIMON:</p> <p>9 Q. And by the way, and I don't want to jump</p> <p>10 around too much, but since you mentioned it. In terms</p> <p>11 of the proposed plantings, based on the heights at the</p> <p>12 time of planting that were depicted in the site plan</p> <p>13 and stated via testimony, do you have an opinion as to</p> <p>14 whether those "replacement trees" are going to be able</p> <p>15 to screen the proposed cell tower?</p> <p>16 A. Well, they're not going to screen the cell</p> <p>17 tower. Over time they will screen the equipment area.</p> <p>18 The other point I want to raise is the</p> <p>19 proximity of the tower to the property lines. When you</p> <p>20 measure setbacks you measure to the closest point of</p> <p>21 the structure. And the measurements that you've been</p> <p>22 given by the Applicant go to the centerline of the</p> <p>23 tower. That's like saying, I mean, you don't measure</p> <p>24 the one setback to the centerline of your house, you</p> <p>25 measure it to the closest point of your house. And</p>
<p style="text-align: right;">Page 43</p> <p>1 given the fact that the faux tree alternative has, I</p> <p>2 believe, a 20-foot diameter to the artificial</p> <p>3 branching, that tree structure I would estimate is</p> <p>4 going to be 45 feet from the property line of the</p> <p>5 O'Donnell property, and approximately 80 feet from the</p> <p>6 property to the west.</p> <p>7 So it's in terms of what's the degree of</p> <p>8 variance that's needed, it's more severe than what the</p> <p>9 Applicant implied. Because the Applicant only measured</p> <p>10 to the centerline of the tower, which again is a</p> <p>11 convenient engineering issue, but it's not the way you</p> <p>12 measure setbacks.</p> <p>13 CHAIRMAN FLANAGAN: Mr. Steck, let me ask</p> <p>14 you a question. On the top of the trees, I think you</p> <p>15 just said the plantings would eventually cover or hide</p> <p>16 the equipment shed, they weren't going to cover the</p> <p>17 tower. How large of a tree could be moved or</p> <p>18 transplanted? Do you have any experience?</p> <p>19 THE WITNESS: I don't. I know that the</p> <p>20 taller the tree, certainly the more expensive it is,</p> <p>21 but the less likely it will survive. So one problem is</p> <p>22 when you do -- there are a number of tradeoffs. When</p> <p>23 you plant larger trees there's a greater probability</p> <p>24 that it's not going to survive, and obviously difficult</p> <p>25 to replace.</p>	<p style="text-align: right;">Page 44</p> <p>1 The -- I had another point that -- and the</p> <p>2 other issue, and again it depends upon the species.</p> <p>3 There are some trees that grow faster than others, two</p> <p>4 feet a year. And one of the problems is they tend to</p> <p>5 be susceptible to wind damage or being blown over. So</p> <p>6 there's kind of a tradeoff in types of trees.</p> <p>7 But you know, the Applicant obviously is</p> <p>8 clearing the area. The Applicant is making some</p> <p>9 attempt to buffer at least the lower part of this.</p> <p>10 CHAIRMAN FLANAGAN: Have you ever seen a</p> <p>11 tree planted in your experience in one of these other</p> <p>12 cases that was say 50-feet tall?</p> <p>13 THE WITNESS: I've never seen a 50-foot</p> <p>14 tall tree planted.</p> <p>15 CHAIRMAN FLANAGAN: 25-feet tall?</p> <p>16 THE WITNESS: I think on rare occasions.</p> <p>17 Again, you need specialized equipment. And there are</p> <p>18 firms that do big time planting. Some of this thing</p> <p>19 also, I think, comes out of litigation. Someone</p> <p>20 damages someone else's trees there has to be a remedy</p> <p>21 and it's not just monetary.</p> <p>22 So the answer is, I think there's some</p> <p>23 judgement involved that obviously evergreens are better</p> <p>24 than deciduous. It is helpful to have a staggered row</p> <p>25 so that there's room to grow because if you plant them</p>

<p style="text-align: right;">Page 45</p> <p>1 too close right away they're going to compete too much</p> <p>2 for light and resources.</p> <p>3 BY MR. SIMON:</p> <p>4 Q. And I guess to follow the Chairman's point,</p> <p>5 isn't it true that if you're going to be -- even if you</p> <p>6 can possibly plant a tree that is taller than the trees</p> <p>7 that are being proposed by the Applicant, as you get up</p> <p>8 there in height in terms of greater height of trees</p> <p>9 that corresponds to an increased root system, right, in</p> <p>10 terms of diameter?</p> <p>11 A. Right.</p> <p>12 Q. And then further opportunity for those root</p> <p>13 systems to be potentially damaged by other activities?</p> <p>14 A. That's potentially true. And again,</p> <p>15 there's always a tradeoff. If you plant big trees they</p> <p>16 have to be spaced more, then they're less effective in</p> <p>17 terms of buffering. And there -- you know, you can't</p> <p>18 buffer a 120-foot faux tree unless you're in a heavily</p> <p>19 wooded area.</p> <p>20 So there are two kinds of negative effects:</p> <p>21 One is, what's on the ground. When you're standing in</p> <p>22 your backyard and you look across the fence what's</p> <p>23 there. But obviously a structure like this has a</p> <p>24 regional effect.</p> <p>25 Q. Now, Peter, just before the Chairman asked</p>	<p style="text-align: right;">Page 46</p> <p>1 you a question. I'm just going to follow up on</p> <p>2 something. You talked about the fact that the distance</p> <p>3 to the relative property lines is actually somewhat</p> <p>4 less than what is depicted on the site plan, because</p> <p>5 you're not taking into account the breast of the tree</p> <p>6 branches; correct?</p> <p>7 A. Right.</p> <p>8 Q. The fake tree branches. If the Applicant</p> <p>9 ultimately installed a flagless flagpole, as was</p> <p>10 depicted in a number of photo simulation images that</p> <p>11 were presented as part of this application, there still</p> <p>12 would be a width certainly from the property line</p> <p>13 that's greater -- I'm sorry, and the distance would be</p> <p>14 less correspondingly to the property line even if you</p> <p>15 went with the flagless pole?</p> <p>16 A. That's correct. There is some diameter to</p> <p>17 the flagless flagpole. So again, I just wanted to</p> <p>18 point out that the dimensions referenced by the</p> <p>19 Applicant are really to the centerline of the</p> <p>20 structure, and that's not really how you measure</p> <p>21 setbacks, in my opinion.</p> <p>22 So I think it's worthwhile talking about</p> <p>23 the neighborhood.</p> <p>24 Q. Peter, just a couple of other things. I'm</p> <p>25 sorry. With regard to this property, and you talked</p>
<p style="text-align: right;">Page 47</p> <p>1 earlier about the fact that it's, in essence, a bowtie</p> <p>2 with this particular shape on two sides of the tie?</p> <p>3 A. I think I referred to it as an hour glass.</p> <p>4 Either one works.</p> <p>5 Q. In my head I think it was a bowtie.</p> <p>6 Before we get off of the subject property,</p> <p>7 can you talk a little bit about the fact that this is</p> <p>8 still one property and not two separate properties even</p> <p>9 though there's different activities?</p> <p>10 A. Correct. That while in its past history it</p> <p>11 was an assembly. The answer is today it is one tax map</p> <p>12 lot, and the entire lot again is indicated as a key</p> <p>13 contributing property in the local historic district.</p> <p>14 So the answer is it is one property. There was -- it</p> <p>15 was merged over time, and right now it has two</p> <p>16 principal uses: It has a historic house and museum on</p> <p>17 one end. And then it has the DPW yard at the other</p> <p>18 end. So it has two principal uses at this current</p> <p>19 time.</p> <p>20 Q. Thank you.</p> <p>21 A. It's worthwhile talking about the</p> <p>22 surrounding neighborhood. And I think the best way to</p> <p>23 look at it is, I guess, P-2 which has an excerpt from</p> <p>24 your Master Plan. And this is largely, as the Board is</p> <p>25 aware, the geometric center of Harding Township, but</p>	<p style="text-align: right;">Page 48</p> <p>1 it's also referred to in numerous documents as a</p> <p>2 historic area.</p> <p>3 On the map on P-2, and there's a key on the</p> <p>4 lower left-hand side --</p> <p>5 Q. And that key is not your key, but the key</p> <p>6 from the actual document?</p> <p>7 A. That's correct. So first of all, everything</p> <p>8 that's in color there, or within the line is in the</p> <p>9 local historic district. And as the record shows this</p> <p>10 has expanded over time. The municipality has elected</p> <p>11 to include adjacent properties in the area.</p> <p>12 Q. Just so we're clear, when you say "it's</p> <p>13 expanded over time" you're talking about the New Vernon</p> <p>14 Historic District has expanded over time?</p> <p>15 A. That's correct. So in the red line, and</p> <p>16 there may be some disagreement on part of the subject</p> <p>17 property, but the red line generally indicates</p> <p>18 properties that are on the State and National Register</p> <p>19 of Historic Places.</p> <p>20 Q. And again, that's not your red line, that's</p> <p>21 the documents?</p> <p>22 A. That's correct. This is from the Master</p> <p>23 Plan.</p> <p>24 The historic element, again, has a table</p> <p>25 that specifically lists by lot and block number the</p>

<p style="text-align: right;">Page 49</p> <p>1 lots that are in the New Vernon Historic District, and 2 it has a commentary about whether they're contributing 3 or key contributing. So everything in blue, which 4 includes the entire subject property, Lot 1 and Block 5 17, is labeled as a key contributing property. Despite 6 the fact that there's some non-historic sheds there, it 7 is a key contributing property.</p> <p>8 The green says that it's contributing. So 9 again there are -- the highest category in terms of the 10 integrity of the historic district is key contributing. 11 Then contributing is -- means that it's in the same 12 theme. It might not be a focal point, but it's in the 13 same theme as the historic nature of the area. There's 14 a reference to a -- to the park that's in the area. 15 And then yellow is noncontributing. And 16 noncontributing means that because there might have 17 been changes over time or -- to the building, or there 18 might be a later construction, but it's still in the 19 historic district. And it means that it's not a focal 20 point, but it deserves attention because it is within 21 the district. So there are different levels of 22 interest on these properties.</p> <p>23 And what is significant is that despite the 24 fact that there is a DPW yard here with fairly low 25 height structures, this cell tower is in the heart of</p>	<p style="text-align: right;">Page 50</p> <p>1 the Historic District. The property that it's on is a 2 key contributing property, and it happens to be toward 3 the center, the focal point of the district.</p> <p>4 Q. And, in fact, if you look at P-2 in terms 5 of following the colored key, that the subject 6 property, Block 17, Lot 1 appears to be only one of 7 three properties in the entire New Vernon Historic 8 District that are key contributing properties 9 identified; correct?</p> <p>10 A. That's correct. There's a church property 11 and then there's another development, and then the 12 subject property.</p> <p>13 CHAIRMAN FLANAGAN: And who designated 14 these as key contributing versus contributing?</p> <p>15 THE WITNESS: I believe the municipality 16 had consultants that analyzed the area, and again --</p> <p>17 BOARD MEMBER NEWLIN: Mr. McCabe. Is that 18 what you're referring to?</p> <p>19 THE WITNESS: Yes. So someone with 20 professional qualifications, a degree, experience, 21 analyzed it. Now, there are formal nomination forms 22 when you're submitting to the State and National 23 Register and they have to review it. But the -- the 24 criteria in general are, the department of interior 25 criteria were used by the local consultants to rate the</p>
<p style="text-align: right;">Page 51</p> <p>1 properties.</p> <p>2 CHAIRMAN FLANAGAN: Okay. So the township 3 designated these as either contributing or key 4 contributing. Are they on the National or State 5 Register of Historic Places?</p> <p>6 THE WITNESS: The red line, according to 7 the Master Plan, shows that that's the boundary of the 8 district on the State and National Register. There is 9 a little bit of disagreement about how much of the 10 subject property is on the State and the National, but 11 it's clearly that the Historic 1795 House is on the 12 State and National Register.</p> <p>13 There is -- as I consulted other sources 14 there was not complete agreement in terms of where that 15 red line is, but this is the line. And the key here 16 says that this is the boundary of the State and 17 National Register, and that's what Harding Township 18 recognizes in its Master Plan as the limits of the 19 district.</p> <p>20 CHAIRMAN FLANAGAN: So Harding Township 21 thinks that the State and National Register includes 22 everything within that red line. Is that what you're 23 saying?</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. FOX: I'm sorry, Mike. I didn't want</p>	<p style="text-align: right;">Page 52</p> <p>1 to interrupt you there, but just to be clear here. I 2 think what Mr. Steck is trying to get to, is there's a 3 difference in how the Federal and State Historic 4 District, the extent of those districts is shown on the 5 original mapping that is approved by the state and the 6 Federal Government, versus what's shown on the township 7 map; is that accurate?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. FOX: And that's what they're trying to 10 get at.</p> <p>11 MR. SIMON: First, did you respond to Mr. 12 Fox's comment?</p> <p>13 THE WITNESS: Would you make your comment 14 again, so I can --</p> <p>15 MR. FOX: Okay. You've gone through pains 16 to talk about the Federal and State Historic District 17 boundary as it's shown on the township map. Are you 18 aware that there is a discrepancy -- are you saying 19 there's a discrepancy between what's shown on the 20 Township maps for that historic and state district, 21 versus what's shown on the actual state and Federal 22 mapping?</p> <p>23 THE WITNESS: Well, there appears to be a 24 discrepancy and I'm not sure which one is correct. If 25 you look at the NJDEP Geo-website you can click on</p>

<p style="text-align: right;">Page 53</p> <p>1 overlays. And the boundaries are somewhat different.</p> <p>2 CHAIRMAN FLANAGAN: So let's talk about</p> <p>3 that difference. So I presume that that is the</p> <p>4 official state listing of what is historic and what is</p> <p>5 not; is that correct, the website you were referring</p> <p>6 to?</p> <p>7 THE WITNESS: Let me put it this way.</p> <p>8 CHAIRMAN FLANAGAN: My question, and I</p> <p>9 don't mean to make it more confusing. There are three</p> <p>10 entities here: The Township, the state, and Federal.</p> <p>11 Do all -- I'm trying to understand, which of those</p> <p>12 three, if any, believe that the subject property is a</p> <p>13 historic property? The Township does, I think is what</p> <p>14 you told me; is that correct?</p> <p>15 THE WITNESS: Yes.</p> <p>16 CHAIRMAN FLANAGAN: Does the state believe</p> <p>17 that it's a subject property?</p> <p>18 MR. SIMON: Can I -- before you answer the</p> <p>19 question, just for clarification. I think to answer</p> <p>20 the question, you may need to clarify what is meant by</p> <p>21 the subject property as Block 17, Lot 1 both sides of</p> <p>22 the hour glass, versus one side of the hour glass.</p> <p>23 That's why I'm asking.</p> <p>24 CHAIRMAN FLANAGAN: So let's say the west</p> <p>25 side of the subject property and the east side. The</p>	<p style="text-align: right;">Page 54</p> <p>1 delineation being the narrow neck. So is there any</p> <p>2 part of the subject property east or west that is</p> <p>3 historic for the state?</p> <p>4 THE WITNESS: Yes.</p> <p>5 CHAIRMAN FLANAGAN: All right. Is the west</p> <p>6 side of the historic property historic?</p> <p>7 THE WITNESS: No. But let me just say, the</p> <p>8 state and the national registers are I think identical</p> <p>9 in terms of their boundaries. Again, the source I used</p> <p>10 for that was -- I didn't look at the individual</p> <p>11 nomination forms, I looked at the NJDEP Geo-website.</p> <p>12 And that had the eastern part of it is on the State and</p> <p>13 Nation Register. It did not have the western part of</p> <p>14 the hour glass.</p> <p>15 CHAIRMAN FLANAGAN: So if we talk about the</p> <p>16 part of the property, the western side where the</p> <p>17 tower's going to go, for the township it's historic,</p> <p>18 for the state it's not historic, and for the Feds it is</p> <p>19 not historic; is that correct?</p> <p>20 THE WITNESS: Yes. What I want to</p> <p>21 emphasize is that the Municipal Land Use Law allows</p> <p>22 this municipality to have its own districts. And they</p> <p>23 don't have to necessarily agree with the State and</p> <p>24 National District. So over time the properties that</p> <p>25 Harding Township considers to have historic merit have</p>
<p style="text-align: right;">Page 55</p> <p>1 expanded. And the colored properties here that are</p> <p>2 blue, green, and yellow, Harding Township considers</p> <p>3 them to have historic merits.</p> <p>4 CHAIRMAN FLANAGAN: So those colors are per</p> <p>5 Harding Township, not per the state or the Federal?</p> <p>6 THE WITNESS: That's correct.</p> <p>7 CHAIRMAN FLANAGAN: Okay. Thanks.</p> <p>8 BY MR. SIMON:</p> <p>9 Q. And just also on that clarification point.</p> <p>10 You include appropriately, Mr. Steck, a note on the</p> <p>11 bottom of P-2 with regard to specifically to Block 17,</p> <p>12 Lots 55.01, 55.02, 55.03, 55.04, where it talks about</p> <p>13 that they were on the national register but due to</p> <p>14 development, actually Harding Township determined that</p> <p>15 even though that they are technically on the State and</p> <p>16 National Register that Harding Township made a</p> <p>17 determination to remove them as contributing or</p> <p>18 otherwise to the New Vernon Historic District because</p> <p>19 of that development?</p> <p>20 A. Yes. That note is from the Master Plan. I</p> <p>21 know it's hard to read, but it's there.</p> <p>22 Q. But the point is, is that Harding Township</p> <p>23 also besides identifying within the New Vernon Historic</p> <p>24 District what's key contributing and contributing, also</p> <p>25 clearly did an evaluation of determining are there</p>	<p style="text-align: right;">Page 56</p> <p>1 properties that are no longer, even if they're in the</p> <p>2 State and National Register, that they're not part of</p> <p>3 the historic district?</p> <p>4 A. For example, to be listed on the State and</p> <p>5 National Register, there's no penalty unless you're</p> <p>6 using some Federal funds or Federal guarantees and then</p> <p>7 it requires review. If you're using private funds you</p> <p>8 can tear down a property that's on the State and</p> <p>9 National Register.</p> <p>10 The local district is different. You have</p> <p>11 a historic commission that reviews this. And if</p> <p>12 something doesn't need an application to the Planning</p> <p>13 Board or Board of Adjustment, they need a Certificate</p> <p>14 of Appropriateness from the Local Historic Commission,</p> <p>15 and that becomes a recommendation that that property</p> <p>16 comes before this Board, or the Planning Board.</p> <p>17 MR. SCHNEIDER: Mr. Chairman, is it --</p> <p>18 BOARD MEMBER NEWLIN: May I ask you, why</p> <p>19 does this matter?</p> <p>20 MR. STECK: It matters because --</p> <p>21 BOARD MEMBER NEWLIN: Are you going to get</p> <p>22 into -- I don't want to interrupt your flow. Are you</p> <p>23 going to actually get into why this information is --</p> <p>24 THE WITNESS: I'm going to jump the gun and</p> <p>25 I'll return to that. The reason it matters is because</p>

<p style="text-align: right;">Page 57</p> <p>1 by and large the adverse impacts of cellular towers is</p> <p>2 their visual impact. And what -- inclusion in a</p> <p>3 historic district means, in my opinion, that the</p> <p>4 municipality needs to take a finer-grain view of its</p> <p>5 negative impacts. And there's a lot of language in the</p> <p>6 Redevelopment Plan, the Master Plan, the PL Zone, the</p> <p>7 B-I Zone that talks about the small scale, the need to</p> <p>8 respect the historic fabric.</p> <p>9 So if this were put in a new residential</p> <p>10 subdivision, that is, you still want to analyze the</p> <p>11 negative impacts, but in my opinion there's a</p> <p>12 heightened level of scrutiny that is required in this</p> <p>13 instance because it's in a historic district.</p> <p>14 BOARD MEMBER NEWLIN: Let me ask you this,</p> <p>15 because I'm quite familiar with the Master Plan, and I</p> <p>16 know exactly what you're referring to. And I will --</p> <p>17 I'm not ignoring that, but tell us why it matters.</p> <p>18 I understand the residential impact, but</p> <p>19 how does it really hurt the Tunis-Ellicks House? How</p> <p>20 does this really hurt the Tunis-Ellicks House? That's</p> <p>21 the east part the hour glass.</p> <p>22 THE WITNESS: It's not just that house, it</p> <p>23 is the integrity of the district.</p> <p>24 BOARD MEMBER NEWLIN: So make it real for</p> <p>25 us.</p>	<p style="text-align: right;">Page 58</p> <p>1 THE WITNESS: I'm going to have to jump the</p> <p>2 gun here. First of all, the municipality says this is</p> <p>3 an important area of Harding Township. And it has</p> <p>4 another level of review by a historic commission than</p> <p>5 is normally the case. By rating properties as</p> <p>6 contributing and noncontributing there's a different</p> <p>7 level of scrutiny that that implies. But at the end of</p> <p>8 the day even though a property is noncontributing it</p> <p>9 gets reviewed and it can do damage to other properties</p> <p>10 in terms of the historic fabric.</p> <p>11 BOARD MEMBER NEWLIN: How?</p> <p>12 THE WITNESS: The theme in your Master Plan</p> <p>13 and the Redevelopment Plan is you would like this to be</p> <p>14 an active area. You would like sidewalks. You want</p> <p>15 more pedestrian interactions. That's what the public</p> <p>16 purpose is with an eye toward preserving the historic</p> <p>17 nature of the area. Here you have a cell tower that</p> <p>18 doesn't produce any pedestrian activity. Maybe a car</p> <p>19 comes to it once every two weeks to look at the</p> <p>20 equipment. It has no contribution in terms of the</p> <p>21 increased intensity that the Master Plan is looking</p> <p>22 for.</p> <p>23 BOARD MEMBER NEWLIN: But how does it hurt</p> <p>24 it?</p> <p>25 THE WITNESS: And on the other end you have</p>
<p style="text-align: right;">Page 59</p> <p>1 something that is completely artificial. If someone</p> <p>2 came in to build a new house and it was a ranch house</p> <p>3 with vinyl siding you might say, what's wrong with</p> <p>4 that? The answer is, that wouldn't be, in my opinion,</p> <p>5 approved in this area. It would be harmful to the</p> <p>6 area. It would damage the integrity of the Historic</p> <p>7 District. It would be detrimental to that theme.</p> <p>8 So it's not just property values, it's the</p> <p>9 public purpose here. The purpose is to keep this area</p> <p>10 intact as a focal point of the municipality. And your</p> <p>11 Master Plan is replete with that language, as well as</p> <p>12 the Redevelopment Plan.</p> <p>13 BOARD MEMBER NEWLIN: I understand, but</p> <p>14 we're going to go through some bouncing on this</p> <p>15 application. And we need to be quite specific in terms</p> <p>16 of pros and cons.</p> <p>17 And with regard to the historic aspect,</p> <p>18 this is not going to be put on the Tunis-Ellicks' part</p> <p>19 of the property, this is going to be put on the DPW</p> <p>20 part of the property. It seems to me if you can be</p> <p>21 more clear about how it hurts the historic aspect, not</p> <p>22 impact on property owners, but the historic, more</p> <p>23 specifically, that would be helpful. I'm familiar with</p> <p>24 the Master Plan language. I understand it at that</p> <p>25 level.</p>	<p style="text-align: right;">Page 60</p> <p>1 THE WITNESS: And that's the public policy.</p> <p>2 Your Master Plan says that you want to support the</p> <p>3 historic nature of the district. There is nothing</p> <p>4 historic about a fake tree that is 120-feet tall. And</p> <p>5 again, if someone came in and said the -- this</p> <p>6 municipality went to a great extent for the Post Office</p> <p>7 building. It has a historical scale. It has</p> <p>8 historical windows. It fits in with the area. It's in</p> <p>9 my opinion not damaging to the area even though it's a</p> <p>10 newer building.</p> <p>11 If someone came in and said I want to do</p> <p>12 big plate glass windows, and I want vinyl siding, and I</p> <p>13 want to put a cupola on the top that would be rejected.</p> <p>14 It would be harmful to the district.</p> <p>15 BOARD MEMBER NEWLIN: Not the cupola part.</p> <p>16 Please don't talk about the cupola.</p> <p>17 CHAIRMAN FLANAGAN: Yes, please.</p> <p>18 (Laughter.)</p> <p>19 MR. SIMON: I think he mispronounced it. I</p> <p>20 think he said Coppola. It's a whole different thing.</p> <p>21 BOARD MEMBER NEWLIN: Okay. I'm going to</p> <p>22 drop my question. I don't think you answered it</p> <p>23 because I'm looking for specifically why it would</p> <p>24 degrade?</p> <p>25 THE WITNESS: Because first of all, a cell</p>

<p style="text-align: right;">Page 61</p> <p>1 tower can go in multiple locations. As you know, 2 there's a large search area here. From a land use 3 point of view it doesn't have to go in a commercial 4 district. Although that's the public policy, it 5 doesn't have to go -- have a setback of so many feet 6 from a street. It is a foreign object that clearly 7 looks artificial. And in my opinion it detracts from 8 what is, I think, one of the better historic districts 9 in the state of New Jersey.</p> <p>10 This is a village that started in the 11 1700s. It grew up slowly. The public policy is to 12 protect this area. Putting a cell tower in that is 13 large, is above the tree line, that will from a 14 practical point of view not look like a real tree, is 15 like putting vinyl siding on all the houses in the 16 area. It detracts from what the nature of what a 17 historic district is.</p> <p>18 You can disagree with that judgment. I 19 invite you to pull your historic consultants back in 20 and I can have a side bet with you. I would bet you 21 they would agree with me.</p> <p>22 BOARD MEMBER NEWLIN: I just don't think 23 you're being specific.</p> <p>24 MR. MLENAK: Peter, please answer this 25 question. The Tunis-Ellicks House will be harmed by</p>	<p style="text-align: right;">Page 62</p> <p>1 the erection of this tower because?</p> <p>2 THE WITNESS: Because it will be very 3 visible when the leaves are down. And it will be an 4 artificial addition to that house. But again the 5 district is a composite. It's not going to hurt the 6 property value of that historic house, because it's in 7 public ownership. It's a museum. But the nature of 8 that is its surrounding.</p> <p>9 If you put, you know, storefronts around 10 that building it starts taking away from its historic 11 environment. And it's a composite issue.</p> <p>12 MR. MLENAK: So my other question, you put 13 an emphasis on the fact at that it's locally designated 14 the entire lot. Would your arguments be any different 15 if the western portion weren't?</p> <p>16 THE WITNESS: You can harm a historic 17 district by doing something bad in the district or 18 doing something bad next to the district that's visible 19 from the district. So in my opinion, because this is 20 visible not only -- this will be visible not only to 21 the Historic 1795 House, but to a number of properties 22 in the district, especially when the leaves are down, 23 that is harmful.</p> <p>24 MR. MLENAK: So for your conclusion on that 25 point, it doesn't matter whether specifically the</p>
<p style="text-align: right;">Page 63</p> <p>1 western portion is included or not included in that 2 historic district?</p> <p>3 THE WITNESS: It doesn't carry the day 4 because it is within the district. It's toward the 5 center of the district, and it is visible from other 6 properties. And again, there's nothing from a land use 7 point of view that says this tower has to be in the 8 historic district.</p> <p>9 If this tower, for example, put at the 10 elementary school, outside of the district in the back 11 of there there's a wooded area, that's a 37, 39-acre 12 property. That clearly is less damaging. It's outside 13 of the area that's recognized as historic. In the back 14 of that area there are -- there's a wooded area.</p> <p>15 There's a gravel driveway going back there. That in my 16 opinion while you might be able to see it from some of 17 the properties is a land shift away in terms of adverse 18 impact.</p> <p>19 CHAIRMAN FLANAGAN: So while we're on this 20 topic, where do you think it would be better placed? 21 You just described one place, which is the school 22 property.</p> <p>23 THE WITNESS: I know that the --</p> <p>24 MR. SIMON: Let the Chairman ask his 25 question.</p>	<p style="text-align: right;">Page 64</p> <p>1 THE WITNESS: Sorry.</p> <p>2 CHAIRMAN FLANAGAN: The Board is not 3 amenable to leasing that property. Right. Neither is 4 the Presbyterian Church. Neither is, I guess, the 5 Township, or Christ the King, or where else did we 6 look? The firehouse, I guess they're not willing to 7 negotiate at a reasonable level. So there have been a 8 number of properties discussed. So where would you 9 suggest it goes knowing that, or at least having heard 10 the testimony, the RF testimony that it needs to be in 11 a certain geographic area. So looking in that 12 geographic area where would you put it?</p> <p>13 THE WITNESS: First of all, and I'm going 14 to get into this later. The solution is not 15 necessarily one tall tower. There are ways to have 16 distributed antenna sites that don't have a visual 17 impact.</p> <p>18 As I understand it, the approach to the 19 Board of Ed was to have a flagpole like in the driveway 20 circle, in a sense in your face on the building. And I 21 don't -- and first of all, that was done, whatever, a 22 year and a half ago or two years ago.</p> <p>23 And number two, there's nothing on the 24 record that says that there was an approach to the 25 Board of Ed to put it in the rear, even to the rear of</p>

<p style="text-align: right;">Page 65</p> <p>1 the play fields. So I don't -- unless the Board of Ed 2 separately met and discussed that, there's nothing on 3 the record that says from the initial proposal of 4 Verizon let me put a -- a flagpole in the front of your 5 building, or in the driveway circle. That was the only 6 question that was put before the Board of Ed, as I 7 understand it. And that was more than a year ago. 8 Given the evidence that's coming into the 9 record, and the fact that there are other solutions -- 10 the other issue that comes to mind is that the record 11 so far suggests that the biggest concentration of 12 people, and if you want to look at the issue of public 13 safety and it's good to have cell phone activity that 14 works in terms of advancing public safety, the biggest 15 concentration of people is the elementary school. You 16 want your kids to be safe. You want your staff to be 17 safe. 18 The answer is, you can put in a in-building 19 distributed service as in this municipal building, or 20 200, 300 feet away you can have a cell tower in the 21 woods and it would guarantee coverage both in that 22 building and on the play fields. There seems to be a 23 melding of public purposes here. That's the one site 24 in this whole area that has the greatest concentration 25 of people, kids and teachers. And your police chief</p>	<p style="text-align: right;">Page 66</p> <p>1 already testified about the fact that there's a focus 2 on helping that out. 3 Now, there are different solutions. There 4 can be an in-building distributed service. There can 5 be some mounted panels on the building. It's like a 6 two-and-a-half story. It's a fairly large building. 7 There are ways to do it which are not just plopping 8 down an antenna. But the answer is, if you want to buy 9 into plopping down one antenna, the back of that 10 building I believe is within the search area, back 11 behind the play fields. While it's going to take a 12 little longer to drive to it for the staff of Verizon, 13 the answer is they're only going to go there once every 14 other week. And the record shows that that question 15 has never been posed to the Board of Ed. And nothing 16 has been re-proposed to them within the last whatever, 17 one and a half to two years. 18 MR. SCHNEIDER: I would object to Mr. 19 Steck's characterization of what would work at the 20 school. He's not an RF expert. 21 MR. SIMON: He gave his opinion, or he's 22 giving his opinion based on a question that was asked, 23 and it's a planning answer. 24 CHAIRMAN FLANAGAN: I had asked where he 25 would recommend to put it, if not the proposed site.</p>
<p style="text-align: right;">Page 67</p> <p>1 He answered it. I understand he's not an RF expert. 2 THE WITNESS: The ground elevation happens 3 to be the same or a little higher than the current 4 elevation where the tower's being proposed. So it's 5 not like you're putting it in a valley. It happens to 6 have a, I believe, a little higher elevation in the 7 back. 8 BOARD MEMBER NEWLIN: May I ask how many 9 cell tower applications have you been involved in as a 10 planner? 11 THE WITNESS: Now, what do you mean 12 involved with? 13 BOARD MEMBER NEWLIN: Any way you want to 14 define it. 15 THE WITNESS: Years ago I did testifying 16 for Verizon and some other carriers. I happen to have 17 a negative opinion representing a municipality, and I 18 seem never to have been called again. So -- 19 BOARD MEMBER NEWLIN: That's too much 20 information. Just how many? 21 THE WITNESS: Probably I've testified in 22 something like a dozen cell towers. 23 BOARD MEMBER NEWLIN: So you don't have a 24 lot of experience in you're not being an RF engineer, 25 but you have a lot of experience in some of these</p>	<p style="text-align: right;">Page 68</p> <p>1 planning situations? 2 THE WITNESS: Well, you hear a lot of 3 testimony. 4 BOARD MEMBER BOYAN: On that topic, if I 5 may. So 45-years experience in the field. I want to 6 talk a little bit about precedent. 7 In a municipally designated historic 8 district have you ever seen a cell tower go up? 9 THE WITNESS: I have never been involved, 10 nor have I seen a new cell tower being placed in a 11 historic district. 12 BOARD MEMBER BOYAN: If it's not a historic 13 district and the State and Federal government is 14 "correct," have you seen a cell tower go up in a 15 proximity of the National and State Historic District 16 within the State of New Jersey? 17 THE WITNESS: Well, to give you an example 18 of -- I referenced the cell tower at the Delbarton 19 School. When that was first proposed because it's -- 20 they did a one-mile search of its visual impact, and 21 because closer than a mile was the Jockey Hollow 22 National Park -- 23 MR. SIMON: Wait. Before you go on, let's 24 make sure the record is accurate. When you say less 25 than a mile, what was the approximate distance between</p>

<p style="text-align: right;">Page 69</p> <p>1 the Delbarton -- because I know the answer -- the</p> <p>2 Delbarton site and Jockey Hollow National Park,</p> <p>3 approximately?</p> <p>4 I mean, was it a half mile? Was it</p> <p>5 three-quarters of a mile?</p> <p>6 BOARD MEMBER BOYAN: Actually, let me</p> <p>7 rephrase my question. What is the distance between the</p> <p>8 proposed site and the area which is being designated by</p> <p>9 State and Federal National Historic District?</p> <p>10 CHAIRMAN FLANAGAN: Are you estimating in</p> <p>11 this --</p> <p>12 BOARD MEMBER BOYAN: Yes. In this</p> <p>13 application.</p> <p>14 CHAIRMAN FLANAGAN: So what's the closest</p> <p>15 property designated by either the State or Federal --</p> <p>16 BOARD MEMBER BOYAN: Exactly. And what's</p> <p>17 the distance?</p> <p>18 THE WITNESS: Just to finish what I was</p> <p>19 saying --</p> <p>20 BOARD MEMBER NEWLIN: On the same property</p> <p>21 as the Tunis-Ellicks.</p> <p>22 BOARD MEMBER BOYAN: A portion of the</p> <p>23 property.</p> <p>24 THE WITNESS: -- with the Delbarton tower</p> <p>25 --</p>	<p style="text-align: right;">Page 70</p> <p>1 BOARD MEMBER BOYAN: The question is, what</p> <p>2 is the distance between the proposed tower and the</p> <p>3 closest distance to something that's designated State</p> <p>4 or Federal Historic?</p> <p>5 THE WITNESS: Let me get another piece of</p> <p>6 paper.</p> <p>7 CHAIRMAN FLANAGAN: Can I ask you this? Is</p> <p>8 one of the abutting properties designated as either by</p> <p>9 the State or the Federal as historic?</p> <p>10 THE WITNESS: Yes. And I was trying to --</p> <p>11 MR. SIMON: Yes. That's the answer.</p> <p>12 THE WITNESS: So the so-called Conine</p> <p>13 property --</p> <p>14 MR. SIMON: Conine.</p> <p>15 THE WITNESS: Conine property, Block 17,</p> <p>16 Lot 55 is on the State and National Registers. And</p> <p>17 this -- the compound is proposed to be 66.6 feet away.</p> <p>18 And the closest part of the tower I estimate to be</p> <p>19 80 feet away.</p> <p>20 BOARD MEMBER BOYAN: Okay. So with that</p> <p>21 80 feet, have you ever seen a cell tower go up within</p> <p>22 80 feet of a property that is designated on the State</p> <p>23 or Federal Historic District?</p> <p>24 THE WITNESS: I have not. And I just want</p> <p>25 to make the distinction that sometimes because there's</p>
<p style="text-align: right;">Page 71</p> <p>1 a preference to put it on an existing structure,</p> <p>2 sometimes they can be put on buildings. But in terms</p> <p>3 of a new constructed tower, I have never seen something</p> <p>4 either in a historic district or that close to a</p> <p>5 historic district that's on the State and National.</p> <p>6 BOARD MEMBER BOYAN: Third and last</p> <p>7 question should be very quick. You testified that the</p> <p>8 cell tower's approximately 45 feet, again, from the</p> <p>9 perimeter of the branches, to the O'Donnell property?</p> <p>10 THE WITNESS: Yes.</p> <p>11 BOARD MEMBER BOYAN: Have you ever seen a</p> <p>12 cell phone tower go up within 45 feet, or whatever the</p> <p>13 right number of feet is, to a residential site?</p> <p>14 THE WITNESS: I have not seen a new cell</p> <p>15 tower go up, in my experience, that close.</p> <p>16 BOARD MEMBER BOYAN: So based on my three</p> <p>17 questions, you would call this application</p> <p>18 unprecedented?</p> <p>19 THE WITNESS: From my experience, yes.</p> <p>20 BOARD MEMBER BOYAN: Thank you.</p> <p>21 BOARD MEMBER NEWLIN: Those were two of my</p> <p>22 questions.</p> <p>23 CHAIRMAN FLANAGAN: Do you have any more</p> <p>24 questions?</p> <p>25 BOARD MEMBER NEWLIN: I think he's got more</p>	<p style="text-align: right;">Page 72</p> <p>1 than I do.</p> <p>2 CHAIRMAN FLANAGAN: Go ahead.</p> <p>3 BY MR. SIMON:</p> <p>4 Q. Can I -- and by the way, I'm sorry. I</p> <p>5 apologize. To close that loop regarding the National</p> <p>6 Historic Park, just because you started testifying and</p> <p>7 I didn't want to lose the point. Is it that despite</p> <p>8 the fact that the National Historic Park was basically</p> <p>9 a mile away or almost a mile away, that there was still</p> <p>10 great consideration given in the context of that,</p> <p>11 actually that cell tower application to its proximity</p> <p>12 of almost a mile to National Park?</p> <p>13 A. Because, there was a search area of a mile</p> <p>14 from that Delbarton tower, and the State Historic</p> <p>15 Preservation Office got involved and reviewed it. And</p> <p>16 one of the comments, because it was in a wooded area,</p> <p>17 it did trigger state interest in it. But the answer</p> <p>18 is, at the end of the day it was approved, because</p> <p>19 while, you know, obviously, it was -- because of the</p> <p>20 wooded -- part of it, in my opinion, because of the</p> <p>21 wooded nature of the environment it wasn't a tower that</p> <p>22 was in your face. But within a mile, a mile was the</p> <p>23 search area in terms of analyzing adverse visual</p> <p>24 impacts.</p> <p>25 BOARD MEMBER BOYAN: And your professional</p>

<p style="text-align: right;">Page 73</p> <p>1 opinion 5,280 feet is substantially larger than 2 80 feet? 3 THE WITNESS: In my professional opinion it 4 is. 5 CHAIRMAN FLANAGAN: So not to belabor this, 6 but does not the Saint Abby's property abut Jockey 7 Hollow? There's an entrance between the two? 8 THE WITNESS: Again, but -- 9 CHAIRMAN FLANAGAN: But just -- 10 THE WITNESS: Well, the tower itself -- 11 CHAIRMAN FLANAGAN: Forget about the tower. 12 Do the properties share a property line? 13 THE WITNESS: I believe they do. 14 CHAIRMAN FLANAGAN: All right. So there's 15 an example where a tower has been put on a piece of 16 property that abuts a historic piece of property. 17 Now, at considerably greater distance, but 18 the properties adjoin each other. 19 MR. SIMON: And the distance is 20 approximately a mile away, Mr. Steck? 21 THE WITNESS: I think just short of a mile 22 away, and it triggered a state review. 23 BOARD MEMBER NEWLIN: What about if you 24 just went into questions of residential zones, of 25 historic, residential zones, which was his question?</p>	<p style="text-align: right;">Page 74</p> <p>1 Are you aware of any? Well you said already you 2 weren't. 3 THE WITNESS: I'm not aware. Part of it -- 4 I'm giving you my professional opinion, but you don't 5 have to look beyond your ordinances. Your conditional 6 use standards say that it shouldn't be within a 7 thousand feet of a national historic property or 8 district. 9 BOARD MEMBER NEWLIN: Well, we have a 10 question and we want you to answer the question. He 11 had very good questions. We know what the Master Plan 12 and ordinance says. 13 THE WITNESS: But that's what we're bound 14 by. That's the expression of public policy in your 15 ordinances and your Master Plan. So what I'm saying is 16 that it happens to be my opinion, but the test of the 17 negative impact here is how it affects the integrity of 18 your Master Plan and zoning ordinance. 19 And you already have policies. You would 20 prefer that it be an Office Zone or the B-2 Zone along 21 the Interstate highway. 22 BOARD MEMBER NEWLIN: No. 23 CHAIRMAN FLANAGAN: So when you refer to 24 office Zone or B-2 Zone you recognize there are no B-2 25 Zones or Office Zones in this general area; right?</p>
<p style="text-align: right;">Page 75</p> <p>1 THE WITNESS: Correct. 2 CHAIRMAN FLANAGAN: So it brings us back to 3 where you put it. And you recognize that the Board of 4 Education is an independent entity that controls this 5 property to this Board, or the Township controls the 6 Board of Ed; correct? 7 THE WITNESS: Yes. 8 CHAIRMAN FLANAGAN: So Mr. Simon -- 9 MR. SIMON: Yes. I mean, I know we went 10 off and I was trying to be deferential to the Board, 11 but I have a whole different area of questioning that I 12 think will -- hopefully, the goal is to come back to a 13 lot of these good comments and questions. 14 CHAIRMAN FLANAGAN: Go ahead. 15 MR. SIMON: Full circle, but I do need to 16 make a record, so to speak. 17 BY MR. SIMON: 18 Q. So I think, Mr. Steck, at this point I'm 19 trying to lend some continuity to your recent testimony 20 in response to the questions of the Board members. So 21 we're here for an application and we're here for an 22 application before the Board of Adjustment; correct? 23 A. Yes. 24 Q. And certainly this Applicant needs 25 preliminary and final site plan approval as part of</p>	<p style="text-align: right;">Page 76</p> <p>1 this application pursuant to the Harding Township 2 ordinance; correct? 3 A. Yes. 4 Q. They also were here before the Board of 5 Adjustment specifically under 44:55D-7 in the Municipal 6 Land Use Law; correct? 7 A. Yes. 8 Q. So why don't we talk a little bit about why 9 the Applicant is here before this Board as opposed to 10 the Planning Board? 11 A. Okay. As the Board is aware, when there's 12 a "D" Variance involved, any kind of "D" Variance only 13 the Board of Adjustment has jurisdiction and they 14 handle all other aspects of it, site plan approval. So 15 this is in a public land zone that permits public 16 buildings and uses. It permits museums, but it does 17 not permit cellular towers. 18 And your ordinance makes a distinction. If 19 your ordinance loves cellular panels that are attached 20 to existing structures, and the obvious reason is they 21 have less of a visual impact, but it is much more 22 restrictive when a new tower is being constructed. 23 And there were a number of standards in 24 your ordinance. First of all, because this zone 25 doesn't permit cellular towers, that's the classic D-1</p>

<p style="text-align: right;">Page 77</p> <p>1 Variance.</p> <p>2 Your ordinance also says that, and this is</p> <p>3 a general principal, you should have only one principal</p> <p>4 use per lot. And if you have multiple principal uses</p> <p>5 per lot that's another D-1 Variance. Well, here we</p> <p>6 have a situation where we have a historic house and</p> <p>7 museum, and we have a public works yard. Those are two</p> <p>8 principal uses. They don't interrelate. So you're</p> <p>9 already beyond the limit, and now you're going to add a</p> <p>10 third principal use. The cell tower has nothing to do</p> <p>11 with the public works yard. It has nothing to do with</p> <p>12 the historic house and museum. So that independently</p> <p>13 is another "D" Variance associated with this.</p> <p>14 And then there's the issue of height. Now,</p> <p>15 your public land zone does not have dimensional</p> <p>16 standards in it. Surrounding this, as you know, is the</p> <p>17 B-1 Zone, which has a 35-foot height limit. And this</p> <p>18 is going to be 90, 100 feet above that. That's</p> <p>19 obviously going to have an impact.</p> <p>20 But the two "D" Variances that brings this</p> <p>21 application to this Board are the number of principal</p> <p>22 uses on the property, and the fact that -- the obvious</p> <p>23 fact that cell towers are not a permitted principal use</p> <p>24 in this PL Zone.</p> <p>25 Q. Before we talk about the conditional use</p>	<p style="text-align: right;">Page 78</p> <p>1 standard that include conditionally permitting cell</p> <p>2 towers in various zones in Harding Township, you</p> <p>3 mentioned earlier, Peter, about the fact in response, I</p> <p>4 think to Mr. Newlin's question, about the fact that</p> <p>5 this particular cell tower, you know, doesn't invite</p> <p>6 the public and things of that nature.</p> <p>7 Now, the PL Zone where this property is</p> <p>8 located, permits public uses?</p> <p>9 A. Yes.</p> <p>10 Q. Correct. Such as libraries, historical</p> <p>11 buildings, public schools, parks, playgrounds and the</p> <p>12 like; correct?</p> <p>13 A. Yes. That's correct.</p> <p>14 Q. And is there any significance to -- and</p> <p>15 obviously it doesn't permit a private</p> <p>16 telecommunications facility?</p> <p>17 A. Correct.</p> <p>18 Q. But from a professional planning standpoint</p> <p>19 and in terms of your, you know, history and your</p> <p>20 experience with other, not only your 40 years plus</p> <p>21 years of practicing, but also with your vast experience</p> <p>22 in being part of cell tower applications, does the fact</p> <p>23 that the PL Zone and what it permits, is that relevant</p> <p>24 or significant in terms of this particular application?</p> <p>25 A. It is. Another thought came to mind that</p>
<p style="text-align: right;">Page 79</p> <p>1 there is a generic conditional use standard --</p> <p>2 Q. We'll talk about that in a minute.</p> <p>3 A. -- and there's a third "D" Variance</p> <p>4 involved. So let me read the description of -- this is</p> <p>5 Section 225-151 of your code under the Public Land</p> <p>6 Regulations. It says, "In the PL Public Land Zone the</p> <p>7 following uses shall be permitted: Administrative</p> <p>8 buildings and installations, libraries, historical</p> <p>9 buildings, cultural or community centers, public</p> <p>10 schools, parks, play fields, playgrounds, conservation</p> <p>11 purposes, recreational uses, Educational facilities,</p> <p>12 garages to house municipal equipment or any other</p> <p>13 public uses, buildings, and structures.</p> <p>14 "In order to preserve historic structures</p> <p>15 on sites in the Public Land Zone the Township Committee</p> <p>16 may authorize the renovation and adaptive reuse of</p> <p>17 existing buildings on properties, for use of office</p> <p>18 space, museums, or hosting social functions, cultural</p> <p>19 or community events, and may arrange for resident</p> <p>20 caretakers." There's one more sentence that's not</p> <p>21 relevant.</p> <p>22 So while the focus is on public uses,</p> <p>23 there's a recognition that in some public land zones</p> <p>24 and, in fact, in this zone there is a historic element</p> <p>25 here, and that's recognized in the very language of the</p>	<p style="text-align: right;">Page 80</p> <p>1 zone. So despite the fact that there are no setbacks</p> <p>2 or height limits, there's a theme here that the</p> <p>3 governing body was aware of the historic factors that</p> <p>4 are in some of the PL Zones.</p> <p>5 Q. Now, you were about to talk about</p> <p>6 conditional uses. Now, we understand that wireless</p> <p>7 telecommunications towers are conditionally permitted</p> <p>8 per Section 175 of the Zoning Ordinance in the OB Zone</p> <p>9 or the B-2 Zone, but only on the easterly side of Route</p> <p>10 202; right?</p> <p>11 A. Yes.</p> <p>12 Q. And there's no adjacent home, immediately</p> <p>13 adjacent homes in those areas?</p> <p>14 A. That's correct. They're pretty much</p> <p>15 non-residential areas.</p> <p>16 Q. And under the conditional use provision of</p> <p>17 the zoning ordinance that includes permitting cell</p> <p>18 towers in those zones. One of the requirements,</p> <p>19 though, before you can even locate a cell tower even in</p> <p>20 those zones on the easterly side of Route 202, is that</p> <p>21 those properties need to be located on the lot with the</p> <p>22 required minimum frontage, and having access to a</p> <p>23 county road or state highway?</p> <p>24 A. Correct.</p> <p>25 Q. So even if you found a lot that's in one of</p>

<p style="text-align: right;">Page 81</p> <p>1 those zones on the easterly side of Route 202, if they 2 were not having frontage on an access to a county or 3 state roadway, or didn't have the required minimum 4 frontage on either one of those roads you actually even 5 for those zones would be here before the Board of 6 Adjustment?</p> <p>7 A. It would be a D-3 Variance. When you don't 8 comply with a condition of the conditional use that's 9 another "D" Variance that gives this Board 10 jurisdiction. And there are kind of, I'll call them 11 two types of conditional use standards. You might say 12 that if I have -- if I'm going to allow a church in a 13 residential district instead of having three acres I 14 have a condition that it has to be ten acres. That has 15 to do with, you know, protecting adjacent properties, I 16 need more land for my church. But if the conditional 17 use standard says the church must front on a county or 18 state highway that essentially means that when it's not 19 on the county or state highway in a sense it isn't even 20 permitted on that property.</p> <p>21 So what I want to emphasize is that there 22 are certain conditional use standards, and they don't 23 arise to the so-called Medici decision, but they have 24 to do with the fact that -- whether the tower can be 25 there anyway. Your regulations say in the B-2 Zone or</p>	<p style="text-align: right;">Page 82</p> <p>1 the Office Business Zone, even when you're in that zone 2 if you're within a thousand feet of a National Historic 3 District or property we don't want you there. It's not 4 permitted on that property when you're that close.</p> <p>5 Q. And that also applies under the Harding 6 Zoning Ordinance for conditional uses that you can't 7 have a nonresidential structure, parking area, or 8 activity associated with that nonresidential structure 9 located within a hundred feet of a residential property 10 or residential zone property?</p> <p>11 A. Right. So even if this were in a, you 12 know, a B-2 Zone, the answer is having a tower this 13 close to residential properties would mean there's a 14 "D" Variance and only this Board would have 15 jurisdiction.</p> <p>16 Q. And under a different section of the 17 ordinance under the zoning ordinance, you can't have a 18 principal use on the same lot as an authorized 19 conditional use; right?</p> <p>20 A. Correct. There's a reference to, I guess, 21 the singularity of cell towers as a use.</p> <p>22 Q. Right. So even if you were -- even if you 23 went ten for ten in the OB or the B-2 Zone, check off 24 all the boxes, and you're able to meet all the 25 conditions to establish a cell tower on the easterly</p>
<p style="text-align: right;">Page 83</p> <p>1 side of Route 202 in the OB district or the B-2 2 district, that if there's another principal use on the 3 lot, another use that's not associated with the cell 4 tower use, you still would need to go in for a form of 5 a use variance?</p> <p>6 A. Yes. And again only this Board would have 7 jurisdiction.</p> <p>8 Q. So again, I think you mentioned this 9 already, but in terms of the principal uses on this 10 lot, on Lot One, we have the historic house, right, the 11 Tunis-Ellicks House?</p> <p>12 A. Yes.</p> <p>13 Q. We have the DPW facilities?</p> <p>14 A. Yes.</p> <p>15 Q. And so this will be a third principal use?</p> <p>16 A. That's correct.</p> <p>17 Q. And the cell tower by law is its own 18 principal use and it wouldn't be deemed to be accessory 19 to any type of DPW?</p> <p>20 A. That's correct. It is unrelated to either 21 the historic house museum or the DPW operation.</p> <p>22 Q. And is it fair to say, based on everything 23 you said so far, that while a telecommunications towers 24 is not a common-type use within the historic district?</p> <p>25 A. Not only within the district but not within</p>	<p style="text-align: right;">Page 84</p> <p>1 a thousand feet of a district.</p> <p>2 Q. And we haven't talked much yet about the 3 New Vernon Village Redevelopment Plan. There's also 4 this Redevelopment Plan; right?</p> <p>5 A. Yes.</p> <p>6 Q. And a cellular communications monopole is 7 also not contemplated by the New Vernon Village 8 Redevelopment Plan; correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And it's not contemplated by any element of 11 the Master Plan or the zoning ordinance for historic 12 purposes?</p> <p>13 A. That's correct.</p> <p>14 Q. And you talked about it a little bit, and I 15 don't know if it was Mr. Newlin or Mr. Flanagan who 16 asked you a question, about the significance of the 17 adjacent B-1 historic district.</p> <p>18 I just want to touch upon that just to the 19 extent that the answer to the question you gave wasn't 20 fully comprehensive in terms of the purpose and the 21 intent of the B-1 Historic District, Village Business 22 Zone?</p> <p>23 A. So again, this is extracted from the area. 24 If this were not, in my opinion, if this were not a 25 publicly owned property it would logically be in the</p>

<p style="text-align: right;">Page 85</p> <p>1 B-1 Zone. In any event, this property has -- it's kind 2 of sandwiched between the B-1 Zone, which focuses 3 towards the street, and oddly enough as you go to the 4 south it then gets into a very low density zone, the 5 R-1 Zone.</p> <p>6 So it has an impact on the B-1 zone. And 7 in my opinion if it was not a publicly owned property 8 it would logically be part of that. The very title of 9 the B-1 Zone is the Historic Village Business Zone.</p> <p>10 And in talking about your -- your ordinance 11 in Section 225-140 talks about the purpose of the zone, 12 and it talks about providing a mix of residential and 13 small-scale neighborhood and family-oriented business 14 and service uses, compatible with a historic compact, 15 and pedestrian-friendly building development pattern 16 that is characteristic of New Vernon Village.</p> <p>17 And it describes the area. It says, "The 18 B-1 Historic Village Zone is included in the New Vernon 19 Historic District, and the designated New Vernon 20 Redevelopment area."</p> <p>21 It says further on down in the purpose 22 statement, "The requirements and limitations stipulated 23 herein are intended to carry on the policy standards 24 set forth in the New Vernon Village Redevelopment Plan 25 adopted by Ordinance 603 and may be supplemented from</p>	<p style="text-align: right;">Page 86</p> <p>1 time to time. It is also the intent of this article, 2 to the extent feasible, the integrity of historic or 3 contributing buildings listed in the historic survey or 4 the New Vernon Historic District be retained in their 5 historic setting, and that new development be 6 undertaken in a manner compatible with the character of 7 the New Vernon Historic District."</p> <p>8 Q. So besides just reading it from the page, 9 what is -- as a professional planner, what is the 10 significance of that language?</p> <p>11 A. The significance of -- is it expresses the 12 public policy of a zone that abuts this property and is 13 close to the tower use. It's recognized that it's a 14 historic area. It has a maximum height of 35 feet. 15 And there is a clear statement that incompatible 16 buildings or structures can be damaging to the 17 district.</p> <p>18 Q. And there's also within the Harding 19 Township Master Plan there's also a Historic 20 Preservation Plan element of that Master Plan; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And what is the significance, if any, of 23 the provisions of the historic preservation plan 24 element of the Master Plan to this application?</p> <p>25 A. Well, first of all, it reinforces the</p>
<p style="text-align: right;">Page 87</p> <p>1 public policy. So there's a -- in the Municipal Land 2 Use Law there's a purpose statement in terms of 3 preserving historic areas. That's a public good that 4 is announced in the Municipal Land Use Law.</p> <p>5 Q. And when you say that it's announced in the 6 Municipal Land Use Law, you're referring to 7 specifically the Section Two of the Municipal Land Use 8 Law --</p> <p>9 A. The purpose statement, yes. It's one of 10 the recognized purposes. And the historic element of 11 the Master Plan has a table listing each and every 12 property. And again it lists all of Lot 1 in Block 17 13 as in the district, and it characterizes it as a key 14 contributing property.</p> <p>15 So there's, in my opinion, an 16 intensification of scrutiny needed, and in my opinion 17 on the other side of the coin there can be more severe 18 damage because of the proximity -- because the fact 19 that this tower is within the historic -- the locally 20 designated historic district.</p> <p>21 Q. And, in fact, with regards to the 22 Township's Wireless Telecommunications Ordinance that 23 regulates location and placement of wireless facilities 24 within the Township, there are certain stated goals 25 associated with that ordinance; correct?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Yes.</p> <p>2 Q. And one of the goals is to limit the impact 3 of wireless telecommunications towers and antenna 4 facilities on both residential and historic areas?</p> <p>5 A. Yes. The purpose statement says that, it's 6 recognized that there could be an adverse impact, 7 number one, on residential areas, whether they're 8 historic or not, but it specifically then talks about 9 individual properties and districts that are historic, 10 and the fact that there can be a negative consequence 11 to establishing a tower in those areas.</p> <p>12 Q. And the wireless ordinance actually goes on 13 to talk about that, that one of the goals is to 14 minimize the use of large towers by encouraging the 15 location of small antennas on or in the existing 16 structures?</p> <p>17 A. Yes. There's a clear policy of trying to 18 search out existing structures, rather than building 19 something new.</p> <p>20 Q. And also to locate -- if you're going to 21 locate a tower, to locate it in a non-historic and 22 nonresidential areas?</p> <p>23 A. And a distance away from historic areas. 24 Not just not in the area, but a thousand feet away.</p> <p>25 Q. And so with regard to the historic district</p>

<p style="text-align: right;">Page 89</p> <p>1 here you already mentioned the fact that it shouldn't</p> <p>2 be -- the tower cannot be erected within a thousand</p> <p>3 feet of any historic district or site listed on or</p> <p>4 eligible for listing on the National and/or State</p> <p>5 Register; right?</p> <p>6 A. Yes.</p> <p>7 Q. And the historic district was actually</p> <p>8 created as the first registered historic district in</p> <p>9 the Township of New Vernon?</p> <p>10 A. I think in 1983, if I recall.</p> <p>11 Q. And the fact that it's also been designated</p> <p>12 -- the portion of New Vernon Village is designated an</p> <p>13 area that's in need of redevelopment, which included, I</p> <p>14 guess, 13 lots?</p> <p>15 A. Correct. And this was one of the lots that</p> <p>16 was included.</p> <p>17 Q. And the Redevelopment Area is within the</p> <p>18 State and National Historic District?</p> <p>19 A. That's correct.</p> <p>20 Q. And amongst the objectives of the</p> <p>21 Redevelopment Plan the New Vernon Redevelopment Plan is</p> <p>22 a preservation of the historic character and integrity</p> <p>23 of New Vernon Village?</p> <p>24 A. That is correct. This is not a</p> <p>25 redevelopment area that was like tear down everything</p>	<p style="text-align: right;">Page 90</p> <p>1 and build it new. It was the clear intent to assist in</p> <p>2 preserving historic properties and the historic</p> <p>3 environment.</p> <p>4 Q. And that if you're going to have a</p> <p>5 nonresidential use that it has to be both a scale and</p> <p>6 the intensity that would be compatible with existing</p> <p>7 residences and historic structures?</p> <p>8 A. Yes. That language is in the Redevelopment</p> <p>9 Plan.</p> <p>10 Q. And so at this point you've certainly</p> <p>11 participated in the recent site visit this past</p> <p>12 Saturday; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you've also had an opportunity to</p> <p>15 review Mr. Masters' visual impact study; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you've had an opportunity to review it</p> <p>18 based on what I provided to you, which was basically</p> <p>19 take certain exhibits that were provided by Mr. Masters</p> <p>20 and collate them together in a logical sequence so that</p> <p>21 you can see the various views from various properties</p> <p>22 at different heights?</p> <p>23 A. Yes. You've in a sense repaginated the</p> <p>24 exhibit, so there is a -- I think a more readable theme</p> <p>25 to it.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. And so based on your review of Mr. Masters'</p> <p>2 visual impact study, most recently, I guess it's A-28,</p> <p>3 A-29 and A-30. Do you have any comments with regard to</p> <p>4 the visual impact study that was provided?</p> <p>5 And if necessary, we can certainly refer to</p> <p>6 those exhibits as collated, if you'd like. Would you</p> <p>7 like? Yes. Okay.</p> <p>8 MR. SIMON: So, Lori, can we, I guess, mark</p> <p>9 as O-5 --</p> <p>10 SECRETARY TAGLAIRINO: And where are we</p> <p>11 going?</p> <p>12 MR. SIMON: This is the other e-mail that I</p> <p>13 sent over.</p> <p>14 CHAIRMAN FLANAGAN: Mr. Simon, before we</p> <p>15 jump into this. We have ten minutes. How much longer</p> <p>16 do you expect to be?</p> <p>17 MR. SIMON: Well, I have a while because I</p> <p>18 have to get obviously into the positive and negative</p> <p>19 criteria of Mr. Steck, but I thought it was very useful</p> <p>20 to allow, you know, sort of steel my thunder and allow</p> <p>21 the Board to ask a lot of questions even before we got</p> <p>22 into it.</p> <p>23 You know, certainly we're not going to</p> <p>24 finish tonight, not even close. But what I would do,</p> <p>25 as I've represented to this Board in the past, is I'll</p>	<p style="text-align: right;">Page 92</p> <p>1 go back through my notes and the answers to the</p> <p>2 questions that Mr. Steck provided to the good questions</p> <p>3 of the Board members and see if I can, I guess for lack</p> <p>4 of a better word, truncate the presentation somewhat,</p> <p>5 while at the same time, of course, making the</p> <p>6 appropriate record.</p> <p>7 CHAIRMAN FLANAGAN: Right. So if you were</p> <p>8 to estimate how much more time you need with Mr. Steck,</p> <p>9 what would you estimate?</p> <p>10 MR. SIMON: Thirty minutes. Thirty to 40,</p> <p>11 does that sound right? Is that fair, Mr. Steck?</p> <p>12 THE WITNESS: That's an attorney's 30 to 40</p> <p>13 minutes, which I always add ten percent on top of that.</p> <p>14 CHAIRMAN FLANAGAN: He can have 33, if you</p> <p>15 want, but not 34.</p> <p>16 MR. SIMON: I'll do it in 32.</p> <p>17 CHAIRMAN FLANAGAN: Whatever you need to</p> <p>18 make your point, that's fine.</p> <p>19 So Mr. Schneider, if there's another</p> <p>20 33 minutes of testimony, having heard what you've heard</p> <p>21 so far, how long do you estimate your cross-examination</p> <p>22 would be? And what I'm getting at --</p> <p>23 MR. SCHNEIDER: Yes, I understand. You're</p> <p>24 trying to look ahead on what we can accomplish on</p> <p>25 August 30th.</p>

<p style="text-align: right;">Page 93</p> <p>1 CHAIRMAN FLANAGAN: Is two hours sufficient</p> <p>2 to finish this testimony and then do your cross? Would</p> <p>3 an hour and a half --</p> <p>4 MR. SCHNEIDER: Yes. We may not be able to</p> <p>5 get to another witness, but two hours would suffice to</p> <p>6 complete Mr. Steck's direct and my cross.</p> <p>7 CHAIRMAN FLANAGAN: Okay. Mr. Simon, with</p> <p>8 nine minutes left would it make sense to go into</p> <p>9 something else or should we let it move to another</p> <p>10 meeting?</p> <p>11 MR. SIMON: Move to another meeting.</p> <p>12 BOARD MEMBER NEWLIN: I have some</p> <p>13 questions. I'd love to have them answered in the</p> <p>14 course of the presentation.</p> <p>15 MR. SIMON: Sure. That's great.</p> <p>16 BOARD MEMBER NEWLIN: Would it be okay to</p> <p>17 ask the question and you can maybe then think about</p> <p>18 them later?</p> <p>19 MR. SIMON: Absolutely. Sure. Do you want</p> <p>20 to ask them now?</p> <p>21 BOARD MEMBER NEWLIN: Yes. So one question</p> <p>22 is, have you looked at the tower -- these are random.</p> <p>23 THE WITNESS: I didn't hear.</p> <p>24 BOARD MEMBER NEWLIN: Did you look at the</p> <p>25 tower in Green Village?</p>	<p style="text-align: right;">Page 94</p> <p>1 MR. SIMON: These are questions. Just</p> <p>2 write them down.</p> <p>3 BOARD MEMBER NEWLIN: There's a 98-foot</p> <p>4 tower in Green Village located pretty close to here. I</p> <p>5 don't think that's in Harding -- Paul can correct me --</p> <p>6 but it's an R-3. There's lots of houses around there.</p> <p>7 What's wrong with that tower there?</p> <p>8 CHAIRMAN FLANAGAN: And can I ask, is it</p> <p>9 not a historic district as well?</p> <p>10 BOARD MEMBER NEWLIN: I don't know. But</p> <p>11 it's residential for sure. There's a mixture of</p> <p>12 properties, but it's a small monopole tower with a lot</p> <p>13 of houses around it. How does that hurt the planning</p> <p>14 in that area? That's one question.</p> <p>15 You'd actually have to drive by and see it,</p> <p>16 if you haven't done that already. That's the question</p> <p>17 I have.</p> <p>18 Have you ever seen -- these are</p> <p>19 experiences. Have you ever seen neighboring properties</p> <p>20 get compensated?</p> <p>21 I mean, the town is putting -- is offering</p> <p>22 to put this tower up for compensation. And neighboring</p> <p>23 property owners are absolutely impacted by this tower.</p> <p>24 Have you ever seen them get compensated</p> <p>25 somehow? May be a stupid question. If the tower</p>
<p style="text-align: right;">Page 95</p> <p>1 actually fell I think it would hit their property.</p> <p>2 Are you going to give testimony on the</p> <p>3 impact on property values? Just a question. You know,</p> <p>4 I think most Board members wonder about that.</p> <p>5 And then this is not a fair question, but</p> <p>6 it's a question. You gave pretty strong testimony</p> <p>7 about basically this is almost anathema to put a cell</p> <p>8 tower in this location in Harding. Why do you think</p> <p>9 the governing body accepted a lease? Like I said, it</p> <p>10 might be an unfair question. But from a planning</p> <p>11 perspective, why do you think they did that?</p> <p>12 CHAIRMAN FLANAGAN: Okay. Anybody else?</p> <p>13 BOARD MEMBER BOYAN: Quickly. I want to</p> <p>14 follow up to that last question as a corollary.</p> <p>15 Could the governing body amend the zoning</p> <p>16 ordinance in order to make this a permitted use, and</p> <p>17 effectively remove it from this body, is kind of my</p> <p>18 general question?</p> <p>19 CHAIRMAN FLANAGAN: Why did they bless us</p> <p>20 with this, is that what you're asking? It could have</p> <p>21 been a lot easier.</p> <p>22 Anyone else have a question?</p> <p>23 BOARD MEMBER ADDONIZIO: I have a question.</p> <p>24 You talk about the school being 35 acres tucked back in</p> <p>25 the woods, but in the Harding map it's still</p>	<p style="text-align: right;">Page 96</p> <p>1 contributing. It's a contributing location. So could</p> <p>2 you talk to that as to why?</p> <p>3 THE WITNESS: It's outside -- I'm sorry.</p> <p>4 MR. SIMON: Just deal with it later.</p> <p>5 BOARD MEMBER ADDONIZIO: I understand it's</p> <p>6 outside of the red marking, but it's still considered</p> <p>7 contributing based on the Township. Probably not state</p> <p>8 or --</p> <p>9 MR. SIMON: It's outside.</p> <p>10 THE WITNESS: There's no color on it. It's</p> <p>11 not --</p> <p>12 MR. SIMON: You're not answering the</p> <p>13 question, just for clarification.</p> <p>14 THE WITNESS: I'm sorry for --</p> <p>15 BOARD MEMBER ADDONIZIO: I thought it was</p> <p>16 the long triangle on Lot 15 at the top. My apologies.</p> <p>17 CHAIRMAN FLANAGAN: Anyone else?</p> <p>18 BOARD MEMBER ROSENBAUM: I have one</p> <p>19 question. So in your experience have you seen cases</p> <p>20 and what happened where there were conflicts between</p> <p>21 local ordinance, state ordinance, and Federal</p> <p>22 regulations? Just that one.</p> <p>23 CHAIRMAN FLANAGAN: All right. And one</p> <p>24 other question. Perhaps this is for the attorneys</p> <p>25 among us, among you. Aric brought up a good question</p>

<p style="text-align: right;">Page 97</p> <p>1 and I'm with him on this.</p> <p>2 We some time ago had a discussion about the</p> <p>3 law surrounding this. There was a memo written by our</p> <p>4 former Board Attorney. It's been a long time, I think,</p> <p>5 since we looked that the -- I'm wondering if you could</p> <p>6 take a look at that memo and in conjunction with -- I</p> <p>7 think last time the three -- the two of you, Mr. Simon</p> <p>8 and Mr. Schneider and our former Board Attorney worked</p> <p>9 in some fashion to get it on that memo; is that</p> <p>10 correct?</p> <p>11 MR. SIMON: I don't think we worked on it.</p> <p>12 It would be totally memorable if Rich and I worked on</p> <p>13 something together.</p> <p>14 MR. SCHNEIDER: I'm not clear -- Mr.</p> <p>15 Chairman, that memo that you've been referring to I'm</p> <p>16 not clear neither the Applicant or Mr. Simon was privy</p> <p>17 to that.</p> <p>18 MR. MLENAK: I actually think it was an</p> <p>19 attorney/client --</p> <p>20 BOARD MEMBER NEWLIN: I don't think it was</p> <p>21 ever released.</p> <p>22 CHAIRMAN FLANAGAN: You never saw this?</p> <p>23 MR. SCHNEIDER: No.</p> <p>24 MR. SIMON: But the reason why I think I</p> <p>25 know about it --</p>	<p style="text-align: right;">Page 98</p> <p>1 CHAIRMAN FLANAGAN: But Mr. Schneider, you</p> <p>2 provided us a memo, did you not?</p> <p>3 MR. SCHNEIDER: No. No.</p> <p>4 MR. SIMON: I think there is a memo that I</p> <p>5 know nothing about; however, I think I recall at an</p> <p>6 early meeting, and Rich you'll tell me if I'm wrong on</p> <p>7 this, that somebody put someone on the spot, and it</p> <p>8 might have been Mr. Schneider was asked, well, what's</p> <p>9 the legal standard? And Rich sort of did it</p> <p>10 off-the-cuff. And then somebody then asked me, do you</p> <p>11 agree with that? And I said, well, there's some</p> <p>12 nuance, but I'm not disagreeing.</p> <p>13 BOARD MEMBER NEWLIN: Mr. Schneider, I</p> <p>14 think you did give a verbal.</p> <p>15 MR. SCHNEIDER: Here's what I think</p> <p>16 you're -- I'll do this from memory, because this goes</p> <p>17 back to 2019. First of all, I don't think we were ever</p> <p>18 provided with the memo. I think the issue was I</p> <p>19 indicated early on in the proceedings that I thought</p> <p>20 that it was, and I think I used the exact phrase,</p> <p>21 "relevant but not dispositive," that the governing body</p> <p>22 made available the subject property for wireless.</p> <p>23 I took the position that while it didn't</p> <p>24 control, that it was an important element to particular</p> <p>25 suitability. Mr. Simon took some umbrage at that</p>
<p style="text-align: right;">Page 99</p> <p>1 analysis. I think you may have sought or solicited the</p> <p>2 opinion of your former Board Attorney, but I don't know</p> <p>3 that.</p> <p>4 BOARD MEMBER NEWLIN: No. Actually, you</p> <p>5 covered the law.</p> <p>6 MR. SIMON: But Rich is half right in that</p> <p>7 I think it came out of that discussion.</p> <p>8 CHAIRMAN FLANAGAN: Well, regardless. I</p> <p>9 think we could all use a little refresher on what the</p> <p>10 law is, without recreating the wheel. Can you take a</p> <p>11 look at this memo that was prepared, refresh it,</p> <p>12 correct it as necessary and share it with this Board?</p> <p>13 MR. MLENAK: Absolutely.</p> <p>14 MR. SIMON: Is that something that is going</p> <p>15 to be shared with the Applicant as well?</p> <p>16 CHAIRMAN FLANAGAN: I don't know.</p> <p>17 BOARD MEMBER ROSENBAUM: Why don't we look</p> <p>18 at it first and then we'll make a determination.</p> <p>19 CHAIRMAN FLANAGAN: My recollection is that</p> <p>20 you all looked at it.</p> <p>21 MR. SCHNEIDER: The only reason I know</p> <p>22 this, Mr. Chairman, is because I think I saw it in the</p> <p>23 bills that I got. So I was charged for it, but I never</p> <p>24 saw it.</p> <p>25 CHAIRMAN FLANAGAN: I agree. And it was --</p>	<p style="text-align: right;">Page 100</p> <p>1 which is what I would like to do is take the existing</p> <p>2 memo and hopefully not spend a ton of time, but renew</p> <p>3 it.</p> <p>4 MR. MLENAK: No less than 30 hours.</p> <p>5 CHAIRMAN FLANAGAN: We'll decide whether</p> <p>6 we'll have the time, what we do with that, but</p> <p>7 certainly for the Board. Okay? All right. Is there</p> <p>8 anything else? No? Any other business?</p> <p>9 MR. SCHNEIDER: Just so I can get -- real</p> <p>10 quickly. So we're going to carry it to August 30th,</p> <p>11 for the members of the public who might not have been</p> <p>12 here for our prior -- we're going to carry it to</p> <p>13 August 30th at 7 p.m. Unless your agenda changes, Mr.</p> <p>14 Chairman, it sounds like we won't get much past --</p> <p>15 because remember I indicated I may need to bring in</p> <p>16 another witness. But practically speaking if we're</p> <p>17 only going to be given seven to nine between Mr. Steck</p> <p>18 and my cross we're not going to get to another witness.</p> <p>19 MR. SIMON: And plus re-direct.</p> <p>20 CHAIRMAN FLANAGAN: And you need 7 p.m.</p> <p>21 MR. SIMON: You prefer 7 p.m., right,</p> <p>22 Peter?</p> <p>23 THE WITNESS: Yes.</p> <p>24 CHAIRMAN FLANAGAN: You prefer or --</p> <p>25 THE WITNESS: Well, I would prefer 7 a.m.,</p>

<p style="text-align: right;">Page 101</p> <p>1 but I'll concede 7 p.m. I have to -- well --</p> <p>2 CHAIRMAN FLANAGAN: All right. I'm not --</p> <p>3 7 p.m. this application starts. We'll go until nine.</p> <p>4 MR. SCHNEIDER: That's fine. Basically,</p> <p>5 I'm not going to bring another witness that night</p> <p>6 because we're not going to get to her.</p> <p>7 CHAIRMAN FLANAGAN: Does that push us out</p> <p>8 into September?</p> <p>9 MR. SCHNEIDER: Well, we'll see what the</p> <p>10 rest of the testimony is, whether I need to bring in</p> <p>11 another witness.</p> <p>12 CHAIRMAN FLANAGAN: All right. Any other</p> <p>13 business? All right. We're adjourned. Thank you.</p> <p>14 (Whereupon, the hearing on this application</p> <p>15 concludes at 11:03 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 102</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, IRIS LA ROSA, a Notary Public and</p> <p>4 Certified Shorthand Reporter of the State of New</p> <p>5 Jersey, do hereby certify that the foregoing is a true</p> <p>6 and accurate transcript of the testimony as taken</p> <p>7 stenographically by and before me at the time, place,</p> <p>8 and on the date hereinbefore set forth.</p> <p>9 I DO FURTHER CERTIFY that I am neither a</p> <p>10 relative nor employee nor attorney nor counsel of any</p> <p>11 of the parties to this action, and that I am neither a</p> <p>12 relative nor employee of such attorney or counsel, and</p> <p>13 That I am not financially interested in the action.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 IRIS LA ROSA, CSR, RPR</p> <p>19 Certificate No. 30XI 00162800</p> <p>20</p> <p>21</p> <p>22 Dated: _____</p> <p>23</p> <p>24</p> <p>25</p>

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