

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES  
MEETING  
AUGUST 30, 2021  
SPECIAL MEETING 7:00 PM**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

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

**ROLL**

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

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

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

**REGULAR MEETING**

**MINUTES**

Mr. Flanagan tabled the July minutes until the September meeting.

**OLD BUSINESS**

<u>Application BOA# 17-18</u>	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.
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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. Flanagan noted a memo from Ms. Mertz regarding New Vernon Historic District Boundaries.

Mr. Flanagan also noted a draft memo from Mr. Mlenak that outlined the legal considerations for the application.

There was a discussion about the September meeting date. The meeting will be September 23, 2021. If there is a conflict then the Board will meet on September 23, 2021 solely to carry all of the applications to a meeting that will be held on September 30, 2021

Mr. Simon presented Exhibit O-4 and O-5, packets of photo simulations.

A transcript of the testimony is appended to the minutes.

### **ADMINISTRATIVE—Mr. Flanagan**

Mr. Flanagan suggested discussing a resolution to have the ability to regulate the length of public comment to five minutes.

A motion was made by Mr. Flanagan to allow limiting the duration of public comment to five minutes per person. It was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Mr. Maselli, Mr. Rosenbaum, Mr. Newlin, Mr. Cammarata, Mr. Addonizio and Mr. Flanagan

Against: None

Mr. Flanagan noted that the following applications will be carried until the September 23, 2021 meeting with no further notice.

#### **Application BOA# 02-21**

Dr. James Wittig  
34 Kitchell Road B1/L5 R-1 Zone

#### **Application BOA#03-21**

Jack Lankford Wade  
203 Blue Mill Road, B4/L27, R-1 Zone

#### **Application BOA# 7 &12-21**

529 Waterfront Properties, LLC  
595 Van Beuren Road, B5/L8, RR Zone **(Subject to proper notice.)**

### **RESOLUTIONS**

#### **Application BOA# 11-21**

William Lewis  
523 Van Beuren Road, B5/L2, RR Zone

A motion was made by Mr. Newlin to adopt BOA # 11-21 Lewis. It was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Mr. Rosenbaum, Mr. Newlin, and Mr. Addonizio

Against: None

#### **Application BOA# 15-21**

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

A motion was made by Mr. Rosenbaum to adopt BOA # 15-21 Hofmann It was seconded by Mr. Newlin. A roll call vote went as follows:

For: Mr. Rosenbaum, Mr. Newlin, and Mr. Addonizio

Against: None

Application BOA# 08-21

Steve & Rachel Fleming  
508 Spring Valley Road, B11/L5.01, R-1 Zone

A motion was made by Mr. Newlin to adopt BOA # 08-21 Fleming. It was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Mr. Rosenbaum, Mr. Newlin, Mr. Addonizio and Mr. Flanagan

Against: None

BOA#05-2021 Do Not Exceed for Gary Hall for Purchase Order for Litigation

Mr. Addonizio Recused.

A motion was made by Mr. Flanagan to adopt BOA#05-2021 Do Not Exceed for Gary Hall for Purchase Order for Litigation. It was seconded by Mr. Rosenbaum. On a voice vote all were in favor of adopting the resolution.

Remand-Resolution BOA# 06-20, 529 Waterfront Properties, Appeal of Tree Permit for the Gargiulo Flagstaff

Mr. Addonizio recused.

There was an explanation by Mr. Hall regarding the conditions of the Remand Order.

A motion was made by Mr. Flanagan to adopt Remand-Resolution BOA# 06-20, 529 Waterfront Properties, Appeal of Tree Permit for the Gargiulo Flagstaff. It was seconded by Mr. Newlin.

For: Mr. Maselli, Mr. Rosenbaum, Mr. Newlin, Mr. Cammarata, and Mr. Flanagan

Against: None

**BUDGET**

There was a discussion about the proposed 2022 budget. The total budget remains the same with some adjustments to particular line items.

A motion was made by Mr. Flanagan to adopt the 2022 budget. It was seconded by Mr. Rosenbaum. On a voice vote all were in favor of adopting the budget

**OLD BUSINESS**

Application BOA# 14-21

Charles Kilgore and Victoria Hawbecker  
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

Hyland Turner, Architect

Mr. Turner was sworn in for testimony.

- Ms. Magdziak discussed the comments from the HPC requesting the rotation of the structure 90 degrees.
- Mr. Turner presented the proposed plans for the application. He noted that a perpendicular turn would be hindered by constraints on the rear of the site.
- Mr. Turner noted they team chose the open part of the lot to situate the home.
- Mr. Turner noted that the detached garage would serve as a buffer to the rest of the property. The idea to run the dwelling parallel to the street was intentional.
- Mr. Turner noted the turn would still require a variance and the rear would be off the side of the property.
- Mr. Flanagan noted that turning the house would put more of the dwelling in the building envelope.
- Ms. Magdziak noted that the accessory structures would all end up in the setbacks with the change in orientation and would result in more tree removal.
- Mr. Newlin noted that the coverage was very close to the maximum allowed and what can the applicant do about the coverage...
- Mr. Newlin questioned the bulk of the house compare to the neighboring properties.
- Mr. Maselli suggested that maybe the house is too large for the lot and creates a lot of mass for the lot.
- Mr. Schommer presented the existing conditions on the lot, including the tree line, slope line and wetland line.
- Mr. Schommer noted where the proposed septic would be situated.
- Mr. Schommer does not believe that it will be visible from the street.
- Mr. Hall and Mr. Flanagan asked can the application be more conforming.
- This application will be carried until September 23, 2021 with no further notice.

Application BOA# 13-21

Morris Home Builders, LLC

604 Spring Valley Road, B 3/L3,

Presenting:

Nicole Magdziak, Attorney

- Ms. Magdziak summarized the application is for a deck as presented at the July meeting.

There was a discussion regarding the language to be set forth in the deed to restrict development on the second property.

A motion was made by Mr. Flanagan to adopt Resolution BOA# 13-21 Morris Home Builders. subject to the confirmation by the engineer that the lot coverage is less than 10.2%. It was seconded by Mr. Newlin.

For: Mr. Maselli, Mr. Rosenbaum, Mr. Newlin, Mr. Cammarata, and Mr. Flanagan

Against: None

### **OTHER BUSINESS**

None

### **ADJOURNMENT**

Mr. Flanagan adjourned the meeting at 10:49.

*Lori Taglairino*

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

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

#### **RESOLUTION**

**William Lewis - Application No. BOA 11-21**

**523 Van Beuren Road - Block 5, Lot 2**

**Adopted August 30, 2021**

WHEREAS, William Lewis applied to the Harding Township Board of Adjustment for a determination as to whether the proposed construction of a pool house is consistent with previously granted use variance relief as set forth in a resolution adopted on October 18, 2018 from Section 225-221(A)(1) of the Land Use and Development Ordinance, which permits only one single-family dwelling per lot in the R-1 and RR Zones, and Section 225-115(B), which prohibits replacement or enlargement of nonconforming structures and structures devoted to nonconforming use, to permit construction of a replacement principal residence while retaining a nonconforming cottage and accessory apartment attached to a barn on the same property, and related(c) variance relief for property located in a RR Zone at 523 Van Beuren Road and designated on the Township Tax Map as Block 5, Lot 2; and

WHEREAS, the Board of Adjustment conducted a public hearing on the present application at a meeting on July 15, 2021 at the Harding Township Municipal Building, for which public notice and notice by applicant were given as required by law; and

WHEREAS, the Board of Adjustment determined that a site inspection of the property was not necessary in light of the prior development application approval and the specific characteristics of the current proposal; and

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

WHEREAS, at the meeting on July 15, 2021, the Board of Adjustment adopted an oral resolution determining that the proposed pool house is consistent with the prior variance approval and thus does not require new variance relief based on findings and conclusions and subject to certain conditions, as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 30th day of August 2021, that the oral approval of the application of William Lewis is hereby memorialized based on findings and conclusions as follows:

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

1. The property is located in a RR Zone at 523 Van Beuren Road. The property has a lot size of 31.532 acres, which significantly exceeds the 5-acre minimum.

2. The property is improved with a recently constructed replacement principal residence and a pre-existing cottage, barn containing an accessory dwelling unit, and sheds. The accessory structures have nonconforming front and right side setbacks and nonconforming locations in front of the principal residence. All of the accessory structures are located on the right front portion of this very large parcel. A wooded stream corridor occupies the left side of the property, with open paddocks for sheep and goats in the area between the woods and structures. The rear portion of the property is wooded. Existing conditions on the property were shown on a variance map prepared by Parker Engineering & Surveying, P.C., initially dated July 17, 2018 and last revised February 24, 2021.

3. By resolution adopted on October 18, 2018 on Application No. BOA 7-18, the Board of Adjustment granted variance relief to permit construction of a replacement residence at the same general location on the property as the then-existing residence, while retaining a cottage and accessory residence on the same property that predated current zoning use regulations, thus representing a protected nonconforming use condition, as shown on the variance map. Related (c) variance relief was also granted.
4. The current proposal involves construction of a pool house adjacent to the previously approved swimming pool behind the replacement residence, as shown on architectural plans prepared by Alliance Architecture, dated March 1, 2021.
5. The Township Health Department commented on the application in a memorandum dated May 13, 2021, which indicated that the proposed construction of a pool house appeared to be consistent with applicable Health Department regulations.
6. Testimony in support of the application was provided by applicant William Lewis.
7. Mr. Lewis testified that the pool house would include a modest 12' by 12' lounge area with a wet bar, rest room including a shower, and a storage/utility room, along with a patio facing the pool with a pergola above, as shown on the plans. He stated that the pool house would not be heated and would not be used as an accessory residence.
8. No neighbor or member of the public objected or commented on the application.
9. The proposed pool house will conform with all setbacks and other zoning requirements, and therefore does not require any new variance relief.
10. The Board of Adjustment determined that the proposed pool house will not alter and thus will be consistent with the prior grant of use variance relief pursuant to N.J.S.A. 40:55D-70(d) to permit construction of a replacement residence while retaining the nonconforming cottage and barn with an accessory apartment.

#### **Description of Board Determination**

1. The proposed pool house will not alter and thus will be consistent the prior grant of use variance relief pursuant to N.J.S.A. 40:55D-70(d) as set forth in a resolution adopted by the Board of Adjustment on October 18, 2018 on Application No. BOA 7-18 that authorized construction of a replacement residence while retaining the nonconforming cottage and barn with an accessory apartment, as shown on variance map prepared by Parker Engineering & Surveying, P.C., initially dated July 17, 2018 and last revised February 24, 2021, and on architectural plans prepared by Alliance Architecture, dated March 1, 2021.

#### **Approval Conditions**

1. This approval is granted subject to payment of any outstanding property taxes and technical review fees, issuance of a building permit and any other necessary approvals.
2. Except for authorizing the pool house as shown the new variance map and architectural plans, this approval does not alter or eliminate any conditions of the prior approval as set forth in the resolution adopted on October 18, 2018 on Application No. BOA 7-18.
3. In accordance with Section 225-35(C)(1) of the Ordinance, this approval shall expire unless the authorized construction is commenced within one year from the date of this resolution and is subsequently pursued in a reasonably diligent manner.

#### **Vote on Resolutions**

For the Oral Resolution: Addonizio, Newlin, Rosenbaum & Symonds.

Against the Oral Resolution: None.

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

Against the Form of the Written None.

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

#### **Morris Home Builders, LLC - Application No. 13-21 604 Spring Valley Road - Block 3, Lot 3 Adopted August 30, 2021**

WHEREAS, Morris Home Builders, LLC applied to the Harding Township Board of Adjustment for variances from Section 225-115(B) of the Land Use and Development Ordinance, which prohibits the enlargement of certain nonconforming structures, Section 225-122(F), which imposes a 100' minimum side setback requirement, and Section 225-122(H), which permits a maximum lot coverage ratio of 10%, to permit construction of a rear deck addition and related improvements to the residence on property located in a R-1 Zone at 604 Spring Valley Road and designated on the Township Tax Map as Block 3, Lot 3; and

WHEREAS, the Board of Adjustment conducted an initial public hearing on the application at a meeting on July 15, 2021 at the Harding Township Municipal Building, for which public notice and notice by applicant were given as required by law; and

WHEREAS, at the meeting on July 15, 2021, concerns were expressed as to possible future development of Lot 3.02, a commonly owned vacant parcel with an area of 1.29 acres that is separated from Lot 3 by a 20'-wide strip of land containing a drainage channel that is part of Lot 3.01, the main portion of which abuts both lots to the east and is owned by a third party who also owns property in Chatham Township designated as Block 140, Lot 3 that contains a residence accessed from Loantaka Lane South; and

WHEREAS, questions were raised as to the ability to restrict future development of Lot 3.02 as a possible means of mitigating any impact of variance relief for Lot 3 requested by the present development application, and the public hearing was adjourned to permit consideration by the applicant of a possible development restriction; and

WHEREAS, counsel for the applicant subsequently presented a written proposal for a restriction, which was the subject of discussion at a continued public hearing at a meeting of the Board of Adjustment on August 30, 2021; and

WHEREAS, the Board of Adjustment determined that a site inspection was not necessary based on the specific characteristics of this particular property and proposal; and

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

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 30th day of August 2021, that approval of the variance application of Morris Home Builders, LLC is hereby approved based on findings and conclusions and subject to certain conditions as follows:

**Findings of Fact and Statement of Reasons**

1. The applicant's property is a 1.58-acre lot located in a R-1 Zone at 604 Spring Valley Road.
2. The property is improved with a single-family residence, swimming pool and pool house, as shown on a copy of a survey prepared by James P. Deady Surveyor, LLC, dated November 2, 2020.
3. The property is nonconforming due to lot size (1.58 ac. vs. 3 ac. minimum) and lot width (201.02' vs. 300' minimum). The residential improvements are nonconforming due to the right side setback (35.52' vs. 100' minimum), left side setback (46.75' vs. 100' minimum), building coverage ratio (4.15% vs. 3% maximum), and lot coverage ratio (17.1% vs. 10% maximum), as shown on the survey and zoning table.
4. The applicant proposed to construct a rear deck addition and related improvements, as shown on the survey and on architectural plans prepared by John B. Van Lenton AIA Architect, dated December 28, 2020.
5. The proposed rear deck addition requires variance relief from the 100' minimum side setback requirement in Section 225-122(F) of the Ordinance to permit a left side setback of 61.63' for proposed new steps.
6. The proposed rear deck addition requires variance relief from the 100' minimum side setback requirement in Section 225-122(F) of the Ordinance to permit a right side setback of 80.1' for separate proposed new steps.
7. The proposed rear deck addition requires variance relief from the 10% maximum lot coverage ratio limit in Section 225-122(H) of the Ordinance to permit the nonconforming ratio to be increased from 17.1% to 18.1%.
8. This proposal also requires variance relief from Section 225-115(B) of the Ordinance to permit enlargement of the applicant's nonconforming residence.
9. The applicant was represented in proceedings before the Board of Adjustment by Nicole Magdziak, Esq., of Day Pitney LLP.
10. Testimony in support of the application was provided by the applicant's contractor, who explained the proposed deck improvements.
11. No neighbor or member of the public objected to the application.
12. The need for side setback variance relief is attributable to the current nonconforming side setbacks that will not be appreciably reduced by the proposed rear deck and stairs. The applicant's residence could not be reasonably expanded in compliance with the side setback requirements.
13. The proposed improvements requiring side setback variance relief are limited to an open deck and stairs that will not be visible from the street due to their location to the rear of the residence. The left side setback is opposite a 20' wide strip of land that could not be developed, and the property on the opposite side is unimproved and also owned by the applicant, and it will be the subject of a development restriction as set forth in this Resolution.
14. The need for a variance for the 10% maximum lot coverage ratio requirement is attributable to the limited size of Lot 3, which is barely half of the 3-acre minimum. If commonly owned Lot 3.02 were restricted against any development involving additional lot coverage and the two lots were considered as a single lot for practical purposes for calculation of the lot coverage ratio, the ratio would be less than 10.2%. This calculation approach cannot be applied as a legal matter absent merger of the lots, which is precluded by the intervening 20' wide portion of Lot 3.01, but it can be relied upon as a mitigating factor in support of variance relief for the proposed lot coverage ratio variance for Lot 3.
15. The applicant agreed to a condition of any lot coverage ratio variance to impose an express restriction against development on Lot 3.02 involving any additional lot coverage in order to permit the indicating variance impact mitigation analysis. The contract purchaser acknowledged and did not object to this proposed condition.
16. Under the circumstances, the proposed enlargement of the nonconforming residence by construction of the proposed rear deck addition is reasonable and appropriate and will not result in any adverse impacts on adjacent properties.
17. The proposed improvements to the residence will result in significant functional and aesthetic benefits.
18. In the case of this specific property, the unusual 20' portion of Lot 3.01 that separates commonly owned Lots 3 and 3.02, the location and characteristics of the existing and proposed improvements, and the restriction on development of Lot 3.02 agreed to by the applicant, strict application of the zoning requirements would impose peculiar and exceptional practical difficulties on the applicant by precluding the proposed rear deck addition to the residence, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).
19. All of the variance relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

**Description of Variances**

1. A variance is hereby granted from Section 225-115(B) of the Land Use and Development Ordinance to allow expansion of the applicant's nonconforming residence by construction of a rear deck addition and related improvements, as shown on architectural plans prepared by John B. Van Lenton AIA Architect, dated December 28, 2020.
2. Variance relief is hereby granted from the 100' minimum side setback requirement in Section 225-122(F) of the Ordinance to allow construction of a rear deck addition with minimum side setbacks for separate new stairs of 61.83' on the left side and 80.1' on the right side, as shown on the plans.

3. A variance is hereby granted from Section 225-1122(H) of the Ordinance to allow construction of a rear deck addition and related improvements that will increase the nonconforming ratio from 17.1% to 18.1%.as shown on the plans.

**Variance Conditions**

These variances are granted subject to the following conditions:

1. The applicant shall obtain a building permit and any other necessary approvals.
2. Any outstanding technical review fees shall be paid prior to issuance of a building permit and certificate of occupancy.
3. These variances are based on and authorize only the specific improvements proposed by the applicant as set forth in the testimony, application, plans. New or amended variance approval may be required for any materially different improvements.
4. These variances are granted subject to the express condition that prior to issuance of a building permit, the applicant shall record in the land records an instrument restricting Lot 3.02 against any development involving additional lot coverage for the benefit of Lot 3. This restriction shall expire in the event that Lot 3 and Lot 3.02 are merged into a single lot that may include part of Lot 3.1 and reconfiguration of the component portions of Lots 3 and/or 3.02 and the lot coverage ratio for the new lot does not exceed 10%. This instrument shall be subject to prior review and approval as to form by the Board Attorney.
5. These variances are granted subject to the condition that prior to issuance of a building permit confirmation by a licensed professional shall be submitted that the calculated new lot coverage ratio based on the combined area of Lot 3 and Lot 3.02 shall not exceed 10.2%.
6. These variances shall expire unless the authorized construction is commenced within one year from the date of this resolution.

**Vote on Resolution**

For the Approval Resolution: Addonizio, Cammarata, Maselli, Newlin, Flangan & Rosenbaum.

Against the Approval Resolution: None.

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**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
RESOLUTION**

**Steven & Rachel Fleming - Application No. BOA 08-21  
508 Spring Valley Road - Block 11, Lot 5.01  
Adopted August 30, 2021**

WHEREAS, Steven and Rachel Fleming applied to the Harding Township Board of Adjustment for variances from Section 225-122(F) of the Land Use and Development Ordinance, which requires 100' minimum front and side setbacks, and from Section 225-115(B), which prohibits the enlargement of certain nonconforming structures, in order to permit construction of a front entry roof, rear addition and a separate vertical addition to expand the attic level of the current nonconforming residence on a lot located in a R-1 Zone at 508 Spring Valley Road and designated on the Township Tax Map as Block 11, Lot 5.01; 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' proposal was revised in response to comments at the initial hearing, and a public hearing was conducted on a revised proposal at a virtual meeting using the Zoom platform on June 17, 2021; and

WHEREAS, the applicants' proposal was further revised in response to comments at the second hearing, and a public hearing was conducted at an in-person meeting on July 15, 2021 on the further revised proposal that reduced the size and modified design of the proposed vertical addition in order to limit the expanded attic level to a conforming half story, thus eliminating any need for variance relief to permit a third story; and

WHEREAS, the Board of Adjustment determined that a site inspection was not necessary based on the characteristics of this particular proposal and the requested variance relief in relation to the existing improvements on the property; and

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

WHEREAS, at the meeting on July 15, 2021 the Board of Adjustment adopted an oral resolution approving the revised variance application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 30<sup>th</sup> day of August 2021, that the oral approval of the revised variance application of Steven and Rachel Fleming is hereby memorialized as follows:

**Findings of Fact and Statement of Reasons**

1. The applicants' property is located at 508 Spring Valley Road in a R-1 Zone.
2. The property has a lot size of 3.484 acres that exceeds the applicable 3 acre minimum. It has a lot width of 264' that is less than the 300' applicable minimum.
3. The single-family residence is nonconforming due to the front setback for the steps (88.35' vs. 100' minimum) and the right side setback (83.3' vs. 100' minimum), as shown on a variance map prepared by Parker Engineering and Surveying, P.C., initially dated April 8, 2021 and last revised June 10, 2021.
4. The applicants proposed to expand their nonconforming residence by construction of a 2-story rear addition with a 2-car garage and a great room on the floor above, which has the appearance of a first story relative to the front of the residence, but is classified as the second story due to the topography of the property and overall design of the residence. The current attic level



with be significantly enlarged by a vertical addition, and a small front entry roof also would be constructed. The proposed improvements were shown on the variance map and on architectural plan prepared by Washington Architectural Group, P.A.

The proposed front entry addition would have a minimum front setback of 94.49', requiring a variance from the 100' minimum setback requirement in Section 225-122(F).

5. The proposed vertical addition would maintain the nonconforming right side setback of 83.3', requiring a variance from the 100' minimum setback requirement in Section 225-122(F).

6. As initially proposed, the expanded attic level would be classified as a third story, requiring variance relief from the 2-1/2 story limit in Section 225-122(D)(1). In response to feedback at the initial and second hearings, the proposal was revised to conform with the criteria for a permitted half story, thus eliminating the need for variance relief.

7. The proposed improvements require a variance from Section 225-115(B) to allow enlargement of a nonconforming structure.

8. Testimony in support of the application was provided by the applicants and by their architect Thomas Chauvette, who explained the proposed improvements.

9. Questions and concerns were expressed at the initial hearing concerning potential classification of the proposed upper level as third story, which would require variance relief from the 2-1/2 story limit. The public hearing was adjourned to allow further consideration of this issue.

10. Prior to the continued hearing on June 17, 2021, an appearance was entered on behalf of the applicants by Nicole Magdziak, Esq., of Day Pitney LLP. The building height classification issue was discussed at that meeting, and the hearing was then adjourned to permit consideration of further revisions.

Architectural plans with a revision date of July 2, 2021 were submitted prior to the continued hearing at the meeting on July 15, 2021, which was an in-person meeting, rather than a virtual meeting. The revised design increased the area of the upper level with a head room clearance height of less than 5' to 46.7%, thus exceeding the 40% minimum for classification as a half story, rather than a full story. This was achieved in part by reduction in the horizontal length of the proposed rear shed dormer, which also reduced the visual appearance of a full story. The design for the front of the expanded attic level of the residence does not have the appearance of a full story.

11. No member of the public or neighbor objected to the application.

12. The need the requested front and right side setback variance relief is attributable to the existing nonconforming location of the residence. The proposed improvements will not alter the current nonconforming setbacks. The front setback of 94.49' for the new front entry porch will be greater than the current nonconforming front setback 88.35' for the steps.

13. The vertical addition will maintain the nonconforming right side setback of 83.3'.

14. Expansion of the building footprint will be limited to the rear addition, which will comply with all setback requirements.

15. The enlarged residence will comply with all other zoning regulations.

16. The vertical addition and related improvements will enhance the appearance of the applicants' property, which will offset any possible adverse visual impact.

17. Under these particular circumstances, the proposed improvements will not result in any adverse impacts on adjacent properties or the surrounding community.

18. In the case of this specific property and proposal and the nonconforming location of existing residence, strict application of the zoning requirements would impose peculiar and exceptional practical difficulties on the applicants by precluding the proposed improvements, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

19. 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 Variances**

1. A variance is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Land Use and Development Ordinance to permit construction of a vertical addition to the residence that will maintain the nonconforming right side setback of 83.3', as shown on a variance map prepared by Parker Engineering and Surveying, P.C., initially dated April 8, 2021 and last revised June 10, 2021, and on architectural plans prepared by Washington Architectural Group, P.A., last revised July 2, 2021.

2. A variance is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to permit construction of a front entry porch with a front setback of 94.49', as shown on the variance map and architectural plans.

3. A variance is hereby granted from the restriction against the enlargement of certain nonconforming structures in Section 225-115(B) of the Ordinance to allow enlargement of the applicants' nonconforming residence by construction of additions, as shown on the plans.

#### **Variance Conditions**

These variances are granted subject to the following conditions:

1. The applicants shall obtain a building permit and any other necessary approvals.
2. Any outstanding property taxes, application fees and technical review fees shall be paid prior to issuance of a building permit and certificate of occupancy.
3. These variances are based on and authorize only the specific proposed improvements as set forth in the testimony and plans. New or amended variance approval may be required for any materially different improvements.

4. In accordance with Section 225-35(C)(1) of the Ordinance, these variances shall expire unless the authorized construction is commenced within one year from the date of this resolution and is subsequently pursued in a reasonably diligent manner.

**Vote on Resolutions**

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

Against the Oral Resolution: None.

For the Form of the Written Resolution: Addonizio, Newlin, Rosenbaum & Flanagan.

Against the Form of the Written Resolution: None.

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**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
RESOLUTION**

**Michael Hofmann - Application No. BOA 15-21**

**34 Blue Mill Road - Block 16, Lot 26**

**Adopted August 30, 2021**

WHEREAS, Michael Hofmann applied to the Harding Township Board of Adjustment for variances from Section 225-115(B) of the Land Use and Development Ordinance, which prohibits the enlargement of certain nonconforming structures, and from Section 225-130(F), which requires a minimum front setback of 35', to authorize construction of a wider replacement covered front entry porch for his nonconforming residence on property located in a R-3 Zone at 34 Blue Mill Road and designated on the Township Tax Map as Block 16, Lot 26; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meeting on July 15, 2021 at the Harding Township Municipal Building, for which public notice and notice by applicant were given as required by law; and

WHEREAS, the Board of Adjustment determined that a site inspection of the property was not necessary based on the limited scope of the proposed replacement covered front entry porch and the particular characteristics of the applicant's property; and

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

WHEREAS, at the meeting on July 15, 2021, the Board of Adjustment adopted an oral resolution approving the variance application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 30th day of August 2021, that approval of the variance application of Michael Hofmann is hereby memorialized as follows:

**Findings of Fact and Statement of Reasons**

1. The applicant's property is located at 34 Blue Mill Road in a R-3 Zone.
2. The property has a lot size of 24,999 square feet that exceeds the minimum requirement of 15,000 square feet for the R-3 Zone. The property conforms with all dimensional requirements.
3. The property is improved with a single-family residence, as shown on a site plan included with architectural plans prepared by Arthur Demarest, RA Architects, LLC, dated May 2, 2019. The residence is nonconforming due to a minimum front setback for the covered front entry porch of 32.17' versus a minimum front setback requirement of 35'. The residential improvements conform with all other zoning criteria.
4. The applicant proposed to construct a replacement covered front entry porch and related improvements. The width would be increased from 5' to 8', as shown on the architectural plans.
5. The proposed replacement covered front entry porch would maintain the nonconforming front setback of 32.17', requiring a variance from the 35' minimum in Section 225-130(F).
6. Variance relief is also required from Section 225-115(B) to permit enlargement of a nonconforming structure.
7. Testimony in support of the application was provided by the applicant, who explained the proposal.
8. The Township Historic Preservation Commission commented on the application in a memorandum dated July 1, 2021, which stated that the property is an independent contributing historic site. The memorandum recommended approval and also suggested a design adjustment that was acceptable to the applicant.
9. No neighbor or member of the public objected to the application.
10. The replacement covered front entry porch will comply with all other zoning regulations.
11. The increased width of the replacement covered front entry porch will enhance the residential use and appearance of the residence.
12. The need for variance relief for the proposed front setback and to expand the nonconforming residence is attributable to the current nonconforming location of the residence and the resulting nonconforming front setback that will not be reduced.
13. The proposed replacement covered front entry porch will not result in any adverse impacts on adjacent properties under the particular circumstances of this property and proposal.
14. In the case of this specific property and the location and characteristics of the existing residence and proposed replacement covered front entry porch, strict application of the zoning requirements would impose peculiar and exceptional practical difficulties on the applicant by precluding the proposed improvement, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).
15. The variance relief requested by the applicant can be granted without substantial detriment to the public good and

without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

**Description of Variances**

1. A variance is hereby granted from the minimum front setback requirement of 35' in Section 225-130(F) of the Land Use and Development Ordinance to permit construction of a replacement covered front entry porch and related improvements to the residence that will maintain the nonconforming front setback of 32.17', as shown on architectural plans prepared by Arthur Demarest, RA Architects, LLC, dated May 2, 2019.

2. A variance is hereby granted from Section 225-115(B) of the Ordinance to permit enlargement of the applicant's nonconforming residence by construction of a wider replacement covered front entry porch and related improvements, as shown on the architectural plans.

**Variance Conditions**

These variances are granted subject to the following conditions:

1. Any outstanding property taxes, application fees and technical review fees shall be paid prior to issuance of a building permit and certificate of occupancy.

2. The applicant shall obtain a building permit and any other necessary approvals.

3. These variances are based on and authorize only the specific improvements proposed by the applicant as set forth in the testimony, application and plans, and new or amended variance approval may be required for any materially different improvements.

4. In accordance with Section 225-35(C)(1), these variances shall expire unless the authorized construction is commenced within one year from the date of this resolution and subsequently is pursued in a reasonably diligent manner.

**Vote on Resolutions**

For the Oral Resolution: Addonizio, Newlin, Rosenbaum, Symonds & Sovolos.

.Against the Oral Resolution: None.

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

Against the Form of the Written Resolution: None.

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**TOWNSHIP OF HARDING BOARD OF ADJUSTMENT**

**RESOLUTION BOA# 05-2021 CONSENTING TO LEGAL REPRESENTATION OF THE HARDING TOWNSHIP  
BOARD OF ADJUSTMENT**

**BY GARY HALL, ESQ. IN THE MATTER KNOWN AS 529 WATERFRONT PROPERTIES LP VS MICHAEL  
GARGIULO AND PATRICIA GARGIULO AND THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF  
HARDING, DOCKET NO. MRS-L-2176-20**

**WHEREAS**, the Township of Harding Board of Adjustment requires the services of legal representation in the matter known 529 Waterfront Properties LP vs Michael Gargiulo and Patricia Gargiulo and the Board of Adjustment of the Township of Harding, Docket No. MRS-L-2176-20 (hereinafter the "Litigation"); and

**WHEREAS**, Gary Hall, Esq. is a licensed New Jersey Attorney, is recognized as capable and available toundertake such work; and

**WHEREAS**, Gary Hall, Esq. was previously appointed by the Board of Adjustment to represent it for the 2021 calendar year; and

**WHEREAS**, the Board of Adjustment negotiated a contract with Gary Hall, Esq. for the purposes set forth herein wishes taward a contract to Gary Hall represent it in the Litigation for an amount not to exceed \$25,000.00.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Harding, County of Morris, State of New Jersey as follows:

1. The Township of Harding Board of Adjustment hereby consents to the appointment of Gary Hall, Esq. for representation of the Board of Adjustment in the matter known as 529 Waterfront Properties LP vs Michael Gargiulo and Patricia Gargiulo and the Board of Adjustment of the Township of Harding, Docket No. MRS-L-2176-20.

2. A contract for professional services is authorized to be entered into with Gary Hall, Esq. for the purposes set forth herein in an amount not to exceed \$25,000.00.

3. The Board Chairman and Board Secretary are hereby authorized to execute said contract on behalf of the Board of Adjustment.

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**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
RESOLUTION**

**Remand to Tree Conservation Officer per Court Order  
595 Van Beuren Road - Block 5, Lot 8**

**529 Waterfront Properties, LP, Appellant - Application No. BOA 6-20**

**Adopted August 30, 2021**

WHEREAS, by resolution adopted on October 15, 2020, the Harding Township Board of Adjustment denied an appeal submitted by 529 Waterfront Properties, LP in accordance with N.J.S.A. 40:55D-70(a) and Ordinance Section 225-111(C) that challenged a decision by the Township Tree Conservation Officer to issue a tree removal permit to Michael and Patricia Gargiulo authorizing removal of 28 trees on the flag staff portion of their property located at 595 Van Beuren Road in the RR Zone and designated on the Township Tax Map as Block 5, Lot 8; and

WHEREAS, an appeal of the Board's decision to Superior Court by 529 Waterfront Properties, LP resulted in entry by the Court of the attached Consent Order on July 20, 2021 remanding this matter and requiring the Board to direct the Township Tree Conservation Officer to mail a copy of the prior tree permit application to the Shade Tree Advisory Committee in accordance with the procedure specified in Ordinance Section 225-111(C)(3);

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 30th day of August 2021, that the Board Attorney is hereby authorized and directed to forward this Resolution and the attached Consent Order to the Harding Township Tree Conservation Officer; and

BE IT FURTHER RESOLVED that Harding Township Tree Conservation Officer is hereby directed to mail a copy of the prior tree permit application to the Shade Tree Advisory Committee as provided for in Ordinance Section 225-111(C)(3) and as required by the Consent Order.

**Vote On Resolution**

For the Resolution: Cammarata, Maselli, Newlin, Flanagan & Rosenbaum.

Abstain: Addonizio.

Against the Resolution: None.

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">HARDING TOWNSHIP BOARD OF ADJUSTMENT</p> <p>IN THE MATTER OF: : TRANSCRIPT : CASE: BOA# 17-18 : OF New York SMSA Limited Partnership: d/b/a Verizon Wireless : PROCEEDINGS 8 Millbrook Road : Block 17; Lot 1; PL Zone : _____X</p> <p style="text-align: center;">Monday, August 30, 2021 Municipal Building 21 Blue Mill Road New Vernon, NJ 07976 Commencing at 7:00 p.m.</p> <p>BOARD MEMBERS PRESENT: MIKE FLANAGAN, Chairman ALF NEWLIN THOMAS ADDONIZIO ARIC ROSENBAUM MICHAEL CAMMARATA</p> <p>ALSO PRESENT:</p> <p style="padding-left: 40px;">LORI TAGLAIRINO, Board Administrator PAUL D. FOX, P.E., CME McKINLEY MERTZ, PP, AICP DR. BRUCE EISENSTEIN, Cellular Communications Consultant</p> <p style="text-align: center;">PRECISION REPORTING SERVICE Certified Shorthand Reporters (908) 642-4299</p>	<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S: 2 3 GREENBAUM, ROWE, SMITH &amp; DAVIS, LLP BY: STEVEN G. MLENAK, ESQUIRE Attorneys for the Board 4 5 VOGEL, CHAIT, COLLINS &amp; SCHNEIDER, ESQUIRES BY: RICHARD SCHNEIDER, ESQUIRE Attorneys for the Applicant 6 7 8 HEROLD LAW, PA BY: ROBERT F. SIMON, ESQUIRE Attorneys for the Objectors: SGSL, LLC; Harsh and 9 Nina Bansal; Michael and Susan Koenke; David and Eunice Conine; Brian and 10 Christina McKittrick; Livio Saganic and Christel Engel; James M. Carifa and 11 Sarah G. Conine; Ted Cotton 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 3 WITNESS: PAGE 4 PETER STECK ..... 17 5 6 7 8 9 E X H I B I T S 10 11 IN EVD. DESCRIPTION PAGE 12 O-5 Recollated set of Mr. Masters' visual impact 13 studies..... 50 14 15 16 17 PUBLIC MEMBERS ARE SWORN: 18 No public members are sworn 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 CHAIRMAN FLANAGAN: Welcome everyone. This 2 is a -- is this a regular meeting, Steve? All right. 3 This is -- and correct me, this is a Special meeting as 4 it was not initially -- 5 SECRETARY TAGLAIRINO: No, it's regular. 6 CHAIRMAN FLANAGAN: This is a regular 7 meeting of the Harding Township Board of Adjustment. 8 Notice of this meeting was sent to the Observer-Tribune 9 and other outlets in accordance with the Open Public 10 Meetings Act. 11 Lori, will you call the roll? 12 SECRETARY TAGLAIRINO: Mr. Boyan is 13 excused. Mr. Maselli? 14 BOARD MEMBER MASELLI: Here. 15 SECRETARY TAGLAIRINO: Mr. Symonds is 16 excused. Mr. Newlin? 17 BOARD MEMBER NEWLIN: Here. 18 SECRETARY TAGLAIRINO: Mr. Rosenbaum is not 19 here. We expect him. Mr. Addonizio? 20 BOARD MEMBER ADDONIZIO: Here. 21 SECRETARY TAGLAIRINO: Chairman Flanagan? 22 CHAIRMAN FLANAGAN: Here. 23 SECRETARY TAGLAIRINO: Ms. Sovolos is 24 excused. Mr. Cammarata? 25 BOARD MEMBER CAMMARATA: Here.</p>

<p style="text-align: right;">Page 5</p> <p>1 SECRETARY TAGLAIRINO: If you would turn</p> <p>2 the speaker on down there. If you turn it on and then</p> <p>3 press. That's for you and Dr. Eisenstein.</p> <p>4 CHAIRMAN FLANAGAN: So tonight we are going</p> <p>5 to hear the Verizon application first. We're going to</p> <p>6 approximately nine o'clock, I understand. We'll save</p> <p>7 the regular meeting for the other applications,</p> <p>8 Resolutions, et cetera, for after nine o'clock. So</p> <p>9 starting now it's going to be Verizon until nine. I</p> <p>10 think there's a couple of things I do want to discuss,</p> <p>11 and Mr. Schneider, welcome back. Mr. Simon, welcome.</p> <p>12 Two things. One, We have a memo from Ms.</p> <p>13 Mertz, which I'll ask you to speak to in a moment. We</p> <p>14 also had for the Board we have seen a draft of a memo</p> <p>15 from Steve discussing some of the legal considerations</p> <p>16 of this application, how the Board should consider</p> <p>17 this. So Steve, do you want to introduce that and just</p> <p>18 if the Board has any questions we'll talk about this</p> <p>19 more, but --</p> <p>20 MR. MLENAK: Sure. So at the last meeting</p> <p>21 the Board asked me to update a memo that was originally</p> <p>22 drafted by prior Counsel, Mr. Purcell, under the</p> <p>23 attorney/client privilege, to expand upon it. I have</p> <p>24 done that and it has been submitted to the Board, a</p> <p>25 draft under attorney/client privilege. But it's now in</p>	<p style="text-align: right;">Page 6</p> <p>1 final. I'm happy to entertain questions. Really what</p> <p>2 it does is outlines the legal standard for reviewing an</p> <p>3 application like this. I believe it can be released</p> <p>4 publicly for the attorneys to review. Obviously, the</p> <p>5 intention is not to become a war of briefs over</p> <p>6 legality, but this is really just per the Board's</p> <p>7 request an outline of how they are to review this</p> <p>8 application in accordance with the applicable cases.</p> <p>9 CHAIRMAN FLANAGAN: And thank you for that.</p> <p>10 I think it was very helpful. You know, and I think it</p> <p>11 served the purpose. I think the goal is to give the</p> <p>12 Board the legal framework, right. I mean, it's really,</p> <p>13 in my mind, a series of questions that we need to</p> <p>14 answer. And I think you did a very good job at laying</p> <p>15 that out. We are -- obviously we'll have opportunities</p> <p>16 to discuss this. I'm sure we're going to discuss this</p> <p>17 in much more detail when we get to the meeting where we</p> <p>18 finally deliberate. My personal thought process is I'm</p> <p>19 going to go through this list and say, all right, this</p> <p>20 is the criteria. Was it met? Yes, or no. This is the</p> <p>21 criteria. Yes, no. And go through it in that fashion.</p> <p>22 Does anybody else have any questions in the</p> <p>23 interim or was there anything that wasn't clear or</p> <p>24 anything the Board feels needs to be expanded upon?</p> <p>25 No? Alf, anything else?</p>
<p style="text-align: right;">Page 7</p> <p>1 BOARD MEMBER NEWLIN: No.</p> <p>2 CHAIRMAN FLANAGAN: Okay. We have had some</p> <p>3 discussions. I think what I'd like to do, and I guess</p> <p>4 -- I guess, post tonight, just make a final version</p> <p>5 rather than a draft, which I think we should distribute</p> <p>6 to Mr. Schneider and Mr. Simon, you know, for your</p> <p>7 reading pleasure. I guess if you have comments, I'm</p> <p>8 not really looking for them, but if you see something</p> <p>9 that looks apply wrong, which I don't think you'll see,</p> <p>10 but if you do please let Steve know, and then we can</p> <p>11 discuss that at a subsequent meeting.</p> <p>12 MR. MLENAK: Sounds good.</p> <p>13 CHAIRMAN FLANAGAN: Okay. All right. Ms.</p> <p>14 Mertz, you have a memo for us. Do you want to go</p> <p>15 through this really briefly? I know this is on the</p> <p>16 heels of discussions about what is the history of the</p> <p>17 historic designation on this property.</p> <p>18 MS. MERTZ: Yes. Absolutely.</p> <p>19 MR. SIMON: Can I just interrupt for a</p> <p>20 second?</p> <p>21 CHAIRMAN FLANAGAN: Sure.</p> <p>22 MR. SIMON: I haven't received any type of</p> <p>23 memo. Is this memo a public memo? I don't know if the</p> <p>24 Applicant has seen it. I haven't seen it from</p> <p>25 McKinley.</p>	<p style="text-align: right;">Page 8</p> <p>1 SECRETARY TAGLAIRINO: It was in the</p> <p>2 Agenda.</p> <p>3 MR. SIMON: It was not brought to my</p> <p>4 attention that there was a new memo that was issued.</p> <p>5 But anyway --</p> <p>6 CHAIRMAN FLANAGAN: Would you like a copy</p> <p>7 of it now?</p> <p>8 MR. SIMON: I certainly would. I haven't</p> <p>9 seen it.</p> <p>10 SECRETARY TAGLAIRINO: I have one here.</p> <p>11 MR. SIMON: Because I would have liked to</p> <p>12 -- obviously, if it was brought to my attention I would</p> <p>13 have shown it to Mr. Steck, as well.</p> <p>14 CHAIRMAN FLANAGAN: Sure. Fair enough.</p> <p>15 Well, in light of that I don't know if Mr. Simon has</p> <p>16 questions on this memo subsequent to tonight. I mean,</p> <p>17 it seems fair enough. How do we handle that?</p> <p>18 MR. MLENAK: I think it would be -- did the</p> <p>19 e-mail go to you, Mr. Schneider, with a copy?</p> <p>20 MR. SCHNEIDER: No. I did not get a copy,</p> <p>21 but when Lori sent me the Agenda I saw that report</p> <p>22 noted on the agenda, so I reviewed it in the context of</p> <p>23 what was posted on the website.</p> <p>24 MR. MLENAK: So that was obviously an</p> <p>25 error. It was intended to go to everybody.</p>

<p style="text-align: right;">Page 9</p> <p>1 MR. SCHNEIDER: I do have it, though.</p> <p>2 CHAIRMAN FLANAGAN: So Mr. Simon, it seems</p> <p>3 fair enough. If you want to review that and if you</p> <p>4 have any other questions on this memo --</p> <p>5 MR. SIMON: Yes. We can deal with it on a</p> <p>6 later date. I'm not suggesting that we stop the</p> <p>7 presses, I just want to make that known to the Board,</p> <p>8 that's all.</p> <p>9 CHAIRMAN FLANAGAN: All right. Ms. Mertz,</p> <p>10 do you want to speak to this memo for a moment?</p> <p>11 MS. MERTZ: Yes. So it's dated</p> <p>12 August 19th. It really is a factual memo. I'm not</p> <p>13 offering any kind of opinion here about the relevance</p> <p>14 of the historic designation, simply clarifying where</p> <p>15 the boundary is for all of the districts.</p> <p>16 I was able to get in touch with a Historic</p> <p>17 Preservation Specialist at the New Jersey Historic</p> <p>18 Preservation Office to confirm what was happening with</p> <p>19 the state and national boundaries in relation to the</p> <p>20 local boundary in the New Vernon Historic District.</p> <p>21 So as a reminder, the New Vernon Historic</p> <p>22 District was placed on the State and National Register</p> <p>23 in 1982, and it was placed on the local Harding</p> <p>24 Historic list in 1993. The Historic Preservation</p> <p>25 Specialist from NJ SHPO it's called, she confirmed with</p>	<p style="text-align: right;">Page 10</p> <p>1 me that very rarely do state and national boundaries</p> <p>2 differ from each other. It's frequent, however, that</p> <p>3 will differ from a local boundary. The state and</p> <p>4 national nominations are in this case the exact same.</p> <p>5 It appears as though the person who filled out the</p> <p>6 first one submitted the -- and I believe the state</p> <p>7 register was first followed by the National Register</p> <p>8 again in 1982, but it's the exact same application that</p> <p>9 was submitted to both.</p> <p>10 So included in that application is a map</p> <p>11 that represents the boundaries. And that map I have</p> <p>12 attached to my memo very clearly confirms that the</p> <p>13 Tunis-Ellicks House is included in the State and</p> <p>14 National Historic District boundary, which is the</p> <p>15 eastern section of Block 17, Lot 1.</p> <p>16 The Lucy Online Map, which has come up a</p> <p>17 few times as well in our discussion here, is the online</p> <p>18 GIS public database for anybody to go and check out</p> <p>19 their local historic district, the boundaries, the</p> <p>20 contributing properties. The map that is on Lucy</p> <p>21 matches the map that is in the State and National</p> <p>22 application for the Historic Register. So the Lucy map</p> <p>23 is correct and it accurately reflects what is on the</p> <p>24 Historic Register.</p> <p>25 And what those three maps really show is</p>
<p style="text-align: right;">Page 11</p> <p>1 that the specific location of this tower is not within</p> <p>2 the State or National boundary, simply the eastern</p> <p>3 portion of this site, that includes the Tunis-Ellicks</p> <p>4 House. It really does stop where that hour glass</p> <p>5 pinches in, or the bow-tie, however you wish to refer</p> <p>6 to it. So the eastern section is absolutely within the</p> <p>7 State and National District; the western section is</p> <p>8 not.</p> <p>9 On the maps attached on page three and five</p> <p>10 -- I apologize, Mr. Simon, your copy is in black and</p> <p>11 white -- but I have added a orange triangle with a</p> <p>12 black outline to the maps that shows roughly where the</p> <p>13 proposed monopole is located. The Harding local</p> <p>14 Historic District that was designated in 1993 and is</p> <p>15 included in the 2005 Historic Preservation element is</p> <p>16 also included within the 2004 architectural survey that</p> <p>17 was completed by McCabe and Associates for which the</p> <p>18 Historic Preservation element is based on. That study</p> <p>19 identifies the entire block and lot as what they call</p> <p>20 key contributing to the local neighboring and historic</p> <p>21 district.</p> <p>22 So the entire lot, including the location</p> <p>23 of the monopole, is within the local historic district.</p> <p>24 However, the local historic district map misidentified</p> <p>25 where the State and National boundary is. So it's</p>	<p style="text-align: right;">Page 12</p> <p>1 absolutely in the local district, not in the State and</p> <p>2 National. The conclusion to my memo again is just</p> <p>3 clarifying where they stand on the Historic Registry.</p> <p>4 CHAIRMAN FLANAGAN: For the record, Mr.</p> <p>5 Rosenbaum joined us at 7:08.</p> <p>6 McKinley, thank you. Anyone on the Board</p> <p>7 have any questions about this? There were some</p> <p>8 questions from the last meeting so this is helpful.</p> <p>9 Thank you. Everyone on the Board is okay? Mr.</p> <p>10 Schneider and Mr. Simon, any questions?</p> <p>11 MR. SIMON: I'm just asking McKinley if she</p> <p>12 has a colored version. This one is black and white.</p> <p>13 CHAIRMAN FLANAGAN: There's one on the</p> <p>14 screen. Perhaps Lori, if you have a colored version</p> <p>15 you can e-mail it to Mr. Simon.</p> <p>16 SECRETARY TAGLAIRINO: Sure.</p> <p>17 MR. SIMON: That will be great. Thank you.</p> <p>18 CHAIRMAN FLANAGAN: Anybody? No? Okay.</p> <p>19 Good. One, just a little bit of housekeeping for this</p> <p>20 application. We discussed September's meeting. I</p> <p>21 don't think we have ever finalized a date. We</p> <p>22 discussed the 23rd, as I recall. Have we all confirmed</p> <p>23 if that date works for everyone present?</p> <p>24 MR. SCHNEIDER: It does for me, Mr.</p> <p>25 Chairman. I had a brief communication with Mr. Simon</p>

<p style="text-align: right;">Page 13</p> <p>1 before the meeting. Depending on what we accomplished  2 tonight, we'll be able to reconvene on the 23rd.  3 MR. SIMON: Mr. Schneider is accurate in  4 his comment about he and I discussing September 23rd.  5 And I am available on that evening. I just checked  6 with Mr. Steck, though, that's why the pause. And I  7 believe that unfortunately Mr. Steck is not available.  8 MR. SCHNEIDER: Rob, can you just keep your  9 voice up.  10 MR. SIMON: I'm sorry. Is this on?  11 SECRETARY TAGLAIRINO: No, it's not,  12 because the red light should be on.  13 There you go. Now hit --  14 MR. SIMON: Sorry about that. Sorry, Rich.  15 Mr. Schneider is correct. He and I spoke. I am  16 available on September 23rd. I just checked with Mr.  17 Steck, though, and Mr. Steck, you're not available on  18 the 23rd?  19 MR. SPECK: That's correct.  20 MR. SIMON: So I guess depending on how far  21 we get tonight.  22 CHAIRMAN FLANAGAN: All right. So we're  23 going to try to accommodate everyone. I guess it's  24 still on the top of the discussion. Mr. Steck, I guess  25 the plan is for him to finish his testimony tonight,</p>	<p style="text-align: right;">Page 14</p> <p>1 and then if he finishes tonight will you need him here  2 on the 23rd?  3 MR. SIMON: Well, I think that once Mr.  4 Steck finishes his testimony and entertains questions  5 from the Board and members of the public, then Mr.  6 Schneider will have opportunity to cross-examine him.  7 Once that concludes then typically I will have some  8 certain redirect questions for him. So depending on  9 the timing and how far we get will dictate. We  10 probably should save a couple of minutes around nine  11 o'clock or right before that to see how far we can get.  12 Okay?  13 CHAIRMAN FLANAGAN: Okay. So then we're  14 back and it's been a long time since we met. It's your  15 application, Mr. Schneider. Do you want to remind us  16 of where we stand with this?  17 MR. SCHNEIDER: Sure. Very briefly. Mr.  18 Simon's commenced the direct of Mr. Steck. I think we  19 got maybe halfway through that before the Board had  20 some questions. So the game plan for tonight would be  21 for Mr. Simon, as you just mentioned, to complete the  22 direct of Mr. Steck. Have Board questioning, and then  23 time permitting I will, after the public, I will begin  24 my cross-examination. Whether we can all complete that  25 by nine o'clock is to be determined.</p>
<p style="text-align: right;">Page 15</p> <p>1 CHAIRMAN FLANAGAN: Okay. And then once  2 your cross-examination of Mr. Steck is done, is it  3 still the case you feel -- you have no more witnesses.  4 Do you have any more witnesses, Mr. Simon, after -- or  5 anymore testimony after Mr. Steck?  6 MR. SIMON: Well, I certainly do. I have  7 certainly some clients who would want to, you know,  8 make statements. And to the extent that there are some  9 additional photographs from the site visit that we may  10 want to introduce. We still have to resolve the issue  11 as to the O-1 with the photographer. And I'll talk to  12 Mr. Schneider about that off-line before we decide what  13 to do logistically. But other than that, at this  14 point, I don't have any additional professional  15 witnesses.  16 CHAIRMAN FLANAGAN: All right. So then  17 we'll have public comment. We'll have some of your  18 clients' comments. We'll have deliberations. You both  19 will have summations, I guess. At one point we  20 discussed the possibility of having the final meeting  21 on this application next month. Is that still  22 realistic in your view?  23 MR. SCHNEIDER: It's realistic to the  24 extent that we're able to finish or try to finish Mr.  25 Steck tonight. So if we don't then we'll have to</p>	<p style="text-align: right;">Page 16</p> <p>1 figure out a date in September to complete Mr. Steck's  2 cross, and whatever other redirect from Mr. Simon.  3 Proceed to public comment and/or comments from Mr.  4 Simon's clients and then summations. So whether we can  5 accomplish that all in one meeting, that may be  6 ambitious, but hope springs eternal.  7 CHAIRMAN FLANAGAN: So I asked for -- just  8 to hear your thinking. I think we have had some  9 discussion, the three of us, the four of us, Mr.  10 Schneider, Mr. Simon, Mr. Mlenak this morning, about  11 the possibility of having the final meeting of this  12 application to be a full meeting. And my goal would  13 be, and I'm going to do that if it's possible so we can  14 actually finish it. That concludes everything that  15 needs to be done after Mr. Steck, including the  16 deliberations.  17 So with that, Mr. Simon, do you want to go  18 back to your testimony for Mr. Steck?  19 MR. SIMON: Sure. So if the Board recalls,  20 just by way of background, where we last left I was  21 questioning Mr. Steck as to certainly his Exhibit O-4,  22 and we were about to enter or introduce what I was  23 marking as O-5. And at that point I recall that the  24 Board had a number of questions, pointed questions for  25 Mr. Steck to respond to. And so I think what I'd like</p>



<p style="text-align: right;">Page 17</p> <p>1 to do in the interest of efficiency is maybe just start  2 off with some of those questions and have Mr. Steck  3 respond to them, and then we can get back into the  4 visual impact study O-5 and the other items with regard  5 to his direct examination.  6 P E T E R S T E C K, having been  7 previously sworn, testifies as follows:  8 BY MR. SIMON:  9 Q. Mr. Steck, good evening.  10 A. Good evening.  11 Q. You understand you're still under oath?  12 A. Yes.  13 Q. So one of the questions that was asked of  14 you at the end of the last meeting where you testified  15 was a question about why it matters that the property  16 at issue is located within the historic district and  17 the Tunis-Ellicks House is a historic building. And  18 more pointedly how will the cell tower, if it is  19 approved and if it is installed, hurt or harm or damage  20 or degrade either the historic district and/or the  21 Tunis-Ellicks House as a historic building, or for that  22 matter other historic buildings?  23 So why don't you start with that question  24 that was posed to you.  25 A. As affirmed this evening this entire</p>	<p style="text-align: right;">Page 18</p> <p>1 property, including the proposed cell site, is in your  2 historic district. So your governing body with a  3 recommendation of the Planning Board said this area is  4 a historic district, which means that there's some  5 properties that are key properties and the subject  6 property is referenced as a key property. Others may  7 be contributing.  8 But the reason you have districts is first  9 of all there is obviously a cluster is of historic  10 buildings in this area, and that lends itself to a  11 district. And in order to protect those properties  12 there are other properties that are included in the  13 area. And that's a recognition that you may do  14 something to a building that's not historic, but if it  15 is in the district it's still subject to the review of  16 your Historic Commission. And there's a recognition  17 that it may have an adverse effect on the entire  18 district or in this case a property that's designated  19 as a key property in the district.  20 Q. And as Ms. Mertz pointed out in her memo,  21 just because you don't have technically a historic  22 building on a piece of property does not necessarily  23 mean that that property is not in a historic district?  24 It doesn't otherwise qualify?  25 A. That's correct. So this happens to be on</p>
<p style="text-align: right;">Page 19</p> <p>1 the local district a historically designated property  2 that's in your local historic district. It happens to  3 be considered as a key contributing factor.  4 And as I'll describe in a moment, your  5 ordinance also takes into account effects outside of a  6 historic district. For example, your wireless  7 ordinance says you shouldn't be within a thousand feet  8 of a historic property either on the National Register  9 in the District. So there's a pretty consistent  10 recognition that there is a potential adverse impact.  11 The reason why this is very important is  12 that the focal point of Historic Districts is typically  13 the aesthetics. How do they look? And that's the  14 focal point of the negative impacts of a cell tower, as  15 Mr. Masters, the Applicant's Planner indicated. From a  16 planning point of view your evaluation is essentially  17 one of aesthetics. So we have two things going on  18 here. The concern from a planning point of view of  19 this application is the aesthetics of this faux tree  20 that's proposed at 126 feet.  21 Q. Or a flagless flagpole?  22 A. Or a flagless flagpole. The recognized  23 impact is one of aesthetics on other properties in the  24 district. The fact that it is in a Historic District  25 is a emphasis, an enhancement of the concern of</p>	<p style="text-align: right;">Page 20</p> <p>1 aesthetics. So there's a melding of two issues in  2 opposite directions. The Applicant is saying we're  3 putting something in here that clearly is not a 1759  4 improvement. It happens to be very tall. It happens  5 to be very difficult to shield. It happens to be an  6 area where trees are going to be removed to install it.  7 And on the other hand you have a very sensitized area.  8 Now there are a number of documents that  9 tell you this is a sensitive area. Let me just find  10 some notes. First of all, and we have already covered  11 this, it is -- this part of the property is not in the  12 national district, but it is in the local district.  13 Q. When you say -- just so the record's clear,  14 and this is again per Ms. Mertz's memo -- when you say  15 "National" you're implying National and State?  16 A. Yes. The National and State are identical  17 and as indicated that's typically the case. The  18 nomination goes to both the State and to the National.  19 So we're going to confirm that the part of  20 the property that has the proposed cellular facility is  21 just outside of the national register district limits.  22 But there is a local policy of historic preservation,  23 so there's a legislative action that says this property  24 is in a historic district. There is a legislative  25 action of your governing body saying that this is a key</p>

<p style="text-align: right;">Page 21</p> <p>1 property. There is a zone that abuts this property,  2 which is the B-1 Historic Village Business District.  3 And if you read the regulations in your adjacent  4 district, not only is it in the title "Historic," but  5 the answer is the purpose of the district is to  6 encourage activities but with an eye towards protecting  7 the historic character of the area.</p> <p>8 There's also a redevelopment plan that  9 includes the subject property, and the B-1 district.  10 And that redevelopment plan has language in it that  11 says while we want to encourage additional development,  12 perhaps expand the FAR, have a walkable area, there  13 clearly is a continuation of the theme that the  14 character of the district is important.</p> <p>15 The Master Plan has a historic preservation  16 element that supports all of these policies. And in  17 fact, there's a policy in it when they talk about New  18 Vernon Village it talks about the goals of the plan.  19 It says, "Infrastructure improvements should be  20 investigated including the feasibility of converting  21 electric and telephone lines to underground utilities,  22 and whether public water supply improvements are needed  23 to address public health concerns."</p> <p>24 The proposed cellular facility is not a  25 public utility, but it has the same visual impact. It</p>	<p style="text-align: right;">Page 22</p> <p>1 even says something as simple as telephone lines or  2 electric lines ought to go underground. Why? Because  3 that's the character of the historic area that the  4 municipality is trying to preserve.</p> <p>5 Now, when someone applies to this Board, as  6 you know, the Historic Commission is a recommending  7 body, and you have an application form that an  8 Applicant fills out, and that has certain guiding  9 principles in it -- and if I can find my copy.</p> <p>10 Q. If you don't have one, Peter, I have one.  11 A. Okay.</p> <p>12 Q. And what you're referring to, Peter, is  13 just the application form for an application for the  14 Historic Preservation Commission in the Township of  15 Harding?</p> <p>16 A. Yes. So if someone is going to apply to  17 the Commission they're given the form with paperwork.  18 And amongst the items is page eight which says  19 "Advisory Review Guidelines; The following items may be  20 discussed with the Historic Preservation Commission  21 during the advisory review process."</p> <p>22 And one of the discussion points in these  23 guidelines talks about, "The Applicant has to talk  24 about the Master Plan, the current compatibility,  25 nature, and character of the surrounding properties,</p>
<p style="text-align: right;">Page 23</p> <p>1 and how the proposed change will affect the integrity  2 of the historic property or the Historic District. The  3 integrity of the Historic District is dependant in part  4 on the existence of both critical mass and the  5 continuity of --" I think that was supposed to be  6 "continuity of contributing historic structures."</p> <p>7 So far all of the policies that I've  8 referenced in planning documents have focused on the  9 importance of the Historic District. As I mentioned  10 earlier, translated into your ordinances, the PL  11 District does not allow cellular towers. So that's an  12 outright policy decision. Your wireless ordinance also  13 says you shouldn't have cellular -- as you know they're  14 permitted conditionally in the OB-2, and the B-1  15 District.</p> <p>16 But the policy also is they shouldn't be  17 within a thousand feet of a National Register site, or  18 a district. So there are -- I don't know what the  19 count is now -- up to eight policy expressions about  20 the importance of Historic Districts. And again when a  21 property is in a Historic District, according to the  22 Municipal Land Use Law, you can control aesthetics to a  23 degree you can't control other conventional zoning. So  24 as I mentioned last time, if someone wants to build a  25 new building and they want to come in with vinyl</p>	<p style="text-align: right;">Page 24</p> <p>1 siding, although that's not traditionally a zoning  2 concern, that is a concern and that's within the powers  3 of a Historic Preservation Commission to either on its  4 own prohibit that or recommend to the Planning Board or  5 the Board of Adjustment the prohibition of that.</p> <p>6 So for starters, your policies and your  7 laws are all consistent about the sacredness of a  8 Historic District.</p> <p>9 Q. Peter, let me just ask you, or just a  10 clarification. You referenced the ordinance, the  11 Harding Township Ordinance pertaining to wireless  12 telecommunications facilities. And you talked about  13 the fact that they should not be -- they shall not be  14 erected within a thousand feet of any National or State  15 Register of Historic Places; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Isn't it true, though, that under Section  18 175(c)(5) of the Ordinance the language actually says  19 that "Wireless telecommunication towers shall not be  20 erected within a thousand feet of any Historic District  21 or site listed on or eligible for listing on the  22 National and/or State Register."</p> <p>23 So do you have an opinion as to whether  24 that includes not just the National and State Register,  25 you know, which this application is violative of being</p>

<p style="text-align: right;">Page 25</p> <p>1 within a thousand feet of a National or State Register  2 property, but also whether that also applies to any  3 Historic District as is stated here?  4 A. So let me read it into the record. This is  5 Subparagraph Five. "Wireless telecommunications towers  6 shall not be erected within a thousand feet of any  7 Historic District or site listed on or eligible for a  8 listing on the National and/or State Register of  9 Historic Places."  10 So as you know, this is on the same  11 property. It is 500-some odd feet away from a historic  12 house that's on the State and National Register. And  13 this statement is even broader because while this  14 doesn't apply to your local district, there are also  15 properties that are not technically listed on the State  16 and National, but they're declared eligible. So this  17 has a broad search, and again it reinforces the fact  18 that proximity of a tower to a Historic District,  19 historic site, or one eligible for a State and National  20 designation is a concern, and in fact it's prohibited.  21 That's the public policy.  22 MR. SCHNEIDER: Mr. Chairman, just so I  23 want to preserve that I'm not waiving anything. The  24 section that Mr. Steck and Mr. Simon are referring to  25 is not the ordinance that governs this application.</p>	<p style="text-align: right;">Page 26</p> <p>1 That's the conditional use section of the Harding  2 Township Ordinance, and this is not a conditional use.  3 So I don't want to be perceived. I'll let the  4 testimony go in, but for the purposes of the record I'm  5 not conceding in any way, shape, or form that that  6 section of the ordinance governs this application.  7 CHAIRMAN FLANAGAN: Okay.  8 THE WITNESS: So to clarify my point, that  9 condition, you can't be within a thousand feet, applies  10 to the OB Zone and the B-2 Zone. So it applies to  11 zones where the governing body says there's a  12 possibility that this is a good place for a cellular  13 tower. What I would suggest is, even greater concern  14 in a zone where it's not permitted, such as the PL Zone  15 that this is in.  16 BY MR. SIMON:  17 Q. So with regard, Peter, to the negative  18 criteria, and obviously, you know, based on Mr.  19 Mlenak's memo we're going to talk about positive and  20 negative criteria, even in the context of your  21 testimony, that the Master Plan and the zoning  22 ordinance, and adhering to them or considering them,  23 are important whether or not this is a conditional use  24 or a prohibited use under the negative criteria under  25 the Municipal Land Use Law; correct?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes. As the Board is aware, part of the  2 negative criteria is you have to find that it does not  3 substantially impair the zone plan which is the Master  4 Plan and the zoning ordinance. That runs to the heart  5 of this. Again, because there is a cautionary note and  6 in fact a prohibition. Not in this zone and not within  7 a thousand feet of a district or a historic property.  8 Q. And that would even apply if wireless  9 telecommunications facilities were inherently  10 beneficial under the Municipal Land Use Law, or  11 applicable case law which they are not; correct?  12 A. Yes. If this were a classic Sica Case with  13 an inherently beneficial use that's not an automatic  14 approval. You would still have to address the negative  15 criteria. And again, this is a dual focus. The real  16 impact of this facility is on aesthetics. And  17 according to local policies and the Master Plan and  18 your local ordinance the highest sensitivity here is  19 the aesthetics because it's in a Historic District.  20 Q. So let's move on to another question that  21 was asked by a member of the Board, specifically asking  22 you as a professional planner, to take a look at the  23 tower at Green Village. And when I say the tower at  24 Green Village I'm referring to the flagless flagpole at  25 the Green Village Fire Company. Are you familiar with</p>	<p style="text-align: right;">Page 28</p> <p>1 that --  2 A. Yes.  3 Q. -- tower. Okay. And that it's  4 approximately 97, a hundred feet?  5 A. It's a hundred feet or less.  6 Q. And have you had an opportunity to look at  7 that tower and the surrounding area and the  8 circumstances surrounding that approval?  9 A. Yes. I looked at the Resolution and I did  10 tour the site. And first of all, if you're driving  11 past the volunteer fire department it's a single  12 flagless pole. It's in the back of the building. And  13 if you're driving by it and you're not looking for it  14 you're not going to see it, because it's remote from  15 the road. There are tall trees near it on at least the  16 northeast side, if I recall correctly, or to the rear  17 of it. There are also wetlands to the rear so nothing  18 is going to get built close to this tower.  19 And in fact, in the Resolution, this was in  20 a shallow R-3 Zone across from a business zone, but it  21 did require a D-1, a D-2 and a D-6 variance. And in  22 fact the -- there was some discussion about putting a  23 flag on the pole. And because that would require  24 beefing up the diameter to 33 inches, presumably to  25 strengthen it from wind loads, that was declined. They</p>

<p style="text-align: right;">Page 29</p> <p>1 just wanted to have the pole without the flag. That's</p> <p>2 the minimum impact that they found acceptable in that</p> <p>3 instance.</p> <p>4 So here is a facility that at least for</p> <p>5 that setting, Chatham Township found to meet the</p> <p>6 statutory criterion. That, whatever, 98-foot pole</p> <p>7 behind the building, not easily seen and not</p> <p>8 necessarily a community center, there's no school by</p> <p>9 that site or no historic building actually, it's fairly</p> <p>10 close to the Harding Township boundary, but that was</p> <p>11 found to be acceptable. And they're allowed to make</p> <p>12 that call. But again there are specific conditions on</p> <p>13 that, no flag, very narrow. In fact, the equipment</p> <p>14 shelters are wooden small barns at the bottom of it.</p> <p>15 Again, not trying to mask as much as possible the</p> <p>16 aesthetic impact of that facility. And as you know</p> <p>17 there's a gas station in the area. There's a deli</p> <p>18 across the street, a commercial area. But if you're</p> <p>19 driving by it is indeed difficult to see. And the</p> <p>20 other issue is, it's not in a Historic District.</p> <p>21 MR. MLENAK: Do you know how tall that is?</p> <p>22 THE WITNESS: I believe it's 98 feet</p> <p>23 according to the Resolution. And I'm assuming it was</p> <p>24 built to the height it was approved for.</p> <p>25 BY MR. SIMON:</p>	<p style="text-align: right;">Page 30</p> <p>1 Q. So if hypothetically there was no tower at</p> <p>2 the Green Village Fire Company, and hypothetically if</p> <p>3 the question was, well, you can put a tower either at</p> <p>4 the subject DPW site or at the Green Village Fire</p> <p>5 Company, from a planning perspective which one would</p> <p>6 you choose and why?</p> <p>7 A. I would immediately go to Green Village</p> <p>8 because it's not in a Historic District. So there's</p> <p>9 not an enhanced review in terms of aesthetics. It also</p> <p>10 happens to be lower than what's proposed, and again a</p> <p>11 flagless flagpole. So on the Historic District alone</p> <p>12 criteria it's -- the Green Village site is, in my</p> <p>13 opinion, clearly superior.</p> <p>14 Q. And notwithstanding the fact that there are</p> <p>15 some houses in the Green Village Fire Company location;</p> <p>16 correct?</p> <p>17 A. In that, there's a mixture of commercial</p> <p>18 and residential houses. The houses tend to be rather</p> <p>19 small. And one difference is that the subject site,</p> <p>20 again, is in a PL Zone, surrounded on a couple of sides</p> <p>21 by the B-1 Historic Village District. But when you get</p> <p>22 into the residential area it's one of your most</p> <p>23 restrictive residential areas in Harding. And as the</p> <p>24 Board members who were on the site tour know, those</p> <p>25 homes are substantial in size. They have well</p>
<p style="text-align: right;">Page 31</p> <p>1 manicured open space. The owners are clearly sensitive</p> <p>2 to aesthetics as evidenced by their own properties.</p> <p>3 And in my opinion, again, there are clearly</p> <p>4 distinctions between the Green Village site and the</p> <p>5 subject site.</p> <p>6 Q. Another question that was asked by the</p> <p>7 Board was whether you have ever seen neighboring</p> <p>8 properties get compensated in connection with a</p> <p>9 wireless telecommunications application?</p> <p>10 A. I've never seen any monetary compensation</p> <p>11 for the adverse effects of towers. There have been</p> <p>12 some instances where a cellular provider might offer to</p> <p>13 plant shrubbery on an adjacent property, but in my</p> <p>14 experience it's never the instance where someone in a</p> <p>15 sense pays their way to mitigate the adverse</p> <p>16 consequences.</p> <p>17 Q. And you were asked whether you were going</p> <p>18 to be giving any testimony as to the impact of property</p> <p>19 values on the surrounding properties?</p> <p>20 A. Yes. I'm not a real estate appraiser.</p> <p>21 I've been involved in cases where the value of real</p> <p>22 estate has been an issue. There was a case in</p> <p>23 Bernardsville where indeed there were appraisers on</p> <p>24 both sides, and there was a new subdivision proposed</p> <p>25 right across the street for a cell tower that was</p>	<p style="text-align: right;">Page 32</p> <p>1 proposed, and part of the evidence of the Objectors was</p> <p>2 the impact on property values.</p> <p>3 I can't testify to that, but in my opinion</p> <p>4 just in terms of the usability and the character of a</p> <p>5 district it may well have an adverse impact. And in</p> <p>6 this case --</p> <p>7 MR. SCHNEIDER: Objection. Mr. Steck's not</p> <p>8 qualified to render that opinion.</p> <p>9 MR. SIMON: I don't think Mr. Steck is</p> <p>10 opining as to the impact on property values. I would</p> <p>11 agree with Mr. Schneider, but I don't think that that</p> <p>12 was the purpose of his comment. I think the purpose of</p> <p>13 his comment was that there is testimony,</p> <p>14 particularly -- so let me ask a follow-up question to</p> <p>15 Mr. Steck.</p> <p>16 BY MR. SIMON:</p> <p>17 Q. Mr. Steck, in those applications that you</p> <p>18 were involved in where there is appraisal or valuation</p> <p>19 testimony, not by you but by others, is it typically</p> <p>20 the case that the Applicant has the burden of proof who</p> <p>21 presents that type of testimony, and then in some cases</p> <p>22 the opposition group or neighbors will retain an</p> <p>23 appraisal to provide their own testimony?</p> <p>24 A. Well, it's always the case that the</p> <p>25 Applicant has the burden of proof. But it's true that</p>

<p style="text-align: right;">Page 33</p> <p>1 in some cases the cellular provider will provide or  2 attempt to provide testimony of an appraiser. And I've  3 been in at least two instances where the Objectors have  4 produced an appraiser that demonstrates that there is  5 an adverse impact.</p> <p>6 Q. So just basically to close the loop on  7 this. When the Applicant presents their case, and they  8 present an appraiser, the purpose of them presenting an  9 appraiser is to demonstrate allegedly that there's no  10 impact on property values. And then the objector group  11 will sometimes present a counter appraisal to indicate  12 that yes there is an effect on property value?</p> <p>13 A. Yes.</p> <p>14 Q. And so another question that was asked of  15 you from the Board is, from a planning perspective why  16 do you think the governing body accepted a lease in  17 this case for the DPW site?</p> <p>18 A. I would suspect because they were asked by  19 Verizon if they wanted to lease the site. So it was  20 not that the -- my understanding it was not the  21 governing body that generated this, it was Verizon that  22 approached the governing body and said would you  23 consider leasing out the site.</p> <p>24 BOARD MEMBER NEWLIN: Mr. Simon, will you  25 clarify this? I thought that it was the governing body</p>	<p style="text-align: right;">Page 34</p> <p>1 actually put it out to bid.</p> <p>2 MR. SIMON: I was just about to finish this  3 up. But I think the testimony was that initially, Mr.  4 Newlin, that Verizon did in the first instance  5 approach --</p> <p>6 BOARD MEMBER NEWLIN: That was whose  7 testimony?</p> <p>8 MR. SIMON: I think it was the site  9 acquisition person that originally Verizon reached out  10 to the municipality about that, which led to -- about  11 siting a cell tower in the area, which led to the  12 identification of the DPW site, which led to a public,  13 to your point, Request for Proposals, an RFP that  14 Verizon was a successful bidder, that a lease was drawn  15 up and the lease provided in relevant part our opinion  16 that it was contingent on the Applicant, Verizon,  17 securing all requisite local approvals, including from  18 this Board acknowledging in the lease that the property  19 is located in a historic area.</p> <p>20 Q. So Mr. Steck, just to kind of save some  21 time here, I just recited my recollection of the site  22 acquisition history, and to try to, you know, lend some  23 focus to the issue of the governing body accepting a  24 lease to this site?</p> <p>25 A. That's my understanding of the situation,</p>
<p style="text-align: right;">Page 35</p> <p>1 that the initiation to put it out to bid was based on  2 an approach from Verizon.</p> <p>3 Q. But ultimately there is a lease that was  4 entered into, and the lease provided that it's -- that  5 the approval by the Township was contingent on Verizon  6 having the onus of seeking all requisite local county  7 and state approvals; correct?</p> <p>8 A. And it also referenced approvals from the  9 state if needed because of historic preservation. So  10 there was clearly a recognition that the historic  11 nature of the area was a concern. And that's in the  12 lease document.</p> <p>13 BOARD MEMBER NEWLIN: Mr. Simon, you can  14 tell me -- just to cut to the chase here.</p> <p>15 Mr. Steck, why did the Town put out an RFP?</p> <p>16 They didn't have to do that, because they know it's a  17 historic district. Why did they do that?</p> <p>18 THE WITNESS: I don't know what was in the  19 mind of the Town to do that, but I can tell you --  20 well, you can see it in the lease, that there clearly  21 was a concern, and they put -- they simply said, the  22 burden is going to be on the Applicant to prove its  23 case.</p> <p>24 BOARD MEMBER NEWLIN: But they didn't have  25 to put out a lease if they oppose this; right?</p>	<p style="text-align: right;">Page 36</p> <p>1 THE WITNESS: They didn't have to do that.</p> <p>2 BOARD MEMBER NEWLIN: So to Mr. Simon's  3 point, almost the first section --</p> <p>4 THE WITNESS: But my understanding is that  5 just because there is a site that is offered by lease  6 does not absolve the Applicant from trying to minimize  7 the impact as is evaluate other sites and other  8 technologies. That doesn't shut the door on this  9 inquiry this evening, because simply the Applicant  10 passed the first step. They got the award, got the  11 bid, they were able to award the bid to propose  12 something on this site, but it doesn't go any further  13 than that. And again it doesn't absolve the Applicant  14 in my opinion to meet the statutory proofs.</p> <p>15 BY MR. SIMON:</p> <p>16 Q. And Mr. Steck, just to follow up, and I'm  17 going to try to be a little clairvoyant in terms of a  18 question I'm anticipating, and that was actually asked  19 at the last hearing, which is, couldn't the governing  20 body, once they granted or gave Verizon the winning,  21 you know, acknowledging that they were the winning  22 bidder, couldn't the governing body just amend the  23 zoning ordinance in order to make cellular towers  24 permitted uses in the PL Zone, and effectively removing  25 this matter from the Township's Board of Adjustment?</p>

<p style="text-align: right;">Page 37</p> <p>1 A. They could have done that. Obviously, they</p> <p>2 could have amended the zoning ordinance. This is in</p> <p>3 also a redevelopment plan area. So they could have</p> <p>4 picked a specific site and amended the redevelopment</p> <p>5 plan. What does not make sense is that there was a</p> <p>6 whole host of statements in the Master Plan, in the</p> <p>7 zoning ordinance, saying we don't want this in a</p> <p>8 historic district or near a historic district. They're</p> <p>9 the same kind of protections in the redevelopment plan.</p> <p>10 So from a logical point of view, in my own</p> <p>11 mind, for the governing body to make this an outright</p> <p>12 permitted use and eliminate these proceedings would be</p> <p>13 to undo years of policy statements both by the Planning</p> <p>14 Board and the governing body. But you're right, they</p> <p>15 could have simply not put this out to bid and the</p> <p>16 Applicant would have to on its own search for</p> <p>17 properties.</p> <p>18 Q. And they could have just amended the</p> <p>19 ordinance pursuant to the redevelopment plan or</p> <p>20 otherwise, and there would be no application before the</p> <p>21 Board of Adjustment?</p> <p>22 A. That's correct.</p> <p>23 Q. And you were also asked whether you've seen</p> <p>24 cases where -- and again this probably goes to Ms.</p> <p>25 Mertz's memo -- conflicts between local state and</p>	<p style="text-align: right;">Page 38</p> <p>1 Federal Ordinance, I guess pertaining to specifically,</p> <p>2 you know, locations of Historic Sites?</p> <p>3 A. I don't know if it's a matter of conflicts,</p> <p>4 because a governing body, a local governing body is</p> <p>5 allowed to have different district lines than a</p> <p>6 property on the State and National Register. They have</p> <p>7 that flexibility, and in fact, Harding has used that</p> <p>8 flexibility. They have a district that is larger than</p> <p>9 what is on the state and National Register. And the</p> <p>10 answer is, there's nothing wrong with that. That's</p> <p>11 allowed in the law and there's no conflict.</p> <p>12 Q. And just to clarify, you've never seen a</p> <p>13 case where a monopoly was proposed to be located in a</p> <p>14 Historic District, which is also a redevelopment area,</p> <p>15 less than a hundred feet to residences, and that</p> <p>16 residential homes adjacent exceed an acre of land?</p> <p>17 BOARD MEMBER ROSENBAUM: Can I just stop</p> <p>18 you for just one second? Because to go back to the</p> <p>19 question you just asked. I think it was one of my</p> <p>20 questions the last time, it was a conflict between</p> <p>21 Federal, state and local, you know, rules, you know,</p> <p>22 zoning, or what have you. But it was more broadly than</p> <p>23 historic districts, so it had to do with say the FCC</p> <p>24 requirements versus what the Town wants in terms of</p> <p>25 local preservation. So I wanted to hear if you had</p>
<p style="text-align: right;">Page 39</p> <p>1 experience in that area.</p> <p>2 THE WITNESS: Could you ask that again?</p> <p>3 I'm sorry. I kind of --</p> <p>4 BOARD MEMBER ROSENBAUM: So my question was</p> <p>5 broader than just historic areas, but to talk about say</p> <p>6 where on one hand you have an FCC requirement on the</p> <p>7 Federal level, and then on the other side you have a</p> <p>8 town that wants to preserve the local character. And</p> <p>9 what cases -- and what became of those cases where</p> <p>10 there was that conflict?</p> <p>11 THE WITNESS: If a municipality said we</p> <p>12 don't want cellular facilities anywhere in our town,</p> <p>13 that would obviously be a conflict, assuming the town</p> <p>14 was large enough that had gaps. There are some towns</p> <p>15 in New Jersey that are so small, Guttenberg for</p> <p>16 example, that probably could get away without a cell</p> <p>17 tower.</p> <p>18 BOARD MEMBER ROSENBAUM: Fair enough.</p> <p>19 THE WITNESS: But if the regulations are so</p> <p>20 onerous that they frustrate the mandate of the provider</p> <p>21 to provide seamless service that's clearly a conflict.</p> <p>22 And matters like that presumably would be litigated and</p> <p>23 presumably the municipality would lose. But part of</p> <p>24 the process is not just looking at one site. An</p> <p>25 inherent part of this process, in my opinion, even</p>	<p style="text-align: right;">Page 40</p> <p>1 where there is a lease site, is to evaluate alternate</p> <p>2 sites and to evaluate alternate technologies.</p> <p>3 BY MR. SIMON:</p> <p>4 Q. And I guess just a follow up to Mr.</p> <p>5 Rosenbaum's question before I see his light going on.</p> <p>6 Is that the whole dichotomy between FCC regulations and</p> <p>7 providing cell coverage, and the municipality's</p> <p>8 concerns and sensitivities and impacts on neighboring</p> <p>9 properties and the Master Plan and zoning ordinance,</p> <p>10 doesn't that inherently go to specifically the positive</p> <p>11 and negative criteria that the Applicant has the burden</p> <p>12 of proof?</p> <p>13 A. Yes. That's part and parcel of the</p> <p>14 approach.</p> <p>15 Q. Right? Where -- just to generalize it.</p> <p>16 We'll get into the specifics in a minute -- that the</p> <p>17 FCC considerations are part of the positive criteria,</p> <p>18 and let's say the first prong of the Sica balancing</p> <p>19 test of the negative criteria, but you have other local</p> <p>20 considerations in terms of particular suitability and</p> <p>21 the like that also are addressed in the positive</p> <p>22 criteria, and certainly in the second, third, and</p> <p>23 fourth prongs of the negative criteria and the negative</p> <p>24 criteria in the Municipal Land Use Law?</p> <p>25 A. You know, the state could have said</p>

<p style="text-align: right;">Page 41</p> <p>1 wireless carriers are public utilities. It did not.  2 The courts could have said they're an inherently  3 beneficial uses. They did not. So clearly there is an  4 interest in allowing local discretion to take some part  5 of this process. If the local discretion is too  6 extreme, no cell towers in my town, that's too far.  7 BOARD MEMBER ROSENBAUM: But is the local  8 discretion to evaluate other locations for that tower  9 that are less impactful, let's say? But if that's the  10 case and the petitioner has done so, isn't it then, you  11 know, where Federal law would trump the sensitivities  12 of the town historical character?  13 THE WITNESS: It's a fact-sensitive  14 situation. In my opinion the Applicant is obligated to  15 evaluate alternate sites. And it depends upon the  16 facts of the situation. If there's a site that's  17 outside of the Historic District on its surface, I  18 would suggest I'm going to evaluate that site.  19 BOARD MEMBER ROSENBAUM: And if the  20 Applicant had to evaluate all the those sites and found  21 them either from a technical point of view or economic  22 point of view not sufficient?  23 THE WITNESS: Then part of the proofs that  24 would warrant approval are there. But again, there are  25 situations where there may be alternate technologies</p>	<p style="text-align: right;">Page 42</p> <p>1 that enhances. So it depends upon, I would suggest,  2 the shape of the gap area. What kind of a district is  3 it in. It's obviously, you know, topography is  4 important. There are a number of features. And there  5 clearly is a line that a municipality might cross,  6 which is improper and a Court would reverse it.  7 BOARD MEMBER ROSENBAUM: And are you aware  8 of any actual cases that were done in New Jersey or  9 elsewhere where this was all evaluated and we can use  10 as a guide for our decision-making process?  11 THE WITNESS: Well, the Bernardsville Case  12 is one where the Board denied the monopoly that's being  13 proposed. The matter was appealed and the Appellate  14 Division upheld the denial. That's also true in  15 Cranford. I was on a case that got denied and I  16 believe it was affirmed. The denial was affirmed.  17 In Hillsborough there was another case. I  18 don't know if that was appealed, but that was a case  19 where the Board denied it and that was not reversed.  20 BY MR. SIMON:  21 Q. And again, to Mr. Rosenbaum's point and the  22 question I asked you, and we'll get to it in a couple  23 of minutes, the whole purpose of analyzing the case  24 under the Sica balancing test for the negative criteria  25 is to do that balancing of the need for the service,</p>
<p style="text-align: right;">Page 43</p> <p>1 balanced against the perceived detriments of the, in  2 this case placing a cell facility in a particular  3 location and then balancing the two?  4 A. That's my understanding.  5 Q. So in this case the, again, this property  6 was conveyed as two separate parcels. There was no  7 merger for operational law, but they voluntarily merged  8 these two sites together; is that correct?  9 A. That's correct. When this property was  10 taken over by the municipality it was one tax map lot.  11 Q. And the fact that from a planning  12 perspective there is, in my term, a lot going on on  13 even this left side of the hour glass and the bow tie  14 in terms of the DPW garages, the locker rooms, the  15 bathrooms, the sleeping accommodations, the recycling  16 facility, a lot going on even just on the left side,  17 forget about the right side, and adding -- and what  18 impact, if any, from a planning perspective occurs when  19 you're adding the proposed use to this side of the hour  20 glass?  21 A. If we were talking just about a equipment  22 compound that was 30-by-60 feet presumably that could  23 be nestled somewhere in the public works yard,  24 although, a lot of people see it because they go to the  25 recycling center, presumably there could be ways of</p>	<p style="text-align: right;">Page 44</p> <p>1 addressing the adverse aesthetic impacts of that.  2 That's not the lightning rod issue here. The lightning  3 rod issue is the 120-plus-6-foot lightning rod on the  4 top of this. That cannot be aesthetically mitigated at  5 a low level. Again, keep in mind the Applicant is  6 removing trees at the base of this. The trees that are  7 in the area there are largely deciduous. Probably 40  8 or 50 percent of this tower is going to be visible  9 above the trees from different locations, nearby  10 residential locations, and other locations in the  11 historic district. That's a significant factor that  12 makes this a unique situation.  13 And also, again, your zoning ordinance says  14 in this zone there should be one use, one principal use  15 per lot. Already, you have two: You have a historic  16 museum and house. You have the public works yard. Now  17 we're going for three principal uses. Again, another  18 factor that triggers a "D" Variance in your zoning  19 ordinance.  20 And finally, there is a proximity issue.  21 The cellular tower is some 500 feet from the Historic  22 House. It's going to be visible from the Historic  23 House and from someone who's visiting the Historic  24 House. It's going to be visible from many of the  25 properties in the Historic District. That's an</p>

<p style="text-align: right;">Page 45</p> <p>1 essential consideration.</p> <p>2 CHAIRMAN FLANAGAN: Mr. Steck, you said</p> <p>3 about the Village Green Firehouse, the monopole, that</p> <p>4 it's fairly noticeable when you drive down the road.</p> <p>5 Do you know how far?</p> <p>6 THE WITNESS: I said it wasn't easily</p> <p>7 noticed.</p> <p>8 CHAIRMAN FLANAGAN: It was not easily</p> <p>9 noticed.</p> <p>10 THE WITNESS: If you go across the street</p> <p>11 in the parking lot, because you're looking up, it looks</p> <p>12 as tall as the utility poles.</p> <p>13 CHAIRMAN FLANAGAN: Do you know how far</p> <p>14 that is from the road, roughly? And how does that</p> <p>15 compare to the distance that this proposed tower will</p> <p>16 be from Village Road, from the main road that goes to</p> <p>17 the center of town?</p> <p>18 THE WITNESS: I would say -- if you give me</p> <p>19 a moment if we have a break I can figure it out.</p> <p>20 CHAIRMAN FLANAGAN: Just eyeballing it.</p> <p>21 THE WITNESS: I would say that that cell</p> <p>22 tower is maybe -- Green Village is maybe in the order</p> <p>23 of a hundred to 150-feet back from the road.</p> <p>24 CHAIRMAN FLANAGAN: And how far back would</p> <p>25 the proposed tower be from Village Road? And my</p>	<p style="text-align: right;">Page 46</p> <p>1 expectation is it's further than that.</p> <p>2 THE WITNESS: That's my -- I mean, I can</p> <p>3 look at a plan, but that's my sense of this.</p> <p>4 CHAIRMAN FLANAGAN: So then if the</p> <p>5 testimony is that the Green Village Firehouse pole is</p> <p>6 barely visible from the road, Green Village Road, then</p> <p>7 it stands to reason if that's closer to the road, that</p> <p>8 this tower would be barely visible from Village Road,</p> <p>9 the center of town?</p> <p>10 THE WITNESS: You know, it depends on where</p> <p>11 you're standing. I stopped to look at the Green</p> <p>12 Village tower, so I knew when I was approaching. But</p> <p>13 if you are, you know, driving across the front face of</p> <p>14 that property, and again there are utility poles there,</p> <p>15 there's a flagpole on one side. It clearly doesn't</p> <p>16 shout out at you. Now, that's from the point of view</p> <p>17 of a motorist, not a pedestrian. I don't recall</p> <p>18 sidewalks in that area anyway.</p> <p>19 CHAIRMAN FLANAGAN: And I'm trying to</p> <p>20 isolate who is going to be offended most by the visual</p> <p>21 impact of this tower? Obviously, the neighbors that</p> <p>22 about the property are going to have a very clear view</p> <p>23 of it. It would seem though it's not the motorists</p> <p>24 driving through the town. And I would also ask, I'll</p> <p>25 say, when I go bring my recycling up to the recycling</p>
<p style="text-align: right;">Page 47</p> <p>1 center I don't expect a visually appealing site. So</p> <p>2 I'm trying to narrow it down who is really most</p> <p>3 adversely impacted in the district. I don't think it's</p> <p>4 the people driving down the road. I don't think it's</p> <p>5 people bringing their recycling to the recycling</p> <p>6 center. Is it solely the property owners that about</p> <p>7 that property, and perhaps people that go to visit the</p> <p>8 Tunis-Ellicks House?</p> <p>9 THE WITNESS: I would say it's clearly</p> <p>10 residential property owners in the area, as evidenced</p> <p>11 by I guess my presence here. I would say someone who</p> <p>12 is sensitive to historic preservation would be offended</p> <p>13 by it. And I would say the most offense is to your</p> <p>14 established public policy. Your public policy doesn't</p> <p>15 depend upon an on-site vote, do you like it or not.</p> <p>16 And the answer is there's a policy that the governing</p> <p>17 body adopted for this town. That's what's offended the</p> <p>18 most.</p> <p>19 CHAIRMAN FLANAGAN: But in terms of</p> <p>20 visually displeasing the adjoining neighbors, and it's</p> <p>21 people who may visit Tunis-Ellicks House?</p> <p>22 THE WITNESS: I'll tell you that, you know,</p> <p>23 the property owners -- the properties are fairly, as</p> <p>24 you know, fairly valuable in the area. So there's a, I</p> <p>25 would say, a knee-jerk reaction of property values, of</p>	<p style="text-align: right;">Page 48</p> <p>1 property owners. But as you saw from our site visit</p> <p>2 these are very elegant properties in the area. The</p> <p>3 people who own them and care for them have a strong</p> <p>4 interest in their visual environment, aside from any</p> <p>5 kind of property value issue.</p> <p>6 CHAIRMAN FLANAGAN: I'm just trying to</p> <p>7 isolate who is going to be most offended, it's property</p> <p>8 owners and potential visitors to the Tunis-Ellicks</p> <p>9 House, is that your --</p> <p>10 THE WITNESS: There are different groups</p> <p>11 that are offended. In my opinion, the most offended</p> <p>12 group is the elected officials in this municipality.</p> <p>13 CHAIRMAN FLANAGAN: Okay. Fair enough.</p> <p>14 BY MR. SIMON:</p> <p>15 Q. Just a follow-up question from Mr.</p> <p>16 Flanagan, Mr. Steck. And it goes to I think also your</p> <p>17 analysis of the Green Village site which also Mr.</p> <p>18 Flanagan asked you about. The fact that this is at</p> <p>19 the, I think according to the Master Plan, the center</p> <p>20 of citizen interaction, you know, the downtown Harding</p> <p>21 Historic District. Does that have an impact too in</p> <p>22 terms of your response to the question in terms of, you</p> <p>23 know, who's going to be most impacted?</p> <p>24 A. I guess this is not only the geographic</p> <p>25 center of Harding, but it's recognized in the Master</p>



<p style="text-align: right;">Page 49</p> <p>1 Plan as a focal point. And it happens to be both a</p> <p>2 functional focal point. That's why you have the post</p> <p>3 office here, as well as the recycling center, as well</p> <p>4 as in the crossroads area. But it also has a historic</p> <p>5 flavor to it. And again there's a I would call it a</p> <p>6 constellation of public policies reinforced by the</p> <p>7 historic designation that says this is an important</p> <p>8 location in the municipality. Radio waves don't really</p> <p>9 care about that. They don't have to be in the Historic</p> <p>10 District to work well. This tower can be just outside</p> <p>11 of a Historic District, and the electromagnetic signals</p> <p>12 don't care that it's historic or not.</p> <p>13 CHAIRMAN FLANAGAN: And it gets back to the</p> <p>14 point of the question that Aric was asking earlier is,</p> <p>15 then where? So the Applicant has gone through a litany</p> <p>16 of properties: The school, the Presbyterian Church,</p> <p>17 Christ the King, I think this property, I'm not sure,</p> <p>18 the municipal property. And so far the answer has been</p> <p>19 none of the owners are interested. All right. So if</p> <p>20 we cross those off the list, where else then, right?</p> <p>21 Because once we get outside of that DPW site, if you go</p> <p>22 down Millbrook it's all residential. If you go down to</p> <p>23 Village it's all residential. There's nothing but</p> <p>24 residential.</p> <p>25 MR. SIMON: So we're going to -- I'm going</p>	<p style="text-align: right;">Page 50</p> <p>1 to interrupt, only -- not to shut off the question.</p> <p>2 We're going to answer the question, but I think that</p> <p>3 we're going to answer the question in the context, I</p> <p>4 think, to help the Board, assist the Board of the</p> <p>5 positive and negative criteria and going through that</p> <p>6 evaluation.</p> <p>7 CHAIRMAN FLANAGAN: All right. Please</p> <p>8 don't forget, because that --</p> <p>9 MR. SIMON: I promise you I will not</p> <p>10 forget.</p> <p>11 CHAIRMAN FLANAGAN: I'll write it down.</p> <p>12 MR. SIMON: Yes. So I think at this point,</p> <p>13 let's move on to what we previously marked, I think, as</p> <p>14 O-5, which is really not our exhibit at all. And I</p> <p>15 think -- I have copies for the Board, although I think</p> <p>16 I sent electronic version, Lori. And all this is is</p> <p>17 Mr. Masters' visual impact studies sort of recollated</p> <p>18 to -- without having any -- showing any disrespect to</p> <p>19 anyone, to make it a little more logical and readable</p> <p>20 for the Board and the public in terms of the impact of</p> <p>21 the tower, the proposed tower at various heights and</p> <p>22 from various locations.</p> <p>23 (Exhibit O-5 was received and marked.)</p> <p>24 SECRETARY TAGLAIRINO: Were these from</p> <p>25 March?</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. SIMON: I probably originally sent them</p> <p>2 in March.</p> <p>3 CHAIRMAN FLANAGAN: So Mr. Simon, you're</p> <p>4 re-presenting testimony?</p> <p>5 MR. SIMON: I'm not re-presenting any</p> <p>6 testimony. What I'm doing is there were exhibits that</p> <p>7 Mr. Masters and the Applicant entered as separate</p> <p>8 exhibits, separate photos from different locations.</p> <p>9 What I have done and I'd like to mark as O-5 is just to</p> <p>10 -- I basically recollated it so that it's, frankly,</p> <p>11 easier to follow in terms of the study that was</p> <p>12 presented by the Applicant and have Mr. Steck comment</p> <p>13 on it, on the photos.</p> <p>14 CHAIRMAN FLANAGAN: All right. So we're</p> <p>15 going to look at photos that we previously looked at.</p> <p>16 MR. SIMON: Absolutely.</p> <p>17 CHAIRMAN FLANAGAN: That sounds a little</p> <p>18 bit redundant to me. We want to go through if there's</p> <p>19 a fresh take -- Steve, please tell me if I'm wrong --</p> <p>20 I'm happy to hear Mr. Steck's take on it, but get</p> <p>21 through it as quickly as possible.</p> <p>22 MR. SIMON: Sure. I would ask him</p> <p>23 normally, Mr. Flanagan, here's A-28, A-29, A-30.</p> <p>24 Please comment on it. This way I've created one</p> <p>25 Exhibit O-5, actually in the interest of efficiency and</p>	<p style="text-align: right;">Page 52</p> <p>1 easier to follow, and have him just comment on this all</p> <p>2 in one exhibit.</p> <p>3 CHAIRMAN FLANAGAN: I just want to be</p> <p>4 conscious of time, especially if it's something that we</p> <p>5 have already seen before.</p> <p>6 MR. SIMON: I'm not going to have him go</p> <p>7 through every single page, but just for him to comment</p> <p>8 and respond to the visual impact study presented in</p> <p>9 various forms, at various times, by the Applicant's</p> <p>10 witness. Fair enough?</p> <p>11 CHAIRMAN FLANAGAN: Let's go quickly.</p> <p>12 MR. SIMON: Do you want me to hand out -- I</p> <p>13 have a bunch of copies. You've all seen every single</p> <p>14 one of these pages before.</p> <p>15 SECRETARY TAGLAIRINO: I'll do that. Is</p> <p>16 that the same than what I just put up there?</p> <p>17 MR. SIMON: Yes. I'm sure. And I sent</p> <p>18 this to Mr. Schneider many months ago. And I'm marking</p> <p>19 this as O-5. And I think we may have previously marked</p> <p>20 it that, but --</p> <p>21 BY MR. SIMON:</p> <p>22 Q. So Mr. Steck, I'm showing you what's been</p> <p>23 marked O-5 for Identification. These are submissions</p> <p>24 by the Applicant, specifically by Mr. Masters, of</p> <p>25 certain photographed locations where he took</p>

<p style="text-align: right;">Page 53</p> <p>1 photographs. And then he took photos first of a crane  2 at a certain height. And based on his testimony, it's  3 146 feet, I believe. And then superimposed first a  4 tree at 146 feet; and then at 1B showed a tree at 126  5 feet; and then at 1C the tree at 106 feet; 1D would be  6 the flagless flagpole at 120 feet; 1E would be the  7 flagless flagpole at a hundred feet. And that's 1A  8 through 1E. And then the same thing would be the case  9 in terms of the succession of photographs for photo  10 locations two through eight; correct?  11 A. Yes.  12 Q. Okay. So you've had an opportunity to look  13 at composite Exhibit O-5, which is the photo locations  14 that Mr. Masters took from various vantage points in  15 the area, and the various tower types and tower -- and  16 various tower heights; correct?  17 A. Yes.  18 Q. And you agree that A through E represents  19 first the tower itself -- the crane itself, and then A  20 through E represents the simulated tree, and also  21 flagless flagpole; correct?  22 A. Yes.  23 Q. And based on -- and you've had a chance to  24 review O-5, as well as the underlying exhibits  25 presented by the applicant; correct?</p>	<p style="text-align: right;">Page 54</p> <p>1 A. Yes.  2 Q. And based on your review of Mr. Masters'  3 visual impact studies, which I've collated as O-5  4 together to be more easily read, do you have any  5 comments from a professional planning perspective as to  6 what you're looking at in O-5?  7 A. Well, two comments: It only evaluates one  8 site, one location, the one that the Applicant wants.  9 Although, if I recall the testimony correctly, the  10 crane wasn't exactly over the site. I think there was  11 some admission that it was not -- it didn't identify  12 exactly where the location of the proposed monopole  13 was.  14 Q. Right. So the first point is that in terms  15 of the location of the crane and then the various  16 simulations that are depicted in O-5, that this  17 location is not precisely the location, the currently  18 proposed location for the monopole; correct?  19 A. Yes.  20 Q. And your understanding is that in the  21 recent site visit that was hosted by the Board, where a  22 crane was placed at 120 feet, that that crane was  23 placed on top of the actual current location as being  24 proposed by the Applicant?  25 A. Well, the end of the boom was placed over</p>
<p style="text-align: right;">Page 55</p> <p>1 the proposed location.  2 Q. Right. And in your Exhibit O-4 you  3 actually included some photographs from that site  4 visit; correct?  5 A. Correct.  6 Q. So what else about O-5 do you want to  7 comment about?  8 A. The second item is that once this is  9 approved the Applicant has the ability to increase the  10 height by ten percent without necessarily requiring --  11 CHAIRMAN FLANAGAN: So we have discussed  12 this as well. Let's move this along. There's  13 mechanisms which could prohibit that, right. I think  14 Mr. Schneider, you said you would even consider,  15 perhaps you don't have to tell me but I understand. So  16 the Board understands that by a right an Applicant  17 would have the right to increase the height of the  18 tower by 10 feet or a percentage; correct?  19 MR. SCHNEIDER: Twenty feet under the FCC,  20 but subject to limitations, and I don't want to go over  21 them again.  22 CHAIRMAN FLANAGAN: Subject to a lease,  23 right? Okay.  24 MR. SCHNEIDER: Correct.  25 BY MR. SIMON:</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. And in your review of O-5, Mr. Steck, in  2 terms of the tree heights or the trees in the area of  3 where the tower is proposed to be located do you have  4 any comments about that as depicted?  5 A. The trees, first of all, are largely  6 deciduous. And they, they would leave even if the  7 tower were 120, 126 feet, would leave close to half of  8 the tower above the tree line.  9 Q. And that would even be the case if the  10 flagless flagpole over the tree were at a 100 feet;  11 correct?  12 A. That's correct. It might be 40 percent  13 over the tree line, but again the trees that are at the  14 base of the proposed location are going to be removed.  15 But in general that tree line is not going to be  16 effective in allowing the faux tree to be masked, or to  17 blend into the background.  18 CHAIRMAN FLANAGAN: Not to pick on you, but  19 in Exhibit 5, I guess it's page seven.  20 MR. SIMON: Which number?  21 CHAIRMAN FLANAGAN: Eight Millbrook Road.  22 MR. SIMON: But if you look at the top  23 right.  24 MR. MLENAK: Just seven. Before 7A.  25 CHAIRMAN FLANAGAN: I guess you can also</p>

<p style="text-align: right;">Page 57</p> <p>1 look at 7C, perhaps 7D. Right. So yes, if the tower  2 is at a hundred feet and the tree tops are at 50 feet,  3 correct, half the tower would be above the tree line.  4 But there's a question of where you're standing when  5 you're looking at it, because you're not going to be  6 standing 50 feet off the ground. So if one looks at it  7 from the ground, at least the photo in seven -- if this  8 is an accurate representation, which I imagine it is,  9 the top of the tower does not extend above the top of  10 the trees; correct?</p> <p>11 THE WITNESS: In certain cases, yes.</p> <p>12 MR. SIMON: And that's from certain vantage  13 points as well; right?</p> <p>14 THE WITNESS: Correct.</p> <p>15 CHAIRMAN FLANAGAN: But just to be clear,  16 it's geometry. So if you are on the ground and you're  17 50 feet below, right, the distance you are away from  18 the pole would determine how much of the pole you can  19 see; correct?</p> <p>20 THE WITNESS: That's correct. And again,  21 the Applicant did not request when the study was done  22 to go on to any private properties. We had the  23 opportunity to do that on the site visit, and that  24 clearly offers a different view or a different visual  25 impact than is represented by this exhibit.</p>	<p style="text-align: right;">Page 58</p> <p>1 CHAIRMAN FLANAGAN: Okay. Sorry to  2 interrupt. Go ahead. But I wanted --  3 BY MR. SIMON:  4 Q. That's okay. And then finally in terms of  5 the trees that are shown on O-5, based on the  6 Applicant's most recent site plan that depicts certain  7 trees to be removed it's not identified in this set of  8 simulation in O-5 as to how the views would look with  9 those trees removed?</p> <p>10 A. That's correct.</p> <p>11 Q. And in fact, in terms of the Applicant site  12 plan, while it provides Xs that depict trees to be  13 removed it doesn't identify which trees are going to be  14 removed, their heights, their diameter breast heights,  15 or types of trees; correct?</p> <p>16 A. Correct. It just indicates that -- the Xs  17 represent a tree removed.</p> <p>18 Q. And we don't know based on the site plan  19 exhibit what was the basis for determining that certain  20 trees would have an "X" through them, while other trees  21 that clearly are going to be removed that are in the  22 vicinity of what I'll call "X trees" are not  23 identified. And we don't know if they're not  24 identified because there was a certain minimum diameter  25 breast height or tree height or otherwise; correct?</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Yes. There wasn't an explanation in the  2 material submitted.</p> <p>3 Q. And in fact, in the most recent site plan  4 submitted by the Applicant there's no identified limit  5 of disturbance even to determine whether there's -- for  6 any trees that are even intended to be saved, whether  7 those trees are going to be impacted at all by any  8 grading via the tree roots or otherwise and whether  9 that has an impact on whether they have the ability to  10 survive or not?</p> <p>11 A. There's not a limit of disturbance shown.  12 Obviously, where the Applicant is trying to replant an  13 area or install equipment that necessitates removal,  14 but typically plans show a clearance area which may be  15 larger because of regrading or other reasons and it's  16 not shown here.</p> <p>17 Q. Okay. So let's move on to the positive and  18 negative criteria.</p> <p>19 BOARD MEMBER NEWLIN: Can I ask you a  20 question about the tree planting? Is there anything in  21 the application that talks about planting trees?</p> <p>22 THE WITNESS: About the --</p> <p>23 BOARD MEMBER NEWLIN: Planting any trees?</p> <p>24 THE WITNESS: They're going to plant --  25 there is a diagram that shows planting between the</p>	<p style="text-align: right;">Page 60</p> <p>1 equipment area and the closest residential property  2 line.</p> <p>3 BOARD MEMBER NEWLIN: And you think that's  4 sufficiently detailed? Do you have any detail about  5 the tree planting plans?</p> <p>6 THE WITNESS: I did not evaluate it  7 specifically because it only addresses the equipment  8 area, it doesn't address the tower, which in my opinion  9 has a greater visual impact.</p> <p>10 BOARD MEMBER NEWLIN: Doesn't address the  11 tower because it can't or because it did not?</p> <p>12 THE WITNESS: It has to do with the -- the  13 answer is, in this environment where there are  14 relatively few tall trees around it doesn't address the  15 tower because it can't.</p> <p>16 BOARD MEMBER NEWLIN: So it's not worth --  17 obviously, there's many other issues, but for this  18 particular issue it's not worth focusing on a tree  19 planting aspect of the application?</p> <p>20 THE WITNESS: It is one consideration  21 because -- well, first of all, the Applicant thinks  22 it's a concern because the Applicant is trying to plant  23 there, but the point is that it's ineffective in terms  24 of the tower itself, in my opinion. And it has to do  25 with whether or not the site is particularly suited for</p>

<p style="text-align: right;">Page 61</p> <p>1 this use.</p> <p>2 BOARD MEMBER NEWLIN: Thank you.</p> <p>3 BY MR. SIMON:</p> <p>4 Q. Which goes to my next set of questions, Mr.</p> <p>5 Steck. So at this point we understand and I understand</p> <p>6 that Mr. Mlenak has shared a memo with the Board</p> <p>7 members, so I'm sure they have some understanding for</p> <p>8 sure, but can you just go through, first of all, the</p> <p>9 legal criteria that the applicant needs to meet first</p> <p>10 under the -- for the D-1 positive criteria, and then</p> <p>11 the D-1 negative criteria. Just in terms of what the</p> <p>12 standard -- before we get to the proofs or the lack</p> <p>13 thereof, if you can just go through what the standard</p> <p>14 is starting with the positive criteria?</p> <p>15 A. So under the heading of the positive</p> <p>16 criteria the Applicant has to presumably demonstrate</p> <p>17 under its licensing that it is advancing this form of</p> <p>18 communication. And it is -- it's filling a gap,</p> <p>19 fulfilling the need. It has to show that the site is</p> <p>20 particularly suited for this type of facility. And the</p> <p>21 Court -- can I mention the name Sica or --</p> <p>22 Q. Well, that's the negative points. I just</p> <p>23 want the positive criteria first and then we'll talk</p> <p>24 about the negative criteria.</p> <p>25 A. And the Applicant should -- and this blends</p>	<p style="text-align: right;">Page 62</p> <p>1 partly into the negative criteria, is that my</p> <p>2 understanding is there's a requirement that alternate</p> <p>3 sites be examined. In case the aesthetic analysis is</p> <p>4 only done at one site, albeit with a tree and with a</p> <p>5 flagless pole, but the analysis is only done of one</p> <p>6 site. I lost --</p> <p>7 Q. So that's okay. So with regard to, for</p> <p>8 clarification, for the positive criteria there needs to</p> <p>9 be a particular suitability of the site to be used;</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. And the need for the facility at the</p> <p>13 location?</p> <p>14 A. Yes.</p> <p>15 Q. And that they can't use other facilities?</p> <p>16 A. Yes. There's no structures in the area</p> <p>17 that could be used, at least to put the antenna on.</p> <p>18 Q. And the site is going to, of course,</p> <p>19 improve telecommunications services?</p> <p>20 A. Yes.</p> <p>21 Q. And then finally, as you just mentioned,</p> <p>22 that the carrier engaged in a reasonable good-faith</p> <p>23 effort to find an alternative less intrusive site or</p> <p>24 technology to meet their needs but none were more</p> <p>25 appropriate, let's say, with less detrimental effects?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. So it's really -- it's a two part. The</p> <p>2 answer is, are there other sites that are better suited</p> <p>3 or can be found to be particularly suitable, and are</p> <p>4 there alternate technologies that would meet the</p> <p>5 requirements of the FCC license, but not have the I'll</p> <p>6 call it the adverse effects that the proposal is.</p> <p>7 Q. So that's the standard for the positive</p> <p>8 criteria. We'll get into the proofs in a second. But</p> <p>9 in terms of the requirements for the negative criteria,</p> <p>10 you were talking about the Sica test?</p> <p>11 A. So as the Board is maybe more aware than it</p> <p>12 wants to be, there's this four-step Sica test. And the</p> <p>13 first step is, what's the magnitude of the public</p> <p>14 benefit that is being advanced by approval of the</p> <p>15 application?</p> <p>16 The second step is what are the negative</p> <p>17 consequences that would arise from approval? And again</p> <p>18 the focus here is on the aesthetic impact.</p> <p>19 The third step is are there reasonable</p> <p>20 conditions that can be imposed that might mitigate</p> <p>21 those adverse consequences?</p> <p>22 And the final step is on balance can part</p> <p>23 of the negative criteria be met? In other words, on</p> <p>24 balance can the Board conclude that the application can</p> <p>25 be approved without substantial detriment to the public</p>	<p style="text-align: right;">Page 64</p> <p>1 good.</p> <p>2 And there's another aspect to the negative</p> <p>3 criteria, which is, can it be approved without</p> <p>4 substantial impairment of the zone plan and zoning</p> <p>5 ordinance. The zone plan here is the Master Plan, and</p> <p>6 the zoning ordinance is the one that we're addressing</p> <p>7 this evening that gives this Board jurisdiction.</p> <p>8 Q. And that's what you're specifically</p> <p>9 referring to earlier in that it's not just the first</p> <p>10 prong of the negative criteria, but it's also the</p> <p>11 second prong of the negative criteria under Section D</p> <p>12 of the Municipal Land Use Law, which actually states in</p> <p>13 the statute that even for inherently beneficial uses</p> <p>14 that an applicant must demonstrate both prongs of the</p> <p>15 negative criteria?</p> <p>16 A. Right. So no matter how good the use is,</p> <p>17 whether it's a head trauma center or a nursing home,</p> <p>18 the Applicant still needs to demonstrate satisfaction</p> <p>19 of the negative criteria.</p> <p>20 CHAIRMAN FLANAGAN: Can I ask a question on</p> <p>21 the negative criteria? As you go through the Sica</p> <p>22 balancing test is there a weighting ascribed to each of</p> <p>23 those considerations you just listed off? So is it,</p> <p>24 does it do damage to the Master Plan? Is that of equal</p> <p>25 weighting? Let's for argument sake say, no, it</p>

<p style="text-align: right;">Page 65</p> <p>1 doesn't. Right. So if I said no to that and then the</p> <p>2 other criteria, let's list them off again, said yes it</p> <p>3 does, so is that a push or does one count more than the</p> <p>4 other?</p> <p>5 THE WITNESS: I think to a certain degree</p> <p>6 it's -- I'll call it fact/policy sensitive. In what is</p> <p>7 peculiar to this application is the fact that the site</p> <p>8 is on the -- the proposed site is on a historic</p> <p>9 property in a historic district surrounded on at least</p> <p>10 two sides by historic properties. In this case every</p> <p>11 document that I've looked at talks about the importance</p> <p>12 of historic preservation. Normally, I would not</p> <p>13 necessarily put that much weight, or the answer is yes</p> <p>14 we need cellular communication in modern life. And in</p> <p>15 other situations it might be easier to satisfy that</p> <p>16 negative criteria, no impairment of the zoning plan and</p> <p>17 zone ordinance.</p> <p>18 In this case, in my opinion this is one of</p> <p>19 the most important considerations, because every one of</p> <p>20 your documents talks about the value of historic</p> <p>21 preservation. That is a major concern, in my opinion,</p> <p>22 with respect to your evaluation.</p> <p>23 CHAIRMAN FLANAGAN: Okay. So you would</p> <p>24 give that more weight than you would any other</p> <p>25 consideration, or other considerations?</p>	<p style="text-align: right;">Page 66</p> <p>1 THE WITNESS: I wouldn't say than any</p> <p>2 other, but I would say it's unusually pronounced in</p> <p>3 this set of facts.</p> <p>4 CHAIRMAN FLANAGAN: Okay.</p> <p>5 BY MR. SIMON:</p> <p>6 Q. So Mr. Steck, why don't you start with the</p> <p>7 positive criteria, and provide your planning evaluation</p> <p>8 based on the proofs presented by the Applicant as to</p> <p>9 whether the Applicant has met the positive criteria</p> <p>10 based on the criteria that you have articulated just a</p> <p>11 moment ago?</p> <p>12 A. So again, it's the burden of the Applicant.</p> <p>13 And the applicant demonstrated, they have FCC license</p> <p>14 so they've crossed that hurdle. I know that the</p> <p>15 Applicant has looked at a few other sites. And in my</p> <p>16 opinion completely ignoring residential zones is not a</p> <p>17 given situation. There could be large properties that</p> <p>18 are heavily wooded that might -- that might accommodate</p> <p>19 a cell tower, even though it's in a residential zone</p> <p>20 and there are some fairly substantial residential</p> <p>21 properties in town.</p> <p>22 The Applicant automatically ignored those</p> <p>23 properties, but the answer is there may be a situation</p> <p>24 where that's an eligible search area. As you're aware,</p> <p>25 the applicant approached the Board of Ed to put the</p>
<p style="text-align: right;">Page 67</p> <p>1 facility on the front lawn. I think I would be</p> <p>2 offended by that. But the answer is that Board of Ed</p> <p>3 property is outside of the Historic District. It has</p> <p>4 play fields in the back. It has woods in the back. My</p> <p>5 understanding is the proposal never involved something</p> <p>6 behind the school building.</p> <p>7 Under the positive criteria and peculiar</p> <p>8 suitability there are other technologies. This</p> <p>9 building, I understand, has a in-building cellular</p> <p>10 system that works pretty well. If there's a need in</p> <p>11 the school there are cellular systems that distribute</p> <p>12 the signal.</p> <p>13 With respect to residential properties,</p> <p>14 most of you when you go home that have, you know,</p> <p>15 Internet service your cell phone will work through your</p> <p>16 Internet service, and you do that to avoid extra bills.</p> <p>17 There's equipment that you could buy. There are</p> <p>18 Femtocells that you could put in your home that will</p> <p>19 either boost or resend the signal. There are ways to</p> <p>20 do it.</p> <p>21 MR. SCHNEIDER: Objection to Mr. Steck's</p> <p>22 qualifications.</p> <p>23 CHAIRMAN FLANAGAN: Mr. Steck, you're not</p> <p>24 an RF Engineer.</p> <p>25 MR. SIMON: Well, he's not presenting RF</p>	<p style="text-align: right;">Page 68</p> <p>1 testimony. He's basically talking from a professional</p> <p>2 planning perspective as to whether there are</p> <p>3 alternatives. And this Applicant has stated that there</p> <p>4 are -- that they want a desired signal strength based</p> <p>5 on in-building service. And I believe that Mr. Steck</p> <p>6 as a professional planner, not as a radio frequency</p> <p>7 expert, is allowed to opine that there are, from a</p> <p>8 planning perspective, ways that any homeowner can go to</p> <p>9 a store and get technology to avoid the need to have a</p> <p>10 requirement for "In-building service" as opposed to out</p> <p>11 of building or an in-car service.</p> <p>12 MR. SCHNEIDER: I'll be brief in the</p> <p>13 interest of time. He's not testifying from a planning</p> <p>14 perspective. He's saying that a Femtocell system is a</p> <p>15 satisfactory technical alternative. He's not saying</p> <p>16 that from a planning perspective, he's saying it from a</p> <p>17 technical perspective.</p> <p>18 MR. SIMON: He's not saying it from a</p> <p>19 technical perspective. He's saying that it's out there</p> <p>20 and it should be considered by the Board considering</p> <p>21 that the Applicant -- Mr. Steck didn't tell the</p> <p>22 Applicant to require in-building service. The</p> <p>23 Applicant decided to do in-building service. There's</p> <p>24 plenty of applications where the desired signal</p> <p>25 strength is not based on in-building. The Applicant</p>

<p style="text-align: right;">Page 69</p> <p>1 chose to go with in-building service and Mr. Steck is  2 saying to you from a planning perspective based on his  3 knowledge and his experience working on 12 cell tower  4 application that that is not necessarily needed, and  5 he's telling you from a planning perspective not from a  6 radio frequency perspective. Anyway, we can move on to  7 other points.</p> <p>8 THE WITNESS: And there is, even the  9 Applicant even in the Exhibits that are presented  10 there's an Outdoor Distributed System along the  11 significant roads that is part of the evidence.  12 There's a way to accommodate, to address the gaps that  13 doesn't involve one large tower. And again, that's not  14 -- while that's in the record that that type of system  15 has been at least conceptually designed for Harding,  16 the Applicant has not referenced that as part of its  17 proofs.</p> <p>18 BY MR. SIMON:  19 Q. And in terms of from a planning perspective  20 do you have an opinion as to whether a distributed  21 antenna system along the major or main roads in and out  22 of the center of Harding is preferable to the proposed  23 monopole installation either at 140 feet, 120 feet, or  24 a hundred feet given the nature of the downtown  25 community located in the Historic District?</p>	<p style="text-align: right;">Page 70</p> <p>1 A. From a point of view of aesthetic impact  2 there clearly is a much more acceptable alternative  3 because again it doesn't necessarily impact the  4 Historic District. And again, on the record there's a  5 design that shows a series of smaller cells that --</p> <p>6 BOARD MEMBER NEWLIN: Mr. Steck, you will  7 agree that that does require a cell tower to work? Do  8 you agree that a Distributed System you're referring  9 to, doesn't that require a monopole?</p> <p>10 THE WITNESS: I don't know that that's the  11 case.</p> <p>12 MR. SIMON: In fact, Mr. Steck, if you, if  13 you took from a planning perspective, if that  14 distributing antenna system that was proposed by Ms.  15 Boschulte in Exhibit I think it was Z-13 as marked that  16 was presented to the board did not include putting DAS  17 Nodes extended along all the major roads but just some  18 of the roads towards the outskirts, I think that's what  19 Mr. Newlin is getting at, that it was presented as  20 intended to fill in, but certainly from a planning  21 perspective if you extended the design that it would  22 cover the major roads?</p> <p>23 THE WITNESS: To put in a Distributed  24 System doesn't require -- in my understanding, doesn't  25 require a large tower. It can be in lieu of a large</p>
<p style="text-align: right;">Page 71</p> <p>1 tower.</p> <p>2 BOARD MEMBER NEWLIN: I didn't say a large  3 tower. I said tower.</p> <p>4 THE WITNESS: I don't think -- I mean, it  5 requires a structure.</p> <p>6 BOARD MEMBER NEWLIN: There's been no  7 testimony about that type of --</p> <p>8 THE WITNESS: That is -- my understanding  9 of that exhibit is that it was supplementary to a  10 tower, but that tower was not necessarily a -- needed  11 to have that Distributed System operate.</p> <p>12 MR. SIMON: So Mr. Steck, with regard to --</p> <p>13 CHAIRMAN FLANAGAN: Hold on, Mr. Simon.  14 I'll ask -- Dr. Eisenstein, does one need a tower, a  15 single monopole of some height to support an ODAS  16 network?</p> <p>17 DR. EISENSTEIN: The ODAS systems stand by  18 themselves. They are mounted on relatively low poles,  19 35 feet or so, and the system would be self-contained.  20 The reason that you heard testimony that it works in  21 conjunction with the monopole is that the number of the  22 small cells that you would need to cover an area goes  23 up as the square of the radius of coverage. So I was  24 just doing some measurements over here for the ODAS  25 system that's either proposed or is there in Harding</p>	<p style="text-align: right;">Page 72</p> <p>1 along the various roads along Glen Alpin Road and  2 they're getting less than an eighth of a mile radius of  3 coverage. They're getting seven-eighths of a mile  4 radius of coverage from the proposed monopole. So to  5 replicate the number of sites from the monopole it  6 would require seven times the radius or 49 ODAS sites,  7 assuming there are even that number available.</p> <p>8 So if you're asking could it be done? Of  9 course it can be done. But I'll also just say since  10 I'm on the record right now, coming up here today I was  11 observing the existing poles along the road there. And  12 to be honest with you, from 287 to here I was looking  13 at every pole along the way. Luckily, I didn't crash  14 into anything while I was doing that, but I did not  15 find one pole that would have been suitable, as it  16 presently stands, for an ODAS system. The reason is  17 they're running the high tension wires along the top of  18 the poles. So the poles require either a brand new  19 pole or a modification. So you're talking about  20 perhaps just under 50 new sites that might require new  21 poles everywhere.</p> <p>22 CHAIRMAN FLANAGAN: Thank you.</p> <p>23 BY MR. SIMON:  24 Q. Mr. Steck, with regard to Harding Township,  25 isn't it true, are you familiar with the fact that on</p>

<p style="text-align: right;">Page 73</p> <p>1 two separate occasions, that in 2014 and also I believe</p> <p>2 in 2020, the Harding Township passed ordinances that</p> <p>3 specifically permitted installations of what Dr.</p> <p>4 Eisenstein was talking about along the right-of-way?</p> <p>5 A. That's correct. The providers approached</p> <p>6 probably every municipality in New Jersey to ask for</p> <p>7 permission to install these Outdoor Distributed Systems</p> <p>8 in public rights-of-way. And this municipality passed</p> <p>9 an ordinance authorizing that approach.</p> <p>10 Q. And so with regard to given the evidence</p> <p>11 that you've heard and reviewed, and your analysis of it</p> <p>12 with regard to the positive criteria, do you have an</p> <p>13 opinion as to whether the Applicant has to date met</p> <p>14 their burden of proof with regard to the -- just the</p> <p>15 positive criteria that they have the burden of proof to</p> <p>16 demonstrate?</p> <p>17 A. In my opinion, the Applicant has not met</p> <p>18 its burden of proof. And that involves the --</p> <p>19 demonstrating that the subject site was particularly</p> <p>20 suited for this facility, as well as I would say the</p> <p>21 fact that it did not address a broader view of</p> <p>22 alternate sites or alternate technology.</p> <p>23 Q. And one thing I neglected to ask you about,</p> <p>24 and Mr. Flanagan commented on it earlier, is this site,</p> <p>25 the municipal building, Kirby Hall, this property, so</p>	<p style="text-align: right;">Page 74</p> <p>1 you understand it's owned by the municipality, right?</p> <p>2 A. Yes.</p> <p>3 Q. You also understand that it is currently</p> <p>4 subject to Green Acres restrictions I'll call it;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Just explain to the Board very quickly what</p> <p>8 does it mean when a property is subject to or</p> <p>9 encumbered by Green Acres restrictions?</p> <p>10 A. If the municipality accepted Green Acres</p> <p>11 Funds for a site, Green Acres doesn't want you to use</p> <p>12 their money and then kind of dump a site at the other</p> <p>13 end of town. So they have what's called a ROSI List, a</p> <p>14 list of open space properties which include properties</p> <p>15 that, let's say, were purchased or improved with Green</p> <p>16 Acres Funds, as well as ones that weren't put on the</p> <p>17 official list of Green Acres properties or open space</p> <p>18 properties. There is no prohibition of having cellular</p> <p>19 facilities on properties that happen to be on that ROSI</p> <p>20 List. In fact, the state legislation does talk</p> <p>21 about --</p> <p>22 Q. Diversion?</p> <p>23 A. There's a word they use is "diversion." If</p> <p>24 you're going to put a cellular tower on a Green Acres</p> <p>25 property or one that's on the ROSI List you have to</p>
<p style="text-align: right;">Page 75</p> <p>1 jump through some hurdles but it's not prohibited.</p> <p>2 Q. You have to comply with the regulations?</p> <p>3 A. That's correct.</p> <p>4 Q. Including making an application to the</p> <p>5 state?</p> <p>6 A. Yes. That's required.</p> <p>7 Q. And also, just to follow up with regard to</p> <p>8 the DAS nodes that Dr. Eisenstein was referring to,</p> <p>9 you're familiar that in the Bernardsville Case that you</p> <p>10 were referring to earlier in your testimony that, in</p> <p>11 fact, that's what they did in Bernardsville; right?</p> <p>12 A. Verizon installed an Outdoor Distributed</p> <p>13 System. That's how they fulfilled their FCC mandate.</p> <p>14 Q. Without any cell tower; correct?</p> <p>15 A. That's correct. In that part of the town,</p> <p>16 yes.</p> <p>17 Q. And do you recall offhand approximately how</p> <p>18 many nodes were used to meet that or to cover the gap</p> <p>19 at issue there?</p> <p>20 A. I don't recall the number.</p> <p>21 CHAIRMAN FLANAGAN: Where was the gap?</p> <p>22 MR. SIMON: Bernardsville Mountain.</p> <p>23 CHAIRMAN FLANAGAN: So away from the center</p> <p>24 of town?</p> <p>25 MR. SIMON: It was away from the center of</p>	<p style="text-align: right;">Page 76</p> <p>1 town. Yes.</p> <p>2 THE WITNESS: I don't recall the number it</p> <p>3 needed.</p> <p>4 BY MR. SIMON:</p> <p>5 Q. Okay. So again, based on all of that, so</p> <p>6 that's your opinion that the positive criteria has not</p> <p>7 been met?</p> <p>8 A. Correct.</p> <p>9 Q. So why don't we talk now a little bit about</p> <p>10 the negative criteria, Sica balancing test. Go ahead.</p> <p>11 A. And that again, the negative, the first</p> <p>12 part of it is that the Applicant, the Applicant must</p> <p>13 demonstrate that approval would not result in</p> <p>14 substantial detriment to the public good. And in this</p> <p>15 case, in my opinion, it has to do with the aesthetic</p> <p>16 impact.</p> <p>17 Q. And I want you to go through, though, the</p> <p>18 four-part balancing test that leads to your conclusion,</p> <p>19 please.</p> <p>20 A. Well, again, the Applicant has the FCC</p> <p>21 license. The Applicant has proposed different</p> <p>22 structural supports which includes a -- it started out</p> <p>23 with 146 feet, and then they talked about 126 feet, and</p> <p>24 again there was an alternate tree or a flagless</p> <p>25 monopole proposed.</p>

<p style="text-align: right;">Page 77</p> <p>1 The analysis, the aesthetic analysis was</p> <p>2 not done of any other site. And it was not done from</p> <p>3 properties which are the most sensitive -- outside of</p> <p>4 the Historic District that are most sensitive, and most</p> <p>5 visible. And two of the properties that we saw on the</p> <p>6 site visit were clearly dramatically impacted in that</p> <p>7 the tower would be, you know, 40 or 50 percent of the</p> <p>8 tower would be visible from the residential properties</p> <p>9 in the R-1 Zone. This was not addressed by the</p> <p>10 Applicant, and in my opinion is a deficiency</p> <p>11 demonstrating the positive criteria. And again, an</p> <p>12 element of that is also alternate technologies or</p> <p>13 potentially alternate sites.</p> <p>14 Q. So let's now talk about the negative</p> <p>15 criteria. Again, and the four-part Sica balancing test</p> <p>16 in the negative criteria.</p> <p>17 A. So the Applicant has to demonstrate that it</p> <p>18 is not substantially detrimental to the public good,</p> <p>19 which in this case is largely the aesthetic impact.</p> <p>20 And on the other half of that it doesn't impair the</p> <p>21 intent and purpose of the zone plan and zoning</p> <p>22 ordinance.</p> <p>23 The Board is now fairly familiar with the</p> <p>24 aesthetic impact. Again, you don't have a real sense</p> <p>25 of it because the trees at the base are not removed.</p>	<p style="text-align: right;">Page 78</p> <p>1 And there are, you know, moderately tall trees now at</p> <p>2 the base, mostly deciduous but they're going to be</p> <p>3 removed. This tower will have a significant element of</p> <p>4 visibility from abutting properties in the historic</p> <p>5 district and the R-1 Zone.</p> <p>6 The focus for me is on the fact that there</p> <p>7 is -- there would be substantial impairment on the zone</p> <p>8 plan and zoning ordinance focusing on the historic</p> <p>9 preservation element. When the Applicant presented</p> <p>10 their case the Applicant was almost silent on the fact</p> <p>11 that this was a historic area. It had to be brought up</p> <p>12 from cross-examination. That, in my opinion, there are</p> <p>13 -- every document that you look at in this municipality</p> <p>14 says this is an important area of the municipality.</p> <p>15 And to say that a faux tree of 126 feet, if that's what</p> <p>16 it turns out to be or taller, would not have an impact</p> <p>17 on this site in my opinion is not credible testimony.</p> <p>18 It is clearly a modern improvement. No one is going to</p> <p>19 look at this tree and say it's a real tree that happens</p> <p>20 to be on steroids. People are going to know what it</p> <p>21 is. It's modern technology.</p> <p>22 A simple example is when someone came in --</p> <p>23 you wanted the post office in this center of town. If</p> <p>24 someone came in and said, I want a full glass front in</p> <p>25 all of the storefronts, and I want big windows and</p>
<p style="text-align: right;">Page 79</p> <p>1 atriums and everything else that might accommodate a</p> <p>2 post office just fine, but clearly it would never be</p> <p>3 acceptable, in my opinion, in terms of its impact on</p> <p>4 the integrity of the Historic District. You went to a</p> <p>5 lot of extremes to design that building so it would</p> <p>6 into the historic theme of this district. This cell</p> <p>7 tower is an anathema. It's at the opposite end of the</p> <p>8 scale. Again, the radio waves don't care if it's</p> <p>9 historic or not. And in my opinion, despite the fact</p> <p>10 that the governing body offered this site out for bid</p> <p>11 the governing body recognized that there were hurdles</p> <p>12 to cross in terms of historic preservation. And in my</p> <p>13 opinion the Applicant simply has not only not addressed</p> <p>14 it but if this is approved has failed to demonstrate</p> <p>15 that even with the Sica balancing test the Applicant</p> <p>16 has failed to demonstrate in my opinion that this can</p> <p>17 be granted without substantial impairment to the</p> <p>18 integrity of that Historic District.</p> <p>19 Q. So I think you've certainly covered the</p> <p>20 neighborhood and the impact tonight and also at the</p> <p>21 last meeting. In terms of -- I just want to make sure</p> <p>22 we're covered here. In terms of the third prong of the</p> <p>23 Sica balancing test in terms of substantial detriment</p> <p>24 to the public, whether there's any reasonable</p> <p>25 conditions on use, whether it's landscaping or</p>	<p style="text-align: right;">Page 80</p> <p>1 stealthing do you have a professional planning opinion</p> <p>2 as to whether there can be reasonable conditions to</p> <p>3 mitigate against any detriment?</p> <p>4 A. In my opinion there might be reasonable</p> <p>5 conditions for the equipment area, but I cannot</p> <p>6 envision reasonable conditions that would accommodate</p> <p>7 either a faux tree or a flagless flagpole of the height</p> <p>8 that is being proposed by the Applicant.</p> <p>9 In my opinion because of its exposure and</p> <p>10 the fact that it's in a Historic District where there</p> <p>11 is a heightened concern of aesthetics the Applicant has</p> <p>12 not satisfied that part of the negative criteria, even</p> <p>13 under the balancing considerations of the Sica</p> <p>14 decision.</p> <p>15 Q. So under the balancing considerations of</p> <p>16 the Sica decision your conclusion is that any D-1</p> <p>17 variance would, in fact, cause substantial detriment to</p> <p>18 the public good, is that accurate to state?</p> <p>19 A. Yes, in my opinion, because of its</p> <p>20 aesthetic impact.</p> <p>21 Q. You also mentioned just a couple of minutes</p> <p>22 ago the second prong of the negative criteria under</p> <p>23 Section D of the Municipal Land Use Law, specifically</p> <p>24 related to substantial impairment of the Master Plan</p> <p>25 and the Zoning Ordinance. Just to conclude what's your</p>



<p style="text-align: right;">Page 81</p> <p>1 opinion in terms of whether the Applicant has met the  2 second prong of the negative criteria?  3 A. The Applicant has not, in my opinion. All  4 of your planning policies, and all of your legislation  5 says this is not a good place for this type of  6 facility. The Applicant largely ignored the fact that  7 this was in a Historic District. And proximate to part  8 of the district that's on the National Register, as  9 well as a house that's on the National Register.  10 The fact that this property is a key  11 property in the local Historic District, those  12 considerations in my opinion were not addressed. And I  13 think the Applicant has therefore failed to meet that  14 part of the negative criteria.  15 Q. And Mr. Steck, you also mentioned at the  16 last meeting in terms of the proofs that were required  17 by this Applicant that the ordinance requires that  18 there not be more than one principal use on a lot. And  19 I think you had referenced both last time and this  20 evening that the Applicant is proposing three principal  21 uses?  22 A. Well, the Applicant is proposing the third  23 principal use.  24 Q. The third, three?  25 A. And again the idea of -- there are some</p>	<p style="text-align: right;">Page 82</p> <p>1 zones that you do allow multiple principal uses. This  2 is not one of them. And the reason -- there's a  3 planning reason for that is that when you have one use  4 per lot you can separate them, have proper setbacks,  5 and the like. Here by having another principal use on  6 the lot you're kind of ignoring the inherent  7 separations that are in the ordinance for different  8 principal uses.  9 Q. And typically when you have, as in this  10 case multiple principal uses that are prohibited by  11 ordinance that an Applicant has to meet the burden of  12 proofs as to the positive and negative criteria for  13 that type of relief for a commercial use as opposed to  14 here it would be subject to the Medici standards;  15 correct?  16 A. That's correct.  17 Q. And under the Medici standard, specifically  18 pertaining as important to this application, besides  19 particular suitability which I think we already talked  20 about and we're not going to retread on, there's also  21 under the Medici standard an enhanced quality of proof  22 where the Applicant has to demonstrate that the  23 variance not only will not be substantial -- there  24 won't be substantial impairment, but it actually states  25 that under the enhanced quality of proof that the</p>
<p style="text-align: right;">Page 83</p> <p>1 variance will not be inconsistent with the intent and  2 the purpose of the Master Plan and Zoning Ordinance; is  3 that correct?  4 A. Yes.  5 Q. Do you have an opinion with regard to that  6 in connection with this application?  7 A. In my opinion the consistent policies of  8 Harding in terms of historic preservation are a very  9 difficult burden to overcome. Even though this use has  10 some -- is in a certain sense a favored use because  11 they have an FCC license, in my opinion that doesn't  12 overcome the damage it will do to the fabric of this  13 Historic District.  14 Q. And the Court, actually Medici talked about  15 the fact that an enhanced proof as you just articulated  16 may be supported by proofs demonstrating, for example,  17 a substantial change in the neighborhood. We don't  18 have that here; correct?  19 A. We don't have it here. There has been a  20 change in the law. I think the position of the  21 municipality, both in terms of the value of historic  22 preservation, as well as its treatment of cellular  23 facilities has not changed.  24 Q. So in terms of the variance that -- the use  25 variance for having multiple principal uses on a lot do</p>	<p style="text-align: right;">Page 84</p> <p>1 you have an opinion whether the Applicant has met the  2 positive criteria applicable to that relief required?  3 A. The Applicant has not even addressed that  4 issue so there's a failure to start with. But in my  5 opinion by examining it as another principal use you  6 inherently talk about separation distances, and the  7 Applicant obviously is ignoring that fact. And that's  8 a way to mitigate the negative impacts.  9 Q. So again just to summarize, under the  10 positive criteria for the D-1 Use Variance for the cell  11 tower and the equipment compound for this facility the  12 Applicant has not met the burden of proof; correct?  13 A. That is my judgment.  14 Q. And for all the reasons stated the  15 Applicant hasn't met the four-part Sica balancing test  16 of the negative criteria to demonstrate that there  17 wouldn't be any substantial detriment to the public  18 good; correct?  19 A. Yes.  20 Q. And they also haven't met the burden of  21 proof under the second prong of the negative criteria  22 under the Municipal Land Use Law; namely, that there's  23 no substantial impairment of the Master Plan for the  24 reasons that you articulate; correct?  25 A. That's also my opinion.</p>

<p style="text-align: right;">Page 85</p> <p>1 Q. And additionally with regard to the</p> <p>2 multiple principal uses on the lot, now we're talking</p> <p>3 about three principal uses, you believe that the</p> <p>4 Applicant has not met both the positive and the</p> <p>5 negative criteria that's applicable to that variance</p> <p>6 relief, including the enhanced quality of proof that's</p> <p>7 required under the Medici standard; correct?</p> <p>8 A. That is correct. And in fact the Applicant</p> <p>9 simply has not addressed that.</p> <p>10 MR. SIMON: I don't think I have any other</p> <p>11 questions at this time for Mr. Steck.</p> <p>12 CHAIRMAN FLANAGAN: Excellent. All right.</p> <p>13 So we need to speak about -- Mr. Schneider, we need a</p> <p>14 few minutes here at the end to discuss the next</p> <p>15 meeting. Just so I understand, the lawyers, Steve and</p> <p>16 the two of you will speak about timing or what you</p> <p>17 need. I guess Mr. Steck is going to be needed at this</p> <p>18 next meeting.</p> <p>19 MR. SCHNEIDER: That's correct.</p> <p>20 CHAIRMAN FLANAGAN: And Mr. Steck, you're</p> <p>21 not available on the 23rd; correct?</p> <p>22 MR. STECK: I have -- I do have hearings</p> <p>23 that presumably -- two hearings in two different</p> <p>24 places. I presume they're both by Zoom, but so far</p> <p>25 they're on my calendar and no one's told me --</p>	<p style="text-align: right;">Page 86</p> <p>1 CHAIRMAN FLANAGAN: We'll hope for a</p> <p>2 miracle, if not we'll look for another night. We're</p> <p>3 moving it to accommodate a lot of folks for next month.</p> <p>4 MR. SIMON: Can I just make a suggestion</p> <p>5 knowing -- and without putting pressure on Mr. Steck.</p> <p>6 That I would ask Mr. Steck if in the next couple of</p> <p>7 days before the holiday weekend if he can just check</p> <p>8 with the attorneys who he's working with just to</p> <p>9 confirm that those hearings remain on.</p> <p>10 CHAIRMAN FLANAGAN: That sounds like a good</p> <p>11 idea.</p> <p>12 MR. SIMON: Because if they're off, or he</p> <p>13 has some flexibility, or there's some witness order</p> <p>14 that we can accommodate I assume that would be</p> <p>15 preferable for Mr. Schneider.</p> <p>16 MR. SCHNEIDER: It's preferable, but I'm</p> <p>17 not clear where that's leaving us here. Here's my</p> <p>18 preference, somewhat strongly. Obviously, you've gone</p> <p>19 two hearings with Mr. Steck. Through no fault of the</p> <p>20 Board we haven't made much progress. So what I would</p> <p>21 suggest is, I would like the matter to proceed on</p> <p>22 September 23rd. That was the backup date and I think</p> <p>23 we should proceed. If Mr. Steck is unavailable I'm not</p> <p>24 clear why those matters take precedence over this</p> <p>25 matter.</p>
<p style="text-align: right;">Page 87</p> <p>1 However, that being said, here's what I</p> <p>2 would suggest. If we can proceed on the 23rd let's do</p> <p>3 it. If not, what I'd like to do this evening is while</p> <p>4 the Board is physically here come up with an alternate</p> <p>5 date. One suggestion I had in looking at my calendar,</p> <p>6 if we want to stay with Thursdays, can we go to</p> <p>7 September 30th? And the reason why I'm suggesting that</p> <p>8 is, it's the fifth Thursday of the month. So it's</p> <p>9 unlikely that -- and if Mr. Steck can, you're putting</p> <p>10 thumbs up, but it takes many to tango.</p> <p>11 CHAIRMAN FLANAGAN: And Mr. Schneider, we</p> <p>12 have several Board members who are not here, too, I</p> <p>13 guess, as well. And I think you're going to want to</p> <p>14 have everyone present for this vote.</p> <p>15 MR. SCHNEIDER: Right. But I don't know</p> <p>16 if, with all due respect, that we get to a vote that</p> <p>17 night because we still have cross, re-direct. So</p> <p>18 obviously I'm not going to proceed without a full</p> <p>19 Board.</p> <p>20 So here's a suggestion. If the Board is</p> <p>21 amenable to September 30th what I would suggest is that</p> <p>22 we carry it to the Board's September 23rd meeting. I</p> <p>23 would respectfully ask that Mr. Steck make every</p> <p>24 opportunity to make himself available, unless the Board</p> <p>25 want to compel him to be here on September 23rd. So</p>	<p style="text-align: right;">Page 88</p> <p>1 that avoids the Board having to meet again on</p> <p>2 September 30th. If for reasons that's not possible I</p> <p>3 would ask that the matter on September 23rd be carried</p> <p>4 to September 30th.</p> <p>5 MR. SIMON: Can I just ask Mr. Schneider?</p> <p>6 You're done with Cross and any Re-Direct. Before we</p> <p>7 get to the public and summations and all, do you have</p> <p>8 any other witnesses?</p> <p>9 MR. SCHNEIDER: Not at this time.</p> <p>10 MR. SIMON: Okay. So then assuming we go</p> <p>11 to the 23rd and it gets automatically carried to the</p> <p>12 30th, I guess the question is kind of a rhetorical</p> <p>13 question for both Mr. Schneider and the Board is, how</p> <p>14 much time -- would that be a Special Meeting on the</p> <p>15 30th? Would that be a regular meeting on the 30th? I</p> <p>16 don't know.</p> <p>17 CHAIRMAN FLANAGAN: Yeah. And as you can</p> <p>18 see the definitions are confusing me. I would expect</p> <p>19 that if it's not on the date that we announced in</p> <p>20 January it would be a Special Meeting. Would it be a</p> <p>21 dedicated meeting, is that what you're asking?</p> <p>22 MR. SIMON: Yes. I'm sorry. That's my</p> <p>23 fault.</p> <p>24 CHAIRMAN FLANAGAN: Yes. As we have</p> <p>25 discussed a few times, I am challenged to have a</p>

<p style="text-align: right;">Page 89</p> <p>1 dedicated meeting simply for this. I was considering</p> <p>2 this at the top if we get to the point that we finish</p> <p>3 this and if you can tell me that we'll finish it in one</p> <p>4 night I would consider dedicating the entire night and</p> <p>5 moving every other application to the following month.</p> <p>6 It doesn't sound like we're there.</p> <p>7 MR. SCHNEIDER: No. But here's what I</p> <p>8 would suggest. And I think we can make that -- my</p> <p>9 anticipation, to be honest, was that we would not be</p> <p>10 able to fully complete it all on September 30th. But</p> <p>11 my instinct would be that we would at least get to the</p> <p>12 completion of Mr. Steck and comments from the public,</p> <p>13 and then have one final meeting for summations and</p> <p>14 vote.</p> <p>15 CHAIRMAN FLANAGAN: And how much time would</p> <p>16 we expect to finish all of the Cross or Re-direct for</p> <p>17 Mr. Steck?</p> <p>18 MR. SCHNEIDER: 45 minutes for me.</p> <p>19 CHAIRMAN FLANAGAN: Mr. Simon?</p> <p>20 MR. SIMON: And then probably 15 or</p> <p>21 20 minutes for me. I mean, Rich asks some great</p> <p>22 questions.</p> <p>23 MR. MLENAK: How long for your clients?</p> <p>24 MR. SIMON: I haven't honestly, Steve, even</p> <p>25 thought about that. But I concur with Mr. Schneider,</p>	<p style="text-align: right;">Page 90</p> <p>1 though, that I do think that if we have a meeting on</p> <p>2 September 30th that between Mr. Steck's Cross,</p> <p>3 Re-Direct, testimony by my clients, comments from</p> <p>4 members of the public, we could get through I think all</p> <p>5 of that, I'm guessing based on prior applications I've</p> <p>6 had, in that one evening. And then the following</p> <p>7 hearing whenever that may take place, would be for</p> <p>8 summations, deliberation and a vote.</p> <p>9 CHAIRMAN FLANAGAN: So three and a half</p> <p>10 hours in one evening. You mean, the entire evening.</p> <p>11 So seven to 10:30?</p> <p>12 MR. SIMON: I'm just basing it on prior</p> <p>13 experience. Like with public and all, I think that,</p> <p>14 you know, take a break in the middle. I do think that</p> <p>15 that would be accurate.</p> <p>16 CHAIRMAN FLANAGAN: All right. I'll tell</p> <p>17 you what, is there anyone on the Board who is not free</p> <p>18 on the 30th of September in the event we cannot do this</p> <p>19 on the 23rd? I'm not suggesting we're having meetings</p> <p>20 back-to-back. As a matter of fact, so if for some</p> <p>21 reason Mr. Steck cannot make it on the 23rd, and Mr.</p> <p>22 Steck, I would implore you to make it on the 23rd. If</p> <p>23 he cannot is there any member of the Board who cannot</p> <p>24 make it on the 30th? Steve?</p> <p>25 MR. MLENAK: Yes.</p>
<p style="text-align: right;">Page 91</p> <p>1 CHAIRMAN FLANAGAN: McKinley?</p> <p>2 MS. MERTZ: Yes.</p> <p>3 CHAIRMAN FLANAGAN: Dr. Eisenstein?</p> <p>4 SECRETARY TAGLAIRINO: The room is</p> <p>5 available.</p> <p>6 CHAIRMAN FLANAGAN: Anyone on the Board?</p> <p>7 Nobody is saying no.</p> <p>8 SECRETARY TAGLAIRINO: What about other</p> <p>9 applications?</p> <p>10 CHAIRMAN FLANAGAN: I don't know yet.</p> <p>11 Right now I just want to -- in the event Mr. Steck, in</p> <p>12 the very unlikely circumstances cannot make it on the</p> <p>13 23rd I just want a backup date.</p> <p>14 MR. SCHNEIDER: Let me just -- maybe my</p> <p>15 suggestion, let me just throw out one other thought.</p> <p>16 Peter, is it feasible in terms of timing, like we</p> <p>17 started today at seven? Does that --</p> <p>18 CHAIRMAN FLANAGAN: Yes. If we can start</p> <p>19 earlier, does earlier work better for you?</p> <p>20 MR. STECK: One of my cases is going on for</p> <p>21 three or four months in Morristown. It's more likely</p> <p>22 --</p> <p>23 MR. SIMON: If you can't -- just whatever.</p> <p>24 MR. STECK: I have two cases. One of them</p> <p>25 has been going so slow I'm not sure I'm going to be</p>	<p style="text-align: right;">Page 92</p> <p>1 needed that night. I have to check with that attorney.</p> <p>2 But there is a --</p> <p>3 CHAIRMAN FLANAGAN: I'll tell you what.</p> <p>4 There is going to be our backup date. We won't have</p> <p>5 everyone available. Please listen to the tape. Mr.</p> <p>6 Steck, please try to make it on the 23rd.</p> <p>7 MR. SCHNEIDER: The only comment I would</p> <p>8 have is, we want to carry it to a date and time</p> <p>9 certain. So we're going to carry it to September 23rd</p> <p>10 at what time?</p> <p>11 CHAIRMAN FLANAGAN: We'll start at seven on</p> <p>12 the 23rd. So going forward we're going to start at</p> <p>13 seven. So September 23rd at seven, and if that doesn't</p> <p>14 work we'll carry.</p> <p>15 MR. MLENAK: If it doesn't don't work we'll</p> <p>16 still have to open on the 23rd to open the record.</p> <p>17 CHAIRMAN FLANAGAN: We're going to meet the</p> <p>18 23rd. So whether these guys are come or not.</p> <p>19 MR. SCHNEIDER: So we're going to carry it</p> <p>20 to September 23rd at seven o'clock p.m. No further</p> <p>21 notice. In the event that Mr. Steck, notwithstanding</p> <p>22 his good efforts, is unavailable then on September 23rd</p> <p>23 we'll announce it carrying it to September 30th.</p> <p>24 CHAIRMAN FLANAGAN: Yes.</p> <p>25 MR. SIMON: At seven.</p>

<p style="text-align: right;">Page 93</p> <p>1 MR. SCHNEIDER: At seven o'clock that</p> <p>2 night.</p> <p>3 CHAIRMAN FLANAGAN: At 7:00 p.m. Well, we</p> <p>4 can decide what time --</p> <p>5 MR. SCHNEIDER: We can decide that on the</p> <p>6 23rd.</p> <p>7 CHAIRMAN FLANAGAN: If Mr. Steck comes</p> <p>8 back.</p> <p>9 MR. STECK: Do you have other applications</p> <p>10 on the 23rd?</p> <p>11 CHAIRMAN FLANAGAN: Yes.</p> <p>12 MR. STECK: So there is a potential that</p> <p>13 maybe the second half of the evening I'll be on a Zoom</p> <p>14 call in my car in the parking lot and --</p> <p>15 CHAIRMAN FLANAGAN: We can even give you a</p> <p>16 little office over there. Okay. We'll figure out the</p> <p>17 timing when we -- but we're meeting the 23rd at 7:00</p> <p>18 p.m.</p> <p>19 SECRETARY TAGLAIRINO: Special Meeting. By</p> <p>20 the way, I think I lost my mind because this is a</p> <p>21 Special Meeting. I know. I didn't even know that it</p> <p>22 wasn't Thursday. Sorry about that. But today is a</p> <p>23 Special Meeting.</p> <p>24 MR. SCHNEIDER: So we're carrying it to</p> <p>25 September 3rd at seven o'clock p.m. we'll make a</p>	<p style="text-align: right;">Page 94</p> <p>1 decision at that time whether to carry it to September</p> <p>2 30th. The Applicant grants an extension of time. I'll</p> <p>3 grant it through September 30th just in the interest of</p> <p>4 time, subject to the Board's mutual consent.</p> <p>5 CHAIRMAN FLANAGAN: We consent.</p> <p>6 BOARD MEMBER NEWLIN: We have a very nice</p> <p>7 conference room.</p> <p>8 CHAIRMAN FLANAGAN: Okay. Good night.</p> <p>9 (Whereupon, the hearing on this application</p> <p>10 concludes at 9:10 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 95</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 Certified</p> <p>4 Shorthand Reporter of the State of New Jersey, do</p> <p>5 hereby certify that the foregoing is a true and</p> <p>6 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 IRIS LA ROSA, CSR, RPR</p> <p>17 Certificate No. 30XI 00162800</p> <p>18 Dated:</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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