

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES  
REGULAR MEETING  
FEBRUARY 17, 2022  
7:00 PM**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Board Chair, Mr. Flanagan called the regular meeting of the Board of Adjustment to order at 7:00 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.

**REGULAR MEETING**

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**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	Present
Mr. Rosenbaum	Present	Mr. Symonds	Present	Mr. Flanagan	Present

Board Attorney, Mr. Hall, was on the phone for the memorialization of a resolution. Board Engineer, Mr. Fox and Board Planner, Ms. Mertz and Ms. Taglairino were also present. Attorney, Mr. Mlenak was present for the Verizon application.

**ADMINISTRATIVE**

Mr. Flanagan announced the following scheduling & procedural matters:

<u>Application BOA# 14-20</u>	Donald & Eliza Murphy 49 Meyersville Road, B55/L5 Status update: <b>(Pending completeness)</b>
<u>Application BOA# 16-21</u>	Ronald & Judith Preiss 110 Village Road, B15/L10.03, R-1 Zone <b>(Pending Completeness)</b>
<u>Application BOA #18-21</u>	529 Waterfront Properties, LLC 595 Van Beuren Road, B5/L8 Appeal of Tree Officer Decision <b>(Pending Completeness)</b>
<u>Application BOA# 02-21</u>	Dr. James Wittig 34 Kitchell Road B1/L5 R-1 Zone <b>(Adjourned to the March 17, 2022 meeting).</b>
<u>Application BOA# 19-21</u>	Andreas & Wendy Kertesz

19 Wildlife Run, B15/L22.04  
(Adjourned to the March 17, 2022 meeting).

Mr. Flanagan reported on an administrative change in the municipal staff. He noted that zoning and land use will now report to Mr. DeNave, the Assistant Administrator.

**RESOLUTIONS**—Mr. Flanagan

Resolution BOA# 17-21

Timothy and Rebecca Daniels  
10 St. Clair Road, B 26.01/L33, R-1 Zone

Mr. Rosenbaum made a motion to approve Resolution BOA# 17-2021 Daniels. It was seconded by Mr. Newlin. On a voice vote all were in favor of approving the resolution.

**MINUTES**

January 20, 2022 Minutes

Mr. Rosenbaum made a motion to approve the January 20, 2022 minutes as written. It was seconded by Mr. Flanagan. On a voice vote all were in favor of approving the minutes.

**OLD BUSINESS**

Application BOA# 17-18

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

Presenting:

Richard Schneider, Attorney

Mr. Mlenak, Acting Board Attorney for this application.

Robert Simon, Objecting attorney for this application.

Dr. Bruce Eisenstein, RFP Specialist

Ms. Boshulte, RF Specialist for Verizon

The applicant re-presented a proposal for a reduced tower of 80 feet in height.

Discussion ensued.

The application is carried until to a March 31, 2022 meeting with no further notice and an extension of the FCC Shot Clock.

A transcript of the testimony is appended to the minutes.

**OTHER BUSINESS**

None

**ADJOURNMENT**

Mr. Flanagan adjourned the meeting at 9:30

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Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

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**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
RESOLUTION**

**Timothy & Rebecca Daniels - Application No. BOA 017-21  
10 St. Clair Road - Block 26.01, Lot 33**

**Adopted February 17, 2022**

WHEREAS, Timothy and Rebecca Daniels 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 Section 225-122(F), which requires 100' side setbacks, to permit construction of a rear deck addition to the residence on property located at 10 St. Clair Road and designated on the Township Tax Map as Block 26.01, Lot 33; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meeting on January 20, 2022 at the Harding Township Municipal Building, for which public notice and notice by applicants were given as required by law; and

WHEREAS, the Board of Adjustment determined that a site inspection was not necessary due to the characteristics of this property and proposal; and

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

WHEREAS, at the meeting on January 20, 2022, 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 17th day of February 2022, that approval of the variance application of Timothy and Rebecca Daniels is hereby memorialized as follows:

**Findings of Fact and Statement of Reasons**

1. The applicants' property is located in a R-1 Zone at 10 St. Clair Road. It is improved with a single-family residence, swimming pool and related residential improvements.

2. It has a lot size of 3.326 acres that exceeds the 3 acre minimum. The lot fronts on the cul-de-sac bulb at the end of St. Clair Road. The lot frontage of 81.7' is nonconforming relative to the 300' minimum.

3. The residential improvements are nonconforming as to setbacks from the right side lot line for the residence (82.5' vs. 100' minimum) and the pool deck (53.4' vs. 100' minimum). A nonconforming shed that straddles the right side lot line would be removed from the property or moved to a conforming location.

4. The applicant proposed to construct an elevated deck addition to the rear of the residence, with a stairway to the rear going down to grade level. Due to the downward sloping topography, the elevated deck would be accessed from the first floor of the residence containing the primary common living areas. An existing stairway to the right side of the residence would be removed.

5. The existing and proposed improvements were shown on plans prepared by John Ferrante, P.E., dated September 23, 2021.

6. The deck addition would have a minimum setback from the right side lot line of 77.7', requiring a variance from the 100' minimum setback requirement in Section 225-122(F).

7. Variance relief is also required from Section 225-115(B) to permit enlargement of the nonconforming residence.

8. The applicant was represented in proceedings before the Board of Adjustment by David Scalera, Esq.

9. Testimony in support of the application was provided by the applicants, who explained the proposal.

10. The present low profile appearance for the front of the residence would not be altered, since all improvements would be to the rear. Even though a side setback variance was requested, the deck would mainly expand the residence to the rear, with only a modest increase of about 4' in the side setback relative to the building façade for the residence. Any potential impact would be offset by elimination of a stairway along the side of the residence with a similar nonconforming setback.

11. There was a discussion of the proposed elevated rear stairway that would project into the rear yard. The applicants agreed to reconfigure the stairway so that it would run parallel to and abutting the deck.

12. The applicants also agreed to move the nonconforming shed to a conforming location on the property or remove it.

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

14. The need for setback variance relief for the proposed deck is due to the nonconforming location of the residence and the interior layout of existing improvements. The proposed deck and patio are modest in size, and it would not be practical to site them at a more conforming location on the property.

15. Reconfiguration of the proposed rear stairway, relocation of the shed, and removal of the existing stairway at the side of the residence would mitigate any potential adverse impact of the requested variance relief.

16. The proposed improvements will not result in any adverse impacts on adjacent property, particularly since all improvements will be to the rear and there will be no change to the low level front appearance of the residence.

17. In the case of this specific property and the location of the existing and proposed improvements, strict application of the zoning requirements would impose peculiar and exceptional practical difficulties on the applicants by precluding the

proposed rear deck, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

18. 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 Section 225-115(B) of the Land Use and Development Ordinance to allow enlargement of the applicants' nonconforming residence by construction of a rear deck addition, as shown on plans prepared by John Ferrante, P.E., last dated September 23, 2021, and required to be revised as a condition of this approval.

2. A variance is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to authorize construction of a rear deck addition with a minimum setback from the right side lot line of 77.7', as shown on the plans as required to be revised.

### **Variance Conditions**

1. The applicants shall obtain any other necessary approvals, including but not limited to a building permit and tree removal permit (if applicable).

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 proposed improvements as set forth in the testimony, application and plans. New or amended variance approval may be required for any materially different improvements.

4. The applicants' plans shall be revised to: (a) show modification of proposed elevated rear stairway to show it running parallel and immediately adjacent to the deck; (2) revise the plan note to state that the nonconforming shed will be relocated to a conforming location on the property; (3) make any necessary adjustments to the zoning table. The revised plans shall be subject to review and approval prior to issuance of a building permit, and shed relocation shall occur prior to issuance of a certificate of occupancy for the deck addition.

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

6. Compliance with all approval conditions shall be addressed by the Zoning Officer, who shall provide written confirmation for the municipal records.

### **Vote on Resolutions**

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

Against the Oral Resolution: None.

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

Against the Form of the Written Resolution: None.

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

PUBLIC MEMBERS ARE SWORN:

CHAIRMAN FLANAGAN: Welcome everyone to our regularly scheduled meeting noticed in the Observer Tribune and other outlets. And tonight is February 17th. Lori, will you call the roll?

SECRETARY TAGLAIRINO: Yes. Mr. Boyan?

BOARD MEMBER BOYAN: Here.

SECRETARY TAGLAIRINO: Mr. Addonizio?

BOARD MEMBER ADDONIZIO: Here.

SECRETARY TAGLAIRINO: Ms. Sovolos is excused. Mr. Maselli?

BOARD MEMBER MASELLI: Here.

SECRETARY TAGLAIRINO: Make sure you use your microphone, people. Mr. Cammarata?

BOARD MEMBER CAMMARATA: Here.

SECRETARY TAGLAIRINO: Thank you. Mr. Rosenbaum?

BOARD MEMBER ROSENBAUM: Here.

SECRETARY TAGLAIRINO: Mr. Symonds?

BOARD MEMBER SYMONDS: Here.

SECRETARY TAGLAIRINO: Mr. Newlin?

BOARD MEMBER NEWLIN: Here.

SECRETARY TAGLAIRINO: Mr. Flanagan?

CHAIRMAN FLANAGAN: I am here.

SECRETARY TAGLAIRINO: And McKinley and --

Ms. Mertz and Mr. Fox are here. We will get to you and

<p style="text-align: right;">Page 5</p> <p>1 get you sworn in at some point. All right.</p> <p>2 Administrative.</p> <p>3 CHAIRMAN FLANAGAN: Okay. So tonight the</p> <p>4 only application we have is Verizon. Before we get to</p> <p>5 that we're going to do a little bit of housekeeping</p> <p>6 upfront.</p> <p>7 (Whereupon, the Board discusses</p> <p>8 Administrative matters at this time.)</p> <p>9 SECRETARY TAGLAIRINO: Steve, there was a</p> <p>10 request just so you know that Ms. Mertz and Mr. Fox</p> <p>11 were not here at the last meeting and they have not</p> <p>12 been sworn in as professionals. We were wondering if</p> <p>13 you can swear them in for the purposes of the</p> <p>14 application this evening?</p> <p>15 MR. MLENAK: Sure. Do you want to do it</p> <p>16 together? Let's start for the record so we know who's</p> <p>17 being sworn in for the record, your name.</p> <p>18 MR. FOX: Paul Fox.</p> <p>19 MS. MERTZ: McKinley Mertz.</p> <p>20 MR. MLENAK: Okay. Do you swear that the</p> <p>21 testimony that you may give during this hearing is the</p> <p>22 truth the whole truth and nothing but the truth?</p> <p>23 MR. FOX: I do.</p> <p>24 MS. MERTZ: I do.</p> <p>25 P A U L F O X, P.E., is duly sworn.</p>	<p style="text-align: right;">Page 6</p> <p>1 M c K I N L E Y M E R T Z, P.P., is duly</p> <p>2 sworn.</p> <p>3 SECRETARY TAGLAIRINO: Thank you.</p> <p>4 CHAIRMAN FLANAGAN: All right. So now</p> <p>5 we're on Verizon. Mr. Schneider welcome back. Happy</p> <p>6 New Year. Is it too late to say that?</p> <p>7 SECRETARY TAGLAIRINO: Make sure you put</p> <p>8 your microphone on and make sure you speak into it</p> <p>9 loudly and clearly.</p> <p>10 CHAIRMAN FLANAGAN: Lunar New Year, is it</p> <p>11 too late too?</p> <p>12 MR. SCHNEIDER: Happy New Year.</p> <p>13 CHAIRMAN FLANAGAN: Thank you. Welcome</p> <p>14 back. So tonight what are we going to talk about?</p> <p>15 MR. SCHNEIDER: I think we'll be brief, but</p> <p>16 best laid plans sometimes go astray.</p> <p>17 Good evening. Once again for the record,</p> <p>18 Richard Schneider of law firm of Vogel, Chait, Collins</p> <p>19 and Schneider on behalf of the Applicant New York SMSA</p> <p>20 Limited Partnership doing business as Verizon Wireless.</p> <p>21 Mr. Chairman, members of the Board, as you</p> <p>22 I'm sure all recall when we last convened it was at the</p> <p>23 Board's December meeting, at which time the Board</p> <p>24 engaged in its deliberative process as to whether</p> <p>25 approve -- whether to approve or to deny the</p>
<p style="text-align: right;">Page 7</p> <p>1 application that was pending before the Board.</p> <p>2 Objectively, I think the takeaway, I don't</p> <p>3 think this is in dispute was, I think the Board made</p> <p>4 clear at least to myself and I don't think it's in</p> <p>5 dispute, that there were not sufficient votes, five</p> <p>6 being required, to obtain approval at the amended</p> <p>7 proposed height of 120 feet.</p> <p>8 Summarily, the Board asked the Applicant</p> <p>9 what it wished to do in response to the Board's</p> <p>10 deliberative process, whether the Applicant wished to</p> <p>11 proceed to a vote or to reconsider the application,</p> <p>12 specifically as it related to the proposed height. The</p> <p>13 applicant in response to the clear message from the</p> <p>14 Board did review the matter substantially internally as</p> <p>15 to what it wished to do in response.</p> <p>16 In an effort frankly, honestly, and with no</p> <p>17 undue respect to the Board, while the Applicant is</p> <p>18 prepared to ultimately and necessary avail itself of</p> <p>19 all remedies if it has not obtained approval, it very</p> <p>20 much sincerely wishes to avoid potential litigation.</p> <p>21 Therefore, the Applicant in my opinion has made a</p> <p>22 significant compromise that it wishes to very simply</p> <p>23 put forward to the Board.</p> <p>24 The Applicant is prepared to, as a</p> <p>25 condition of approval, to lower the height of the</p>	<p style="text-align: right;">Page 8</p> <p>1 structure to 80 feet. If you recall the original bid</p> <p>2 was 140. We amended it during the course of the</p> <p>3 application to 120. We are now offering as a condition</p> <p>4 of approval to lower the height to 80 feet.</p> <p>5 I would make the following additional</p> <p>6 comments in that regard. The Applicant remains</p> <p>7 committed to honoring the Board's preferences as to the</p> <p>8 design of the tower, whether that be a flagless</p> <p>9 flagpole, akin to that which is located at the Green</p> <p>10 Village Fire Department, or the King Shopping Center,</p> <p>11 or a stealth tree as was discussed and presented during</p> <p>12 the course of the public hearing.</p> <p>13 The impact of lowering the height from the</p> <p>14 previously amended 120 to 80 does have some impacts on</p> <p>15 the nature of the coverage. Primarily and summarily,</p> <p>16 and this has been the subject of probably ten to 12</p> <p>17 public hearings of the 22 or so that we have had, I</p> <p>18 don't think it requires a lot of further explanation</p> <p>19 tonight, at the 2100 frequency band, that being the</p> <p>20 higher frequency band at the 80 feet there is</p> <p>21 essentially no reliable coverage at the Harding</p> <p>22 Township Elementary School. That's the crux of what is</p> <p>23 lost at 80 feet versus the higher height, and it's</p> <p>24 primarily to draw the distinction a loss in coverage at</p> <p>25 the higher frequency band, which has the greater</p>

<p style="text-align: right;">Page 9</p> <p>1 capacity.</p> <p>2 The Applicant clearly would have preferred</p> <p>3 the higher height. There was, and I remember this</p> <p>4 vividly, there was a lot of discussion during many of</p> <p>5 the public hearings as to whether practically speaking,</p> <p>6 not legally speaking, but practically speaking from a</p> <p>7 visual impact whether the added coverage is appropriate</p> <p>8 when you're only talking about a 20-foot increase in a</p> <p>9 design mode of a flagpole. That being said, the Board</p> <p>10 collectively had a certainly different opinion as</p> <p>11 reflected in its deliberative process in December.</p> <p>12 BOARD MEMBER NEWLIN: Rich, I'm sorry. Can</p> <p>13 you re-explain that point?</p> <p>14 MR. SCHNEIDER: Sure.</p> <p>15 BOARD MEMBER NEWLIN: I didn't quite</p> <p>16 follow.</p> <p>17 MR. SCHNEIDER: Yes. I'd be glad to, Mr.</p> <p>18 Newlin. I apologize if I didn't make that clear.</p> <p>19 I guess what I was trying to say is I think</p> <p>20 it was an honest and fair discussion during the public</p> <p>21 hearing that clearly, and I'm speaking not as an expert</p> <p>22 RF witness, but based on the testimony clearly there is</p> <p>23 some degree of coverage differences between 80, 100 and</p> <p>24 120. And maybe I didn't say this in an articulate</p> <p>25 manner. What I was trying to say was I think, to use a</p>	<p style="text-align: right;">Page 10</p> <p>1 slang expression, while you may get more bang for the</p> <p>2 buck at the higher height the point being that when</p> <p>3 you're talking about a flagpole the ten or 20 feet from</p> <p>4 the Applicant's perspective is not a significant visual</p> <p>5 impact when you're using a stealth design verse the</p> <p>6 increase in coverage. We think it's a fair tradeoff to</p> <p>7 have the better coverage at the higher height when</p> <p>8 you're talking only 20 feet in differences in height,</p> <p>9 especially when you're talking about a flagpole.</p> <p>10 I think from the Applicant's perspective,</p> <p>11 Mr. Newlin, I had the opportunity to review the photo</p> <p>12 sims that we presented. And if you will recall, as I</p> <p>13 know you would, we presented three photo sims: 140,</p> <p>14 120 and 100 early on in the process. As I reflect on</p> <p>15 it the visual impact between, the 20-foot intervals is</p> <p>16 not significant. Once you recognize that there's going</p> <p>17 to be a structure of a certain height the 20 feet from</p> <p>18 the Applicant's perspective and from my advocacy</p> <p>19 perspective is not significant. So we think that the</p> <p>20 additional height justifies the better coverage.</p> <p>21 The Board came to a different conclusion in</p> <p>22 December. I mean, I think that's obvious, and we can</p> <p>23 agree to disagree. So what the Applicant is coming</p> <p>24 back to is saying we can agree to disagree, but in an</p> <p>25 effort to provide still a reasonable degree of reliable</p>
<p style="text-align: right;">Page 11</p> <p>1 coverage, albeit not what we think is appropriate and</p> <p>2 necessary, we're prepared to propose an 80-foot</p> <p>3 structure with the understanding, and I don't think</p> <p>4 there's any respectful disagreement about this, that</p> <p>5 there are some constraints and limitations on the</p> <p>6 coverage that is being offered at 80.</p> <p>7 We have been very, I think, upfront about</p> <p>8 what those differences are. Specifically, Mr. Newlin</p> <p>9 and I had a back and forth about that through a couple</p> <p>10 of public hearings. And A-21 in Section 5 lays it all</p> <p>11 out in terms of what the difference is between 80, 100</p> <p>12 and 120 both at the lower frequency band that being the</p> <p>13 seven or 850 verse the 2100. And simply stated in that</p> <p>14 regard, and I quote from the report from Ms. Boschulte,</p> <p>15 "80 feet covers the same as 120. I'm talking about the</p> <p>16 higher frequency bands, with the exception of the</p> <p>17 following areas." And the basic point there is it's at</p> <p>18 the Harding Township School.</p> <p>19 The last comment I'll make in that regard</p> <p>20 is this. There is no ODAS solution relative to</p> <p>21 capacity that would address the deficiency in coverage</p> <p>22 interior to the Harding Township Elementary School at</p> <p>23 the 80 feet. That's something that if the Board --</p> <p>24 excuse me, that if the Board is inclined to accept</p> <p>25 there still will be a deficiency in coverage at the</p>	<p style="text-align: right;">Page 12</p> <p>1 school that cannot be resolved by an ODAS</p> <p>2 implementation. You cannot, I think as Ms. Boschulte</p> <p>3 testified, it's not a scenario whereby you could</p> <p>4 install 20 nodes around the Harding Township Elementary</p> <p>5 School.</p> <p>6 But be that as it may, the Applicant has</p> <p>7 made the internal determination that to provide a</p> <p>8 degree of reliable coverage to get a site on air in</p> <p>9 Harding Township and to avoid, with all due respect, a</p> <p>10 lot of money being spent by a lot of different people</p> <p>11 at the taxpayers' expense, that we're prepared to</p> <p>12 proceed with what I've offered as a condition of</p> <p>13 approval. I can only sincerely hope in a hopefully</p> <p>14 civil offer that that is looked upon favorably as an</p> <p>15 appropriate compromise to provide a very -- to provide</p> <p>16 a degree of reliable coverage that will provide</p> <p>17 coverage to a good portion of Harding, albeit not what</p> <p>18 we originally contemplated.</p> <p>19 And I do not -- I think after 23 hearings</p> <p>20 we have either informed you, bored you, or somewhere in</p> <p>21 between with ample RF testimony. You've heard from Ms.</p> <p>22 Boschulte. You've heard from your recognized expert</p> <p>23 Dr. Eisenstein. And I do not intend to have any</p> <p>24 supplemental testimony, although Ms. Boschulte is here</p> <p>25 tonight to answer any question.</p>

<p style="text-align: right;">Page 13</p> <p>1 Let me make one other comment. Putting</p> <p>2 aside the height of the tower every other stipulated</p> <p>3 condition that I offered remains offered as a condition</p> <p>4 of approval. And I will -- I neglected to make one</p> <p>5 other advocacy argument. Notwithstanding the</p> <p>6 compromise that's being offered by the Applicant as a</p> <p>7 condition of approval, the reality is, and I say this</p> <p>8 in full disclosure, going to the 80-foot height, and</p> <p>9 I'll play RF engineer for 30 seconds, but just to</p> <p>10 refresh in the year 2022, if we end up with a flagpole,</p> <p>11 flagless flagpole, as you recall we need to take two</p> <p>12 elevations. In other words, because all the antennas</p> <p>13 can't fit at one elevation. So we would essentially be</p> <p>14 taking 80 feet and 70 feet.</p> <p>15 The point I'm making in that regard is</p> <p>16 objectively it significantly limits the collocation</p> <p>17 possibilities of other carriers. That's ultimately not</p> <p>18 a concern of Verizon Wireless other than our offer to</p> <p>19 make it obviously, and we're required to make it</p> <p>20 available under your ordinance to other collocators at</p> <p>21 prevailing market rates under both our lease and the</p> <p>22 ordinance, and we do that -- at 80 feet we do</p> <p>23 practically lose the significant collocation</p> <p>24 possibility.</p> <p>25 Never trust a lawyer when he says one last</p>	<p style="text-align: right;">Page 14</p> <p>1 thing, but one last thing. That collocation concept is</p> <p>2 somewhat different if the Board was otherwise inclined</p> <p>3 to approve a tree design. The reason for that is under</p> <p>4 the tree design all of the antennas are at one</p> <p>5 elevation. So under that scenario Verizon</p> <p>6 hypothetically would be at 80 feet and there will be</p> <p>7 collocation possibilities at 70 and 60 feet because</p> <p>8 we're only taking one elevation.</p> <p>9 I offer that to the Board hopefully in the</p> <p>10 spirit of compromise in an effort to bring to closure</p> <p>11 what's approaching a three-year process, albeit</p> <p>12 objectively interrupted by the Pandemic. I would just</p> <p>13 respectfully ask that you give that matter due an</p> <p>14 appropriate consideration based on what I just</p> <p>15 articulated. Thank you.</p> <p>16 CHAIRMAN FLANAGAN: All right. So two</p> <p>17 questions, and going back to the school and the</p> <p>18 coverage. I know we had testimony from Chief Heller</p> <p>19 and others I think probably from an RF expert, Dr.</p> <p>20 Eisenstein, and I remember specifically with Chief</p> <p>21 Heller that even their radios didn't work inside the</p> <p>22 building. They attributed it to the fact that it was</p> <p>23 masonry walls, et cetera. So I wonder even if the</p> <p>24 tower were at 120 would you have had reliable</p> <p>25 in-building coverage at neg 95 dBa?</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. SCHNEIDER: I believe the answer is</p> <p>2 yes.</p> <p>3 CHAIRMAN FLANAGAN: So in-building at 120</p> <p>4 but when you go to 80 you don't.</p> <p>5 MR. SCHNEIDER: Right. And in the interest</p> <p>6 of -- I think I've been honest with the Board for</p> <p>7 three, for over three years. What you just said is</p> <p>8 correct, but let me draw a distinction in the interest</p> <p>9 of full disclosure. Coverage would be provided at 120</p> <p>10 interior to the Harding Township Elementary School at</p> <p>11 the lower frequency band, not at the higher frequency</p> <p>12 band. In fact, I'm looking right now, Mr. Chairman, at</p> <p>13 the report Exhibit A-21. At 120 the testimony and the</p> <p>14 narrative says "coverage would be provided to all</p> <p>15 building structures including the Harding Township</p> <p>16 School."</p> <p>17 So there's in-building coverage at 120 at</p> <p>18 the lower frequency band, not at the higher frequency</p> <p>19 band.</p> <p>20 BOARD MEMBER NEWLIN: But you just said at</p> <p>21 80, right, the deficiency with 80 is at 2100, not at</p> <p>22 the lower frequency band.</p> <p>23 MR. SCHNEIDER: That's correct.</p> <p>24 BOARD MEMBER NEWLIN: So even at 120 you</p> <p>25 still don't get in-building at 2100; is that what</p>	<p style="text-align: right;">Page 16</p> <p>1 you're saying?</p> <p>2 CHAIRMAN FLANAGAN: That's what I heard.</p> <p>3 MR. SCHNEIDER: That's correct. No, 120</p> <p>4 you are getting -- at 120 you are getting interior</p> <p>5 coverage at the higher frequency band, not at 80.</p> <p>6 BOARD MEMBER NEWLIN: You are getting.</p> <p>7 MR. SCHNEIDER: Yes.</p> <p>8 CHAIRMAN FLANAGAN: Okay. So a 120-foot</p> <p>9 tower you get in-building coverage at both the high and</p> <p>10 low frequency band?</p> <p>11 MR. SCHNEIDER: Correct.</p> <p>12 CHAIRMAN FLANAGAN: At 80 feet you'll get</p> <p>13 in-building coverage at the low frequency band but not</p> <p>14 at the high, right?</p> <p>15 MR. SCHNEIDER: That's correct. Yes,</p> <p>16 that's correct.</p> <p>17 CHAIRMAN FLANAGAN: Okay. I think it's</p> <p>18 probably -- I don't need testimony, but I just want to</p> <p>19 know if you know. We're talking about in-building</p> <p>20 versus out-of-building coverage. Knowing the testimony</p> <p>21 we have from Chief Heller and Dr. Eisenstein and</p> <p>22 others, given the fact that construction of the</p> <p>23 building, is it safe to assume one would have coverage</p> <p>24 in the parking lots and the outside areas of the school</p> <p>25 at both frequency bands?</p>

<p style="text-align: right;">Page 17</p> <p>1 MR. SCHNEIDER: I think the answer is yes, 2 that there would be coverage exterior to the building; 3 correct. 4 CHAIRMAN FLANAGAN: Okay. So the tradeoff 5 that we face is between 120 and 80 at the school. They 6 are the same regarding outside spaces. It is the same 7 regarding -- with regard to the low frequency band. 8 The only difference now between 80 and 120 is you will 9 not get the higher frequency band inside the school. 10 All right. 11 BOARD MEMBER ROSENBAUM: I have a followup 12 on that. So are modern devices, do they require to 13 support both frequencies? Is there a time frame where 14 one frequency is not -- 15 MR. SCHNEIDER: I think Ms. Boschulte 16 testified to that at length, but the big issue is -- 17 let me play out this scenario. When you're dealing 18 with, God forbid, an emergency situation, God forbid, 19 the issue is the -- at the higher frequency band you 20 have -- as Ms. Boschulte testified -- significant 21 greater capacity. So God forbid there was some 22 emergent situation which required in-building reliable 23 coverage, while you may be able to achieve that 24 coverage at the lower frequency bands, you would not be 25 able to do that for capacity reasons at higher --</p>	<p style="text-align: right;">Page 18</p> <p>1 BOARD MEMBER ROSENBAUM: Can we quantify 2 that? Is it a difference between 10,000 -- at 20,000 3 poles or is it between five and 50? 4 CHAIRMAN FLANAGAN: There's a difference. 5 I mean, I don't know, if I want to get into it. 6 BOARD MEMBER NEWLIN: I mean, that's a 7 pretty technical question. 8 BOARD MEMBER ROSENBAUM: All right. I'll 9 withdraw it. 10 CHAIRMAN FLANAGAN: You know, okay. That 11 was my one question regarding the school coverage. And 12 I know part of our analysis, and you heard it and 13 you've seen it. Actually, Steve had summarized sort of 14 the thought process we went through it I think pretty 15 thoroughly the last time. 16 One of the questions, or two of the 17 questions, the first is, is there a gap? Right. Yes. 18 Let's for argument sake say there is. I don't think 19 anyone disputes that. 20 The next question is, does the tower 21 propose to fill that gap? And I'm paraphrasing, Steve, 22 tell me. But so my question to you, and I think we 23 need to answer in the affirmative and both. So the 24 question is, does an 80-foot tower fill the gap that 25 you see?</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. SCHNEIDER: I trailed off right at the 2 end. 3 CHAIRMAN FLANAGAN: I know. I can be 4 boring, right? 5 MR. SCHNEIDER: No, no. (Laughter). 6 CHAIRMAN FLANAGAN: Can you imagine what my 7 wife says? 8 MR. SCHNEIDER: Maybe as I turned over 60 9 my hearing is going. That could be. 10 CHAIRMAN FLANAGAN: So real quickly, 11 two-step analysis, there are several questions we need 12 to answer: One is, isn't there a gap? I think we all 13 think that there is a gap. 14 The next question is, is the tower that's 15 being proposed or does the tower that is being proposed 16 fill that gap? Right. So we need to answer both of 17 those questions, I believe, in the affirmative that yes 18 there is a gap and yes the tower does fill that gap. 19 Because if the tower doesn't fill the gap there's no 20 point in approving it. That seems to be the logic to 21 me. 22 So my question to you is, does this 80-foot 23 tower you're proposing fill your gap and allow us to 24 answer in the affirmative to that second question? 25 MR. SCHNEIDER: Yes. With the recognition</p>	<p style="text-align: right;">Page 20</p> <p>1 that the entirety of the gap is not filled, but 2 nevertheless a gap is filled. Let me answer it this 3 way, Mr. Chairman. I'm not going to play my lawyer 4 hat. 5 If 80 feet provided us no benefit to 6 address the gap, in other words if it didn't address 7 the gap in any meaningful way, we wouldn't be offering 8 it. It would be of no purpose. So I wouldn't be here 9 -- I would have taken my denial in December. So the 10 practical decision is it fills a portion of the gap, 11 albeit not the entirety of the gap, but like 12 everything, I don't want to say in life, but maybe 13 everything in certain portions of the Land Use Law 14 sometimes Applicants make a decision as to what's 15 reasonable to accept. If you have a pie you don't get 16 to eat the whole pie, but you accept a portion of the 17 pie because it takes us 18 months or so and thousands 18 of dollars to avail ourselves of maybe something we 19 think we're entitled to. But we want -- in this 20 industry it's very critical to get the coverage to 21 market in a reasonable time frame. Perhaps not made 22 clear during the course of the public hearing process, 23 because ultimately I don't know that it's that 24 significant, but it is worth knowing, and I was 25 involved in it.</p>

<p style="text-align: right;">Page 21</p> <p>1 The efforts of the Applicant to site a</p> <p>2 facility in Harding did not commence in 2017 with the</p> <p>3 public bid process. I forget whether it was you, Mr.</p> <p>4 Chairman, or Mr. Newlin. Somebody mentioned many years</p> <p>5 ago in the early 2000s --</p> <p>6 CHAIRMAN FLANAGAN: It was him.</p> <p>7 MR. SCHNEIDER: -- that there was actually</p> <p>8 a --</p> <p>9 BOARD MEMBER NEWLIN: Rich, can I ask you?</p> <p>10 What question are you answering? I'm serious. We have</p> <p>11 got a lot of stuff to go over.</p> <p>12 MR. SCHNEIDER: Okay. The point is that</p> <p>13 Verizon's been making an effort to locate a facility in</p> <p>14 Harding since the early 2000s. That was my point. And</p> <p>15 there comes a point in time where you want a hundred</p> <p>16 percent but you don't get a hundred percent. That was</p> <p>17 my point.</p> <p>18 CHAIRMAN FLANAGAN: And that seems logical</p> <p>19 and reasonable. I asked the question because the law</p> <p>20 requires me to ask it, so that's why I asked it.</p> <p>21 MR. SCHNEIDER: And I was long-winded and I</p> <p>22 apologize.</p> <p>23 CHAIRMAN FLANAGAN: One final thing, I</p> <p>24 guess, for me, or maybe not final, but the next thing</p> <p>25 on the top of my mind is, we talked about the height.</p>	<p style="text-align: right;">Page 22</p> <p>1 We have had a lot of discussion about the 20 percent</p> <p>2 increase and as of right, et cetera, et cetera. So are</p> <p>3 you proposing an 80-foot tower that would be prohibited</p> <p>4 in some fashion from growing taller than 80 feet?</p> <p>5 MR. SCHNEIDER: What I'm -- I'm offering an</p> <p>6 80-foot tower, and if the Board sought to impose as a</p> <p>7 either a recommendation or a condition that I go to the</p> <p>8 governing body and seek their approval not to authorize</p> <p>9 an extension I'd be amenable to doing that.</p> <p>10 CHAIRMAN FLANAGAN: And there's law around</p> <p>11 this. As I understood it at one point we cannot impose</p> <p>12 such a condition, but how does that magic happen?</p> <p>13 MR. SCHNEIDER: In -- do you want to go,</p> <p>14 Steve?</p> <p>15 MR. MLENAK: Go ahead.</p> <p>16 MR. SCHNEIDER: In my opinion the Board</p> <p>17 cannot impose that requirement, but the township as a</p> <p>18 landlord or land owner, acting in a proprietary</p> <p>19 capacity not in a governmental capacity, would have the</p> <p>20 right to limit the height of the tower if it was so</p> <p>21 inclined.</p> <p>22 CHAIRMAN FLANAGAN: So then mechanically</p> <p>23 how would this happen? We would put, I guess, or could</p> <p>24 put a condition saying we condition this approval on</p> <p>25 the Applicant going back to the landlord, and informing</p>
<p style="text-align: right;">Page 23</p> <p>1 the township committee that this Board would like to</p> <p>2 see that tower be no taller than 80 feet, and therefore</p> <p>3 ask the Township Committee to restrict the lease so it</p> <p>4 could not be taller than 80 feet. Is that the</p> <p>5 condition we put on this?</p> <p>6 MR. SCHNEIDER: Exactly. I couldn't have</p> <p>7 said it better.</p> <p>8 BOARD MEMBER NEWLIN: And does that protect</p> <p>9 us, Steve?</p> <p>10 MR. MLENAK: Yes. The condition would be</p> <p>11 tied to the proprietary interest and the amendment of</p> <p>12 the lease.</p> <p>13 BOARD MEMBER NEWLIN: The town could</p> <p>14 actually -- the town enters into a lease and if the</p> <p>15 town -- and if Verizon decided to negotiate the lease</p> <p>16 they can change that condition?</p> <p>17 MR. MLENAK: Correct.</p> <p>18 BOARD MEMBER NEWLIN: If it wasn't in</p> <p>19 there, let's say --</p> <p>20 CHAIRMAN FLANAGAN: If what wasn't in</p> <p>21 there?</p> <p>22 BOARD MEMBER NEWLIN: Okay. I'm sorry. So</p> <p>23 I'm looking at the scenarios so we can cut to the</p> <p>24 chase.</p> <p>25 BOARD MEMBER BOYAN: Alf, I'm sorry. I</p>	<p style="text-align: right;">Page 24</p> <p>1 can't hear you. I'm sorry.</p> <p>2 BOARD MEMBER NEWLIN: Sorry. Okay. So</p> <p>3 that if -- if that condition is in the lease then --</p> <p>4 CHAIRMAN FLANAGAN: Be more specific. If</p> <p>5 what condition?</p> <p>6 BOARD MEMBER NEWLIN: The height limit at</p> <p>7 80 feet, the town can put in the lease and Verizon can</p> <p>8 agree to it, we cannot require that, is that true?</p> <p>9 MR. MLENAK: That is true.</p> <p>10 BOARD MEMBER NEWLIN: So how do we get from</p> <p>11 a approval if we do, to that? Leap of faith, right?</p> <p>12 We can ask for it, but we can't require it.</p> <p>13 MR. MLENAK: Yes. Exactly. They can do</p> <p>14 that and to your point -- at some point later they're</p> <p>15 two private parties. The Town is --</p> <p>16 BOARD MEMBER NEWLIN: Next week they can</p> <p>17 negotiate that out.</p> <p>18 MR. MLENAK: Theoretically.</p> <p>19 CHAIRMAN FLANAGAN: So do we put something</p> <p>20 in our resolution that says the Board recommends that</p> <p>21 the township amend the lease to prohibit it from being</p> <p>22 taller than 80 feet?</p> <p>23 MR. MLENAK: You can.</p> <p>24 BOARD MEMBER NEWLIN: They can do whatever</p> <p>25 they want. Second point is --</p>

<p style="text-align: right;">Page 25</p> <p>1 CHAIRMAN FLANAGAN: Yes. And then it goes</p> <p>2 back to the Township Committee.</p> <p>3 BOARD MEMBER NEWLIN: Let's look at it with</p> <p>4 the cases there. Let's say we don't have this in there</p> <p>5 at all and they enter into a lease at 80 feet. There's</p> <p>6 nothing in there in the lease that says they can't go</p> <p>7 above. Wouldn't they have to go back to the town and</p> <p>8 get approval anyway to go above 80?</p> <p>9 MR. MLENAK: I believe their lease already</p> <p>10 permits 140, right?</p> <p>11 MR. SCHNEIDER: That's correct.</p> <p>12 MR. MLENAK: So they wouldn't have to come</p> <p>13 back.</p> <p>14 BOARD MEMBER BOYAN: I'm sorry.</p> <p>15 Mathematically, what's the add-on?</p> <p>16 CHAIRMAN FLANAGAN: I think 20 percent as</p> <p>17 of right.</p> <p>18 MR. SCHNEIDER: As a matter of law under</p> <p>19 FCC regulations for towers located outside the public</p> <p>20 right-of-way we have a right to increase the height of</p> <p>21 the tower by 20 feet.</p> <p>22 CHAIRMAN FLANAGAN: Okay. There's a</p> <p>23 percentage in there.</p> <p>24 MR. SCHNEIDER: There's a percentage under</p> <p>25 the New Jersey Municipal Land Use Law, but the relevant</p>	<p style="text-align: right;">Page 26</p> <p>1 provision here would be the FCC order and it's a</p> <p>2 20-foot automatic right of extension. So long as it --</p> <p>3 so long as it doesn't materially defeat any concealment</p> <p>4 efforts. In other words, which wouldn't be applicable</p> <p>5 here. In other words, if it's a flagpole or a tree as</p> <p>6 long as you maintain the same stealth structure you do</p> <p>7 have the automatic right -- you have the automatic</p> <p>8 right to increase it by 20 feet, as long as you</p> <p>9 maintain the flagpole or the tree.</p> <p>10 BOARD MEMBER BOYAN: So logistically if</p> <p>11 this Board was okay with 80 feet, I'm still not saying</p> <p>12 we are, but if we are, then the way you mechanically</p> <p>13 get to 80 is you approach 60, don't you, 60 with the 20</p> <p>14 add-on?</p> <p>15 MR. MLENAK: No.</p> <p>16 BOARD MEMBER BOYAN: Why not?</p> <p>17 MR. MLENAK: Because you'll be approving</p> <p>18 something that's not supported on the record. It's an</p> <p>19 indirect.</p> <p>20 DR. EISENSTEIN: Maybe I can straighten it</p> <p>21 out. First of all, with respect to Mr. Schneider I</p> <p>22 think it's in the Middle Class Tax Relief Act,</p> <p>23 provision 64-9A, that authorizes that the next</p> <p>24 applicant, not the current applicant, the next</p> <p>25 applicant can increase the height of the tower by ten</p>
<p style="text-align: right;">Page 27</p> <p>1 percent or 20 feet, whichever is greater. That's one</p> <p>2 part of it. And then the rest of what Mr. Schneider</p> <p>3 says is correct, assume they don't materially affect</p> <p>4 the site plan or other things. There's some</p> <p>5 definitions that they've added in there to what</p> <p>6 constitutes a material change, the amount of</p> <p>7 disturbance on the ground, you can't change the</p> <p>8 stealthing, if any. But that's the next applicant that</p> <p>9 would come in would have the right to do that, not this</p> <p>10 Applicant.</p> <p>11 CHAIRMAN FLANAGAN: So for the Board's</p> <p>12 benefit I think it's worth understanding what we're</p> <p>13 talking about here. And I agree with you, and we had</p> <p>14 had that discussion I think during the hearings</p> <p>15 earlier, well, if I really want it to be an X I'm going</p> <p>16 to say I'm going to approve 80 percent of X. And as</p> <p>17 Steve points out we can't approve 60 feet. There's no</p> <p>18 testimony at all on what a tower at 60 feet looks like.</p> <p>19 What we could do, and the Applicant seems</p> <p>20 amenable to it is, if we're okay at 80 feet we would</p> <p>21 then -- we would in our Resolution say, hey, Township</p> <p>22 Committee in their role as landlord, we really think</p> <p>23 you need to limit the height of this lease that the</p> <p>24 lease permits to 80 feet. And the Applicant has</p> <p>25 indicated he's willing to go to the Township Committee</p>	<p style="text-align: right;">Page 28</p> <p>1 and say you know what, your Board of Adjustment wants</p> <p>2 this to be 80 feet and wants it to be locked at that</p> <p>3 height. So the Township Committee can say, forget</p> <p>4 those guys. I'm going to allow them to go to a hundred</p> <p>5 feet. You know, there's nothing we can do about that</p> <p>6 at this point. But then again --</p> <p>7 BOARD MEMBER NEWLIN: They can allow an</p> <p>8 extension to a second provider.</p> <p>9 CHAIRMAN FLANAGAN: Right. They could, if</p> <p>10 they chose, allow the tower to be bumped up 20 feet if</p> <p>11 a collocator came along.</p> <p>12 BOARD MEMBER BOYAN: Would that collocator</p> <p>13 need to appear before this body?</p> <p>14 DR. EISENSTEIN: No.</p> <p>15 MR. MLENAK: No.</p> <p>16 CHAIRMAN FLANAGAN: But the Township</p> <p>17 Committee has it in their role as a landlord has the</p> <p>18 right in the lease, the lease could say it shall never</p> <p>19 be more than 80 feet and that's it. So there's no</p> <p>20 going above 80. So you're putting it back in their</p> <p>21 court a little bit. And I think we make it clear if</p> <p>22 our view is 80 feet is okay I think we need to make it</p> <p>23 clear in the Resolution we want it to never be more</p> <p>24 than 80 feet. And if the lease needs to be amended it</p> <p>25 should be amended it should be amended. We recommend</p>

<p style="text-align: right;">Page 29</p> <p>1 it be amended to whatever. You know, at the end of the</p> <p>2 day I think you've got to be -- this is here because</p> <p>3 the Township Committee sent it. If the Township</p> <p>4 Committee did not want this tower we would not have</p> <p>5 been spending three years on this, right?</p> <p>6 BOARD MEMBER BOYAN: If they really wanted</p> <p>7 the tower, though, they could make it a permitted use.</p> <p>8 CHAIRMAN FLANAGAN: They could make it a</p> <p>9 permitted use, but in fairness, and I think there's</p> <p>10 some logic to it, they said, you know, we don't spend</p> <p>11 our time thinking about land use stuff. We have a</p> <p>12 Board that does. Let's let them think about it. I</p> <p>13 mean, that's logical.</p> <p>14 BOARD MEMBER MASELLI: But we can't make it</p> <p>15 a condition of approval.</p> <p>16 CHAIRMAN FLANAGAN: We can't, but if the</p> <p>17 Township Committee is looking at this Board as the</p> <p>18 experts on land use, or the best Board to make</p> <p>19 decisions on land use and we put a recommendation in</p> <p>20 our Resolution, hey, in our best judgment you ought to</p> <p>21 change your lease to say 80 feet is the max but we</p> <p>22 can't make you then I think they would listen to it.</p> <p>23 All right. I would hope they would. Whether they do</p> <p>24 or not, I would hope they would.</p> <p>25 BOARD MEMBER NEWLIN: We have a Resolution</p>	<p style="text-align: right;">Page 30</p> <p>1 that has a lot of information why we came up at 80 and</p> <p>2 not 120, and historic zone and residential zone. So</p> <p>3 there should be good information in that Resolution to</p> <p>4 back that up.</p> <p>5 CHAIRMAN FLANAGAN: I think so. All right.</p> <p>6 Those are my first three questions. Who else has --</p> <p>7 BOARD MEMBER NEWLIN: Can I ask about the</p> <p>8 setback?</p> <p>9 CHAIRMAN FLANAGAN: Ask about whatever</p> <p>10 you'd like, Alf.</p> <p>11 BOARD MEMBER NEWLIN: So one of the issues,</p> <p>12 Mr. Schneider, is the setback aspect. And that for me</p> <p>13 and speaking just for me that that impacts the height.</p> <p>14 So 80 I think is -- all things being said, is a big</p> <p>15 change from your standpoint. But the setback is a</p> <p>16 problem because it's pretty close, it's 58,</p> <p>17 57-point-something feet from the property line, from</p> <p>18 the nearest neighbor. And I'm sure you did go back to</p> <p>19 the town because I'm sure you don't really want that</p> <p>20 now setback. But I didn't hear any changes there,</p> <p>21 which seems to imply there are no changes. So can you</p> <p>22 talk about that and what can you do to -- that to me is</p> <p>23 one of the main issues with this location, and there</p> <p>24 hasn't been a lot of testimony in the screening aspect.</p> <p>25 To the extent -- there's been some, but not a lot. And</p>
<p style="text-align: right;">Page 31</p> <p>1 just for me this is the remaining issue.</p> <p>2 MR. SCHNEIDER: I understand. I'm going to</p> <p>3 make five points in response to your --</p> <p>4 BOARD MEMBER NEWLIN: That's a bad sign, by</p> <p>5 the way. Not good news.</p> <p>6 MR. SCHNEIDER: I'm going to take the high</p> <p>7 road here. I did reach out to the township as to</p> <p>8 whether they would consider revising the location. I</p> <p>9 received no appropriate response to this. Point two --</p> <p>10 BOARD MEMBER NEWLIN: What do you mean by</p> <p>11 -- is there silence or --</p> <p>12 CHAIRMAN FLANAGAN: Did they not respond?</p> <p>13 MR. SCHNEIDER: I was directed to, Mr.</p> <p>14 Falzarano referred me to the Township Attorney. I</p> <p>15 indicated to him exactly what you essentially indicated</p> <p>16 to him in December and I did not receive a response.</p> <p>17 My communications with him were verbal. It may very</p> <p>18 well be that the Township Committee did not give him</p> <p>19 any authority to do that. I don't know the answer to</p> <p>20 that. I'm representing that honestly.</p> <p>21 BOARD MEMBER NEWLIN: So you got no</p> <p>22 response whatsoever to that inquiry?</p> <p>23 MR. SCHNEIDER: Correct.</p> <p>24 CHAIRMAN FLANAGAN: And not to pull on</p> <p>25 that, but I would like to know. So you wrote to --</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. SCHNEIDER: I did not write. I made</p> <p>2 inquiry to Mr. Falzarano. He referred me to the</p> <p>3 municipal attorney. I explained the situation.</p> <p>4 CHAIRMAN FLANAGAN: So then you called the</p> <p>5 municipal attorney?</p> <p>6 MR. SCHNEIDER: That's correct.</p> <p>7 CHAIRMAN FLANAGAN: And he --</p> <p>8 MR. SCHNEIDER: I did not receive -- he</p> <p>9 said he would discuss it with the Township Committee.</p> <p>10 I received no response one way or another.</p> <p>11 CHAIRMAN FLANAGAN: All right. So he said</p> <p>12 he would discuss it and he never called you back?</p> <p>13 MR. SCHNEIDER: I don't know what happened</p> <p>14 afterwards.</p> <p>15 CHAIRMAN FLANAGAN: Well, did he ever call</p> <p>16 you back afterwards?</p> <p>17 MR. SCHNEIDER: I made an inquiry. I did</p> <p>18 not receive a response. Let's put it that way. I made</p> <p>19 a couple of inquiries. Let me be more clear.</p> <p>20 Point two: While I understand your concern</p> <p>21 about the setback, I think to a certain extent the -- I</p> <p>22 would hope that the setback concerns are mitigated by</p> <p>23 the lower height.</p> <p>24 Point three: There's a significant legal</p> <p>25 issue about relocating the facility, and it has an A</p>

<p style="text-align: right;">Page 33</p> <p>1 and a B part to it. One is, if you significantly</p> <p>2 relocate it, the facility, you very arguably</p> <p>3 potentially would have to go through a complete new</p> <p>4 public bidding process, because the township bid out a</p> <p>5 specific portion of the subject property.</p> <p>6 Point four --</p> <p>7 BOARD MEMBER NEWLIN: So back to that one,</p> <p>8 quantitative, significantly what?</p> <p>9 MR. SCHNEIDER: I'm sorry.</p> <p>10 BOARD MEMBER NEWLIN: Quantitative, if you</p> <p>11 were 10 feet?</p> <p>12 MR. SCHNEIDER: I think it was 10 feet. I</p> <p>13 don't think 10 feet would be, but if it was 50 feet the</p> <p>14 answer is yes. And if it was in a different location</p> <p>15 on the subject property the answer in my opinion would</p> <p>16 be yes.</p> <p>17 BOARD MEMBER NEWLIN: Okay. Thanks.</p> <p>18 MR. SCHNEIDER: Point four or 3B: Mr.</p> <p>19 Simon has made clear that if that was the case his</p> <p>20 position would be the Applicant would have to go</p> <p>21 through a completely new site plan review process at</p> <p>22 the revised location. And frankly, three years after</p> <p>23 the fact we're not prepared to do that.</p> <p>24 Point five: I have limited ability to --</p> <p>25 Verizon has limited ability to effectively shield an</p>	<p style="text-align: right;">Page 34</p> <p>1 80-foot structure in terms of buffering.</p> <p>2 BOARD MEMBER NEWLIN: Oh, you mean a</p> <p>3 landscaping question?</p> <p>4 MR. SCHNEIDER: Yes.</p> <p>5 BOARD MEMBER NEWLIN: Of course.</p> <p>6 MR. SCHNEIDER: That being said, as I've</p> <p>7 offered, if there was anything within reason that your</p> <p>8 planner or any other township official reasonably</p> <p>9 required in terms of supplemental landscaping to help</p> <p>10 shield the ground equipment the applicant is completely</p> <p>11 amenable to that. We would -- standard condition would</p> <p>12 be subject to a supplemental landscaping plan at the</p> <p>13 reasonable approval of the Township Planner.</p> <p>14 Generally what we've done in those</p> <p>15 circumstances is agree to an on-site site visit with</p> <p>16 your planner to buttress whatever landscaping plan that</p> <p>17 we have already submitted.</p> <p>18 CHAIRMAN FLANAGAN: While we're on that</p> <p>19 topic quickly, and again I think we have spoken about</p> <p>20 it. If surrounding property owners expressed a desire</p> <p>21 to have plantings on their property within reason would</p> <p>22 you be amenable to that?</p> <p>23 MR. SCHNEIDER: I would take it under</p> <p>24 advisement. The problem with that, Mr. Chairman, is my</p> <p>25 experience is putting it on other people's properties</p>
<p style="text-align: right;">Page 35</p> <p>1 creates issues about responsibility for maintenance and</p> <p>2 making sure we have access to it. But if that really</p> <p>3 was a major concern I think we can work out something</p> <p>4 with the advice of Counsel about how to --</p> <p>5 CHAIRMAN FLANAGAN: I'm not sure there's</p> <p>6 even a desire for that.</p> <p>7 MR. SCHNEIDER: My experience is it turns</p> <p>8 out to be a very difficult -- planting -- doing</p> <p>9 plantings on third-party's property, I've never had one</p> <p>10 that turned out well.</p> <p>11 What I've done in the past is agree -- and</p> <p>12 I don't want this to be taken the wrong way, I've</p> <p>13 agreed to make a contribution, a reasonable</p> <p>14 contribution to the Township Shade Tree Commission, if</p> <p>15 there is one, or I don't know if you have a Shade Tree</p> <p>16 Commission.</p> <p>17 CHAIRMAN FLANAGAN: We do.</p> <p>18 MR. SCHNEIDER: -- in a reasonable amount</p> <p>19 and let the Shade Tree Commission -- I don't want the</p> <p>20 responsibility of planting on other people's property,</p> <p>21 but I am amenable to making a reasonable contribution</p> <p>22 to the Shade Tree Commission or whatever agency you</p> <p>23 internally do that.</p> <p>24 CHAIRMAN FLANAGAN: Catalpa Trees all over.</p> <p>25 BOARD MEMBER NEWLIN: So nothing can be</p>	<p style="text-align: right;">Page 36</p> <p>1 done on the setbacks, is what I'm saying.</p> <p>2 MR. SCHNEIDER: Correct.</p> <p>3 BOARD MEMBER NEWLIN: We can't move it</p> <p>4 somewhat. There's no room on that plan. And it's not</p> <p>5 that you can't, it's because here we are and one party</p> <p>6 doesn't want to respond. And then if it's too much it</p> <p>7 triggers a -- potentially triggers expense and cost --</p> <p>8 MR. SCHNEIDER: Let me be clear. Mr.</p> <p>9 Newlin, even if the Township said tomorrow we want to</p> <p>10 relocate it to point A on the property, three years</p> <p>11 after the fact would be difficult for us. And then I'm</p> <p>12 going to be frank to you and I'm going to play planner</p> <p>13 since I played RF engineer. I know what would happen</p> <p>14 here. If I move it further away from the property line</p> <p>15 I'm putting it, with all due respect, in the midst</p> <p>16 potentially of the ongoing DPW operation. And we heard</p> <p>17 about a meeting and a half from Mr. Steck about how the</p> <p>18 wireless facility constitutes a second principal use on</p> <p>19 the property. And my point was it's located in a</p> <p>20 manner that doesn't operationally interfere. So then</p> <p>21 if I move it closer to anywhere close -- anywhere more</p> <p>22 in the middle of the property I'm creating the</p> <p>23 potential for operational interference with the DPW in</p> <p>24 any meaningful manner. I'm not talking about five or</p> <p>25 10 feet, but if I moved it 50 feet further away from</p>

<p style="text-align: right;">Page 37</p> <p>1 the property line I'm putting it right in the midst --</p> <p>2 BOARD MEMBER NEWLIN: I understand. But</p> <p>3 Mr. Steck is not us. We listened to him. And it</p> <p>4 doesn't mean we agree with him in content or duration,</p> <p>5 but what about 10 feet? Why can't you give more</p> <p>6 relief? Surely there's some wiggle room.</p> <p>7 Actually, I'm going to ask other Board</p> <p>8 members, because maybe other Board members don't care.</p> <p>9 BOARD MEMBER SYMONDS: I have a question on</p> <p>10 this topic. Because as we lower the height of the</p> <p>11 tower it seems like we have eliminated the significant</p> <p>12 opportunity for collocation.</p> <p>13 CHAIRMAN FLANAGAN: Well, maybe.</p> <p>14 BOARD MEMBER SYMONDS: Maybe.</p> <p>15 CHAIRMAN FLANAGAN: Depends on whether it's</p> <p>16 a tree or a pole.</p> <p>17 BOARD MEMBER SYMONDS: That's going to be</p> <p>18 one of the questions. We need to decide that before we</p> <p>19 go too much further. But the other question is can the</p> <p>20 equipment pad, equipment shed, equipment area be made</p> <p>21 smaller in anticipation that there will not be</p> <p>22 collocation --</p> <p>23 MR. SCHNEIDER: Can it be? Yes. Subject</p> <p>24 to the approval of the Township.</p> <p>25 BOARD MEMBER SYMONDS: Like in other words,</p>	<p style="text-align: right;">Page 38</p> <p>1 if the pad got smaller the Township has to approve</p> <p>2 that?</p> <p>3 MR. SCHNEIDER: Well, because the Township</p> <p>4 leased out 1,800-square feet to Verizon. So we have no</p> <p>5 issue reducing the size of the compound if the Township</p> <p>6 Committee is amenable to --</p> <p>7 CHAIRMAN FLANAGAN: But even if you had use</p> <p>8 of that 1,800 feet when you build your pad you're going</p> <p>9 to improve it with stuff. You're going to fence in</p> <p>10 that stuff. And I forget what you said you actually</p> <p>11 needed for yourself, let's say 900 feet, just for</p> <p>12 argument sake. So while you have access to 1,800 feet</p> <p>13 why build a fence around the whole thing when you don't</p> <p>14 need the whole thing fenced.</p> <p>15 So would you be amenable to just using the</p> <p>16 portion you needed for your own stuff if and when a</p> <p>17 collocator comes in then you go take down the fence and</p> <p>18 put up a new one?</p> <p>19 MR. SCHNEIDER: Yes.</p> <p>20 CHAIRMAN FLANAGAN: Does that answer your</p> <p>21 question?</p> <p>22 BOARD MEMBER SYMONDS: Yes. You said --</p> <p>23 I'm sorry. Just to clear this up. You said you would</p> <p>24 be amenable to using the smaller footprint?</p> <p>25 MR. SCHNEIDER: Let me relate it back to</p>
<p style="text-align: right;">Page 39</p> <p>1 what the Chair just indicated. I would be amenable to</p> <p>2 constructing only what is necessary for the tower and</p> <p>3 the Verizon Wireless equipment cabinetry and related</p> <p>4 appurtenances, and if and when any additional</p> <p>5 collocators came to the site they would have themselves</p> <p>6 the responsibility for expanding the compound.</p> <p>7 The answer to that suggestion is yes. And</p> <p>8 that's not uncommon. It's not the common way to do it.</p> <p>9 You usually build the entirety of the 1,800-square foot</p> <p>10 compound, but the way the Chair just suggested would be</p> <p>11 amenable to us. In other words, just build what's</p> <p>12 necessary for the tower structure, the cabinetry, and</p> <p>13 the generator.</p> <p>14 BOARD MEMBER NEWLIN: Can you possibly</p> <p>15 projected the site plan as you talk about it? Is that</p> <p>16 possible, Lori?</p> <p>17 SECRETARY TAGLAIRINO: I'm sorry. Put the</p> <p>18 site plan up? Mr. Schneider, which sheet? Would it be</p> <p>19 the one --</p> <p>20 MR. SCHNEIDER: You know what I think is</p> <p>21 actually the easiest? You can, but Lori, me and you</p> <p>22 had a conversation today about that separate exhibit.</p> <p>23 SECRETARY TAGLAIRINO: That's the one you</p> <p>24 want? Okay.</p> <p>25 MR. SCHNEIDER: Yes. So if you go to that</p>	<p style="text-align: right;">Page 40</p> <p>1 separate exhibit it will be an easier plan view, if you</p> <p>2 bear with me.</p> <p>3 SECRETARY TAGLAIRINO: I think it's this</p> <p>4 one. Is this it? Let me rotate it. Is this the one</p> <p>5 from July, what did we say?</p> <p>6 MR. SCHNEIDER: July 1st, 2019. If you go</p> <p>7 to sheet, perhaps it's easy if you go to Sheet SP-2 for</p> <p>8 a second.</p> <p>9 SECRETARY TAGLAIRINO: Okay. I have</p> <p>10 somewhere there's a pointer.</p> <p>11 MR. SCHNEIDER: Now you're getting --</p> <p>12 CHAIRMAN FLANAGAN: So Lori, let me ask.</p> <p>13 Can you maximize that window on the projector screen?</p> <p>14 SECRETARY TAGLAIRINO: Yes. This isn't the</p> <p>15 one that works. Is there another remote down there</p> <p>16 somewhere? Yes. Give that to Mr. Schneider and then</p> <p>17 I'll focus in. Where do you want me to go, in this</p> <p>18 compound area?</p> <p>19 MR. SCHNEIDER: Right in that compound</p> <p>20 area. If you go down -- see there's a tree species</p> <p>21 being removed?</p> <p>22 SECRETARY TAGLAIRINO: Yes.</p> <p>23 MR. SCHNEIDER: Right above that is a</p> <p>24 picture of the compound. Okay? So if you enlarge</p> <p>25 that --</p>

<p style="text-align: right;">Page 41</p> <p>1 SECRETARY TAGLAIRINO: Are we getting</p> <p>2 there? More?</p> <p>3 MR. SCHNEIDER: No, you're there. So right</p> <p>4 in the center of that compound is the tower, and to the</p> <p>5 right of that is the Verizon Wireless equipment</p> <p>6 cabinetry. Does everyone see where I'm looking?</p> <p>7 SECRETARY TAGLAIRINO: Push the yellow</p> <p>8 button.</p> <p>9 CHAIRMAN FLANAGAN: It's backwards.</p> <p>10 MR. SCHNEIDER: So there.</p> <p>11 CHAIRMAN FLANAGAN: Can you zoom in on</p> <p>12 that, Lori?</p> <p>13 SECRETARY TAGLAIRINO: I can go in. Sure.</p> <p>14 MR. SCHNEIDER: So that's the tower.</p> <p>15 That's the Verizon equipment cabinetry. Right there</p> <p>16 and there are spaces that have been designed for future</p> <p>17 collocation, if everyone can follow me. And also</p> <p>18 there's a third collocator right there.</p> <p>19 So if -- to follow up on the Chair's, you</p> <p>20 could cut the compound such that it's only in that</p> <p>21 general area and eliminate the portion of the compound</p> <p>22 originally for the -- which addresses those two --</p> <p>23 those are 10-by-20-foot areas by the way for each of</p> <p>24 the future compound. So the way this was theoretically</p> <p>25 designed would be you'd have tower, Verizon equipment</p>	<p style="text-align: right;">Page 42</p> <p>1 cabinetry, collocator one, collocator two, collocator</p> <p>2 three. What you could do is cut the compound</p> <p>3 essentially right here and eliminate that whole portion</p> <p>4 of the compound.</p> <p>5 BOARD MEMBER BOYAN: Could you eliminate</p> <p>6 the box for collocator one on the bottom right-hand</p> <p>7 side?</p> <p>8 MR. SCHNEIDER: You could do that.</p> <p>9 BOARD MEMBER NEWLIN: Say that again,</p> <p>10 George?</p> <p>11 BOARD MEMBER BOYAN: I said could you</p> <p>12 remove the dotted box on the bottom right-hand side</p> <p>13 that was designated for collocator one. That would</p> <p>14 help the setback, because I understand the neighbors on</p> <p>15 the bottom.</p> <p>16 BOARD MEMBER MASELLI: Well, the setback</p> <p>17 we're referring to I think is the tower, right, 58?</p> <p>18 BOARD MEMBER BOYAN: Not the pad?</p> <p>19 BOARD MEMBER MASELLI: Not the pad. I</p> <p>20 think the pad is closer, right, than --</p> <p>21 MR. SCHNEIDER: The pad is closer, that's</p> <p>22 correct.</p> <p>23 BOARD MEMBER NEWLIN: But the setback that</p> <p>24 people are concerned about is to the tower. That's</p> <p>25 57-something feet?</p>
<p style="text-align: right;">Page 43</p> <p>1 MR. SCHNEIDER: Correct.</p> <p>2 BOARD MEMBER NEWLIN: That drawing's so</p> <p>3 small.</p> <p>4 MR. SCHNEIDER: Lori, can you zoom in more?</p> <p>5 We don't need to see anything but that.</p> <p>6 BOARD MEMBER NEWLIN: You have to remember</p> <p>7 the demographic of certain Board members.</p> <p>8 CHAIRMAN FLANAGAN: There we go.</p> <p>9 SECRETARY TAGLAIRINO: Is that good?</p> <p>10 CHAIRMAN FLANAGAN: That's better.</p> <p>11 BOARD MEMBER NEWLIN: And what's the</p> <p>12 possibility of moving that tower some feet without</p> <p>13 triggering a brand new site plan.</p> <p>14 CHAIRMAN FLANAGAN: Well, we discussed</p> <p>15 moving it towards that -- if you're looking at the open</p> <p>16 -- if you're looking at the metal recycling, like the</p> <p>17 cans and --</p> <p>18 BOARD MEMBER NEWLIN: Can you point while</p> <p>19 he's talking, Rich?</p> <p>20 CHAIRMAN FLANAGAN: -- moving it to the</p> <p>21 right.</p> <p>22 BOARD MEMBER MASELLI: That would be to the</p> <p>23 left of this.</p> <p>24 CHAIRMAN FLANAGAN: And I think it's -- you</p> <p>25 said previously, moving it 10 feet this way or that you</p>	<p style="text-align: right;">Page 44</p> <p>1 could do. We had this discussion surrounding, well,</p> <p>2 can we save more trees by moving it a little further to</p> <p>3 the left in this picture? And I think you had</p> <p>4 indicated you could do that.</p> <p>5 MR. SCHNEIDER: There's no significance</p> <p>6 from an RF perspective or anything about relocating the</p> <p>7 tower that amount, that degree.</p> <p>8 BOARD MEMBER NEWLIN: Meaning you can.</p> <p>9 MR. SCHNEIDER: Yes.</p> <p>10 CHAIRMAN FLANAGAN: It would be a question</p> <p>11 for this -- so that square, that rectangle we see is</p> <p>12 what's indicated in the lease. So it would be a</p> <p>13 question of amending the lease to shift that rectangle</p> <p>14 to the left, I guess, right? I think it can save you a</p> <p>15 tree or so.</p> <p>16 MR. MLENAK: Are we talking about moving</p> <p>17 the rectangle or moving the tower within the rectangle?</p> <p>18 CHAIRMAN FLANAGAN: Moving the entire</p> <p>19 rectangle over. Because as I recall there's a tree</p> <p>20 kind of to the upper-right portion that's going to be</p> <p>21 lost if it goes there. And, you know, and I would say</p> <p>22 if we were to approve this I would ask, I guess it's</p> <p>23 Paul? I'm not sure, Paul, to help locate that to</p> <p>24 reduce the number of trees that have to be taken down,</p> <p>25 if that makes sense. And the Applicant wouldn't have</p>

<p style="text-align: right;">Page 45</p> <p>1 an objection to that?</p> <p>2 MR. SCHNEIDER: No.</p> <p>3 BOARD MEMBER NEWLIN: Mike. I know you're</p> <p>4 not going to like this at all, but I do think the</p> <p>5 Applicant should go back and see what can be done about</p> <p>6 the site plan. Yes, I understand it's not at this</p> <p>7 meeting, but if you get support for everything else, I</p> <p>8 guess that's an if, and do the best you can to address</p> <p>9 the setback items, the tree items, the screening within</p> <p>10 reason. According to -- we're not looking for things</p> <p>11 that are not do able, that are not reasonable. I think</p> <p>12 that's a fair request.</p> <p>13 And in terms of our standards, when we go</p> <p>14 through site plans we look at things in detail and this</p> <p>15 is probably the biggest application that we've done</p> <p>16 certainly in a long time. And I think we should be</p> <p>17 very careful about site plan. I'm not very comfortable</p> <p>18 just saying leave this to Paul or would you do this or,</p> <p>19 I think that's against our standards.</p> <p>20 MR. SCHNEIDER: May I respond, Mr. Newlin?</p> <p>21 CHAIRMAN FLANAGAN: Please do.</p> <p>22 MR. SCHNEIDER: Subject to what you</p> <p>23 prefaced your comments, if there was a consensus that</p> <p>24 the height was worthy of us going back and doing that I</p> <p>25 am more than willing to engage formally the Township,</p>	<p style="text-align: right;">Page 46</p> <p>1 involve Mr. Fox, et cetera, to see what I can do to the</p> <p>2 maximum extent within my control and the Township to</p> <p>3 address your site plan concerns to mitigate your</p> <p>4 reduction in trees and do whatever I could to increase</p> <p>5 the setback.</p> <p>6 BOARD MEMBER NEWLIN: And you would then be</p> <p>7 okay with coming back and running through this with us?</p> <p>8 MR. SCHNEIDER: Yes. But I don't want to</p> <p>9 go on a wild goose chase.</p> <p>10 BOARD MEMBER NEWLIN: Understood. Also, I</p> <p>11 was just speaking for myself. I don't know if other</p> <p>12 Board Members agree with me. So --</p> <p>13 MR. SCHNEIDER: But I am amenable to doing</p> <p>14 that.</p> <p>15 CHAIRMAN FLANAGAN: So what is it -- we</p> <p>16 have more questions, but what is it you would envision</p> <p>17 you would walk out of here tonight with that would get</p> <p>18 you comfortable you're not going down a wild goose</p> <p>19 chase? Do you want to have a straw poll like we did</p> <p>20 the last time?</p> <p>21 MR. SCHNEIDER: I would like a straw poll</p> <p>22 to the extent that the Board would be amenable to</p> <p>23 approving an 80-foot tower, and subject to all the</p> <p>24 conditions that I indicated, including the condition we</p> <p>25 talked about relative to the Township -- all of the</p>
<p style="text-align: right;">Page 47</p> <p>1 conditions that I did, and direct the Applicant to</p> <p>2 address the site plan concerns as articulated by Mr.</p> <p>3 Newlin, and collective by the Board, and I would come</p> <p>4 back with a plan in March to address those.</p> <p>5 BOARD MEMBER NEWLIN: Revised site plan.</p> <p>6 And I think, fair enough, if we did do that every Board</p> <p>7 member should give you input as best they can tonight</p> <p>8 on the site plan.</p> <p>9 MR. SCHNEIDER: I would welcome that.</p> <p>10 CHAIRMAN FLANAGAN: And can I add one more</p> <p>11 thing to that? If we were to go down this path, we</p> <p>12 have had a lot of discussion back and forth about</p> <p>13 flagless flagpole versus tree. And I think some</p> <p>14 members I think are in favor from listening to comments</p> <p>15 from the dais of a tree. Some for a flagless flagpole.</p> <p>16 Personally, I've seen some really ugly trees, but I've</p> <p>17 also seen some decent ones.</p> <p>18 So I think one thing we would like you to</p> <p>19 come back with if we were to go down this path in</p> <p>20 addition to site plan is a menu of what these things</p> <p>21 could look like, right. Because have you driven down</p> <p>22 the turnpike say Exit 103 there's a really ugly tree,</p> <p>23 just a raggedy little old thing, but then I think</p> <p>24 there's also some nicer ones. So would you be able to</p> <p>25 come back and say these are some of the flavors of</p>	<p style="text-align: right;">Page 48</p> <p>1 trees?</p> <p>2 I think a flagless flagpole it is what it</p> <p>3 is. I think we have all seen those. I don't think</p> <p>4 they vary much, but there are certainly different</p> <p>5 designs of trees.</p> <p>6 MR. SCHNEIDER: May I make -- let me</p> <p>7 address it this way. If I came back with photographs</p> <p>8 of two or three trees would that be responsive to your</p> <p>9 request?</p> <p>10 CHAIRMAN FLANAGAN: I think so. And I</p> <p>11 would ask, if we get there, if the Board knows of the</p> <p>12 location of any trees they find --</p> <p>13 MR. SCHNEIDER: One of the ones that</p> <p>14 have -- let me throw out two, okay, based on my</p> <p>15 experience. One is, and Mr. Masters testified, the one</p> <p>16 at DelBarton. There are ones in the town that I live</p> <p>17 in that are awful so I'm not going to go -- in</p> <p>18 Randolph. You have a tree on Route 10.</p> <p>19 CHAIRMAN FLANAGAN: But there must be a</p> <p>20 catalog, is there not?</p> <p>21 MR. SCHNEIDER: There is.</p> <p>22 CHAIRMAN FLANAGAN: Is there not the Sears</p> <p>23 Catalog?</p> <p>24 MR. SCHNEIDER: There's a new one --</p> <p>25 there's actually one on Route 78 further west.</p>

<p style="text-align: right;">Page 49</p> <p>1 CHAIRMAN FLANAGAN: West of 287?</p> <p>2 MR. SCHNEIDER: As you approach</p> <p>3 Pennsylvania on the eastbound side that I think</p> <p>4 actually looks pretty good. So why don't I do this. I</p> <p>5 will come forward with photographs of three</p> <p>6 representative vantage points of three in terms of a</p> <p>7 design. Does that seem like a --</p> <p>8 CHAIRMAN FLANAGAN: That would be great.</p> <p>9 That sound fair. And I'm serious --</p> <p>10 MR. SCHNEIDER: But you don't need anymore</p> <p>11 flagless flag poles?</p> <p>12 CHAIRMAN FLANAGAN: Well, I think we have</p> <p>13 all seen -- unless there's variations. But seriously,</p> <p>14 are there not companies, though, that design fake trees</p> <p>15 and can we not go to that company and show me your</p> <p>16 picture book?</p> <p>17 MR. SCHNEIDER: Yes. There are stealth</p> <p>18 manufacturers. The answer is yes. I will come forward</p> <p>19 with that.</p> <p>20 CHAIRMAN FLANAGAN: Yeah. Okay. All</p> <p>21 right. So what else do we want to do tonight?</p> <p>22 BOARD MEMBER MASELLI: Well, Alf keeps</p> <p>23 asking if he's alone and he's not alone on the setback</p> <p>24 issue. That's one of my biggest concerns still. So if</p> <p>25 I was running this town, which I don't run this town</p>	<p style="text-align: right;">Page 50</p> <p>1 I'd put that tower in the middle of those buildings</p> <p>2 like the wood one that's there now that no one seems to</p> <p>3 even notice.</p> <p>4 MR. SCHNEIDER: I'm sorry. I had trouble</p> <p>5 hearing what you said.</p> <p>6 SECRETARY TAGLAIRINO: Dan, put your</p> <p>7 microphone on, please?</p> <p>8 BOARD MEMBER MASELLI: I've been told I was</p> <p>9 loud without one.</p> <p>10 SECRETARY TAGLAIRINO: But you're even</p> <p>11 louder.</p> <p>12 BOARD MEMBER MASELLI: If I had my choice I</p> <p>13 would put that tower in the middle of those buildings</p> <p>14 where the wood one is, if I had the ability to make all</p> <p>15 the decisions on my own. And I would house all the</p> <p>16 equipment in the building, in the shed, just like Green</p> <p>17 Village. All right. And even if that was at a hundred</p> <p>18 feet it wouldn't be as noticeable as this one. But</p> <p>19 that's not what's on -- that's not what's being</p> <p>20 presented to us.</p> <p>21 CHAIRMAN FLANAGAN: Sorry. What did -- say</p> <p>22 that again?</p> <p>23 BOARD MEMBER MASELLI: Which part?</p> <p>24 CHAIRMAN FLANAGAN: The part about even if</p> <p>25 it were at a hundred feet it wouldn't be as noticeable.</p>
<p style="text-align: right;">Page 51</p> <p>1 BOARD MEMBER MASELLI: It wouldn't be as</p> <p>2 noticeable as this one.</p> <p>3 CHAIRMAN FLANAGAN: If what were at a</p> <p>4 hundred feet, Green Village?</p> <p>5 BOARD MEMBER MASELLI: No. If this tower</p> <p>6 were at 80 or a hundred is irrelevant to me if it was</p> <p>7 not in this location.</p> <p>8 When you talk about disrupting, when you</p> <p>9 talk about disruption to what's current as activity</p> <p>10 that wood tower that's there now, it's not really a</p> <p>11 tower, it's a pole, doesn't really interrupt anything</p> <p>12 activity-wise that's going on. And I'm no engineering</p> <p>13 expert with towers, but I am a builder and I'm also an</p> <p>14 architect and I try to make very little impact on the</p> <p>15 environment, if I could. And I don't know if anything</p> <p>16 would be put on the ground, we're not going to go</p> <p>17 there, but even Green Village is a good example of</p> <p>18 trying to hide something a little bit better than what</p> <p>19 this one is doing.</p> <p>20 CHAIRMAN FLANAGAN: How did they hide that</p> <p>21 one at Green Village?</p> <p>22 BOARD MEMBER ADDONIZIO: It looks like a</p> <p>23 couple of sheds.</p> <p>24 CHAIRMAN FLANAGAN: So hiding what, the</p> <p>25 tower or the equipment?</p>	<p style="text-align: right;">Page 52</p> <p>1 BOARD MEMBER MASELLI: All the equipment is</p> <p>2 inside a shed. So here we are, we have a recycling</p> <p>3 shed adjacent to that. So instead of it being outside</p> <p>4 like that it could simply go into that shed instead.</p> <p>5 But again, I'm not designing it. If I were to design</p> <p>6 it I would try to mitigate because of where it is,</p> <p>7 because of neighbors, and because of -- so it's in the</p> <p>8 middle of a neighborhood. We can't help that, but how</p> <p>9 can we help it?</p> <p>10 CHAIRMAN FLANAGAN: So if you were to take</p> <p>11 that equipment you see on the picture, and I'm sure</p> <p>12 they could put it in the shed or maybe one big shed, is</p> <p>13 it better to have it in one big shed?</p> <p>14 I'm guessing, Mr. Schneider can confirm</p> <p>15 this, if this Board were to say, yeah, you know what,</p> <p>16 we're okay at 80 feet but we're worried that the</p> <p>17 equipment is ugly I'm sure they would go and design and</p> <p>18 put it in shed, a single shed, multiple sheds. So what</p> <p>19 is it you would put it in, two sheds or one shed?</p> <p>20 Because Green Village is like two.</p> <p>21 BOARD MEMBER MASELLI: I think it's just a</p> <p>22 matter of -- I don't know if they built those sheds</p> <p>23 specifically for equipment. I have no idea. There's</p> <p>24 two sheds there.</p> <p>25 CHAIRMAN FLANAGAN: What would you like?</p>

<p style="text-align: right;">Page 53</p> <p>1 BOARD MEMBER MASELLI: I just described  2 what I would like to see but I'm not going to get that.  3 If that tower is where the wood one is now that would  4 be ideal for me, but I'm not getting that. So how else  5 can we mitigate this to be less impactful than the  6 neighbor that's closest to that, that's all.  7 BOARD MEMBER NEWLIN: Can I ask  8 theoretically, can you actually from an engineering  9 perspective have the tower separated from the equipment  10 with a driveway in between?  11 MR. SCHNEIDER: We've looked at that. So  12 there's a two-fold answer. There are certain  13 circumstances where you could put the equipment within  14 a -- instead of cabinetry within a shed. I will tell  15 you that beauty is in the eye of the beholder. A lot  16 of people find that the cabinetry creates more of an  17 impact than -- the shed creates more than the outdoor  18 cabinets. That's a different issue.  19 To answer Alf's question, there is a  20 correlation, the equipment has to be within a certain  21 physical proximity because you're running lines from  22 the tower to the equipment. So there's a proximity  23 number where if the equipment is further away from the  24 tower you start to lose gain. But we've looked at that  25 Mr. Newlin. So I could, in the spirit of time I will</p>	<p style="text-align: right;">Page 54</p> <p>1 go back and see what we can do to do that within our  2 technical parameters perhaps.  3 BOARD MEMBER NEWLIN: Again, I think the  4 ask is to push the tower away from the property line as  5 much as you can.  6 BOARD MEMBER SYMONDS: Even 40 feet back  7 from lowering the tower.  8 MR. SCHNEIDER: Again, my ability to  9 significantly mitigate, to relocate the tower is  10 limited for the reasons --  11 CHAIRMAN FLANAGAN: Well, as much as you  12 could. So I mean, little steps. What's the distance  13 between the tower and the top edge of your compound  14 there? What's the total size of that compound?  15 MR. SCHNEIDER: I think it's 1,800-square  16 feet.  17 CHAIRMAN FLANAGAN: What is the width?  18 BOARD MEMBER MASELLI: Even if you look at  19 that it's 35 feet.  20 CHAIRMAN FLANAGAN: If you were to put the  21 tower on the upper-most edge of your area there you  22 would be moving it 10 feet further from the property  23 line, right.  24 BOARD MEMBER MASELLI: It actually says  25 right there. It says 60 feet.</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. SCHNEIDER: I understand the concern  2 and I suspect -- here's the -- I'll play engineer for a  3 second. I suspect the reason the tower was located  4 where it was originally was for the reason I just  5 mentioned. The tower has to be generally -- wants to  6 be proximate to the three or four equipment shelters.  7 So if you locate it in one corner of the compound --  8 CHAIRMAN FLANAGAN: So I just ask you to  9 locate it because my guess is 10 feet doesn't make a  10 bit of difference and some engineer just drew this up.  11 MR. SCHNEIDER: Point is noted. I will  12 look at every effort to shift the tower further away  13 from the property line even if it's -- even if it's  14 pushing it to the far end of the compound away, further  15 away.  16 CHAIRMAN FLANAGAN: So even in that upper  17 right-hand corner I don't know where the property line  18 is, but the further away you can get it to that.  19 MR. SCHNEIDER: I can do that.  20 BOARD MEMBER MASELLI: As far as just to  21 comment on the, you know, enclosures being more  22 obnoxious than a screened fence. The reason why it  23 works well is when you build -- the buildings are  24 something you would see in a neighborhood. There's a  25 couple of little gambrel sheds is all it is. So you</p>	<p style="text-align: right;">Page 56</p> <p>1 don't really notice them because it's something you  2 would see in our landscape and something you would see  3 in our hardscape.  4 CHAIRMAN FLANAGAN: And it begs the  5 question then, right. So if you want to blend in with  6 the other buildings there do you go and put up another  7 pop-up building?  8 BOARD MEMBER MASELLI: They're not really  9 pop-up buildings -- yeah, they're pop-ups.  10 CHAIRMAN FLANAGAN: Can you give us a  11 couple of options as to how you would cover the -- hide  12 the equipment?  13 BOARD MEMBER NEWLIN: I mean, no one is  14 going to see it unless you go to the recycling.  15 CHAIRMAN FLANAGAN: Well, the neighbors  16 are. So who is going to see it is the O'Donnells.  17 MR. SCHNEIDER: Maybe, I understand very  18 clearly what you're trying to achieve. What I will  19 do -- you have my commitment -- I will have my design  20 professionals to the extent work with the Township  21 Official, but most specifically confer with Mr. Fox. I  22 think he would be the perfect point person to try to --  23 BOARD MEMBER NEWLIN: Mr. Fox, do you  24 represent the Board or do you represent the Town in  25 this?</p>

<p style="text-align: right;">Page 57</p> <p>1 MR. FOX: The Board.</p> <p>2 CHAIRMAN FLANAGAN: Is the fence there for</p> <p>3 security or is that for aesthetics?</p> <p>4 BOARD MEMBER MASELLI: Visual mitigation.</p> <p>5 MR. SCHNEIDER: Both.</p> <p>6 CHAIRMAN FLANAGAN: I would argue then if</p> <p>7 you want to further minimize the visual impact get rid</p> <p>8 of the fence. Right. You're building a big fence. If</p> <p>9 you're going to put that and a couple of sheds, well,</p> <p>10 look like Green Village works because there's no fence</p> <p>11 around that.</p> <p>12 BOARD MEMBER MASELLI: Right. Because it</p> <p>13 goes into buildings.</p> <p>14 CHAIRMAN FLANAGAN: So if you were to do a</p> <p>15 similar thing here I would get rid of the fence to be</p> <p>16 honest with you, because it just calls more attention</p> <p>17 to it. I don't know. Get your designers out, maybe --</p> <p>18 BOARD MEMBER MASELLI: Well, you can't hide</p> <p>19 all of it.</p> <p>20 MR. SCHNEIDER: But I do remember, Mr.</p> <p>21 Chairman, out of fairness. Many years ago when we did</p> <p>22 the original site visit --</p> <p>23 CHAIRMAN FLANAGAN: I wanted a fence?</p> <p>24 MR. SCHNEIDER: You wanted the fence even I</p> <p>25 thought a little higher to shield the equipment.</p>	<p style="text-align: right;">Page 58</p> <p>1 CHAIRMAN FLANAGAN: It's three years later.</p> <p>2 I've grown.</p> <p>3 BOARD MEMBER MASELLI: There has to be a</p> <p>4 compromise.</p> <p>5 CHAIRMAN FLANAGAN: I don't know what the</p> <p>6 right answer is, but aesthetically you understand what</p> <p>7 --</p> <p>8 MR. SCHNEIDER: I think you've given me</p> <p>9 clear direction, the details of which have to be</p> <p>10 addressed, what you're seeking to achieve. Let me</p> <p>11 phrase it that way.</p> <p>12 BOARD MEMBER MASELLI: And just one more</p> <p>13 thing. Never trust a lawyer when he says one more</p> <p>14 thing.</p> <p>15 BOARD MEMBER ROSENBAUM: Or architect.</p> <p>16 BOARD MEMBER MASELLI: I'd feel more</p> <p>17 comfortable if we had an answer from who you were</p> <p>18 trying to get an answer from earlier.</p> <p>19 MR. SCHNEIDER: But Mr. Maselli, I want to</p> <p>20 be clear. Relocating it anywhere else creates a lot</p> <p>21 of -- it creates a whole new site plan and a whole new</p> <p>22 public bidding process that I can't go through. I can</p> <p>23 work within the confines of the equipment cabinet or</p> <p>24 shifting it in a general location, but putting it in</p> <p>25 the center of the DPW property --</p>
<p style="text-align: right;">Page 59</p> <p>1 BOARD MEMBER MASELLI: You can't just put</p> <p>2 the whole thing in the middle of the DPW. It would</p> <p>3 have to be disjointed, right, meaning that the tower</p> <p>4 would need to be there and then maybe the equipment</p> <p>5 still stays here. And what you're talking about, I</p> <p>6 think I'm guessing, is voltage drop between, you know,</p> <p>7 it being disjointed, but it's not that far away.</p> <p>8 CHAIRMAN FLANAGAN: My understanding of</p> <p>9 what Mr. Schneider is saying, though, even aside from</p> <p>10 that, if they went and moved -- and let's say just for</p> <p>11 argument sake they left the equipment where it is but</p> <p>12 they moved the tower right to the middle of the</p> <p>13 turnaround. And let's put aside, you know, it's going</p> <p>14 to mess up the traffic and the township, you know, DPW</p> <p>15 guys won't let you put -- put all that stuff aside.</p> <p>16 What I had heard is that somebody else could</p> <p>17 potentially look at that.</p> <p>18 BOARD MEMBER MASELLI: And collocate it.</p> <p>19 CHAIRMAN FLANAGAN: Anybody could look at</p> <p>20 that and say, wait a minute, I didn't bid on the</p> <p>21 project because I didn't want to put it there. But if</p> <p>22 I knew it was going in the center of the driveway I</p> <p>23 would have bid on it. So someone could make the</p> <p>24 argument that it wasn't properly put out to the public</p> <p>25 in a bid. It was kind of a bait and switch thing.</p>	<p style="text-align: right;">Page 60</p> <p>1 BOARD MEMBER MASELLI: Are you speculating</p> <p>2 on that?</p> <p>3 CHAIRMAN FLANAGAN: No. I think --</p> <p>4 MR. SCHNEIDER: And that the Township bid a</p> <p>5 specific portion of the property. They did not say</p> <p>6 "the DPW property."</p> <p>7 CHAIRMAN FLANAGAN: They said this spot on</p> <p>8 the DPW.</p> <p>9 MR. SCHNEIDER: And again, I think I would</p> <p>10 be within my reason if it was 5, 10 feet, but 50 feet</p> <p>11 is a different scenario. And it invokes the whole need</p> <p>12 for a completely different site plan.</p> <p>13 CHAIRMAN FLANAGAN: So I think that's his</p> <p>14 concern about moving it. I get it.</p> <p>15 MR. SCHNEIDER: But I will repeat, I'm more</p> <p>16 than amenable to trying to address your concerns with</p> <p>17 the assistance of Mr. Fox. And hopefully good</p> <p>18 cooperation from the Township Committee as to reducing</p> <p>19 the size of the compound. I have no issue with</p> <p>20 reducing --</p> <p>21 CHAIRMAN FLANAGAN: Well, but you don't</p> <p>22 need their approval to improve a section of the</p> <p>23 property you've leased, right? So I imagine the way</p> <p>24 the lease is written is, as it stands you have that</p> <p>25 1,800-square feet, the lease doesn't dictate whether</p>

<p style="text-align: right;">Page 61</p> <p>1 you go and improve it or not, right?</p> <p>2 MR. SCHNEIDER: That's probably correct.</p> <p>3 CHAIRMAN FLANAGAN: So I think you just</p> <p>4 exercise your option to not improve it or only improve</p> <p>5 the section you need.</p> <p>6 What else does the Board have? Any</p> <p>7 questions on this?</p> <p>8 BOARD MEMBER BOYAN: I've got a lot of</p> <p>9 questions if I can have a few minutes.</p> <p>10 CHAIRMAN FLANAGAN: Yes. Go ahead.</p> <p>11 BOARD MEMBER BOYAN: So I remember photo</p> <p>12 sims of 140, 120 and a 100. Were there any photo</p> <p>13 simulations created at the 80 feet?</p> <p>14 MR. SCHNEIDER: No.</p> <p>15 BOARD MEMBER BOYAN: Is that something that</p> <p>16 can be done prior to the March meeting? It's hard to</p> <p>17 vote on something -- maybe I'm okay with 80 feet, but</p> <p>18 until I see a simulation of what it's going to look</p> <p>19 like I'm not sure if I'm a yes or a no without it.</p> <p>20 CHAIRMAN FLANAGAN: Yeah. Well, let me</p> <p>21 ask. Could you do that? I think he wants to walk out</p> <p>22 of here tonight with -- well, what you said earlier is</p> <p>23 a straw poll on whether 80 feet could work or not. And</p> <p>24 I think your answer is you don't know if it works.</p> <p>25 BOARD MEMBER BOYAN: I'm open to it, but I</p>	<p style="text-align: right;">Page 62</p> <p>1 can't say definitively until I see what 80 feet would</p> <p>2 look like, and that's a concern. Particularly, if we</p> <p>3 said we can't approve 60 feet because there's nothing</p> <p>4 in the record. Well, is there anything in the record</p> <p>5 with respect to the visual impact at 80 feet? And I</p> <p>6 think I just got my answer is no.</p> <p>7 CHAIRMAN FLANAGAN: Okay. There's Mr.</p> <p>8 Boyan's answer. And I don't want to get into it, but I</p> <p>9 think his answer is he's open to it but without seeing</p> <p>10 if he can't give you a definitive -- but straw poll --</p> <p>11 in a straw poll he is open to 80 feet?</p> <p>12 BOARD MEMBER BOYAN: But I would love to</p> <p>13 see a simulation at 80 feet. I know we're going to see</p> <p>14 the pictures of the -- the catalog, but if we could</p> <p>15 superimpose them at 80 feet I would feel more</p> <p>16 comfortable about voting one way or another.</p> <p>17 BOARD MEMBER NEWLIN: Can you take the</p> <p>18 existing photograph and with some kind of accuracy --</p> <p>19 MR. SCHNEIDER: I will take it under</p> <p>20 advisement. It's not -- I don't have the ability to</p> <p>21 confirm that, but your request is noted.</p> <p>22 CHAIRMAN FLANAGAN: Okay.</p> <p>23 BOARD MEMBER BOYAN: Secondly, Paul, do we</p> <p>24 have any idea -- can you enter -- is there anything in</p> <p>25 the record that says the height of the existing trees</p>
<p style="text-align: right;">Page 63</p> <p>1 in that area --</p> <p>2 MR. FOX: No there is not.</p> <p>3 BOARD MEMBER BOYAN: -- or know what they</p> <p>4 are in relation to 80 feet?</p> <p>5 MR. FOX: That is not in the record.</p> <p>6 CHAIRMAN FLANAGAN: Do you have an estimate</p> <p>7 based on the boy scout method or any other method on</p> <p>8 how tall those trees are?</p> <p>9 MR. FOX: I think it would be best if the</p> <p>10 Applicant were requested to provide that information.</p> <p>11 BOARD MEMBER NEWLIN: There was some</p> <p>12 testimony about that. There was some guess. I think</p> <p>13 we discussed on the site visit and somebody on one of</p> <p>14 the sides came back with something more quantitative.</p> <p>15 CHAIRMAN FLANAGAN: Do you recall that, Mr.</p> <p>16 Schneider?</p> <p>17 MR. SCHNEIDER: I thought there was. There</p> <p>18 was also discussion -- I went through the record. Just</p> <p>19 one of the comments you made last time, or Mr. Simon</p> <p>20 made was about the caliper of the trees. That it</p> <p>21 actually is reflected on the plans. It's reflected on</p> <p>22 the original survey submitted with the application.</p> <p>23 BOARD MEMBER NEWLIN: But not the height?</p> <p>24 MR. SCHNEIDER: Not the height, correct.</p> <p>25 BOARD MEMBER NEWLIN: I thought there was</p>	<p style="text-align: right;">Page 64</p> <p>1 some testimony.</p> <p>2 MR. SCHNEIDER: There was an approximation.</p> <p>3 I can't recall what it was. It was through Mr.</p> <p>4 Mawrowski. I want to say 50 to 60 feet was my</p> <p>5 recollection.</p> <p>6 BOARD MEMBER NEWLIN: That's your engineer?</p> <p>7 MR. SCHNEIDER: Yes.</p> <p>8 BOARD MEMBER BOYAN: I think that sounds</p> <p>9 reasonable. So it would be approximately 20 or 30</p> <p>10 taller --</p> <p>11 MR. SCHNEIDER: That's correct. My</p> <p>12 recollection, sir, was that the testimony was that</p> <p>13 there are trees 50 to 60 feet. So 20 feet above that.</p> <p>14 BOARD MEMBER BOYAN: When we were talking</p> <p>15 about the site at the school, my recollection is that</p> <p>16 you approached them with respect to a tower at 140; is</p> <p>17 that right?</p> <p>18 And then I guess a followup to that is, has</p> <p>19 there been -- 80 is a material change from 140. And</p> <p>20 would there be -- would you be amenable to or maybe</p> <p>21 from a legal perspective are we required to see that</p> <p>22 there aren't any alternative potential sites for the</p> <p>23 tower at an 80-foot height versus the 140 that the</p> <p>24 school was originally approached with?</p> <p>25 MR. MLENAK: One of the things that you're</p>

<p style="text-align: right;">Page 65</p> <p>1 going to have to answer with respect to the first part</p> <p>2 of this which is the positive criteria is whether or</p> <p>3 not the Applicant has met its burden in investigating</p> <p>4 alternative sites that can fill the gap.</p> <p>5 Now, there's been a lot of testimony on</p> <p>6 that, specifically with the school. I don't recall off</p> <p>7 the top what the e-mail said about the height, but the</p> <p>8 Board would consider whether that reduction per the</p> <p>9 offered condition of approval at 80 feet was properly</p> <p>10 investigated by the applicant at the school.</p> <p>11 BOARD MEMBER BOYAN: Okay. So to follow on</p> <p>12 that comment -- thank you, Steve. I would love for</p> <p>13 another overture to be made to the school at the</p> <p>14 80-foot height. And maybe the answer is the same and</p> <p>15 we're right back where we started, but at least we'll</p> <p>16 in good conscience be able to check that box of</p> <p>17 alternative sites at that particular height.</p> <p>18 MR. SCHNEIDER: That one I'm not at this</p> <p>19 point in the proceedings prepared to do.</p> <p>20 BOARD MEMBER BOYAN: With respect to the</p> <p>21 tree structure, you said that would allow for a</p> <p>22 collocator. Does that, in your opinion, reduce the</p> <p>23 chances of another -- maybe this is an unfair question</p> <p>24 -- but another provider coming in asking for a site?</p> <p>25 If we were to do the flagless flagpole you wouldn't be</p>	<p style="text-align: right;">Page 66</p> <p>1 able to accommodate T-Mobile, for instance.</p> <p>2 BOARD MEMBER NEWLIN: Wait. Wait. That's</p> <p>3 not true, is it? You can -- can you explain that</p> <p>4 again?</p> <p>5 MR. SCHNEIDER: Obviously, the lower the</p> <p>6 height of the structure you limit the structure's</p> <p>7 ability to meet the technical objectives of future</p> <p>8 collocators.</p> <p>9 BOARD MEMBER NEWLIN: Rich, I'm sorry to</p> <p>10 bud in, but can you -- you need the 20 feet.</p> <p>11 MR. SCHNEIDER: I'll get there. So on a</p> <p>12 flagpole, as you recall, we take -- and as Dr.</p> <p>13 Eisenstein explained, we take two elevations: 80 and</p> <p>14 70.</p> <p>15 BOARD MEMBER BOYAN: So 60 is not available</p> <p>16 for a collocator?</p> <p>17 MR. SCHNEIDER: It's available.</p> <p>18 BOARD MEMBER BOYAN: But no one wants it.</p> <p>19 MR. SCHNEIDER: Well, they may or may not.</p> <p>20 I can't comment on T-Mobile or AT&amp;T on whether they</p> <p>21 would or not. But the point I think Mr. Newlin was</p> <p>22 trying to lead me to is, you increase the collocation</p> <p>23 possibilities if you go to a tree because you would be</p> <p>24 able to have 70 feet available for a collocator;</p> <p>25 whereas, 60 feet would be the next available height on</p>
<p style="text-align: right;">Page 67</p> <p>1 a flagpole.</p> <p>2 BOARD MEMBER BOYAN: But in theory you</p> <p>3 should reduce the probability of another provider</p> <p>4 coming before this body asking for a second pole in</p> <p>5 town.</p> <p>6 CHAIRMAN FLANAGAN: And I think that's a</p> <p>7 Township objective, right? Try to design it so if you</p> <p>8 can get a collocator on it. I think the long and the</p> <p>9 short of it is if T-Mobile came in and the can only get</p> <p>10 at 50 feet I guess they would go to somebody and say,</p> <p>11 that doesn't work for me. I need another location.</p> <p>12 BOARD MEMBER NEWLIN: It's also true enough</p> <p>13 that the firehouse antennas were about 45 feet. So 60</p> <p>14 feet is a lot more than 45. We don't have a whole lot</p> <p>15 of backup but that is true.</p> <p>16 BOARD MEMBER BOYAN: Okay. Continuing on.</p> <p>17 You said that at 80 feet it would not fill the gap, it</p> <p>18 would substantially fill the gap and there may be</p> <p>19 remaining gaps. Is Verizon willing to say that it</p> <p>20 would not seek another tower in town in order to fill</p> <p>21 that remaining gap?</p> <p>22 MR. SCHNEIDER: I can never say that.</p> <p>23 BOARD MEMBER BOYAN: So by going to 80 feet</p> <p>24 theoretically we'd have another application from</p> <p>25 Verizon six months away?</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. SCHNEIDER: Theoretically, I would find</p> <p>2 it highly unlikely you will have another application.</p> <p>3 The reality is that at 80 feet it's the school that's</p> <p>4 the problem. I think we have been through that. The</p> <p>5 thought process that Verizon Wireless would construct a</p> <p>6 new tower to serve the school is, I would say, highly</p> <p>7 unlikely.</p> <p>8 CHAIRMAN FLANAGAN: And by the way on that</p> <p>9 point, and you noted it. I think it was an incredibly</p> <p>10 astute observation. The school has had the opportunity</p> <p>11 to put a tower on their property, and despite all the</p> <p>12 testimony of how critical it was to get coverage at the</p> <p>13 school, which seems reasonable to me, despite all of</p> <p>14 that the school Board said no, I don't want it.</p> <p>15 BOARD MEMBER BOYAN: Well, because maybe</p> <p>16 partially because they were asked for 140.</p> <p>17 BOARD MEMBER NEWLIN: Maybe.</p> <p>18 BOARD MEMBER BOYAN: And the Applicant has</p> <p>19 made it clear tonight that they're not willing to ask</p> <p>20 the school again for 80, which surprises me but</p> <p>21 nonetheless that's their position and they have a right</p> <p>22 to it.</p> <p>23 CHAIRMAN FLANAGAN: My recollection is from</p> <p>24 the testimony we have and the emails we have there</p> <p>25 wasn't a whole lot heck of a conservation.</p>

<p style="text-align: right;">Page 69</p> <p>1 BOARD MEMBER BOYAN: Correct. A couple of</p> <p>2 one line e-mails.</p> <p>3 CHAIRMAN FLANAGAN: So for all the</p> <p>4 discussion about -- and hey, listen, I have kids in</p> <p>5 that school. I get it. It's important. The School</p> <p>6 Board doesn't seem concerned about it because they must</p> <p>7 have different plans or whatever it is. I can't force</p> <p>8 them to --</p> <p>9 BOARD MEMBER BOYAN: Three years later the</p> <p>10 composition of the School Board has changed</p> <p>11 substantially, though, right?</p> <p>12 CHAIRMAN FLANAGAN: Has it?</p> <p>13 BOARD MEMBER BOYAN: Sure. John.</p> <p>14 CHAIRMAN FLANAGAN: John Flynn? He's been</p> <p>15 on there forever.</p> <p>16 BOARD MEMBER BOYAN: He's not on there.</p> <p>17 CHAIRMAN FLANAGAN: Oh, so there's a</p> <p>18 change. I don't know.</p> <p>19 BOARD MEMBER BOYAN: Circling back to the</p> <p>20 Route 78 comment. I just want to highlight, I think I</p> <p>21 know the tower you're talking about. The tower on</p> <p>22 Route 78 approximately mile marker 19 in my opinion is</p> <p>23 the best looking tree tower that I've seen in the</p> <p>24 state.</p> <p>25 MR. SCHNEIDER: I think that's the one up</p>	<p style="text-align: right;">Page 70</p> <p>1 close to Clinton Township?</p> <p>2 BOARD MEMBER BOYAN: Yes. I work in</p> <p>3 Clinton. I pass it every day.</p> <p>4 MR. SCHNEIDER: It's near a Cracker Barrel</p> <p>5 or some restaurant?</p> <p>6 BOARD MEMBER BOYAN: I'm not familiar with</p> <p>7 the Cracker Barrel.</p> <p>8 MR. SCHNEIDER: That's how it was referred</p> <p>9 to me.</p> <p>10 BOARD MEMBER BOYAN: It's on Petticoat</p> <p>11 Lane.</p> <p>12 MR. SCHNEIDER: I know where it is. It's</p> <p>13 on the eastbound side.</p> <p>14 BOARD MEMBER BOYAN: Exactly. The south</p> <p>15 side.</p> <p>16 MR. SCHNEIDER: I will get you a photo of</p> <p>17 that. I'm familiar with it.</p> <p>18 BOARD MEMBER BOYAN: And I guess my final</p> <p>19 question piggybacking on Dan's comments, I'm</p> <p>20 envisioning and I'm wondering feasibility, could you</p> <p>21 put all these cabinets in a lock underground? Like I'm</p> <p>22 thinking like a doomsday prepper. Can you pour</p> <p>23 concrete, put them underground and not see any of it?</p> <p>24 MR. SCHNEIDER: It was done once in Madison</p> <p>25 and it turned out to be the biggest problem the</p>
<p style="text-align: right;">Page 71</p> <p>1 industry had in years.</p> <p>2 BOARD MEMBER BOYAN: How so? Water?</p> <p>3 BOARD MEMBER NEWLIN: Water.</p> <p>4 MR. SCHNEIDER: Water. They did it once in</p> <p>5 the Borough of Madison and they would cut my head off</p> <p>6 if I would suggest it. It would be the last job I ever</p> <p>7 would do for Verizon.</p> <p>8 BOARD MEMBER NEWLIN: Put in sump pumps.</p> <p>9 MR. SCHNEIDER: I'm sorry?</p> <p>10 BOARD MEMBER BOYAN: You should see my</p> <p>11 basement after a storm. There are sump pumps that do</p> <p>12 the trick. I'm done, Mr. Chairman. Thank you.</p> <p>13 CHAIRMAN FLANAGAN: Who else? All right.</p> <p>14 So you'd like a straw poll, I guess, right? What would</p> <p>15 you like the question to be?</p> <p>16 MR. SCHNEIDER: I would like the question</p> <p>17 to be as follows.</p> <p>18 CHAIRMAN FLANAGAN: Well, let me ask this,</p> <p>19 as I see a hand. What's next?</p> <p>20 MR. MLENAK: I was going to suggest. Let</p> <p>21 Rich say what he wants to suggest for the Board to</p> <p>22 consider. But I think it's only fair given the amount</p> <p>23 of discussion tonight and the changes that have been</p> <p>24 since the last time both attorneys have given closing</p> <p>25 that I think it's only fair that Mr. Simon gets to say</p>	<p style="text-align: right;">Page 72</p> <p>1 his peace.</p> <p>2 CHAIRMAN FLANAGAN: Mr. Simon, would you</p> <p>3 likes to say your peace?</p> <p>4 BOARD MEMBER NEWLIN: Well --</p> <p>5 MR. SIMON: I'd like to say more than that.</p> <p>6 MR. MLENAK: Let Rich finish so then Rob</p> <p>7 can respond.</p> <p>8 CHAIRMAN FLANAGAN: Is that -- okay. What</p> <p>9 about the gallery, Steve? So here's the question,</p> <p>10 right. And I'm going to ask the lawyers. When we have</p> <p>11 testimony then anybody in the gallery, Mr. Simon, can</p> <p>12 ask questions of the person who gave the testimony. I</p> <p>13 believe the way this works is if it's an attorney it's</p> <p>14 not really testimony because it's not.</p> <p>15 MR. MLENAK: So what we're --</p> <p>16 CHAIRMAN FLANAGAN: Use your microphone.</p> <p>17 MR. MLENAK: Oh, of course. So what I'm</p> <p>18 proposing is that Rob can respond right now, but</p> <p>19 because if the Board gives a response to the unofficial</p> <p>20 straw poll to the Applicant in a manner that he's</p> <p>21 amenable to coming back with more testimony next month</p> <p>22 there's certainly no need to open it up to anybody else</p> <p>23 at this point because there's going to be new</p> <p>24 testimony, there's going to be cross-examination,</p> <p>25 there's going to be questions, and then the public</p>

<p style="text-align: right;">Page 73</p> <p>1 would have an opportunity to comment only on the new 2 material.</p> <p>3 CHAIRMAN FLANAGAN: So let me say that 4 again, just more simply. We're not voting to approve 5 anything tonight, right, Mr. Schneider?</p> <p>6 MR. SCHNEIDER: Agreed.</p> <p>7 CHAIRMAN FLANAGAN: All Mr. Schneider is 8 asking us to do is to say, you know what, I don't know 9 exactly how he wants to phrase it, but hey could 10 80 feet work? And if the answer to that is yes Mr. 11 Schneider's going to go away and do all those things we 12 just talked about, site plans and drawings and 13 whatever. And at that point that would be in March, 14 that would be new testimony from whomever. And at that 15 point whenever there's new testimony the gallery can 16 ask questions, the public can ask questions. So does 17 that make sense?</p> <p>18 Fear not, we're not voting to approve 19 anything tonight. All we're doing is --</p> <p>20 MR. MLENAK: Well, we don't know that. And 21 again the straw poll we want to call it, the Board is 22 deliberating and giving opinions. It's not an advisory 23 opinion. You're giving your opinions right now and the 24 Applicant can interpret those any way he wishes and 25 determine whether to come back or not or ask for a</p>	<p style="text-align: right;">Page 74</p> <p>1 vote.</p> <p>2 CHAIRMAN FLANAGAN: Does that make sense? 3 Does that make sense to everybody in the gallery, the 4 public? You will have another chance to ask questions. 5 We will not make a decision without people having an 6 opportunity to ask a question. Fair enough? Okay. 7 What would you like us to consider?</p> <p>8 MR. SCHNEIDER: I would like to solicit the 9 Board's opinion that subject to all of the direction 10 that it has given to the Applicant this evening 11 relative to the site plan considerations and the 12 design, that the Board believes that the pursuit of 13 those -- that the Board believes that the Applicant's 14 response to those suggestions are worth pursuing in 15 recognition of the offer of 80 feet as a condition of 16 approval. I'm not asking the Board to commit to 17 approval, I'm asking the Board to give the Applicant 18 a -- a reasonable comfort level that those matters are 19 worth pursuing in an effort to gain approval. And it 20 is satisfactorily resolved that the Board would 21 reasonably consider that.</p> <p>22 MR. MLENAK: I think Mr. Simon would like 23 to say something at this point.</p> <p>24 MR. SIMON: I think requesting a second 25 straw poll is enormously unfair and violative of the</p>
<p style="text-align: right;">Page 75</p> <p>1 Municipal Land Use Law. This case was over. There 2 were summations. Deliberation. Straw poll was taken 3 in terms of the Board's feelings on the application 4 that was submitted that we went through 22 hearings on, 5 and now on the 23rd hearing, oh wait.</p> <p>6 I took copious notes as to the Board's 7 feelings about the application that was submitted 22 8 hearings ago. And its feelings based on all the 9 testimony, all of the evidence, all of the comments 10 from all of the members of the public, whether it's 11 visual impact, whether it's Historic District, whether 12 it's other concerns. And the Board deliberated 13 appropriately and gave its opinion. The Applicant 14 comes back and says, oh, I took some notes and now I'm 15 going to address or try to address all of those 16 concerns so I can get some votes.</p> <p>17 So I'm going to as if it's the only issue 18 in this case, which respectfully is offensive, is I'm 19 just going to just take what was 140. We provided 20 sworn testimony that we needed 140 -- no wait, we 21 provided sworn testimony that we needed 130 -- no wait, 22 120. Now we're down to all of a sudden Vwa-La. Eighty 23 feet now works. Surprise, surprise, after 22 hearings 24 we have to wait to find out that that is acceptable as 25 a height. The issue, though, is that it is not just a</p>	<p style="text-align: right;">Page 76</p> <p>1 height issue. And the way that Mr. Schneider, with all 2 due respect presented this, and I give him credit for 3 being crafty, he positioned it like it was clear to me 4 that what the concern was was the height.</p> <p>5 I took copious notes, too. There were a 6 lot of concerns eloquently, comprehensively addressed 7 by the various Board members with regard to this 8 application that went well beyond what was the proposed 9 height. And I also respectfully submit that a decision 10 should not be based on a threat of litigation at any 11 height, whether it's the Applicant who's threatening 12 litigation, whether it's a member of the public who is 13 threatening litigation. The Board needs to determine 14 the application based on the evidence that has been 15 submitted.</p> <p>16 And we submit that certainly, for example, 17 if you are changing and presenting new evidence now as 18 to heights, visual impacts, setbacks based on do we 19 have to take another site visit? Is there new 20 testimony that's now going to be presented? Am I or 21 members of the public now obligated to make our own 22 record to come back before this Board with expert 23 witnesses and testimony as to this new 80-foot tower 24 that is being proposed at an unknown setback at an 25 unknown equipment compound size, but the one thing --</p>

<p style="text-align: right;">Page 77</p> <p>1 and there's questions also actually under the Municipal  2 Land Use Law, under Section 46 of the Municipal Land  3 Use Law that if a change to a plan represents a  4 substantial amendment in the layout or improvements  5 proposed by a developer that has been subject of a  6 hearing an amended application shall be submitted and  7 processed.</p> <p>8 So is it substantial? Do we have to start  9 with this amended application? And in essence start  10 again after 23 hearings with new testimony in evidence  11 as to the impact of this 80-foot tower given the tree  12 line, given the vegetation and trees that are going to  13 be removed, given the impact on the Historic District.  14 Given the fact, and you heard my closing statement at  15 length, the fact that not only is this a prohibited  16 use, not only are there multiple principal uses on a  17 lot that are not permitted, not only does it violate  18 many provisions of the conditional use standard for  19 towers that are only permitted in two separate zones  20 near Route 202, including the fact that you need to be  21 a thousand feet away from a Historic District versus  22 the fact that we're right smack in the middle of a  23 Historic District. And we heard testimony in evidence  24 and I summed it up in terms of the impacts, you heard  25 it from the members of the public as well, to the</p>	<p style="text-align: right;">Page 78</p> <p>1 Historic District. And the fact that what's the  2 difference if this is 58 feet away from neighboring  3 properties, or as admitted to Mr. Schneider's credit 68  4 feet away from neighboring properties.</p> <p>5 What did Mr. Masters say? Did he ever see  6 a monopole in Historic District? No. Did he ever see  7 a monopole within a hundred feet of residential  8 properties that were one acre or greater? No. Did he  9 ever see a cell tower in a redevelopment zone? No.  10 Did he ever see a cell tower on the same property as  11 one that is on the National and State Register of  12 Historic Places? No.</p> <p>13 So I respectfully asked you to take into  14 consideration the fact that we have been down this road  15 for a long time and Verizon was the one who went to the  16 Township. It wasn't the other way around. So they're  17 claiming, with all due respect, that oh, we're  18 precluding from changing this ridiculous -- my word --  19 setback to residential properties because the town  20 hasn't returned our phone calls or the town won't let  21 us, or oh if we do that Simon's going to start an  22 action claiming that the public bidding process was  23 wrong. We didn't make that decision. That was the  24 Applicant's decision to make.</p> <p>25 Did the Applicant to Mr. Boyan's point,</p>
<p style="text-align: right;">Page 79</p> <p>1 there's a whole issue about was there a proper  2 investigation of alternate sites and alternate  3 technologies given a proposed 80-foot tower? And as  4 Mr. Mlenak has advised you, and will continue to advise  5 you, under the Sica balancing test what you look at is  6 the public interest at stake, versus the detrimental  7 impacts, and then you balance and you determine on  8 balance whether there's a substantial detriment.  9 Right? We've heard that. We read that in Steve's  10 memo. Well, guess what? What happens when this tower  11 that was 140-feet tall and was providing all this  12 coverage. And Ms. Boschulte testified that, oh, we  13 can't do it at 80 feet. 80 feet doesn't make any  14 sense. It's in the transcript. And now we say, okay,  15 well, it's going to have less coverage. Well, how do  16 you compare that less coverage in the balancing test  17 against the detrimental impacts to residential  18 properties to the Historic District? I'm not going to  19 bore you with the many, many, many, many instances in  20 the zoning ordinance, in the wireless  21 telecommunications ordinance, in the redevelopment  22 plan, in the Master Plan that talks about the need to  23 protect the Historic District and residential  24 properties. Information, and I know Mr. Schneider and  25 I have this disagreement, that incredibly Mr. Masters</p>	<p style="text-align: right;">Page 80</p> <p>1 or maybe transparently barely addressed, despite  2 growing up here in Harding Township.</p> <p>3 We didn't pick this property not only that  4 is subject to a bidding process as being a public  5 property, but one that has all these different uses.  6 We didn't do that. With regard to this issue about,  7 oh, well, we can go to the governing body and they can  8 agree or not agree to limit the height of the tower. I  9 have been involved in litigation over the issue of  10 either a carrier saying, well, we're not bound by that.  11 I'm looking at state law. I'm looking at Section 46.2.  12 I'm looking at Federal law in terms of what I can do,  13 and that's what I'm doing.</p> <p>14 I've also been involved in cases where the  15 governing body who made a promise, and in fact imposed  16 the deed restriction as to a various issue, seven years  17 later just like we talked about with the Board of  18 Education, there are new sheriffs in town. And now all  19 of a sudden that new governing body says, well, look,  20 they said what they're going to say. How can they bind  21 us seven years later? What, are they binding us till  22 the end of time just because they were of a certain  23 political persuasion or had a certain opinion as to a  24 particular issue? We're not going to do that. We're  25 going to undo that because we don't want a second cell</p>

<p style="text-align: right;">Page 81</p> <p>1 tower 200 yards away and let them sue us. Let the  2 neighbors or whomever sue us.</p> <p>3 So this is not simply, oh, we're going to  4 go to the governing body with a condition that they  5 need to agree X, Y or Z. It is not as simple as that.  6 Whether you want to talk about the public bidding  7 process or whether you want to talk about the law, just  8 generally. So, you know, again, there are a lot of  9 complications associated with, in essence, opening this  10 case back up again after you've heard from all the  11 evidence and you've heard the testimony, based on the  12 application that was submitted. Hey, we didn't have  13 this discussion in the third hearing or the first  14 hearing or the fourth hearing. You know, come on guys,  15 it's 140. Can't you reduce it to 80 and we can  16 eliminate some of these equipment cabinets, et cetera,  17 et cetera, right? It's not until the 22nd hearing or  18 the 23rd hearing, I'm sorry, Rich, that all of a sudden  19 it's, oh, well, we're going to go in a different  20 direction now. Why are they going in a different  21 direction? Because they were going to lose the vote.  22 And we submit that making this type of change that's  23 going to open the case up to additional proofs that are  24 going to be required, evidence that's going to be  25 required we believe, because a record needs to be made</p>	<p style="text-align: right;">Page 82</p> <p>1 one way or another. And certainly a threshold issue  2 here -- again, I took really pretty good notes on your  3 excellent intelligent comments the last time we were  4 together as to your concerns, and it wasn't just, hey,  5 if they lower this to 80 feet, you know, I'm good. Did  6 we say the word -- we, we, did we say the word  7 "historic" once in two hours? The answer is no. As if  8 we're ignoring, we, are ignoring the evidence and  9 testimony and commentary regarding the impacts to the  10 Historic District. Have we heard once about the impact  11 of taking a tower and lowering it to 80 feet and how  12 that works with alternate technology including outdoor  13 DAS, Distributed Antenna Systems, along roadways in  14 light of models that are conceptual, potential models,  15 how that works, how this is all interplayed with the  16 telecommunications ordinance in the Township, as well  17 as the small cell public right-of-way ordinance that we  18 talked about last time, or at least I talked about last  19 time, where the height is 35 feet, right, and placing  20 them along the right-of-way. And what's the delta,  21 what's the difference in the coverage? And how that  22 plays into a balancing with the consideration of the  23 impact to the neighbors and the impact to the Historic  24 District. Whether this is a hundred feet, or 80 feet,  25 it's big. It is wide as a flagless flagpole, as a</p>
<p style="text-align: right;">Page 83</p> <p>1 alleged stealth tree.</p> <p>2 So, you know, with all due respect to the  3 Applicant, you know, again, I think that going to  4 another straw poll and reopening the case and  5 continuing on and then we have to present evidence as  6 to the impact of this 80-foot tower on everything I  7 discussed, including of course the Historic District,  8 right, do we need to spend money, our own money to get  9 a crane operator out there at 80 feet and fly the  10 yellow balloon and do a walk about? Do we need to do  11 that? And I'm not saying that sarcastically. I'm  12 making a point that it is not as simple as, okay, we're  13 going to go from 140, 130, 120, 100, 80, 80, that's it.  14 That's the number. That's the one I want. And then,  15 oh, yeah, we didn't get a phone call back from the  16 township attorney, but we'll try that again and see if  17 we can move it 10 more feet, as if it's going to make a  18 difference, frankly, right, within the compound.</p> <p>19 So again, and I apologize if I seem a  20 little animated. And you know, it's just unbelievable  21 to me, and I put like three exclamation points on my  22 notes here, that three years later Verizon suddenly has  23 an epiphany, yes, we will go back to the Township  24 Committee and we'll ask them about the setback and see  25 if we can move the setback a little bit. Three years</p>	<p style="text-align: right;">Page 84</p> <p>1 later after they heard the Board's comments and know  2 which way this case was going to go.</p> <p>3 So again, I have many more things that I  4 could say about this, and I apologize again for being a  5 little animated, but it is unbelievable and admittedly  6 upsetting that this dialogue over the last two hours,  7 at least from my perspective, with all due respect to  8 the Board, has turned into can we just lower it to  9 80 feet and do a couple of things here and there and  10 not take site of all -- 22 hearings guys, 22 hearings,  11 of a lot of information that was submitted to this  12 Board.</p> <p>13 And I'm sure that there are other members  14 of the public that may want to speak on this issue.  15 I'm not sure, maybe not. But I believe that I've said  16 my peace for the record with regard to -- with regard  17 to this particular issue about taking a straw poll and  18 potentially boxing in the Board where we're going to  19 have just an amended application and it's going to go  20 on so that a record can appropriately be made by any  21 interested party.</p> <p>22 I thought we were there. I thought we were  23 at the end. That all the testimony was done.  24 Applicant rested, public rested, and now it seems like  25 we're entering a new phase of this that I respectfully</p>

<p style="text-align: right;">Page 85</p> <p>1 believe is possibly inappropriate given where we are  2 procedurally with regard to the case. Thank you.  3 (Applause from the public.)  4 CHAIRMAN FLANAGAN: All right. How about  5 we take a five-minute break. We'll come back and when  6 we come back remind me I think I have to ask the Board  7 if they have any questions for Mr. Simon. We'll take a  8 five-minute break.  9 (Whereupon, a brief recess is taken at  10 9:05 p.m.)  11 (Back on the record at 9:10 p.m.)  12 CHAIRMAN FLANAGAN: Okay. Lori can you put  13 us back on?  14 SECRETARY TAGLAIRINO: We're back on. Can  15 everyone please have a seat? We're back on. We're  16 recording.  17 CHAIRMAN FLANAGAN: Can we dot roll call?  18 SECRETARY TAGLAIRINO: Yes. Mr. Boyan?  19 BOARD MEMBER BOYAN: Here.  20 SECRETARY TAGLAIRINO: Mr. Addonizio?  21 BOARD MEMBER ADDONIZIO: Here.  22 SECRETARY TAGLAIRINO: Ms. Sovolos is  23 excused. Mr. Maselli?  24 BOARD MEMBER MASELLI: Here.  25 SECRETARY TAGLAIRINO: Mr. Cammarata?</p>	<p style="text-align: right;">Page 86</p> <p>1 BOARD MEMBER CAMMARATA: Here.  2 SECRETARY TAGLAIRINO: Mr. Rosenbaum?  3 BOARD MEMBER ROSENBAUM: Here.  4 SECRETARY TAGLAIRINO: Mr. Symonds?  5 BOARD MEMBER SYMONDS: Here.  6 SECRETARY TAGLAIRINO: Mr. Newlin?  7 BOARD MEMBER NEWLIN: Here.  8 SECRETARY TAGLAIRINO: Mr. Flanagan?  9 CHAIRMAN FLANAGAN: Here.  10 SECRETARY TAGLAIRINO: And Mr. Fox and Ms.  11 Mertz are still here, and Mr. Mlenak.  12 CHAIRMAN FLANAGAN: We're waiting for Mr.  13 Schneider. Is Mr. Schneider in the hallway?  14 We're back on the record. Everyone's back  15 in the room. So Mr. Simon, thank you. My first  16 question is Steve, is there anything procedurally  17 inappropriate about us taking a straw poll tonight?  18 MR. MLENAK: In my opinion it's not. The  19 fact that the Board is doing what its designed to do.  20 You're evaluating a case under a standard where one of  21 the prongs specifically requires the Board to evaluate  22 what conditions can be proposed to mitigate certain  23 detrimental effects. That process is often undertaken  24 in consultation with the Applicant as to what they  25 would consent to, and that's been the basis of the</p>
<p style="text-align: right;">Page 87</p> <p>1 discussion tonight. I don't see anything  2 inappropriate. In fact, I think a Court would find  3 that forcing you to vote on something without  4 evaluating those options would be potentially  5 inefficiency of this Board's time, the municipality's  6 time and ultimately the Court's time. So I think it is  7 appropriate.  8 I will comment on one thing that Mr. Simon  9 noted that I do agree with, although it didn't come up  10 in any deliberations by the Board members so I didn't  11 address it, but I will address it now that it has been  12 brought up twice. This Board knows not to, and I will  13 make sure that I will say now so you do if you didn't,  14 that you should not consider at all any threat of  15 litigation as a basis for considering this application.  16 Everybody here knows because you're involved in I  17 believe more than one currently suit. Any Applicant or  18 any Objector for that matter has the right to bring  19 suit to a higher tribunal to adjudicate what they  20 thought was a wrong decision by this Board. And any  21 cost associated with that should not be considered by  22 the Board. You have my memo which sets forth what you  23 should consider.  24 CHAIRMAN FLANAGAN: Anybody on the Board  25 have any questions for Mr. Simon? (No response.) All</p>	<p style="text-align: right;">Page 88</p> <p>1 right. Thank you, Mr. Simon.  2 So we're back to I think what you had asked  3 right before Mr. Simon. As I recall, to put it in a  4 nutshell, you would like a straw poll on whether or not  5 this is worth pursuing at 80 feet given all of the  6 mitigating or all the discussions we had tonight. Is  7 that the question?  8 MR. SCHNEIDER: Correct.  9 CHAIRMAN FLANAGAN: I'll tell you what, in  10 no particular order I'm happy to go first. I think it  11 is worth discussing at 80 feet. I think in my mind  12 this has always been, I think I put on the record the  13 last time, the concern is about the visual impact being  14 in a Historic District. The visual impact is caused by  15 the height of the tower. By reducing the height of the  16 tower you're reducing the negative visual impact. To  17 answer the question, yes, I do think it's worth  18 discussing further. Does anybody else want to go next?  19 BOARD MEMBER ROSENBAUM: You said last time  20 you were going from the left.  21 CHAIRMAN FLANAGAN: Oh, I lied. Tom,  22 you're up.  23 BOARD MEMBER ADDONIZIO: I'm -- so I've  24 heard both sides. I'm still -- what I said last time  25 in December. My feeling is that this town works very</p>

<p style="text-align: right;">Page 89</p> <p>1 hard to keep it the way it is. I understand that there</p> <p>2 is -- there's some benefit to those, to cell phone use</p> <p>3 and cell phone tower, but at the same time there's a</p> <p>4 lot of language in these books that we get that we're</p> <p>5 supposed to follow that says that this place, this</p> <p>6 location is not the right place for it. So with that</p> <p>7 said, I'm not for it.</p> <p>8 CHAIRMAN FLANAGAN: Okay. Fair enough.</p> <p>9 Alf, do you want to go next?</p> <p>10 BOARD MEMBER NEWLIN: So Mike, I mostly, I</p> <p>11 do agree with your summary. I do think that there's</p> <p>12 been proven a need, a gap in coverage. As you said</p> <p>13 before I'm going to add that. I do think the height is</p> <p>14 the impact. So if that height can be reduced is a good</p> <p>15 thing.</p> <p>16 I am also very concerned about the setback</p> <p>17 and depending on what Mr. Schneider comes back with</p> <p>18 that's going to be an important consideration for me.</p> <p>19 Lastly, I will complain that I just don't</p> <p>20 understand why the Town didn't try hard to locate the</p> <p>21 tower in the center of the property. It's a mystery to</p> <p>22 me. And I'm disappointed that we don't get any</p> <p>23 information on that aspect, because that would</p> <p>24 potentially give you a hundred feet at least in terms</p> <p>25 of setbacks.</p>	<p style="text-align: right;">Page 90</p> <p>1 The other site, I mean, I think you've</p> <p>2 proven that you reached out to the school, barely, but</p> <p>3 it's very minimal. And I guess barely. That's it,</p> <p>4 Mike.</p> <p>5 CHAIRMAN FLANAGAN: All right. Aric?</p> <p>6 BOARD MEMBER ROSENBAUM: I'm not going to</p> <p>7 reiterate everything I said last time, but this is a</p> <p>8 reminder my biggest deterrent was the visual impact.</p> <p>9 Obviously, lowering it from 130 feet to 80 feet goes a</p> <p>10 long way towards minimizing that visual impact. So I</p> <p>11 would definitely like to see the Applicant take into</p> <p>12 account all of the conversations we had today and all</p> <p>13 the points that he said he would take back to his</p> <p>14 clients. So that's my comment.</p> <p>15 CHAIRMAN FLANAGAN: Do you understand what</p> <p>16 that answer is from Aric?</p> <p>17 MR. SCHNEIDER: Until the last sentence.</p> <p>18 CHAIRMAN FLANAGAN: Is it worth proceeding</p> <p>19 at 80 feet?</p> <p>20 BOARD MEMBER ROSENBAUM: Yes. I think it's</p> <p>21 worth proceeding.</p> <p>22 BOARD MEMBER MASELLI: Personally, I'm on</p> <p>23 the fence. To me it's not just the height because</p> <p>24 there was a number of items that I didn't feel</p> <p>25 comfortable with. Historic is definitely on the top of</p>
<p style="text-align: right;">Page 91</p> <p>1 my list, even though it wasn't talked about this</p> <p>2 evening. But equally important is this setback issue</p> <p>3 and how it's being mitigated. Might not be enough but</p> <p>4 I'm willing to look at what is being proposed, but it</p> <p>5 would have to be a pretty significant swing from the</p> <p>6 current the application that's before us right now for</p> <p>7 me.</p> <p>8 And I would like to see some input from</p> <p>9 maybe a little bit more of an aggressive approach to</p> <p>10 the Town and getting an answer about whether it could</p> <p>11 go somewhere else on that property. Because I think</p> <p>12 that if the height is mitigated and the setback issue</p> <p>13 is mitigated then maybe we have something. So that's</p> <p>14 my opinion on that.</p> <p>15 CHAIRMAN FLANAGAN: Okay. Hugh?</p> <p>16 BOARD MEMBER SYMONDS: As much as I would</p> <p>17 love to see the setback issues resolved as well as the</p> <p>18 height issue, my concern has always been the height.</p> <p>19 Early on several months ago when I realized you could</p> <p>20 get pretty much the same coverage at 80 feet as was</p> <p>21 provided at 120 or 140 it seemed clear to me that if</p> <p>22 they went down to a hundred, you know, if they went</p> <p>23 down to 80 feet I would not really be in a position to</p> <p>24 object.</p> <p>25 CHAIRMAN FLANAGAN: Okay. Mr. Cammarata?</p>	<p style="text-align: right;">Page 92</p> <p>1 BOARD MEMBER CAMMARATA: I was on the</p> <p>2 fence, too, like Dan, but my biggest issue was the</p> <p>3 visual impact. I do think there's a significant</p> <p>4 reduction but I'm all for moving forward with it with a</p> <p>5 caveat that I'd like to see what George relayed to to</p> <p>6 superimpose the cell tower.</p> <p>7 I am also concerned about the school,</p> <p>8 though. I'm unclear why this ODAS system couldn't</p> <p>9 still bring that cellular signal in there. It's just a</p> <p>10 20-foot drop of cell tower. It's just unclear as to</p> <p>11 how that can be.</p> <p>12 CHAIRMAN FLANAGAN: But 80 feet is not dead</p> <p>13 on arrival for you?</p> <p>14 BOARD MEMBER CAMMARATA: No.</p> <p>15 CHAIRMAN FLANAGAN: George?</p> <p>16 BOARD MEMBER BOYAN: So I think I made my</p> <p>17 position clear earlier, but I'll take the opportunity</p> <p>18 to recapitulate. I don't think we have the information</p> <p>19 on the record today in order to be able to complete the</p> <p>20 balancing test required in the negative criteria</p> <p>21 without more information on the actual visual impact at</p> <p>22 80 feet. I would be welcome to receive that testimony</p> <p>23 and to look at it and make a determination at that</p> <p>24 point, so in that respect I'm wide open to proceeding,</p> <p>25 but with the information that I have today I don't have</p>

<p style="text-align: right;">Page 93</p> <p>1 enough information to make that determination.</p> <p>2 CHAIRMAN FLANAGAN: But it's not dead on</p> <p>3 arrival?</p> <p>4 BOARD MEMBER BOYAN: It's not dead on</p> <p>5 arrival, no. That being said, I want to highlight</p> <p>6 again I am disturbed by the Applicant's unwillingness</p> <p>7 to reapproach the school at 80 feet. And I'm not sure</p> <p>8 that I could in good conscience check the box that says</p> <p>9 that we have looked at alternative sites without making</p> <p>10 that overture at this new height. So not dead on</p> <p>11 arrival, but I'm just not sure.</p> <p>12 CHAIRMAN FLANAGAN: Okay. All right. Mr.</p> <p>13 Schneider? That's -- I don't know how to categorize a</p> <p>14 couple of those. It sounds like -- well, you heard</p> <p>15 what everybody said. What would you like to do?</p> <p>16 MR. SCHNEIDER: I'll review the matter with</p> <p>17 my client. Take it under advisement, and advise the</p> <p>18 Board of -- I'd like to carry it to the March meeting</p> <p>19 to review with my client your comments and make a</p> <p>20 determination as to how to address your comments.</p> <p>21 CHAIRMAN FLANAGAN: Okay. Fine. So this</p> <p>22 is carried. This is carried -- hold on. Go ahead.</p> <p>23 MR. MLENAK: I just want to, before you</p> <p>24 carry it. If you decide, if your client decides to</p> <p>25 bring new exhibits or revised plans, do you agree to</p>	<p style="text-align: right;">Page 94</p> <p>1 present them and provide them ten days before the next</p> <p>2 hearing?</p> <p>3 MR. SCHNEIDER: Yes.</p> <p>4 CHAIRMAN FLANAGAN: Is that it?</p> <p>5 SECRETARY TAGLAIRINO: The meeting is</p> <p>6 March 17th.</p> <p>7 MR. SCHNEIDER: I'll wear a green tie.</p> <p>8 CHAIRMAN FLANAGAN: Happy St. Patrick's</p> <p>9 Day. So it's carried. No further notice is required.</p> <p>10 We'll see you on the 17th.</p> <p>11 MR. SIMON: I have a hearing that night. I</p> <p>12 assumed -- I think -- I thought accurately that this</p> <p>13 matter was going to end tonight, and I have been</p> <p>14 putting off many different applications on the third</p> <p>15 Thursday, okay. Right now I have a hearing on</p> <p>16 March 17th that I cannot -- I will not get coverage</p> <p>17 for. It's a big case. Not to mention the fact that if</p> <p>18 new evidence and information is going to be presented,</p> <p>19 what are those witnesses? And do I have to bring</p> <p>20 witnesses that night? And, you know, I mean -- I've</p> <p>21 said my peace on that. I'm just saying that it raises</p> <p>22 a lot of issues. That's all.</p> <p>23 CHAIRMAN FLANAGAN: I don't know. I don't</p> <p>24 think it's fair at this point to schedule it on a date</p> <p>25 that Mr. Simon can't be here, to be honest with you,</p>
<p style="text-align: right;">Page 95</p> <p>1 after however many meetings. And I also understand</p> <p>2 that your client probably wants to get something done</p> <p>3 and doesn't want to wait too much longer. And I think</p> <p>4 you also understand that we have all booked the third</p> <p>5 Thursday to be the date and we have all booked our</p> <p>6 travel plans around that. Is there a time that works</p> <p>7 for you? Is it a timing issue?</p> <p>8 MR. SIMON: No. This is a live meeting</p> <p>9 down in South Jersey. And frankly, if the Applicant</p> <p>10 had presented their case at 80 feet at the beginning we</p> <p>11 wouldn't probably have gone, you know, maybe --</p> <p>12 MR. SCHNEIDER: Rob, I don't think it's</p> <p>13 fair to relitigate the whole matter.</p> <p>14 MR. SIMON: I'm just talking about my</p> <p>15 schedule, Rich.</p> <p>16 MR. SCHNEIDER: Please let me speak. I</p> <p>17 didn't interrupt you when you gave your second</p> <p>18 summation tonight. So I think I should be afforded the</p> <p>19 courtesy to comment. I don't think it's fair to</p> <p>20 comment on what may have happened on third hearing or</p> <p>21 what we should have done. The issue before the</p> <p>22 Board is scheduling, okay, with all due respect. And</p> <p>23 frankly, for 23 public hearings I think I've made</p> <p>24 pretty fair compromises to accommodate a lot of your</p> <p>25 scheduling concerns, not my scheduling concerns. So</p>	<p style="text-align: right;">Page 96</p> <p>1 with all due respect, I think that's a cheap shot.</p> <p>2 That being said, Mr. Chairman, I'd like to</p> <p>3 proceed on March 17th, but can I finish without</p> <p>4 sarcastic comments, please? I don't think I've ever</p> <p>5 treated you disrespectfully and I don't think --</p> <p>6 MR. SIMON: Rich --</p> <p>7 MR. SCHNEIDER: I don't think I deserve to</p> <p>8 be laughed at.</p> <p>9 CHAIRMAN FLANAGAN: Both of you stop.</p> <p>10 Stop.</p> <p>11 MR. SCHNEIDER: So my suggestion is I'll</p> <p>12 throw open to accommodate Mr. Simon, March as five</p> <p>13 Thursdays. Can we accommodate a meeting on the fifth</p> <p>14 Thursday of the month?</p> <p>15 CHAIRMAN FLANAGAN: What does the Board</p> <p>16 think about this? I think I did promise people there</p> <p>17 would not be extraordinary meetings.</p> <p>18 BOARD MEMBER NEWLIN: Under the</p> <p>19 circumstances I'm open to it, Mike.</p> <p>20 BOARD MEMBER MASELLI: Well, we wouldn't do</p> <p>21 two meetings all in the same month, right?</p> <p>22 SECRETARY TAGLAIRINO: Well, we have a lot</p> <p>23 of residentials that have been waiting in the wings</p> <p>24 that are coming forward.</p> <p>25 CHAIRMAN FLANAGAN: Well, yeah.</p>

<p style="text-align: right;">Page 97</p> <p>1 BOARD MEMBER MASELLI: They're not here  2 tonight. They keep pushing their agenda, so they have  3 to wait, too.  4 CHAIRMAN FLANAGAN: So we push everybody to  5 the 31st? I'm with you. I don't want to have the  6 Board show up two nights in one month if we don't need  7 to.  8 Alf, what do you think, do you want to do  9 the 31st?  10 BOARD MEMBER NEWLIN: I support whatever  11 you want to do.  12 CHAIRMAN FLANAGAN: If we're moving the  13 week we're doing it for everybody.  14 MR. SCHNEIDER: I only suggested the fifth  15 Thursday because it's usually a month where the other  16 professionals don't have a conflict. I'm amenable to  17 another dates.  18 CHAIRMAN FLANAGAN: What do people think?  19 So we shift it a week? Which one? Do you want to go  20 to the 31st? I'll be honest with you, why not the  21 24th?  22 BOARD MEMBER ROSENBAUM: I can't do the  23 24th.  24 MR. MLENAK: I can't do the 24th.  25 CHAIRMAN FLANAGAN: What about the 10th?</p>	<p style="text-align: right;">Page 98</p> <p>1 BOARD MEMBER ROSENBAUM: No. I can't do  2 the 10th.  3 SECRETARY TAGLAIRINO: The room is not  4 available the 10th anyway.  5 CHAIRMAN FLANAGAN: The 31st. Does that  6 work with everybody's calendar? Mr. Simon?  7 MR. SIMON: I actually have a hearing, but  8 I'll accommodate this Board.  9 CHAIRMAN FLANAGAN: So we're going to carry  10 this to 7 p.m., March 31st. No further notice  11 required.  12 MR. SCHNEIDER: Thank you.  13 BOARD MEMBER BOYAN: Is this in lieu of the  14 17th, not in addition to the 17th?  15 CHAIRMAN FLANAGAN: This is in lieu of the  16 17th. Unless you guys want to do two meetings? I  17 realize it's a lot, right.  18 BOARD MEMBER ROSENBAUM: What does the deck  19 look like for --  20 CHAIRMAN FLANAGAN: Lori says it's busy.  21 There's a lots of residential.  22 SECRETARY TAGLAIRINO: We're going to have  23 Whitig and we're going to have Cortez and we're going  24 to have Cotter and there's another one in there that I  25 can't remember the name of that's going on. So -- and</p>
<p style="text-align: right;">Page 99</p> <p>1 I think we're going to -- so that's where we're going  2 to be.  3 BOARD MEMBER ROSENBAUM: My concern, Mike,  4 would be I don't want to time box this application, but  5 if we go the whole thing and it takes the whole time  6 then you have to punt the residents.  7 BOARD MEMBER ADDONIZIO: And I won't be  8 here April.  9 CHAIRMAN FLANAGAN: Well, do you guys want  10 to do two meetings?  11 BOARD MEMBER BOYAN: I'm not opposed to it.  12 BOARD MEMBER ROSENBAUM: I'm okay with it.  13 CHAIRMAN FLANAGAN: I'll do it. That's  14 four. Alf?  15 BOARD MEMBER NEWLIN: If you have to.  16 BOARD MEMBER SYMONDS: I think we have to  17 get the work done, so fine.  18 CHAIRMAN FLANAGAN: Okay. Fine. So  19 residential stuff happens on the 17th, or non-Verizon  20 stuff happens on the 17th. Verizon's happens on the  21 31st.  22 Before you go, Mr. O'Donnell, you were  23 raising your hand?  24 MR. O'DONNELL: Mr. Chairman, I thought  25 George brought up a great question. So the 80-foot at</p>	<p style="text-align: right;">Page 100</p> <p>1 the school why wouldn't you while Verizon is here  2 revisit the firehouse at 80 feet?  3 I'm a supporter of them and I know they  4 need the revenue so why not visit them also?  5 CHAIRMAN FLANAGAN: We hear you. Noted.  6 Thank you. Any other business?  7 BOARD MEMBER BOYAN: Procedurally, I want  8 to understand what we agreed to then. So we're going  9 to potentially receive new testimony at the 31st  10 meeting, which there will be cross-examination and  11 potentially public comment?  12 CHAIRMAN FLANAGAN: Yeah. I think if  13 there's testimony -- correct me if I'm wrong -- if  14 there's testimony Mr. Simon and any member of the  15 public has the right to ask questions.  16 BOARD MEMBER BOYAN: And then I imagine  17 there may be new testimony from the Objectors, right?  18 MR. MLENAK: They would have that right,  19 which is why I made sure before that anything new  20 that's coming in has to be available ten days before,  21 which is the exact same time frame under the MLUL and  22 which an Objector would have for the original  23 application.  24 BOARD MEMBER BOYAN: So potentially  25 reopening the whole thing, right?</p>

<p style="text-align: right;">Page 101</p> <p>1 MR. MLENAK: We'd be limited to the</p> <p>2 80 feet.</p> <p>3 BOARD MEMBER BOYAN: Yes. Conversation</p> <p>4 with respect to 80 feet. It would be a revised</p> <p>5 application.</p> <p>6 BOARD MEMBER NEWLIN: And updates to the</p> <p>7 site plan, right?</p> <p>8 MR. MLENAK: Yes. And in response to the</p> <p>9 Board's directions to the applicant tonight.</p> <p>10 BOARD MEMBER BOYAN: My only point is it's</p> <p>11 a substantial new undertaking.</p> <p>12 CHAIRMAN FLANAGAN: Could be.</p> <p>13 BOARD MEMBER NEWLIN: We'll see.</p> <p>14 CHAIRMAN FLANAGAN: Could be. All right.</p> <p>15 Is that it? Any other business tonight? (No</p> <p>16 response.) All right. We are adjourned.</p> <p>17 (Whereupon, the hearing on this application</p> <p>18 is adjourned at 9:30 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 102</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3</p> <p>4 I, IRIS LA ROSA, a Notary Public and</p> <p>5 Certified Shorthand Reporter of the State of New</p> <p>6 Jersey, do hereby certify that the foregoing is a true</p> <p>7 and accurate transcript of the testimony as taken</p> <p>8 stenographically by and before me at the time, place,</p> <p>9 and on the date hereinbefore set forth.</p> <p>10 I DO FURTHER CERTIFY that I am neither a</p> <p>11 relative nor employee nor attorney nor counsel of any</p> <p>12 of the parties to this action, and that I am neither a</p> <p>13 relative nor employee of such attorney or counsel, and</p> <p>14 That I am not financially interested in the action.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 IRIS LA ROSA, CSR, RPR</p> <p>20 Certificate No. 30XI 00162800</p> <p>21</p> <p>22</p> <p>23 Dated: _____</p> <p>24</p> <p>25</p>

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