

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
SPECIAL MEETING
MAY 10, 2022
7:00 PM**

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board Chair, Mr. Flanagan called the special 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.

REGULAR MEETING

ROLL

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

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

Board Engineer, Mr. Fox and Board Planner, Ms. Mertz and Ms. Taglairino were also present. Attorney, Mr. Mlenak was present for the Verizon application.

OLD BUSINESS

<u>Application BOA# 17-18</u>	New York SMSA Limited Partnership d/b/a Verizon Wireless 8 Millbrook Road, B17/L1, PL Zone Applicant requesting variance relief for use, per N.J.S.A. 40:55D-70(d) for a cell tower.
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Presenting:
Richard Schneider, Attorney
Dr. Bruce Eisenstein, RFP Specialist
William Masters, Planner
Peter Steck, Objector's Planner (Via Zoom)

Robert Simon, Objecting attorney for this application.

The applicant re-presented a proposal for a reduced tower of 80 -86 feet in height with a slight shift in location within the lease site.

Mr. Simon presented his questions for Mr. Masters.
Mr. Steck presented planner testimony and Exhibit O-9.

Mr. Schneider had no questions for Mr. Steck.

The Board had questions for Mr. Steck.

The following residents had questions for Mr. Steck:

Christel Engel, Millbrook Road.
Neil O' Donnell, Millbrook Road.
Jeff Spencer, White Deer Lane.

The following residents made public comments on this application:

Steve Schade, Mt. Kemble Ave.
Mike Koenke, Coppertree Lane (Objector)
Sarah Conine, Lees Hill Road (Objector).
Nora Carifa, Lees Hill Road
Harsh Bansal, Coppertree Lane (Objector).
Shauna Ratliff, Long Hill Road.
Neil O' Donnell, Millbrook Road.
Christel Engel, Millbrook Road.
James Carifa, Lees Hill Road (Objector).
Aja Blanco, Lees Hill Road
Jane Riley, Youngs Road
Meghan Lyon, Village Road

Mr. Simon gave his summation.
Mr. Schneider gave his summation.

A motion was made by Mr. Flanagan to approve the application with conditions. It was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Mr. Flanagan, Mr. Rosenbaum

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

A transcript of the testimony is appended to the minutes.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 11: 10

Lori Taglairino

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

<p style="text-align: center;">Page 1</p> <p style="text-align: center;">HARDING TOWNSHIP BOARD OF ADJUSTMENT</p> <p>IN THE MATTER OF: : TRANSCRIPT : CASE: BOA# 17-18 : OF New York SMSA Limited Partnership: D/b/a Verizon Wireless : SPECIAL MEETING Millbrook Road : Block 17; Lot 1; PL Zone : _____X</p> <p style="text-align: center;">Tuesday, May 10, 2022 Municipal Building 21 Blue Mill Road New Vernon, NJ 07976 Commencing at 7:00 p.m.</p> <p>BOARD MEMBERS PRESENT:</p> <p>MIKE FLANAGAN, Chairman ALF NEWLIN DAN MASELLI THOMAS ADDONIZIO ARIC ROSENBAUM GEORGE BOYAN HUGH SYMONDS ELIZABETH SOVOLOS</p> <p>ALSO PRESENT:</p> <p>LORI TAGLAIRINO, Board Administrator PAUL D. FOX, P.E., CME McKINLEY MERTZ, PP, AICP DR. BRUCE EISENSTEIN, Cellular Communications Consultant</p> <p style="text-align: center;">PRECISION REPORTING SERVICE Certified Shorthand Reporters (908) 642-4299</p>	<p style="text-align: center;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 GREENBAUM, ROWE, SMITH & DAVIS, LLP BY: STEVEN G. MLENAK, ESQUIRE Attorneys for the Board</p> <p>4</p> <p>5 VOGEL, CHAIT, COLLINS & SCHNEIDER, ESQUIRES BY: RICHARD SCHNEIDER, ESQUIRE Attorneys for the Applicant</p> <p>6</p> <p>7</p> <p>8 HEROLD LAW, PA BY: ROBERT F. SIMON, ESQUIRE Attorneys for the Objectors: SGSL, LLC; Harsh and Nina Bansal; Michael and Susan Koenke; David and Eunice Conine; Brian and Christina McKittrick; Livio Saganic and Christel Engel; James M. Carifa and Sarah G. Conine; Ted Cotton</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 Witness Page</p> <p>4 WILLIAM MASTERS..... 7</p> <p>5</p> <p>6 PETER STECK..... 15</p> <p>7</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 EXHIBIT DESCRIPTION PAGE</p> <p>12 O-9 Sheets P-1 through P-6 dated April 28th, 2022 16</p> <p>13</p> <p>14</p> <p>15</p> <p>16 PUBLIC MEMBER COMMENTS:</p> <p>17 Christel Engel.....page 64/95</p> <p>18 Neil O'Donnell.....page 68/90</p> <p>19 Jeff Spencer.....page 69</p> <p>20 Steve Schade.....page 78</p> <p>21 Michael Koenke.....page 80</p> <p>22 Sarah Conine.....page 83</p> <p>23 Nora Carifa.....page 85</p> <p>24 Harsh Bansal.....page 86</p> <p>25 Shauna Ratliff.....page 89</p> <p>James Carifa.....page 97</p> <p>Aja Blanco.....page 98</p> <p>Jane Riley.....page 100</p> <p>Meghan Lyon.....page 102</p>	<p style="text-align: center;">Page 4</p> <p>1 CHAIRMAN FLANAGAN: Welcome everyone.</p> <p>2 Tonight is May 10th. This is a Special Meeting of the</p> <p>3 Harding Township Board of Adjustment in accordance with</p> <p>4 the New Jersey Open Public Meetings Act in the Observer</p> <p>5 Tribune and other venues.</p> <p>6 Lori, will you call the roll?</p> <p>7 SECRETARY TAGLAIRINO: Ms. Sovolos?</p> <p>8 BOARD MEMBER SOVOLOS: Here.</p> <p>9 SECRETARY TAGLAIRINO: Mr. Maselli I</p> <p>10 believe will be here in a moment. Mr. Symonds?</p> <p>11 BOARD MEMBER SYMONDS: Here.</p> <p>12 SECRETARY TAGLAIRINO: Mr. Newlin?</p> <p>13 BOARD MEMBER NEWLIN: Here.</p> <p>14 SECRETARY TAGLAIRINO: Mr. Rosenbaum?</p> <p>15 BOARD MEMBER ROSENBAUM: Here.</p> <p>16 SECRETARY TAGLAIRINO: Mr. Addonizio?</p> <p>17 BOARD MEMBER ADDONIZIO: Here.</p> <p>18 SECRETARY TAGLAIRINO: Mr. Flanagan?</p> <p>19 CHAIRMAN FLANAGAN: I am here.</p> <p>20 SECRETARY TAGLAIRINO: Mr. Cammarata is</p> <p>21 excused for the evening. Mr. Boyan?</p> <p>22 BOARD MEMBER BOYAN: Here.</p> <p>23 CHAIRMAN FLANAGAN: All right. So one</p> <p>24 thing on the Agenda tonight. This is the 20th-some-odd</p> <p>25 meeting. How many, Mr. Schneider?</p>

<p style="text-align: right;">Page 5</p> <p>1 MR. SCHNEIDER: I've lost count, Mr.</p> <p>2 Chairman.</p> <p>3 CHAIRMAN FLANAGAN: All right. Well, we're</p> <p>4 three-some-odd years into this. The only application</p> <p>5 on the Agenda tonight is the Verizon application. And</p> <p>6 I believe, and Mr. Schneider since it's your</p> <p>7 application, where did we leave off? Wasn't Mr. Simon</p> <p>8 in the midst of cross-examining one of your witnesses?</p> <p>9 MR. SCHNEIDER: Yes. Good evening, Mr.</p> <p>10 Chairman. For the record, Richard Schneider of the law</p> <p>11 firm of Vogel, Chait, Collins and Schneider on behalf</p> <p>12 of the Applicant, Verizon Wireless.</p> <p>13 I'll answer your question in a second. Are</p> <p>14 we going to wait for Mr. Maselli?</p> <p>15 CHAIRMAN FLANAGAN: Yes. I was going to</p> <p>16 try to reach him right now. Would you like to just</p> <p>17 pause for a moment and we'll --</p> <p>18 SECRETARY TAGLAIRINO: Yes, he said pulling</p> <p>19 in the entrance.</p> <p>20 (Pause in the proceedings.)</p> <p>21 MR. MLENAK: He's walking in the door.</p> <p>22 CHAIRMAN FLANAGAN: All right. So for</p> <p>23 everyone who is here on time, we're all going to leave</p> <p>24 and make Mr. Maselli wait this amount of time after we</p> <p>25 play; sounds fair? (Laughter.)</p>	<p style="text-align: right;">Page 6</p> <p>1 (The Board and public stand for the Pledge</p> <p>2 of Allegiance.)</p> <p>3 SECRETARY TAGLAIRINO: For the record, Mr.</p> <p>4 Maselli is here at 7:05.</p> <p>5 CHAIRMAN FLANAGAN: Do you need anything,</p> <p>6 Dan?</p> <p>7 BOARD MEMBER MASELLI: Yes.</p> <p>8 CHAIRMAN FLANAGAN: Glass of water? Okay.</p> <p>9 All right. Mr. Schneider, I'm sorry.</p> <p>10 MR. SCHNEIDER: Thank you, Mr. Chairman.</p> <p>11 The game plan for tonight I think is simple and</p> <p>12 straight forward. One, we had completed Mr. Master's</p> <p>13 direct, started his cross. Mr. Simon has some</p> <p>14 additional cross-examination of Mr. Masters. And my</p> <p>15 understanding is that he will be presenting his</p> <p>16 professional planner. After that's completed, being</p> <p>17 the optimist, and hopefully we can proceed toward</p> <p>18 public comment, summation, and if all goes well, famous</p> <p>19 last words, deliberations.</p> <p>20 CHAIRMAN FLANAGAN: Public comments then</p> <p>21 summations?</p> <p>22 MR. SCHNEIDER: Yes.</p> <p>23 CHAIRMAN FLANAGAN: Or summations and</p> <p>24 public comment? Okay. Public comment then summations.</p> <p>25 Okay. Sounds good.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. SCHNEIDER: So I will -- unless there's</p> <p>2 any further housekeeping items I will -- Rob, do you</p> <p>3 want to step up here?</p> <p>4 MR. SIMON: Sure. Whatever order you want</p> <p>5 first.</p> <p>6 CHAIRMAN FLANAGAN: I think you have to be</p> <p>7 on a microphone.</p> <p>8 MR. SCHNEIDER: So I'll ask Mr. Masters to</p> <p>9 come up and I'll move to the side so we can pick that</p> <p>10 up.</p> <p>11 CHAIRMAN FLANAGAN: Sounds good. Would you</p> <p>12 guys like to sit at the same table, or would you like</p> <p>13 to sit with Dr. Eisenstein?</p> <p>14 MR. SIMON: I'll sit with Mr. Masters. It</p> <p>15 would be my honor.</p> <p>16 SECRETARY TAGLAIRINO: Mr. Steck, we can</p> <p>17 turn this so you can see -- that might not be good.</p> <p>18 (Secretary Taglairino's computer monitor</p> <p>19 disconnects from Zoom application.)</p> <p>20 (Brief pause in proceedings.)</p> <p>21 MR. MLENAK: While we figure that out, Mr.</p> <p>22 Masters, you understand you're still under oath?</p> <p>23 MR. MASTERS: I do.</p> <p>24 W I L L I A M F. M A S T E R S, having</p> <p>25 been previously sworn, testifies as follows:</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. SCHNEIDER: I just want to make sure.</p> <p>2 Mr. Steck, can you hear me?</p> <p>3 CHAIRMAN FLANAGAN: We cannot hear you, Mr.</p> <p>4 Steck, so hold on one second.</p> <p>5 MR. SIMON: So he clearly unmuted himself.</p> <p>6 CHAIRMAN FLANAGAN: Mr. Steck, just be</p> <p>7 patient with us. We're fixing the camera. Raise your</p> <p>8 hand if you can hear us. We cannot hear you yet. Just</p> <p>9 hold on a second.</p> <p>10 MR. SIMON: You just have to reset the</p> <p>11 speaker.</p> <p>12 CHAIRMAN FLANAGAN: You know, they had it</p> <p>13 set up perfectly. Steve came in here at like 5:30.</p> <p>14 MR. SIMON: I don't doubt that for a</p> <p>15 second.</p> <p>16 Peter can you hear me?</p> <p>17 MR. STECK: Yes, I can.</p> <p>18 MR. SIMON: Peter, can you hear Mr.</p> <p>19 Masters?</p> <p>20 MR. STECK: I can. Thank you.</p> <p>21 MR. SIMON: Rob Simon from Herald Law.</p> <p>22 Before I commence the conclusion of my</p> <p>23 cross-examination of Mr. Masters, just for purposes of</p> <p>24 housekeeping, as many, if not all of you know, and this</p> <p>25 is also for the benefit of members of the public, Mr.</p>

<p style="text-align: right;">Page 9</p> <p>1 Steck unfortunately came down with COVID a couple of</p> <p>2 days ago and as a result of that he is not able to be</p> <p>3 in attendance tonight. However, the Board was kind</p> <p>4 enough to make arrangements so to allow Mr. Steck to</p> <p>5 appear via the Zoom platform. So he's sitting at home</p> <p>6 but he's able to hear all the testimony. We're able to</p> <p>7 see him during his direct and cross-examination.</p> <p>8 I've spoken to both Mr. Schneider, Mr.</p> <p>9 Mlenak on behalf of the Applicant, and the Board</p> <p>10 respectively, explaining the situation, and the</p> <p>11 response, no surprise, was that there was no issue with</p> <p>12 Mr. Steck being able to participate virtually and that</p> <p>13 is why he is so participating in this matter. And I</p> <p>14 thank the Board for its courtesies and cooperation in</p> <p>15 allowing that to happen.</p> <p>16 CHAIRMAN FLANAGAN: Thank you.</p> <p>17 EXAMINATION BY MR. SIMON:</p> <p>18 Q. Mr. Masters, good evening.</p> <p>19 A. Good evening.</p> <p>20 Q. Just a couple of follow-up questions that</p> <p>21 we didn't finish last time.</p> <p>22 The tower in its new location has just been</p> <p>23 shifted approximately 18 feet to the northeast;</p> <p>24 correct?</p> <p>25 A. Actually, 25.9 feet further away from Lot</p>	<p style="text-align: right;">Page 10</p> <p>1 55, which is the Conine property.</p> <p>2 Q. So it's 25.9 feet closer to the post office</p> <p>3 than where it was previously?</p> <p>4 A. 25.9 feet. The prior distance to the</p> <p>5 common boundary line with Lot 55 was 93.6 feet. And</p> <p>6 the relocated distance to that property line is</p> <p>7 119.5 feet. So that's a difference of 25.9 feet.</p> <p>8 Q. Okay. Is the measurement the same in terms</p> <p>9 of the distance from the post office?</p> <p>10 In other words, the post office distance to</p> <p>11 the pole previously, versus the post office distance to</p> <p>12 the pole or the tower as relocated, is it 25.9 feet</p> <p>13 closer?</p> <p>14 A. I don't believe there were any specific</p> <p>15 measurements made to the distance of the pole to the</p> <p>16 post office, but given the fact that the post office is</p> <p>17 to the northeast of the compound it would be a distance</p> <p>18 somewhat close to 25.9 feet. Perhaps not exactly</p> <p>19 25.9 feet, but closer in that general direction.</p> <p>20 Q. In that general measurement; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And the tower now is closer within that</p> <p>23 general measurement range to the propane tank shed and</p> <p>24 the gas station; correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. And it's closer to the driveway that</p> <p>2 connects the post office to the recycling center;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And it also will be closer to where</p> <p>6 recycling patrons patronize and do their recycling;</p> <p>7 correct?</p> <p>8 A. The compound is still behind the recycling</p> <p>9 shed, so I don't know that --</p> <p>10 Q. Isn't it relocated at an angle to be closer</p> <p>11 to the front?</p> <p>12 A. It's closer, but it's no closer in terms of</p> <p>13 vehicular accessibility to the recycling shed. I mean,</p> <p>14 it has no effect whatsoever on the vehicular traffic to</p> <p>15 the recycling sheds.</p> <p>16 Q. Just the pedestrian activity; correct?</p> <p>17 A. Correct. If they were walking behind the</p> <p>18 recycling shed.</p> <p>19 Q. Or if they're walking on the driveway that</p> <p>20 connects the post office to the recycling area;</p> <p>21 correct?</p> <p>22 A. Yeah. I'm not sure why they would to that,</p> <p>23 but yes, I guess that would be correct.</p> <p>24 Q. And again the 29.9 feet is the differential</p> <p>25 to the Conine property; correct?</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. SCHNEIDER: 29.5?</p> <p>2 MR. SIMON: 25.9. That was probably my</p> <p>3 mistake, Rich. Thank you.</p> <p>4 BY MR. SIMON:</p> <p>5 Q. 25 feet 9 inches to the Conine property?</p> <p>6 A. 25.9 feet further away from the Conine</p> <p>7 property.</p> <p>8 Q. And what about to the O'Donnell property,</p> <p>9 what's the differential there?</p> <p>10 A. The differential to the O'Donnell property</p> <p>11 would be 8.2 feet. The prior setback to that property</p> <p>12 was 58.1 feet. It is now 66.3 feet.</p> <p>13 Q. And it's your understanding that the</p> <p>14 wireless facility can't be moved further away from the</p> <p>15 residence than what has been proposed throughout this</p> <p>16 application due to the public bidding process; correct?</p> <p>17 A. That's my understanding.</p> <p>18 Q. So conversely if the project did not need</p> <p>19 to be publicly bid, presumably any applicant, including</p> <p>20 this Applicant, would have more flexibility in the</p> <p>21 location of the tower in considering of its relative</p> <p>22 impacts; correct?</p> <p>23 A. That's probably true.</p> <p>24 Q. And with regard to this application since</p> <p>25 the tower has been reduced in size, in height to</p>

<p style="text-align: right;">Page 13</p> <p>1 86 feet, you have not investigated any other property</p> <p>2 since that time for possible location of this tower,</p> <p>3 whether it's Bayne Park or anywhere outside the</p> <p>4 Historic District; correct?</p> <p>5 A. I have not. That's correct.</p> <p>6 Q. And you still don't know the extent or the</p> <p>7 frequency of any activities or uses at the DPW yard;</p> <p>8 correct?</p> <p>9 A. Extent or frequencies?</p> <p>10 Q. Yes. Of uses at the DPW yard by the</p> <p>11 various users, whether it's for the recycling center</p> <p>12 whether it's for the DPW activities or any other</p> <p>13 activities at the site?</p> <p>14 A. Well, again, as far as the DPW activities</p> <p>15 that's really something that varies, I would assume, on</p> <p>16 a day-to-day basis.</p> <p>17 Q. But you haven't talked to anyone, Mr.</p> <p>18 Masters, in regards to how many DPW workers are</p> <p>19 on-site, how many of them actually stay over in the</p> <p>20 recent months sleeping --</p> <p>21 A. Well, the last time I checked, including</p> <p>22 the director himself who I don't think sleeps there,</p> <p>23 maybe he does during emergency situations, there was a</p> <p>24 total of eight employees.</p> <p>25 Q. At 86 feet, as the professional planner on</p>	<p style="text-align: right;">Page 14</p> <p>1 the project you would agree that there's still a</p> <p>2 difference in terms of height, scale, and proportion as</p> <p>3 compared to other buildings and structures in the</p> <p>4 Historic District; correct?</p> <p>5 A. Obviously it's taller, yes.</p> <p>6 Q. And again, I'll ask it a different way.</p> <p>7 You're not aware of any investigation by anyone else of</p> <p>8 any alternate sites outside Historic District at 86</p> <p>9 feet, including those that have larger properties or</p> <p>10 higher topography; correct?</p> <p>11 A. Correct.</p> <p>12 CHAIRMAN FLANAGAN: Mr. Schneider, bear</p> <p>13 with me one second. Is Mr. Steck okay up there?</p> <p>14 MR. STECK: Yes. I thought you might get</p> <p>15 bored of looking at me so I --</p> <p>16 CHAIRMAN FLANAGAN: We would never be bored</p> <p>17 of looking at you.</p> <p>18 MR. STECK: I'll leave my picture on so you</p> <p>19 know that my eyes are open.</p> <p>20 MR. SIMON: Mr. Steck knows I'm very</p> <p>21 sensitive about making sure all the attention is mine.</p> <p>22 And with that, or course, he's taken my</p> <p>23 mojo. So I have no further questions at this time for</p> <p>24 Mr. Masters.</p> <p>25 CHAIRMAN FLANAGAN: Okay. Anyone from the</p>
<p style="text-align: right;">Page 15</p> <p>1 Board have any questions for Mr. Masters? (No</p> <p>2 response.)</p> <p>3 Any members of the public have any</p> <p>4 questions for Mr. Masters as it relates to his</p> <p>5 testimony from was when was it, it last month I guess?</p> <p>6 MR. SCHNEIDER: March 31st.</p> <p>7 CHAIRMAN FLANAGAN: Last meeting. (No</p> <p>8 response.)</p> <p>9 All right. I hear no other questions.</p> <p>10 MR. SIMON: So then unless Mr. Schneider</p> <p>11 has any?</p> <p>12 MR. SCHNEIDER: I have no re-direct of Mr.</p> <p>13 Masters.</p> <p>14 MR. SIMON: Okay. So I'm going to ask Mr.</p> <p>15 Steck -- Mr. Steck can you hear me?</p> <p>16 THE WITNESS: I can.</p> <p>17 MR. SIMON: And you understand Mr. Steck</p> <p>18 that you continue to be sworn with regard to this</p> <p>19 application?</p> <p>20 MR. STECK: That's my understanding.</p> <p>21 P E T E R S T E C K, having been</p> <p>22 previously sworn, testifies as follows:</p> <p>23 EXAMINATION BY MR. SIMON:</p> <p>24 Q. And Mr. Steck, I'm letting you know before</p> <p>25 you start your testimony this evening that I have</p>	<p style="text-align: right;">Page 16</p> <p>1 submitted to the Board approximately ten days prior to</p> <p>2 the date of this hearing, and I have handed out to the</p> <p>3 Board members, and I have marked as Exhibit O-9 an</p> <p>4 exhibit that you prepared dated April 28th, 2022,</p> <p>5 consisting of six sheets, P-1 through P-6, all of which</p> <p>6 will be marked as O-9; do you understand that?</p> <p>7 A. I do.</p> <p>8 (Exhibit O-9 is received and marked.)</p> <p>9 Q. And so Mr. Steck, you've had an opportunity</p> <p>10 to review the application materials pertaining to this</p> <p>11 application as it relates to the revised location of</p> <p>12 the -- or the relocation of the monopole within the</p> <p>13 equipment compound and the reduction in size of the</p> <p>14 equipment compound within the proposed leased area;</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you continue to be familiar with the</p> <p>18 property in the surrounding area; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And with regard to the relocation of the</p> <p>21 monopole, the reduction in size of the monopole to</p> <p>22 approximately 86 feet, and the shrinking of the</p> <p>23 equipment compound, can you please provide your</p> <p>24 professional planning opinions with regard to those</p> <p>25 plan revisions and how it relates to the burden of</p>

<p style="text-align: right;">Page 17</p> <p>1 proof for the Applicant with regard to the subject 2 application?</p> <p>3 A. Certainly. Perhaps it might be helpful if 4 I initially go through my exhibit.</p> <p>5 Q. Sure.</p> <p>6 A. Now, does it make sense that I put it on 7 the screen?</p> <p>8 SECRETARY TAGLAIRINO: Yes, please.</p> <p>9 MR. SIMON: Yes. If you can -- does he 10 have the ability to share the screen?</p> <p>11 MR. MLENAK: Yes.</p> <p>12 THE WITNESS: Can the Board see?</p> <p>13 BY MR. SIMON:</p> <p>14 Q. Yes. That's P-4; right? So just scroll 15 down. Okay.</p> <p>16 A. Okay. Here we go.</p> <p>17 Q. And before we start, Peter, I assume the 18 Board members have copies of what we're marking as O-9? 19 We do? The Board Professionals? Go ahead, Mr. Steck.</p> <p>20 A. As indicated O-9 was prepared by me and 21 it's dated April 28th of this year. And I'll go 22 through the slides but I may refer to them later to 23 emphasize certain points.</p> <p>24 The first slide which is labeled in the 25 upper right-hand corner P-1 has excerpts from the plan</p>	<p style="text-align: right;">Page 18</p> <p>1 that are colorized for emphasis. So the upper half 2 shows the prior height that was proposed, which was a 3 -- there were some alternatives but it was a 120-foot 4 faux tree with 6-foot branching above it for a total 5 height of 126 feet. And there on the diagram I 6 outlined the initial compound area in red and showed 7 the three potential collocater sites, at least for 8 ground mounted equipment in blue.</p> <p>9 Below that I show the revised height on the 10 bottom half of that, and if I recall the testimony 11 correctly from last time the Applicant is suggesting 12 that it would accept the condition that a flagless 13 flagpole of 80 feet in height would be accommodated, 14 would be accepted, or a faux tree with the branching on 15 top would be 86 feet.</p> <p>16 You see that there is a reduced compound in 17 size. It's cut in half. And the center point of the 18 tower is shifted I estimate about 16 feet from the old 19 location. So there's a slight improvement in terms of 20 its distance from the O'Donnell property. The tower is 21 shifted, as indicated earlier, 25 feet away from the 22 Conine property. Those dimensions are minor compared 23 with the height and visual impact of the tower.</p> <p>24 I note that the lease area has not been 25 changed, and that means that if the Board approves this</p>
<p style="text-align: right;">Page 19</p> <p>1 application there still is the potential for up to 2 three additional carriers to come in. That would 3 necessitate expanding the size of the compound to 4 accommodate all four carriers. And it would be then 5 the original size of the compound area.</p> <p>6 I note parenthetically by shifting the 7 location of the tower about 16 feet again on the 8 diagram to the kind of right and a little bit up the 9 tower itself actually is more visible because it's now 10 just at the edge of the recycling shed. So someone who 11 visits the compound now is certainly going to be able 12 to see the full length of the tower when they're on the 13 property.</p> <p>14 I'm going to flip to the second page of owe 15 nine which is P-two in the upper right hand corner. 16 And there was discussion last time about what 17 vegetation is going to be preserved or removed. And 18 this is a diagram that highlights it. So first of all, 19 I'm going to move my cursor around the new fence line 20 here, which again is 17-feet deep instead of I guess 21 the 30 feet originally proposed. But the brownish line 22 is still the lease line. So that's in a sense still on 23 the table. Should other carriers come in, and that's 24 certainly the intent of both the bid specs and the 25 intent of public policy is to collocate, that that</p>	<p style="text-align: right;">Page 20</p> <p>1 fence line could be increased as part of this process.</p> <p>2 So on the -- there are red lines that go 3 from the identification line on the right-hand side 4 under the heading to be removed, and it talks about the 5 trees and numbers there. All of those trees are going 6 to be removed. And that's just to install the reduced 7 size equipment area. Those are -- the applicant admits 8 that those are going to be removed.</p> <p>9 There was an initial impression in the 10 presentation that below that is a listing of trees to 11 remain. And there were five trees listed to remain. 12 However, as revealed in the cross-examination by Mr. 13 Simon three of those trees are dead. And they're 14 indicated by the red Xs. So the Applicant is at the 15 end of the day saying we're going to keep two trees. 16 They both happen to be Red Maples commonly known as 17 Swamp Maples. There is a -- tree number 12 will stay 18 and is outside of the lease area, but the largest tree 19 in the area, the 24-inch diameter Red Maple is going to 20 be preserved but it's within the leased area so that a 21 subsequent collocater in accordance with the bid specs, 22 if they need the space for their equipment and the 23 fenced compound is increased that tree will have to be 24 removed.</p> <p>25 So at the end of the day the existing</p>

<p style="text-align: right;">Page 21</p> <p>1 vegetation that can reliably, reliably be kept is one 2 tree, one of the Red Maples, which is at the edge, and 3 I'll just highlight it with my cursor. That's the one 4 tree that is going to be retained. 5 Now, on this next page I just make a small 6 point that when you measure setbacks of structures or 7 buildings normally you measure to the closest point of 8 the building, and the Applicant out of convenience 9 likes to measure to the centerline of the pole. So 10 here I just show in blue the compound area as reduced. 11 In yellow I show the enlarged compound area should one, 12 two, or three more collocators appear, and I 13 approximated the actual setbacks from the closest point 14 of the tower. There was a, you know, testimony by Mr. 15 Masters that said that the -- if faux branching is 16 proposed the tower width starts at 5 feet and then it 17 goes down to a smaller I think 18 inches at the top. 18 But the branching, the faux branching extends maybe 10 19 feet out. So this is an approximation of the setbacks 20 that are going to happen. So the closest point is 21 likely to be approximately 58 feet from the O'Donnell 22 property, and 110 feet from the Conine property. 23 I've also highlighted in red the 24 compensating landscaping that the Applicant is 25 proposing. And as you can see in the lower right-hand</p>	<p style="text-align: right;">Page 22</p> <p>1 area there are a number of shrubs, rather small 2 vegetation, trees that are being proposed, Hollies. 3 They're all 5- to 6-foot high most of them at the time 4 of planting. So while over a number of years they may 5 have the effect of helping shield what is at the ground 6 level, the compound level, those plantings are clearly 7 ineffective in terms of the cell tower itself, whether 8 it's a flagless flagpole or a faux tree. 9 The next slide, P-4 portion of Exhibit O-9, 10 actually reproduces photographs that were -- that I 11 took. The one on the right-hand side I took this photo 12 on July 10th of 2021. And if the Board remembers 13 that's when one of the property owners put a crane up 14 on the property, and the top of the crane was 120 feet. 15 So that is an accurate rendition from the Saganic 16 property, and that photo was taken about 400 feet away. 17 So I'm still looking up but because I'm at that 18 distance away I'm starting to approximate, you know, a 19 horizontal view of this. By just linear interpretation 20 I estimated where 86 feet was, as you can see in that 21 red line. And to recall the testimony, although there 22 was not a surveyor that verified this, at the last 23 meeting there was testimony that the top branches, and 24 I believe I got the right tree correctly, that's the 25 24-inch Red Maple, were 69-feet tall. So that 86-foot</p>
<p style="text-align: right;">Page 23</p> <p>1 mark that I make there is I think a fair approximation 2 of where the reduced height tower would be. 3 After the last meeting I took the 4 photograph on the left, and that photograph is about in 5 the same direction approximately, but it's 300 feet 6 away looking across the O'Donnell property. So I'm 7 just at the southern border of the O'Donnell property 8 actually looking through the O'Donnell fence where 9 there isn't landscaping. Actually, I'm standing on the 10 Saganic property. And you can see on the photograph 11 there's a solid hedge -- well, to the right of that I 12 kind of squeezed between it so I'm at the property 13 line. So I'm about 300 feet away. And on March 30th 14 of 2020 I took that picture and that gives you a fair 15 rendition of what it looks like today without leaves on 16 the property, or throughout any Wintertime. Of course, 17 this does not depict what is going to be removed. And 18 the yellow mark shows the -- what I believe to be the 19 24-inch Red Maple. That will remain unless other 20 carriers come in and require the compound to be 21 extended. 22 Q. Peter, can you hear me? 23 A. I can. 24 Q. Thank you. Just for clarification, staying 25 on P-4 for ten more seconds, the yellow line that's at</p>	<p style="text-align: right;">Page 24</p> <p>1 an angle was not put there by you to demonstrate any 2 particular height but just simply to identify a similar 3 tree in both photographs that you took; correct? 4 A. That's correct. And according to the 5 testimony at the last meeting the highest branches 6 there are 69-feet high. That was alleged to be the 7 case even though the surveyors evidence -- the surveyor 8 was not present to verify the accuracy of that, but 9 testimony was at least introduced that suggested that 10 that tree is 69-feet high. So the yellow line is just 11 to compare the right photograph where the trees are in 12 leaf with the left one which was taken before the 13 leaves appeared this Spring. 14 Q. Okay. You can go on to P-5, please. 15 A. P-5 is a photograph that I took on 16 March 30th of 2022, to show you the condition of the 17 vegetation that is behind the recycling shelter. So 18 that brown sloped-roof building on the left is the 19 recycling center. There's some storage equipment in 20 the back, but those trees, and as you are -- are the 21 ones that exist today. And the taller one that's in 22 the foreground in the center of the photo is the one 23 that's apparently going to be left as just outside of 24 the shrunken equipment area. What clearly is apparent 25 is that these trees are not evergreens. And when all</p>

<p style="text-align: right;">Page 25</p> <p>1 of them are removed initially except for two there is 2 going to be very little effective screening in my 3 opinion. And again, the Applicant was alleging to save 4 five trees but some of those trees were acknowledged as 5 already dead.</p> <p>6 The final slide is P-6. And there was a 7 rendition of this submitted previously, but I wanted to 8 -- and when I get into the body of my testimony, wanted 9 to highlight the fact that the proposed site as we all 10 know is not in the National Historic District, which is 11 bounded by the solid red line, and individually 12 designated properties are with the pink coloring. That 13 part of the subject property is surrounded on three 14 sides by the National Historic District, which 15 coincides with the boundaries of the State Historic 16 District.</p> <p>17 I did superimpose in blue the limits of the 18 New Vernon Historic District, your local District. And 19 indeed not only is it within the heart of your local 20 Historic District, but the property is designated as 21 the key property in that district. Parenthetically to 22 the lower left of that diagram just at the border of 23 this aerial photo which is a 2020 aerial photo you can 24 see the elementary school, which is just outside of 25 both the National and the local Historic Districts.</p>	<p style="text-align: right;">Page 26</p> <p>1 Maybe I'll put this away for the moment and see if I 2 can --</p> <p>3 Q. Okay. So that was P-9 pages P-1 through 4 P-6 that you just went through; right, Mr. Steck? O-9. 5 A. O-9 with upper right-hand corner P-1 6 through P-6.</p> <p>7 Q. Thank you.</p> <p>8 A. So I presume you'd want me to continue, Mr. 9 Simon?</p> <p>10 Q. Your presumption is correct, Mr. Steck.</p> <p>11 A. Okay. So I'm reappearing because 12 additional testimony was supplied at the last hearing 13 in March, March 31st. And as you recall, the Applicant 14 provided two witnesses. Its professional engineer 15 talked about the changes of the site plan. And again, 16 the character of the cell tower itself was not 17 discussed it was really the placement on the site plan. 18 And again there was an emphasis that 750-square feet 19 less disturbance was being proposed because the 20 compound is now 17-by-60 feet, but again in my opinion 21 the Board has to take into account that the bidding 22 specs and the public purpose of having multiple 23 locators on the property, in my opinion would 24 automatically expand this to 30-by-60 feet which was 25 the original compound, and again would leave one</p>
<p style="text-align: right;">Page 27</p> <p>1 existing tree.</p> <p>2 Mr. Masters described the change that was, 3 I guess, invited, the -- Mr. Masters said that the 4 Applicant as part of I guess the third step of the Sica 5 process was suggesting that the Applicant is inviting 6 the condition that the tower location be shifted. 7 Again, that the compound be reduced, at least for this 8 part of the -- this carrier, and that either an 80-foot 9 tall flagless pole or an 86-foot tall faux tree would 10 be accepted as a condition.</p> <p>11 I want to kind of characterize this by 12 saying that the Applicant appears to not be -- to be 13 reluctant to amend the application. The Applicant, as 14 I understood the transcript, said that they're not 15 amending their application. So I'm guessing the 16 application is still for a 126-foot structure, but the 17 testimony was that as of -- if the Board was so willing 18 that the Applicant would not object to a condition that 19 would lower the height, for example, by 40 feet, and 20 that was phrased as step three in the Sica process. So 21 if you recall the Sica process the first step is to 22 kind of quantify the magnitude of the public benefit. 23 And that is how much of the gap in this case is going 24 to be covered by this new cell tower.</p> <p>25 The second step is to identify the negative</p>	<p style="text-align: right;">Page 28</p> <p>1 consequences. And that's largely visual, but obviously 2 in the context of a property, a zone that doesn't 3 permit this use, and in the context within a local 4 Historic District, and within proximity on three sides 5 to a National and State Historic District.</p> <p>6 The third step is really for the Board to 7 consider reasonable conditions that might mitigate any 8 adverse consequences.</p> <p>9 And then the fourth step is the so-called 10 balance where acknowledging that there is a certain 11 amount of public benefit the Board is to conclude -- to 12 conclude whether or not the negative criteria are 13 satisfied given these conditions that in theory lessen 14 the adverse impacts of the application.</p> <p>15 I want to suggest that the mechanism for 16 introducing this reduced height is misplaced. First of 17 all, rather than amending the application -- so the 18 Board I guess has to understand what the Applicant 19 really wants because the Applicant is not amending the 20 application, but the Applicant is inviting the Board to 21 in some degree lessen the visual impact by lowering the 22 height. And as you recall, pictures were taken from 23 historic locations, historic meaning that there were 24 photos taken four years ago, and these were updated by 25 someone else who we haven't met and we're a little</p>

<p style="text-align: right;">Page 29</p> <p>1 unsure about how the computer characterized the</p> <p>2 blockage or non-blockage.</p> <p>3 And again, as you recall, the visual</p> <p>4 analysis did not take into account the removal of</p> <p>5 trees, which is clearly going to happen. And again, it</p> <p>6 was done four years ago without updating any of the</p> <p>7 photos. And it was taken from locations that are not,</p> <p>8 in my opinion, the most visible locations. The</p> <p>9 pictures that I took that were in this O-9 Exhibit I</p> <p>10 picked the most prominent locations, meaning the</p> <p>11 O'Donnell property and the property just to the south</p> <p>12 of that, because this is not a wooded area. There are</p> <p>13 open lawns. It's a highly visible part of it. So the</p> <p>14 Applicant has not adjusted its analysis for I would</p> <p>15 consider an accurate evaluation of the negative</p> <p>16 impacts.</p> <p>17 The other, I guess, what I would consider</p> <p>18 kind of false analysis is that the Applicant had no</p> <p>19 comment about the magnitude of the public benefit. If</p> <p>20 going back multiple months and years there was</p> <p>21 testimony suggesting that an 86-foot tower was not</p> <p>22 adequate to serve the area. And particularly it was</p> <p>23 not adequate to serve the elementary school which has,</p> <p>24 according to the testimony of your police chief, has I</p> <p>25 guess the greatest concentration of people, a real</p>	<p style="text-align: right;">Page 30</p> <p>1 concern to have adequate cell connection.</p> <p>2 So not addressed by the Applicant is, and</p> <p>3 in my opinion needed to be addressed, is the first step</p> <p>4 of the Sica process. What has happened is the</p> <p>5 Applicant is saying we'll accept the condition that the</p> <p>6 tower be reduced, but admittedly there will be less</p> <p>7 coverage, and in fact less coverage at least in one of</p> <p>8 the frequency bands of the elementary school which was</p> <p>9 highlighted as a significant public benefit. And so</p> <p>10 the first step of the Sica process has not been</p> <p>11 revisited, but it is clear that the benefit in terms of</p> <p>12 improved coverage has been reduced.</p> <p>13 There has been no explanation -- now that</p> <p>14 the tower is lower, in other words, closer to the</p> <p>15 established tree line, in my opinion it opens the door</p> <p>16 to reconsideration of other sites. It will not be as</p> <p>17 prominent as initially a 146-foot tower and then later</p> <p>18 a 126-foot tall tower. This will be less prominent,</p> <p>19 and in my opinion an exploration should be revisited</p> <p>20 about sites, particularly outside of the local Historic</p> <p>21 District. This has not been done.</p> <p>22 To my knowledge the elementary school has</p> <p>23 not been approached by the revised plan. Again, if you</p> <p>24 recall the initial approach to the Board of Education,</p> <p>25 if I understand the record correctly, was for a very</p>
<p style="text-align: right;">Page 31</p> <p>1 tall pole right in the front yard of the school. There</p> <p>2 are other locations on that site, and this is in a</p> <p>3 sense a significantly different application with a</p> <p>4 height reduced of 40 feet.</p> <p>5 So my understanding is that the Applicant</p> <p>6 still needs to show particular suitability of a</p> <p>7 property. It needs to have a good-faith effort of</p> <p>8 searching other sites, and in recognition of the</p> <p>9 discouragement of a site in a Historic District. So</p> <p>10 there has not been in my opinion a credible re-analysis</p> <p>11 of the Sica criteria. There is kind of a last minute</p> <p>12 Hail Mary we'll shrink the tower, but that is not in my</p> <p>13 opinion a credible analysis under the Sica standards.</p> <p>14 In my judgment -- my initial conclusion was</p> <p>15 that the Sica standards have not been satisfied by the</p> <p>16 initial application, the 126-foot one. And that is</p> <p>17 still my opinion given the conditions that were</p> <p>18 invited. What has not changed is the bidding</p> <p>19 specifications -- before I go there I just want to</p> <p>20 comment a little bit on the visual analysis that was</p> <p>21 redone. It was done by a computer program. We don't</p> <p>22 know what inputs were put in there other than the</p> <p>23 original four-year old photos. We don't know what the</p> <p>24 computer program is capable of doing in terms of</p> <p>25 eliminating trees. The analysis did not eliminate any</p>	<p style="text-align: right;">Page 32</p> <p>1 of the existing trees, which is clearly going to be the</p> <p>2 case. We have no first-hand knowledge of how it was</p> <p>3 done, and apparently Mr. Masters does not. He relies</p> <p>4 on the consultant but is not present when those</p> <p>5 modifications are done.</p> <p>6 The other thing to keep in mind is that</p> <p>7 there is a policy of collocation. So if you see in the</p> <p>8 site plan there's a, you know, a 186-foot tall tree</p> <p>9 with one set of panels from a carrier. But keep in</p> <p>10 mind the bidding requirements allow up to four</p> <p>11 carriers, and that's clearly but a changed view of the</p> <p>12 tree. And the Federal law allows without under certain</p> <p>13 conditions, which I believe are fairly easy to meet,</p> <p>14 the Applicant doesn't have to come back for site plan</p> <p>15 review by state law by increasing the height by ten</p> <p>16 percent, or the Federal law I understand allows it to</p> <p>17 be increased by 20 feet. So while you're approving one</p> <p>18 view, one visual analysis of this there are</p> <p>19 capabilities that will in my opinion reasonably</p> <p>20 automatically appear in the future that obviously have</p> <p>21 an impact on the aesthetics that are simply not being</p> <p>22 addressed.</p> <p>23 What has not changed is that the bidding</p> <p>24 requirements still require the Applicant to address the</p> <p>25 historic impact on the local and the state district,</p>

<p style="text-align: right;">Page 33</p> <p>1 and presumably that means that the State Historic 2 Preservation Office would chime in. And I would expect 3 them to because of my experience with a tower at the 4 DelBarton School where the State Preservation Officer, 5 or a representative of the office, was there during one 6 of the visual impact tests.</p> <p>7 This "P" Zone still is does not permit 8 cellular facilities. This is still in a local Historic 9 District. It is towards the center and is surrounded 10 on three sides by a State and National Historic 11 District. It is adjacent to a B-1 Zone that has a 12 historic theme both in the name of the zone and the 13 purposes of the zone. This is in a redevelopment plan 14 where the governing body has the ability to modify what 15 you might look at as an overlay zoning, but the 16 redevelopment plan they could address just this 17 property. The council has not done that.</p> <p>18 And the ordinance that sets the standards 19 for the complete municipality has not changed. And as 20 you recall those standards treated a new tower as a 21 conditional use. It treated in the north end of the 22 municipality in the B-2 -- in the old "B" Zones. And 23 the principles there were that it be the one use on the 24 property. It be the principal use of the property. 25 There was language that it would have to be not in a</p>	<p style="text-align: right;">Page 34</p> <p>1 residential area because it's a business zone, and it 2 would have to be at least a thousand feet from a 3 Historic District. Those are policies that were in 4 place and remain in place.</p> <p>5 And although certainly the governing body 6 has the ability to change standards and it's been a 7 four-year long process now, clearly enough time to 8 change it, the governing body has decided not to do 9 that.</p> <p>10 So in summary --</p> <p>11 Q. Peter, before --</p> <p>12 A. I've listened to the testimony --</p> <p>13 Q. Peter, before you get to your summary, I 14 know that you covered the positive criteria. You 15 covered the first prong, second prong of the negative 16 criteria. With regard to the third prong of the 17 negative criteria, namely, whether the applicant can 18 impose or suggest any conditions that would mitigate 19 against the detrimental impacts of the proposal. When 20 I talk about the proposal we're talking about the 21 proposal at this point at 86 feet and not at 126 feet 22 and reducing it by 40 feet. Do you agree with that?</p> <p>23 A. The proposal -- the application is still 24 for 126 feet, as I understand it. The Applicant is 25 choosing not to amend the application.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Right. And the question is whether the 2 Applicant should be amending the application and having 3 a different application at 86 feet, because that is 4 what is being proposed before this Board currently.</p> <p>5 A. In my opinion, the only way to handle this, 6 or the proper way to handle this as an amendment to the 7 application. And this is a substantial change. And 8 clearly when you lower it there's potentially less of a 9 visual impact. But it also opens the door to, as I 10 mentioned, the step one of the Sica process. Is this 11 site particularly suited? Are there other sites that 12 are better suited to this and maybe haven't been 13 explored because of the new height?</p> <p>14 So I think it's -- it's maybe one way to 15 put it. I think it's an incorrect or improper vehicle 16 for the Applicant to hint at conditions it might accept 17 but not amend its application. I think the Applicant 18 is dodging the requirements of walking through its 19 burden of proof with respect to the Sica case.</p> <p>20 Q. Okay. And now getting to your summary that 21 I cut you off on.</p> <p>22 A. Let's see if I remember what that -- I do.</p> <p>23 Q. That's a good thing.</p> <p>24 A. In my opinion, the Applicant still has not 25 satisfied its statutory criteria. As indicated, and I</p>	<p style="text-align: right;">Page 36</p> <p>1 agree with Mr. Masters, the impact of this application 2 is largely visual. The standards in my opinion, the 3 screening to whether the aesthetic negatives have been 4 addressed are enhanced by the fact that there is a 5 State and National Historic District and a local 6 district. And there's a Redevelopment Plan that even 7 suggests that new utilities should be under ground.</p> <p>8 The municipality has for a number of years 9 now adopted an ordinance that allows a Distributed 10 Antenna System where you can put up new poles that are 11 I think ten percent taller than maybe existing poles 12 along the street, but it accommodates alternate 13 technologies which have not been addressed by the 14 Applicant.</p> <p>15 So I've listened to the change. In my 16 opinion the Applicant cannot still satisfy the negative 17 criteria even on balance. Yes, the height has been 18 reduced, but this structure, especially with the 19 removal of trees that have some shielding effect but 20 none in the Wintertime, the removal of all trees except 21 for two and maybe at the end of the day if the compound 22 is expanded only one tree remains, there's still a 23 major adverse visual impact on this Historic District.</p> <p>24 And again the Sica test is to evaluate that 25 negative criteria based on the benefits, which is the</p>

<p style="text-align: right;">Page 37</p> <p>1 fulfilling of the gap. And what has happened at the 2 same time is that the Applicant has, in my opinion, 3 reduced the public benefit that it was originally 4 relying upon.</p> <p>5 So my conclusion is on balance the 6 Applicant still fails to meet the negative criteria 7 under the Sica balancing test. The public benefits 8 have been dramatically reduced. The public purpose is 9 to have multiple carriers. If the bidding regs and the 10 desires of the wireless ordinance are met you're going 11 to have a full compound of 30-by-60 feet with one 12 existing tree remaining. The shielding will be 13 initially 6-foot high evergreens, which over a number 14 of years will help shield the base of this, the 15 equipment area, but will do nothing for the tower 16 itself. And because of the nature of the vegetation in 17 the area even though it's a faux evergreen, in my 18 opinion, it's going to stick out like a sore thumb. If 19 it's a flagpole it's going to be a structure twice as 20 tall than is permitted in the zone, and very apparent 21 in this Historic District that it has, in my opinion, 22 an injurious result.</p> <p>23 And to look at the magnitude of it we have 24 to return to your ordinance that says a new tower has 25 to be at least a thousand feet away from an Historic</p>	<p style="text-align: right;">Page 38</p> <p>1 District. This is in the Historic District.</p> <p>2 Q. And Peter your opinion is the same whether 3 it's a flagless flagpole or a faux tree; correct?</p> <p>4 A. That is correct. There obviously is some 5 difference, but the flagless flagpole it doesn't even 6 try to be a natural appearing thing. But the evergreen 7 tree will stand out because if they -- with this kind 8 of proximity of residential properties that are 9 substantially well maintained residential properties 10 it's clearly apparent that this is a faux cell tower 11 and not a tree that blends into the forest because 12 there is no forest.</p> <p>13 Q. And what about the positive criteria? I 14 know you touched upon the investigation or lack thereof 15 at 86 feet. Do you have a professional planning 16 opinion as to whether the Applicant has met the 17 positive criteria given the revised application?</p> <p>18 A. They have not met it because there is no 19 effort to look at alternate technologies. There is no 20 effort to evaluate other sites that may open up because 21 of the reduced height. But there is an acknowledgment 22 that the coverage of the gap that was originally 23 intended has now been reduced.</p> <p>24 Q. And getting back to the negative criteria 25 and the four-part Sica Balancing Test, the fact that</p>
<p style="text-align: right;">Page 39</p> <p>1 the Applicant is now proposing a tower, whether it's a 2 faux tree or flagless flagpole at 86 feet, and with the 3 8-foot distance differential from the O'Donnell 4 property and the 26-foot approximate differential from 5 the Conine property, do your opinions change with 6 regard to the Applicant's ability to meet the negative 7 criteria in particular?</p> <p>8 A. In my opinion, because of the overall 9 proximity of these residential properties, and the 10 height being either 80 feet for a flagless flag pole or 11 86 for a faux tree those distances are insignificant in 12 terms of addressing the negative criteria.</p> <p>13 Q. So your opinion for all the reasons that 14 you stated in your testimony is that the Applicant 15 still fails to satisfy the positive and negative 16 criteria required for the variance relief that's 17 required for this application; correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And otherwise, other than what you've 20 stated here this evening, the prior opinions that 21 you've testified to under oath have not changed; 22 correct?</p> <p>23 A. They have not changed, and the answer is -- 24 the ultimate conclusion of mind has not changed, even 25 with the invited conditions as of the March 31st</p>	<p style="text-align: right;">Page 40</p> <p>1 hearing.</p> <p>2 MR. SIMON: I have nothing further for Mr. 3 Steck at this time. Thank you.</p> <p>4 CHAIRMAN FLANAGAN: Mr. Schneider?</p> <p>5 MR. SCHNEIDER: I have no questions for Mr. 6 Steck.</p> <p>7 CHAIRMAN FLANAGAN: Okay. Does the Board 8 have any questions?</p> <p>9 BOARD MEMBER NEWLIN: I do.</p> <p>10 CHAIRMAN FLANAGAN: Just make sure your mic 11 is on.</p> <p>12 BOARD MEMBER NEWLIN: Maybe this is for Mr. 13 Simon or Mr. Steck. I'm looking for quite concise 14 answers, so not long answers to this otherwise we won't 15 get through it. Why don't they want to amend the 16 application? Maybe that's for Rob.</p> <p>17 MR. SIMON: I'm sorry, Alf.</p> <p>18 BOARD MEMBER NEWLIN: Why do you think they 19 don't want to amend the application? I'm sorry. Why 20 do you think that Verizon doesn't want to amend the 21 application?</p> <p>22 MR. SIMON: First of all, I'm not under 23 oath. I have no idea why they would want to or don't 24 want to amend the application. What I will tell you is 25 that as a matter of law I humbly believe that it is</p>

<p style="text-align: right;">Page 41</p> <p>1 crystal clear that they have to amend the application.</p> <p>2 And they have to present an 86-foot application, and</p> <p>3 they cannot as a matter of law with regard to the</p> <p>4 balancing test, with regard to the first prong, with</p> <p>5 regard to the third prong say, well, we're going to</p> <p>6 mitigate the detrimental impact by reducing it to 86</p> <p>7 feet.</p> <p>8 That's as if I came in with an application</p> <p>9 for an 180-foot or 190-foot tower and say, hey, guess</p> <p>10 what? I'm going to reduce it to blank, whatever blank</p> <p>11 is and that's mitigating the detrimental impact.</p> <p>12 That's not the way it works in terms of the analysis of</p> <p>13 the Sica Balancing Test.</p> <p>14 BOARD MEMBER NEWLIN: Mr. Simon, I</p> <p>15 understand your position, I'm just curious --</p> <p>16 MR. SIMON: Yes. I don't --</p> <p>17 BOARD MEMBER NEWLIN: Second question is</p> <p>18 for Mr. Steck. With regard to the visual aspect of the</p> <p>19 towers, do you have any opinion about which of the</p> <p>20 flagless flagpole or the tree is least worse for the</p> <p>21 site?</p> <p>22 I realize it's not a fair question but I'm</p> <p>23 going to ask it anyway. And you can say no, you have</p> <p>24 no opinion, or you do have an opinion.</p> <p>25 THE WITNESS: In summary, I think they both</p>	<p style="text-align: right;">Page 42</p> <p>1 failed. But the difference is while a faux tree, you</p> <p>2 know, might be acceptable, and if you look at the</p> <p>3 photographs that Mr. Masters presented such as on the</p> <p>4 DelBarton site, a faux tree in a mass of other trees</p> <p>5 where there are, let's say, evergreens can be</p> <p>6 effective. Here it's not the case. And because of the</p> <p>7 proximity of residential uses there's no one on this --</p> <p>8 in the United States that's going to look at that and</p> <p>9 say that's a wonderful tree. The answer is it's a cell</p> <p>10 tower.</p> <p>11 Obviously the flagless flagpole has less</p> <p>12 mass, but it doesn't even pretend to be natural.</p> <p>13 BOARD MEMBER NEWLIN: I know these things.</p> <p>14 I'm looking for your opinion.</p> <p>15 THE WITNESS: That's my opinion.</p> <p>16 BOARD MEMBER NEWLIN: So you have no -- it</p> <p>17 doesn't matter?</p> <p>18 THE WITNESS: It doesn't matter. And</p> <p>19 again, whether one is slightly better than the other if</p> <p>20 the Applicant doesn't meet the statutory criteria I</p> <p>21 don't think the Board has the ability to legitimately</p> <p>22 approve the application.</p> <p>23 BOARD MEMBER NEWLIN: Okay. Third question</p> <p>24 with regard to landscape. I agree with actually most</p> <p>25 of your criticism of the landscape plan. I think it's</p>
<p style="text-align: right;">Page 43</p> <p>1 unsatisfactory.</p> <p>2 What would you look to see for a</p> <p>3 landscaping plan? And again I realize that this is a</p> <p>4 very narrow question and you're opposed to --</p> <p>5 THE WITNESS: I don't think a landscaping</p> <p>6 plan can remedy the visual impact of the tower.</p> <p>7 There's very little -- you know, there are areas --</p> <p>8 there are residential properties that are large. There</p> <p>9 is a Board of Education property with a large wooded</p> <p>10 area. There are areas that have higher elevations. If</p> <p>11 this is placed in the midst of a forested area I think</p> <p>12 it's a whole different ball game.</p> <p>13 BOARD MEMBER NEWLIN: Thank you, Mr. Steck.</p> <p>14 You've answered my question. Thank you, Mike.</p> <p>15 CHAIRMAN FLANAGAN: Anyone else on the</p> <p>16 Board? Hugh?</p> <p>17 BOARD MEMBER SYMONDS: Mr. Steck, one quick</p> <p>18 question, or I hope it will be quick. You mentioned a</p> <p>19 number of times with regard to alternative sites you</p> <p>20 mentioned the school as a possible alternative site.</p> <p>21 Can you tell me in your experience do you know is it</p> <p>22 common, uncommon? Have you ever seen a school used as</p> <p>23 a cell tower site for a use of a facility like this?</p> <p>24 THE WITNESS: I think the Applicant</p> <p>25 testified that they were aware of instances. Now,</p>	<p style="text-align: right;">Page 44</p> <p>1 there are certainly examples in like New York City</p> <p>2 where, you know, facilities could be on buildings.</p> <p>3 It's a different environment. And I know that there</p> <p>4 are, you know, appearance considerations, but --</p> <p>5 BOARD MEMBER NEWLIN: I'm sorry. Doesn't</p> <p>6 DelBarton have a tower?</p> <p>7 THE WITNESS: DelBarton has a tower on its,</p> <p>8 you know, on its many-acre campus. It is remote from</p> <p>9 -- it's near some of its athletic fields. It's remote</p> <p>10 from any of the buildings. It's almost on a separate</p> <p>11 site that happens to be forested.</p> <p>12 BOARD MEMBER SYMONDS: You know, I know</p> <p>13 I've seen cell towers on DPW sites before, but I've</p> <p>14 never, because over the last three years I've been</p> <p>15 looking at cell towers, but I have never seen one at a</p> <p>16 public school. Have you?</p> <p>17 THE WITNESS: I think it's rare in New</p> <p>18 Jersey, simply, I guess I would put it because of</p> <p>19 political considerations. There is an unjustified fear</p> <p>20 of electromagnetic radiation. Boards of Ed don't want</p> <p>21 to be put in the position of being criticized. But I</p> <p>22 invite you to look at the characteristics of the</p> <p>23 elementary school site where it's very deep. There's a</p> <p>24 heavily forested area back by the play fields. If you</p> <p>25 put a tower in that forested area that would have some</p>

<p style="text-align: right;">Page 45</p> <p>1 similarity to the DelBarton campus, well away from</p> <p>2 classroom buildings, et cetera, et cetera.</p> <p>3 BOARD MEMBER SYMONDS: Thank you.</p> <p>4 CHAIRMAN FLANAGAN: While we're on that</p> <p>5 topic of alternate sites, so we've looked at a few,</p> <p>6 right, and I'd just like to run through with Mr. Steck</p> <p>7 what the alternative sites were, and just get your view</p> <p>8 on whether they remain possible alternative sites. So</p> <p>9 one was the Presbyterian Church.</p> <p>10 THE WITNESS: Well, it's not my job to</p> <p>11 reevaluate sites. When the Applicant early in this</p> <p>12 process --</p> <p>13 CHAIRMAN FLANAGAN: Can I just interrupt</p> <p>14 you for a second? I understand that, but I just want</p> <p>15 for my own recollection to go through the alternatives</p> <p>16 we discussed and see where you think it fits best among</p> <p>17 these -- let's phrase it that way.</p> <p>18 So of the following sites which do you</p> <p>19 think is the best? So I believe the Presbyterian</p> <p>20 Church was approached and they dismissed the</p> <p>21 possibility of putting in a cupola on the roof. Is</p> <p>22 that your recollection?</p> <p>23 MR. SIMON: Well, wait. Mr. Chairman, with</p> <p>24 all due respect, I don't really understand what the</p> <p>25 question is for Mr. Steck.</p>	<p style="text-align: right;">Page 46</p> <p>1 CHAIRMAN FLANAGAN: Well, we're talking</p> <p>2 about alternative sites. I think he's proposed</p> <p>3 alternative sites.</p> <p>4 MR. SIMON: But he as the witness is not</p> <p>5 proposing any alternative sites. If there's a question</p> <p>6 about a particular alternative site from a Planning</p> <p>7 perspective it would arguably be an appropriate</p> <p>8 question. So that's why I'm asking --</p> <p>9 CHAIRMAN FLANAGAN: So from his Planning</p> <p>10 perspective I want to see which one he thinks would be</p> <p>11 best.</p> <p>12 THE WITNESS: Well, I don't want to -- the</p> <p>13 answer is it's not my study to look for alternate</p> <p>14 sites. The Applicant has the burden of proof. And as</p> <p>15 I understand the case law the Applicant is burdened</p> <p>16 with a, you know, a fair analysis of other sites. The</p> <p>17 Applicant never looked at any residential sites, and it</p> <p>18 was my opinion before that they should be eligible if</p> <p>19 they're a heavily wooded large site.</p> <p>20 CHAIRMAN FLANAGAN: So let me ask you, from</p> <p>21 your Planning perspective then. So the Presbyterian</p> <p>22 Church was looked at, they said no. The Firehouse, it</p> <p>23 was proposed on their side yard by the softball field.</p> <p>24 Do you know what I'm talking about? I think that area</p> <p>25 to the back, left corner of the Village. Do you think</p>
<p style="text-align: right;">Page 47</p> <p>1 that if it were placed there that would be a better</p> <p>2 location than back by the DPW site?</p> <p>3 THE WITNESS: I'm sorry, but I can't answer</p> <p>4 that because it's not my job -- it's my job to analyze</p> <p>5 the evidence presented by the Applicants. And the</p> <p>6 Applicant approached -- did an analysis with either a</p> <p>7 146- or 126-foot tall structure, and there were</p> <p>8 rejections in some cases of that offer. The Applicant</p> <p>9 never looked at any large residential property that</p> <p>10 happened to be wooded.</p> <p>11 CHAIRMAN FLANAGAN: All right. Well, let</p> <p>12 me ask you this.</p> <p>13 THE WITNESS: And I'm afraid I just can't</p> <p>14 --</p> <p>15 CHAIRMAN FLANAGAN: Well, let me ask my</p> <p>16 question and you can do your very best to answer it.</p> <p>17 If you can't answer it you can just say you can't</p> <p>18 answer it.</p> <p>19 Do you think this tower will be better on a</p> <p>20 residential property in the Township?</p> <p>21 THE WITNESS: In a large wooded residential</p> <p>22 area in my opinion I think it would have a better</p> <p>23 chance of meeting the negative criteria. And again,</p> <p>24 I'm only comparing it --</p> <p>25 CHAIRMAN FLANAGAN: Okay. So can you --</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. SIMON: Well, wait. I think he should</p> <p>2 be allowed to finish his answer.</p> <p>3 THE WITNESS: -- and that means that at</p> <p>4 least the tower could be put outside of the Historic</p> <p>5 District.</p> <p>6 CHAIRMAN FLANAGAN: All right. So can you</p> <p>7 point me to a large wooded residential property in the</p> <p>8 target area?</p> <p>9 THE WITNESS: I have not done a separate</p> <p>10 search. I believe the Applicant needs to revisit the</p> <p>11 search with the new dimensions. But it's not my --</p> <p>12 CHAIRMAN FLANAGAN: So are you familiar</p> <p>13 with any large residential wooded properties that would</p> <p>14 have been suitable at the previous height of 120 feet?</p> <p>15 THE WITNESS: I did not do that analysis</p> <p>16 because my job is to review the Applicant's case</p> <p>17 because it's the Applicant's burden of proof.</p> <p>18 CHAIRMAN FLANAGAN: Okay. But you're</p> <p>19 proposing that it may be better on a site which may or</p> <p>20 may not exist?</p> <p>21 THE WITNESS: It may not exist, but the</p> <p>22 Applicant in my opinion is required to do a</p> <p>23 re-exploration of sites given the dramatic reduction in</p> <p>24 height.</p> <p>25 CHAIRMAN FLANAGAN: Okay. But would they</p>

<p style="text-align: right;">Page 49</p> <p>1 not have been required to do that inspection, that</p> <p>2 survey at the original height?</p> <p>3 THE WITNESS: Yes. They're required to do</p> <p>4 a fair analysis of other sites. I criticized it</p> <p>5 initially because they artificially said we're not</p> <p>6 going to look at any residential properties. And</p> <p>7 again, the Applicant's position as I understand it is,</p> <p>8 look, this site was put out for bid. I'm entitled to</p> <p>9 rely on this one site. And I don't think the Applicant</p> <p>10 did as comprehensive an analysis as would have been the</p> <p>11 case if this was an application for a site that didn't</p> <p>12 happen to be on public property that had already been</p> <p>13 put out to bid.</p> <p>14 CHAIRMAN FLANAGAN: Okay. But to</p> <p>15 summarize, is it your position that you think this</p> <p>16 would be better in another place, yet for either</p> <p>17 because it's not your job -- which is a fair answer --</p> <p>18 to identify that other place, you cannot point me to</p> <p>19 that other place where it will be better; is that</p> <p>20 correct?</p> <p>21 THE WITNESS: It's not my job, and I did</p> <p>22 not do that analysis.</p> <p>23 CHAIRMAN FLANAGAN: Okay. So you cannot</p> <p>24 point to me, point out a property to me where it would</p> <p>25 be better?</p>	<p style="text-align: right;">Page 50</p> <p>1 THE WITNESS: At this time, no.</p> <p>2 CHAIRMAN FLANAGAN: Okay. Thank you.</p> <p>3 Anyone else?</p> <p>4 BOARD MEMBER ROSENBAUM: Just a follow-on</p> <p>5 to Mike's question. Just to be clear, if we did put</p> <p>6 this in a residential there would still be a variance</p> <p>7 involved?</p> <p>8 THE WITNESS: Definitely.</p> <p>9 BOARD MEMBER ROSENBAUM: Okay. That's it.</p> <p>10 BOARD MEMBER BOYAN: And to piggyback on</p> <p>11 the same. I guess I'm not sure, Mr. Steck. To answer</p> <p>12 Mike's question you said you didn't know of another</p> <p>13 property, but now I think previously we heard you say</p> <p>14 that the elementary school might be a better property.</p> <p>15 So is the elementary school better or not better?</p> <p>16 THE WITNESS: I would say the elementary</p> <p>17 school is definitely better. It's the one site that</p> <p>18 was touted as having the most need. It has a heavily</p> <p>19 wooded area in the rear, but is not a substantially</p> <p>20 different elevation than the subject site. It has a</p> <p>21 wooded area in the rear where -- and there's already a</p> <p>22 gravel trail that goes back there. It would seem to me</p> <p>23 in my opinion that on it's face that would be a</p> <p>24 superior site. And it's outside of the Historic</p> <p>25 District.</p>
<p style="text-align: right;">Page 51</p> <p>1 BOARD MEMBER BOYAN: So the answer to the</p> <p>2 Chairman's question is, yes, there is another</p> <p>3 alternative site that is better in your opinion?</p> <p>4 THE WITNESS: Yes.</p> <p>5 CHAIRMAN FLANAGAN: Well, I'm thoroughly</p> <p>6 confused now, but I'll let it rest. Anybody else?</p> <p>7 BOARD MEMBER ADDONIZIO: Just a follow up</p> <p>8 to that is, the school property abuts to the New Vernon</p> <p>9 Historic District, as well as the National and State</p> <p>10 District boundary. So because it's more densely wooded</p> <p>11 your opinion is, even though it's within a thousand</p> <p>12 feet of Historic District, that it's better?</p> <p>13 THE WITNESS: In my opinion if -- first of</p> <p>14 all, most sites because of the restrictive nature of</p> <p>15 your ordinances are going to need some kind of</p> <p>16 variance. That doesn't mean that all variances are</p> <p>17 equal, or that the statutory proofs could be satisfied.</p> <p>18 If the impact of this -- if the adverse</p> <p>19 impact of this proposal is because of the lack of a</p> <p>20 wooded backdrop, a treed backdrop and the proximity to</p> <p>21 homes, if that's the adverse consequences of this site,</p> <p>22 at least at that level of visual impact in my opinion</p> <p>23 back in the woods behind the elementary school, on that</p> <p>24 alone is a superior site. Yes, it would be, you know,</p> <p>25 maybe a hundred feet from the edge of the local and</p>	<p style="text-align: right;">Page 52</p> <p>1 State Historic District, but its impact on the district</p> <p>2 would be substantially less.</p> <p>3 This proposed site that the Applicant is</p> <p>4 talking about, again, is toward the very center of your</p> <p>5 one Historic District. And it clearly has a visual</p> <p>6 impact that is a significant adverse effect associated</p> <p>7 with this application.</p> <p>8 CHAIRMAN FLANAGAN: Mr. Simon, can I ask</p> <p>9 you a question?</p> <p>10 MR. SIMON: I'm not under oath.</p> <p>11 CHAIRMAN FLANAGAN: Not under oath. Did</p> <p>12 you ever reach out to the school to ask them to</p> <p>13 reconsider, and I guess there would have been post</p> <p>14 testimony is that the school was approached, shown a</p> <p>15 plan. The school wrote us a letter, right. We have a</p> <p>16 letter I think from the Superintendent saying we're not</p> <p>17 interested.</p> <p>18 Did you ever reach out to them again and</p> <p>19 ask them to come back and talk to us and --</p> <p>20 MR. SIMON: I've never asked the school to</p> <p>21 provide testimony at this hearing, no.</p> <p>22 CHAIRMAN FLANAGAN: All right. So do you</p> <p>23 know if there was any efforts --</p> <p>24 MR. SIMON: I can't --</p> <p>25 CHAIRMAN FLANAGAN: All right. Fine. So</p>

<p style="text-align: right;">Page 53</p> <p>1 there was no effort to reach out to get them to say, 2 hey, would you reconsider this? 3 MR. SIMON: I know at some point I may have 4 written a follow-up letter or just a letter, but I 5 don't recall receiving any response whatsoever one way 6 or another. 7 CHAIRMAN FLANAGAN: So the Applicant 8 testified they approached the school and we saw a whole 9 bunch of e-mails back and forth. We have testimony 10 they spoke. Testimony that the Superintendent wrote 11 back to the Applicant and said, I'm going to 12 paraphrase, but we're not interested. It was a fairly 13 quick letter, I think. 14 Subsequent to that you may have written a 15 letter to the school asking them to reconsider or 16 whatever, to which you got no response. Is that -- 17 does that make sense, is that the timeline? 18 MR. SIMON: But this was a while ago and 19 this was well before any proposal at 86 feet. 20 BOARD MEMBER NEWLIN: So this was at 140 21 feet; is that correct? 22 MR. SIMON: Yeah. It was the original 23 application and nothing to do with 86 feet. And I 24 believe, you know, frankly that the record, and I'll 25 state it later, the record's unclear admittedly in</p>	<p style="text-align: right;">Page 54</p> <p>1 terms of location at the school property. 2 CHAIRMAN FLANAGAN: And I think I agree 3 with Mr. Steck. I disagreed, then George spoke then I 4 started to agree. Personally, I think the school would 5 be a great place for this. But there's been absolute 6 radio sounds from the school. The only thing we have 7 is a letter saying we're not interested. So I -- 8 MR. SIMON: Well, I believe that goes to 9 whether the Board determines that the Applicant has 10 made a reasonable effort. And I will tell you, and I 11 believe Mr. Steck has opined on this in his sworn 12 testimony, that whether you think that the Applicant 13 has made an effort at 140 whatever it is feet, and 14 whether you think that the response had some clarity to 15 it not withstanding the particular location as to where 16 that 140-foot tower was to go, certainly I believe the 17 record is clear that there's been no effort to reach 18 out to the school at 86 feet, or to further investigate 19 whether there's a location that can be where a tower 20 can be appropriately sited. 21 BOARD MEMBER SOVOLOS: Mike, I would ask 22 the same question about this property as well. So I 23 know they were approached and they said no. I'm not 24 sure what the reasoning was behind that. I don't know 25 if it was at 120 or 140.</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. MLENAK: Just so the record because the 2 record needs to reflect what you're pointing. You're 3 talking about this building we're sitting in today? 4 BOARD MEMBER SOVOLOS: Yes, the municipal 5 building. Sorry. 6 CHAIRMAN FLANAGAN: But to that end, the 7 Township Committee is well aware that this application 8 is before us, right? So my view, personal view is, if 9 they were interested they would have put their hand up. 10 They probably would have said it. 11 BOARD MEMBER NEWLIN: Who is they? 12 CHAIRMAN FLANAGAN: They the Township 13 Committee would have simply just put it here. There's 14 a lot of things they can -- so if they wanted it -- 15 MR. SIMON: I think there are public 16 bidding considerations too that might have gone to the 17 point where Elizabeth is saying that they didn't look 18 at this and they should have, and I think they should 19 have, this property, Kirby Building property. 20 Bayne Park is the same thing. Because they 21 had a bid -- it was publicly bid based on request for 22 a proposal, and somebody was the "Winning bidder." 23 They entered into a lease that was subject to them 24 going before this Board for this publicly bid 25 application at the DPW site. And that does not obviate</p>	<p style="text-align: right;">Page 56</p> <p>1 the need for any Applicant, including Verizon, 2 including for a publicly bid site to meet the 3 positive criteria in looking at alternative sites in a 4 reasonable manner, especially now that we're talking 5 about a reduced compound by the way, which is also very 6 significant in terms of where the location can be. 7 CHAIRMAN FLANAGAN: I mean, my view is if 8 they wanted it here they would be here already. It's 9 not that they're unaware. 10 BOARD MEMBER BOYAN: Mike, from a practical 11 perspective I agree with you, but that's not what the 12 law says. The case law says the burden of ensuring 13 that the alternative sites have been properly explored 14 falls to the Applicant. It doesn't fall to Defense 15 Counsel, it falls on the Applicant to have done that 16 analysis and present it to us. 17 BOARD MEMBER SOVOLOS: It doesn't fall on 18 the Township Committee either. 19 MR. MLENAK: That's correct. To bring this 20 whole circle to where you and I had conversations the 21 last meeting about this issue, and I agree with Mr. 22 Simon on this point, that being that the Board at the 23 end of this when they deliberate you are going to be 24 asked whether or not you believe based on the facts 25 presented to you on the record before you that the</p>

<p style="text-align: right;">Page 57</p> <p>1 Applicant has fulfilled its burden and made a</p> <p>2 reasonable and good-faith effort to find an alternative</p> <p>3 less intrusive site than the application.</p> <p>4 And that was presented, of course, at the</p> <p>5 time when the height being applied for is much higher.</p> <p>6 So you have to determine whether those facts are such</p> <p>7 and the reasons why those sites aren't available could</p> <p>8 be altered into a similar inquiry. That's a factual</p> <p>9 based inquiry for the Board.</p> <p>10 BOARD MEMBER NEWLIN: And the fact for a</p> <p>11 140 feet, I believe that's what the record said --</p> <p>12 MR. MLENAK: The application was for -- oh,</p> <p>13 no. That's what the Board will have to look into the</p> <p>14 record and you can, of course, look at those e-mails</p> <p>15 again. They are useful to your deliberations.</p> <p>16 CHAIRMAN FLANAGAN: I mean, on that point,</p> <p>17 and we'll ask the Applicant to restate it, but my</p> <p>18 recollection is we have testimony that a plan was</p> <p>19 proposed at 140 feet to the School Board, which</p> <p>20 ultimately resulted in a letter back to the Applicant</p> <p>21 saying no thanks.</p> <p>22 BOARD MEMBER NEWLIN: A plan with a certain</p> <p>23 location?</p> <p>24 CHAIRMAN FLANAGAN: I believe it was</p> <p>25 presented in -- I think it's a little bit unclear. You</p>	<p style="text-align: right;">Page 58</p> <p>1 alluded it to -- where do you believe the Applicant</p> <p>2 propose the tower on the school site?</p> <p>3 MR. SIMON: Where? In the front. In the</p> <p>4 front. Within the -- I mean, whatever the record said,</p> <p>5 but my recollection is it was in the front.</p> <p>6 BOARD MEMBER NEWLIN: As far as you know,</p> <p>7 it was not the back property, it's the big expanse --</p> <p>8 CHAIRMAN FLANAGAN: We do have testimony.</p> <p>9 I asked this question. It's in the transcript.</p> <p>10 MR. MLENAK: Can I ask, Rich, do you know</p> <p>11 the exhibit number that we can pull up of the e-mails</p> <p>12 that were used in response to this? Because rather</p> <p>13 than guess, and I don't think the Board -- I think the</p> <p>14 Board should have their memory refreshed on this point.</p> <p>15 CHAIRMAN FLANAGAN: And Mr. Schneider,</p> <p>16 while we're at it, I recall asking this question of I</p> <p>17 think it was your site acquisition person, about the</p> <p>18 back property specifically, and she did testify to</p> <p>19 something. I know that is in there, which transcript I</p> <p>20 couldn't tell you. Maybe back property or playing</p> <p>21 fields or something, if you have an index.</p> <p>22 MR. SCHNEIDER: If you give me a second,</p> <p>23 Mr. Chairman.</p> <p>24 SECRETARY TAGLAIRINO: If I can get my</p> <p>25 screen to work I can pull it up.</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. SCHNEIDER: I'll find it.</p> <p>2 MR. MLENAK: Just minimize Peter in the</p> <p>3 corner there so we can still see him.</p> <p>4 MR. SIMON: I just want to keep track of</p> <p>5 the fact that, not in terms of timing, but just the</p> <p>6 fact that Mr. Steck is still entertaining questions</p> <p>7 from the Board. We haven't opened it up to the public</p> <p>8 yet in terms of questions for Mr. Steck, so he's still</p> <p>9 on the stand, so to speak.</p> <p>10 CHAIRMAN FLANAGAN: Is that okay?</p> <p>11 MR. SIMON: Yes. I'm just trying to keep</p> <p>12 track.</p> <p>13 CHAIRMAN FLANAGAN: How about this, Mr.</p> <p>14 Schneider. Why don't we take a five-minute break.</p> <p>15 It's been an hour and a half. Why don't we take a</p> <p>16 five-minute break while you look for that in the</p> <p>17 transcript?</p> <p>18 MR. SCHNEIDER: Yes.</p> <p>19 SECRETARY TAGLAIRINO: It's Exhibit A-12</p> <p>20 just so you know.</p> <p>21 CHAIRMAN FLANAGAN: We'll be back at 8:35.</p> <p>22 (Whereupon, a brief recess is taken at</p> <p>23 8:30 p.m.)</p> <p>24 (Back on the record at 8:35 p.m.)</p> <p>25 CHAIRMAN FLANAGAN: All right. We're back.</p>	<p style="text-align: right;">Page 60</p> <p>1 Lori, if you want to call the roll attendance.</p> <p>2 SECRETARY TAGLAIRINO: Ms. Sovolos?</p> <p>3 BOARD MEMBER SOVOLOS: Here.</p> <p>4 SECRETARY TAGLAIRINO: Mr. Maselli?</p> <p>5 BOARD MEMBER MASELLI: Here.</p> <p>6 SECRETARY TAGLAIRINO: Mr. Symonds?</p> <p>7 BOARD MEMBER SYMONDS: Yes, here.</p> <p>8 SECRETARY TAGLAIRINO: Mr. Newlin?</p> <p>9 BOARD MEMBER NEWLIN: Here.</p> <p>10 SECRETARY TAGLAIRINO: Mr. Rosenbaum?</p> <p>11 BOARD MEMBER ROSENBAUM: Here.</p> <p>12 SECRETARY TAGLAIRINO: Mr. Addonizio?</p> <p>13 BOARD MEMBER ADDONIZIO: Here.</p> <p>14 SECRETARY TAGLAIRINO: Mr. Flanagan?</p> <p>15 CHAIRMAN FLANAGAN: Here.</p> <p>16 SECRETARY TAGLAIRINO: Mr. Boyan?</p> <p>17 BOARD MEMBER BOYAN: Here.</p> <p>18 CHAIRMAN FLANAGAN: All right. Mr.</p> <p>19 Schneider, would you like us while you're looking just</p> <p>20 to move on to see if the public has any questions? We</p> <p>21 can come back to this.</p> <p>22 MR. SCHNEIDER: No, but if I can, the</p> <p>23 specific -- if you want me I can in the interest of</p> <p>24 efficiency to deal with the issue of where on the</p> <p>25 property the question was. And the reason I'm familiar</p>

<p style="text-align: right;">Page 61</p> <p>1 with it, although I can't locate it exactly in the</p> <p>2 transcript, is you asked the question back in November</p> <p>3 when I did my summation. So it's fresh in my mind.</p> <p>4 Chairman Flanagan, here's what you asked.</p> <p>5 "Was the --" this is to Ms. Enright, the Applicant's</p> <p>6 site acquisition consultant. And this was in</p> <p>7 furtherance at the time of the exhibit that Lori</p> <p>8 referenced.</p> <p>9 CHAIRMAN FLANAGAN: When you read that</p> <p>10 please read out the umms and the poor grammar.</p> <p>11 MR. SCHNEIDER: I'm make you look good.</p> <p>12 CHAIRMAN FLANAGAN: Thank you.</p> <p>13 MR. SCHNEIDER: "CHAIRMAN FLANAGAN: Was</p> <p>14 the possibility left open that this site or the</p> <p>15 compound be further -- could be further from the</p> <p>16 street?</p> <p>17 "MS. ENRIGHT: There was property available</p> <p>18 back there. So what I said was if the Board's</p> <p>19 interested I'll come back with our engineer to look at</p> <p>20 that but we never made it because the Board was not</p> <p>21 interested."</p> <p>22 BOARD MEMBER ROSENBAUM: Can we clarify,</p> <p>23 when you say Board --</p> <p>24 MR. SCHNEIDER: The Board meaning the Board</p> <p>25 of Ed.</p>	<p style="text-align: right;">Page 62</p> <p>1 MR. SIMON: And just to circle back --</p> <p>2 MR. SCHNEIDER: Let me just finish, if I</p> <p>3 can.</p> <p>4 "CHAIRMAN FLANAGAN: Okay. So as discussed</p> <p>5 is the possibility that it will be placed in the field</p> <p>6 behind the school?</p> <p>7 "THE WITNESS: Yes, he was talking about</p> <p>8 that area. We did discuss that area as well."</p> <p>9 CHAIRMAN FLANAGAN: That's exactly what I</p> <p>10 was looking for. Thank you.</p> <p>11 MR. SIMON: So our position is, first of</p> <p>12 all, that that is nebulous in terms of specifically</p> <p>13 what area they're talking about, number one. Number</p> <p>14 two, A-12 specifically states, and we've talked about</p> <p>15 this a number of times, this is from the Board</p> <p>16 Superintendent, I think Mr. Spelker, "Our Board has</p> <p>17 decided not to pursue this proposal any further." This</p> <p>18 is from May 28, 2019. So this is approximately three</p> <p>19 years ago. "We appreciate you presenting to our</p> <p>20 Facilities and Finance Committee, but the Board was</p> <p>21 concerned with possible safety issues and the height</p> <p>22 and footprint that the site would require."</p> <p>23 I'll save it for later, but putting it in</p> <p>24 the -- way back in the woods where there's no kids I</p> <p>25 don't know what safety issues there would be.</p>
<p style="text-align: right;">Page 63</p> <p>1 Obviously, there was a concern about the height and</p> <p>2 footprint as proposed back in May of 2019.</p> <p>3 BOARD MEMBER ROSENBAUM: But to be clear,</p> <p>4 when you say "safety" we're not quite sure what they</p> <p>5 mean by safety. Safety fall distance or anything like</p> <p>6 that?</p> <p>7 MR. SIMON: Aric, I absolutely don't know.</p> <p>8 MR. SCHNEIDER: Unless you have any</p> <p>9 question, I'll defer -- I hope I answered your --</p> <p>10 CHAIRMAN FLANAGAN: You did.</p> <p>11 MR. SCHNEIDER: And I will defer further</p> <p>12 discussion to the extent applicable on the alternate</p> <p>13 sites in my resubmission.</p> <p>14 BOARD MEMBER NEWLIN: Can you clarify the</p> <p>15 height that we do or do not know? Was that discussion</p> <p>16 back with the school was it 140 or is it --</p> <p>17 MR. SCHNEIDER: The 140 at the time, but</p> <p>18 obviously the Applicant -- well, I'll address it in my</p> <p>19 summation.</p> <p>20 CHAIRMAN FLANAGAN: Okay. Any other</p> <p>21 members of the Board have any questions for Mr. Steck?</p> <p>22 (No response.) Okay. Do any members of the public</p> <p>23 have any questions for the testimony that Mr. Steck</p> <p>24 provided today? There's one. Come on down.</p> <p>25 If that microphone -- or maybe if you can</p>	<p style="text-align: right;">Page 64</p> <p>1 use this microphone next to Mr. Simon.</p> <p>2 MR. SIMON: Wait, wait, wait. I'm sorry.</p> <p>3 Ms. Conine, you can you cannot ask questions.</p> <p>4 CHAIRMAN FLANAGAN: I'm sorry. I should</p> <p>5 have said that. Any clients --</p> <p>6 MR. SIMON: I apologize.</p> <p>7 CHAIRMAN FLANAGAN: She can fire you right</p> <p>8 now.</p> <p>9 MR. SIMON: Mr. Chairman, I like that</p> <p>10 you're always in my corner.</p> <p>11 CHAIRMAN FLANAGAN: Does that work? I just</p> <p>12 want to make sure everyone knows their options.</p> <p>13 SECRETARY TAGLAIRINO: It works. It just</p> <p>14 has to be turned on.</p> <p>15 CHAIRMAN FLANAGAN: So this is needs to be</p> <p>16 questions not statement. Questions of Mr. Steck's</p> <p>17 testimony today. So I everyone knows, we're going to</p> <p>18 have another public comment session on --</p> <p>19 MS. ENGEL: This is Christel Engel,</p> <p>20 E-n-g-e-l. We live at 32 Millbrook Road. Sir, may I</p> <p>21 please ask the following question? You stated that</p> <p>22 since there was no revision made to the initial</p> <p>23 application that the 86-foot tower by loopholes or</p> <p>24 otherwise could immediately be changed to 104 feet, if</p> <p>25 I understood you correctly, because it would mean 20</p>

<p style="text-align: right;">Page 65</p> <p>1 plus four.</p> <p>2 And further that because of the</p> <p>3 collocation, that the reduction in the footprint would</p> <p>4 never be the real reduction of the footprint but it</p> <p>5 would be the original size; is that correct?</p> <p>6 THE WITNESS: I'll rephrase that. In</p> <p>7 general, yes. The Applicant has reduced the size of</p> <p>8 the compound and said that we can accommodate one</p> <p>9 10-by-20-foot pad for a second carrier, but the bid</p> <p>10 specifications of the municipality say, number one,</p> <p>11 they like collocation and it can have up to four</p> <p>12 carriers. And so if any more than one additional</p> <p>13 carrier appears the lease area, in my opinion,</p> <p>14 essentially guarantees that the compound would be</p> <p>15 larger to accommodate four carriers.</p> <p>16 As I understand it, the Municipal Land Use</p> <p>17 Law was amended to say, and there are certain</p> <p>18 conditions to it, but it was basically to accommodate</p> <p>19 collocators a site plan to the municipality does not</p> <p>20 have to be submitted in general if a collocator comes</p> <p>21 up and the height can be increased by 10 feet.</p> <p>22 There is also Federal legislation that I</p> <p>23 believe allows an accommodation up to 20 feet taller.</p> <p>24 And again it was in a sense a theme of once the tower's</p> <p>25 there the carriers or the industry has certain rights</p>	<p style="text-align: right;">Page 66</p> <p>1 to encourage collocation and taller towers without the</p> <p>2 hassle of going back to the municipality.</p> <p>3 MS. ENGEL: So then to just clarify again,</p> <p>4 we're looking at probably a much taller tower again?</p> <p>5 THE WITNESS: In my opinion, a fair</p> <p>6 evaluation of this has to look at the possibility of</p> <p>7 four carriers and a taller tower.</p> <p>8 MS. ENGEL: Thank you. No more questions.</p> <p>9 BOARD MEMBER NEWLIN: I'm sorry. I want to</p> <p>10 question what you said.</p> <p>11 CHAIRMAN FLANAGAN: Ms. Engel? Do you have</p> <p>12 a question for her?</p> <p>13 BOARD MEMBER NEWLIN: No.</p> <p>14 CHAIRMAN FLANAGAN: Never mind.</p> <p>15 BOARD MEMBER NEWLIN: To what Mr. Steck</p> <p>16 said, I don't think is entirely accurate that the town</p> <p>17 in this municipality would have to agree to a lease.</p> <p>18 So in fact any tower that wanted to come in and be</p> <p>19 added to this facility the town would have to do that.</p> <p>20 The Board of Adjustment may not, but I don't think it's</p> <p>21 true that the municipality wouldn't have a say. If</p> <p>22 they're a lease holder they can decide --</p> <p>23 MR. MLENAK: Yes. In terms of the</p> <p>24 proprietary interest of the property, the municipality</p> <p>25 is the owner of the property and would have to enter</p>
<p style="text-align: right;">Page 67</p> <p>1 into a lease with any collocator.</p> <p>2 BOARD MEMBER NEWLIN: But the municipality</p> <p>3 could say no?</p> <p>4 BOARD MEMBER BOYAN: Why couldn't the</p> <p>5 lessor sublease to a second carrier without the</p> <p>6 interest of the municipality?</p> <p>7 MR. MLENAK: Well, it would still be</p> <p>8 subject to the lease agreement provision on the ability</p> <p>9 to sublease.</p> <p>10 BOARD MEMBER BOYAN: Does that possibility</p> <p>11 exist or no?</p> <p>12 MR. MLENAK: I haven't even looked at that,</p> <p>13 but what has been proposed by the Applicant's attorney</p> <p>14 is another condition of approval if this Board is so</p> <p>15 willing to require good-faith efforts for that lease to</p> <p>16 be amended to restrict the height to 80 feet plus 6</p> <p>17 feet for branching in the future. So not withstanding</p> <p>18 the Federal and state law, what they provide in terms</p> <p>19 of zoning approvals, there would be a contractual</p> <p>20 limitation.</p> <p>21 BOARD MEMBER BOYAN: But the question of</p> <p>22 whether or not the governing body has say in terms of</p> <p>23 its collocators is nebulous subject to the terms of</p> <p>24 some lessor terms of the agreement?</p> <p>25 MR. MLENAK: My point is that it is subject</p>	<p style="text-align: right;">Page 68</p> <p>1 to the lease being negotiated by the town and not this</p> <p>2 Board.</p> <p>3 BOARD MEMBER BOYAN: But it may have</p> <p>4 already been negotiated by the town, period. So the</p> <p>5 collocator may not have to go to a governing body?</p> <p>6 MR. MLENAK: That's correct.</p> <p>7 MS. ENGEL: My point exactly.</p> <p>8 SECRETARY TAGLAIRINO: Mr. Simon, is Ms.</p> <p>9 Engel no longer represented by you?</p> <p>10 MR. SIMON: No.</p> <p>11 SECRETARY TAGLAIRINO: Okay. I just wanted</p> <p>12 to be clear for the record.</p> <p>13 CHAIRMAN FLANAGAN: Yes. Mr. O'Donnell?</p> <p>14 MR. O'DONNELL: Just a quick question.</p> <p>15 Doesn't Basking Ridge have a cell tower back on their</p> <p>16 fields?</p> <p>17 CHAIRMAN FLANAGAN: Your name?</p> <p>18 MR. O'DONNELL: Neil O'Donnell.</p> <p>19 SECRETARY TAGLAIRINO: And your address?</p> <p>20 MR. O'DONNELL: 28 Millbrook Road. Doesn't</p> <p>21 Basking Ridge have a cell tower? I mean I was at their</p> <p>22 ball field a long time ago and there is a cell tower</p> <p>23 back over that way.</p> <p>24 THE WITNESS: It has one behind the</p> <p>25 municipal building, if I recall.</p>

<p style="text-align: right;">Page 69</p> <p>1 MR. O'DONNELL: Not back by the fields?</p> <p>2 THE WITNESS: I don't recall. I've seen it</p> <p>3 at one time, but I don't recall exactly where its</p> <p>4 position is. And I don't know if it's on Board of Ed</p> <p>5 property or on municipal owned property.</p> <p>6 CHAIRMAN FLANAGAN: Anyone else? Mr. Fox,</p> <p>7 you have a question?</p> <p>8 MR. FOX: Mr. Steck, with respect to the</p> <p>9 Federal or state law allowing the Applicant to extend</p> <p>10 the tower does that also give the Applicant the right</p> <p>11 to increase the size of the equipment enclosures?</p> <p>12 THE WITNESS: I think the maximum permitted</p> <p>13 by at least the state legislation is 2,500-square feet</p> <p>14 for an equipment area. So they put a limit on it,</p> <p>15 which would be the, you know, this full area is</p> <p>16 30-by-60. So that would -- it could be expanded and</p> <p>17 still fit within the state regulations where you don't</p> <p>18 have to come back for site plan approval.</p> <p>19 MR. FOX: Thank you.</p> <p>20 CHAIRMAN FLANAGAN: Come on down. Give</p> <p>21 your name and address. Just your street.</p> <p>22 MR. SPENCER: Jeff Spencer, White Dear</p> <p>23 Lane. My question is we talked a lot about public</p> <p>24 property and then residential property came up for the</p> <p>25 first time. Do these same lease agreements and</p>	<p style="text-align: right;">Page 70</p> <p>1 regulations how do they impact the Applicant applying</p> <p>2 for installation on a residential property?</p> <p>3 THE WITNESS: Well, an Applicant is</p> <p>4 required to do a site search in its area, and that</p> <p>5 doesn't necessarily -- that site search doesn't</p> <p>6 automatically exclude residential properties. And</p> <p>7 again, there's a search area that is established by the</p> <p>8 provider, and then there is an obligation of the</p> <p>9 provider to look at sites, because one of the proofs is</p> <p>10 that the site they select has to be judged to be</p> <p>11 particularly suited. And again, there's kind of a</p> <p>12 sliding scale. Some sites are better than others and</p> <p>13 it depends upon the height of the tower.</p> <p>14 In this instance the Applicant made some</p> <p>15 effort to look at other properties. There were self</p> <p>16 imposed restrictions such as no residential property.</p> <p>17 But they ignored the fact that there was a Historic</p> <p>18 District in certain boundaries. Again, part of this</p> <p>19 process is it's the burden of the Applicant to do a</p> <p>20 fair search of alternate sites, and in my opinion to</p> <p>21 consider alternate technologies.</p> <p>22 MR. SPENCER: And just as a follow up, how</p> <p>23 would subleasing on that Applicant's -- on basically</p> <p>24 the site change if it were to be a residential</p> <p>25 property? Would there be less oversight, or would it</p>
<p style="text-align: right;">Page 71</p> <p>1 be the same?</p> <p>2 THE WITNESS: This is a particular</p> <p>3 situation in that there's a bid package that the Town</p> <p>4 issued that says you can go up to, whatever, 140 feet</p> <p>5 and you can have four carriers. So the winner of the</p> <p>6 bid which is Verizon theoretically has the ability and</p> <p>7 in a sense is encouraged to have collocation.</p> <p>8 If an Applicant came in -- if an Applicant</p> <p>9 came in for a residential property it would have to be</p> <p>10 a site -- it would be a variance application to the</p> <p>11 Board of Adjustment and all of these same principals</p> <p>12 would have to be evaluated but without a lease</p> <p>13 agreement. The first step is for a property owner to</p> <p>14 accept the terms of let's say Verizon should Verizon be</p> <p>15 approved. Once that's done the Applicant has to March</p> <p>16 through the same Sica test that we're talking about</p> <p>17 this evening.</p> <p>18 MR. SPENCER: Great. Thank you.</p> <p>19 CHAIRMAN FLANAGAN: Okay. Anyone else?</p> <p>20 All right. What is our next step, Steve?</p> <p>21 MR. MLENAK: That's it for Mr. Steck. Mr.</p> <p>22 Simon, no other witnesses or anything?</p> <p>23 MR. SIMON: No. Other than I believe that</p> <p>24 a couple of my clients would like to make supplemental</p> <p>25 statements based on the revised application.</p>	<p style="text-align: right;">Page 72</p> <p>1 BOARD MEMBER BOYAN: Mr. Chairman, before</p> <p>2 we move on in the agenda now that Mr. Steck is done I'd</p> <p>3 like to ask Mr. Mlenak a question, a legal question</p> <p>4 related to the testimony that we heard.</p> <p>5 In your opinion, does the Applicant need to</p> <p>6 fill out a revised application or is the method that's</p> <p>7 being proposed by the Applicant legal in your opinion?</p> <p>8 MR. MLENAK: In my opinion, what the</p> <p>9 Applicant is proposing is fine. I respectfully</p> <p>10 disagree with Mr. Simon. It's not a crystal clear</p> <p>11 requirement to the application. You are operating on</p> <p>12 an application under a standard that requires you to</p> <p>13 consider conditions. You're all seasoned members of</p> <p>14 the Board. You've seen many applications where I'm</p> <p>15 sure you've seen applicants recommend or in advance</p> <p>16 tell you that they're consenting to such a condition.</p> <p>17 There is case law which talks about the</p> <p>18 impact on a change to an amendment -- to an application</p> <p>19 in terms of whether new notice needs to be provided.</p> <p>20 One case in particular that comes to mind is a case out</p> <p>21 in Denville which goes to the core of the application</p> <p>22 where the change is being made. That was a three lot</p> <p>23 subdivision. There were changes and there was still a</p> <p>24 three-lot subdivision.</p> <p>25 Here you have an application for a cell</p>

<p style="text-align: right;">Page 73</p> <p>1 tower and it didn't increase in height with the</p> <p>2 intensity in terms of creating new variances. The</p> <p>3 Applicant simply proposed a condition not unlike their</p> <p>4 proposal that it be a stealth tree or any other</p> <p>5 condition that they propose more landscaping</p> <p>6 requirements or anything like that.</p> <p>7 Obviously, you have before you an</p> <p>8 application for 126 feet. If this Board determined</p> <p>9 that it had not met its obligation and that the</p> <p>10 conditions, whether proposed by the Applicant or of</p> <p>11 your own thought process were not sufficient to</p> <p>12 mitigate the negative criteria and that balance lies in</p> <p>13 favor of a denial you'd be denying a 126-foot</p> <p>14 application, not an 86-foot application. The short of</p> <p>15 it is, I don't believe if the Applicant chooses not to</p> <p>16 amend their application --</p> <p>17 BOARD MEMBER BOYAN: So from a procedural</p> <p>18 perspective your advice is that it's okay?</p> <p>19 MR. MLENAK: Yes.</p> <p>20 BOARD MEMBER BOYAN: But I imagine that</p> <p>21 from a practical perspective this Board now has to</p> <p>22 weigh whether or not the Applicant has met the Sica</p> <p>23 balancing test in light of the proposed reduction?</p> <p>24 MR. MLENAK: Yes. You're analyzing --</p> <p>25 BOARD MEMBER BOYAN: -- or suggested</p>	<p style="text-align: right;">Page 74</p> <p>1 condition of a reduction.</p> <p>2 MR. MLENAK: You're analyzing the</p> <p>3 application as it was applied for an determining</p> <p>4 whether reducing the height to 86 is a condition that</p> <p>5 can mitigate the negative criteria. In doing so,</p> <p>6 however, you're implicating obviously other aspects of</p> <p>7 the application.</p> <p>8 You heard testimony from Mr. Steck tonight,</p> <p>9 I agree, because I asked the question of Mr. Masters</p> <p>10 last time, whether or not there's an impact to the</p> <p>11 first part of the Sica balancing test, which is how is</p> <p>12 the public interest affected by reducing the height</p> <p>13 down to 86 feet? So yes, you would have to evaluate</p> <p>14 all of these. You don't operate in a vacuum.</p> <p>15 BOARD MEMBER BOYAN: But the balancing test</p> <p>16 we should be thinking about is at 86?</p> <p>17 MR. MLENAK: Well, I would say you first</p> <p>18 have to do it at what it's proposed at 126.</p> <p>19 BOARD MEMBER BOYAN: We have kind of</p> <p>20 already straw polled that.</p> <p>21 MR. MLENAK: Correct, and that's where I'm</p> <p>22 getting. You may have already done that.</p> <p>23 BOARD MEMBER NEWLIN: Did we already do</p> <p>24 that?</p> <p>25 MR. MLENAK: Well, we did a straw poll.</p>
<p style="text-align: right;">Page 75</p> <p>1 You have to do that deliberation, but then if that is</p> <p>2 the case then, yes, you can consider other conditions</p> <p>3 including lowering the height.</p> <p>4 CHAIRMAN FLANAGAN: And in the interest of</p> <p>5 going through this as efficiently as possible, we</p> <p>6 pretty thoroughly walked through that memo the last</p> <p>7 time and I think it was unanimous in the conclusion</p> <p>8 that the answer was no. So I think the only</p> <p>9 modification here, I think the only thing we need to</p> <p>10 consider tonight is does that 80-foot height change</p> <p>11 your answer? Everything else is equal.</p> <p>12 I hear what you're saying. You need to</p> <p>13 consider, if they had gone with an 80-foot tower to the</p> <p>14 school would they have said yes? Right. That's one of</p> <p>15 the questions. I have a view on that. I'll share it</p> <p>16 with you later.</p> <p>17 BOARD MEMBER BOYAN: Not legally.</p> <p>18 CHAIRMAN FLANAGAN: I'll share it with you</p> <p>19 anyway. What's next? We're going to have public</p> <p>20 comment?</p> <p>21 MR. MLENAK: Yes. Just to close the loop,</p> <p>22 I have the lease in front of me and it does allow for a</p> <p>23 sublease to collocate.</p> <p>24 BOARD MEMBER BOYAN: Okay. Without any</p> <p>25 further approval from the governing body?</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. MLENAK: Correct. It starts without</p> <p>2 any approval or consent of any other party this</p> <p>3 agreement may be --</p> <p>4 CHAIRMAN FLANAGAN: All right. So as it</p> <p>5 comes to public comment, we've done this once before,</p> <p>6 we're going to do it again because we have new</p> <p>7 testimony. I think -- Steve correct me if I'm wrong --</p> <p>8 the public comment we have tonight is what, is it meant</p> <p>9 to be limited to the new testimony we've received since</p> <p>10 the last time we went through this?</p> <p>11 MR. MLENAK: That's correct. The public</p> <p>12 comment has already occurred in this application, but</p> <p>13 because testimony and new exhibits have been introduced</p> <p>14 since that occurring we need to open up to the public</p> <p>15 again for any comment related to that new testimony,</p> <p>16 that new exhibit or any change to your prior comments</p> <p>17 you've given resulting from that new testimony. And it</p> <p>18 should be limited to that.</p> <p>19 CHAIRMAN FLANAGAN: All right. So I would</p> <p>20 ask everyone just to -- we have that five-minute rule.</p> <p>21 You know, please just keep that in mind and had try to</p> <p>22 be efficient with your thoughts.</p> <p>23 So with that said who wants to be first.</p> <p>24 Is Fran Frigerio here? No? (Laughter.)</p> <p>25 Well, you had your hand up so come on down.</p>

<p style="text-align: right;">Page 77</p> <p>1 MR. SIMON: And these would include</p> <p>2 comments from my clients as well instead of me formally</p> <p>3 introducing them?</p> <p>4 CHAIRMAN FLANAGAN: Oh, I'm sorry.</p> <p>5 MR. SIMON: No, no. You don't have to</p> <p>6 apologize. I think it's fine and they can just be part</p> <p>7 of the public and they'll identify themselves as such.</p> <p>8 CHAIRMAN FLANAGAN: This public comment</p> <p>9 session where your clients speak will be in lieu of</p> <p>10 them providing their supplemental testimony, is that</p> <p>11 what you're saying?</p> <p>12 MR. SIMON: Well, it is essentially</p> <p>13 supplemental testimony. And it doesn't have to be in</p> <p>14 any particular order, so this is fine.</p> <p>15 SECRETARY TAGLAIRINO: Okay. So we can</p> <p>16 expect that they'll identify themselves when they come</p> <p>17 up?</p> <p>18 MR. SIMON: Absolutely.</p> <p>19 SECRETARY TAGLAIRINO: Thank you.</p> <p>20 CHAIRMAN FLANAGAN: When you come you've</p> <p>21 just got to give us your name, your address. Street is</p> <p>22 fine. We don't need your street number.</p> <p>23 MR. SCHADE: Steve Schade, Mount Kemble</p> <p>24 Avenue.</p> <p>25 SECRETARY TAGLAIRINO: Can you spell your</p>	<p style="text-align: right;">Page 78</p> <p>1 last name, please?</p> <p>2 MR. SCHADE: S-c-h-a-d-e.</p> <p>3 MR. MLENAK: And because this is considered</p> <p>4 testimony you will have to be sworn in. Sir, do you</p> <p>5 swear to tell the truth, the whole truth, and nothing</p> <p>6 but the truth?</p> <p>7 MR. SCHADE: I do.</p> <p>8 S T E V E S C H A D E, is duly sworn.</p> <p>9 SECRETARY TAGLAIRINO: And your street</p> <p>10 again, please?</p> <p>11 MR. SCHADE: Mount Kemble Avenue.</p> <p>12 SECRETARY TAGLAIRINO: Thank you.</p> <p>13 MR. SCHADE: Off the record, it's Fran's</p> <p>14 63rd wedding anniversary today, so I don't know where</p> <p>15 she is, but let's hope she's having a better time than</p> <p>16 we are.</p> <p>17 CHAIRMAN FLANAGAN: There is no off the</p> <p>18 record.</p> <p>19 MR. SCHADE: So to not go over anything</p> <p>20 from before but to just go over new things that I heard</p> <p>21 tonight for the first time, it seems that the Applicant</p> <p>22 cannot only increase the size of the equipment, but</p> <p>23 they can increase the size of the pole from wherever it</p> <p>24 starts without coming back here again. So a lot of</p> <p>25 this sounds like snake oil to me. You know, they'll</p>
<p style="text-align: right;">Page 79</p> <p>1 promise we're going to do this over here and by the</p> <p>2 time we're done five years later we have this over</p> <p>3 here. That what it looks like to ma.</p> <p>4 And I'm going to quote something that Mr.</p> <p>5 Steck said that sticks in my mind. Significant</p> <p>6 negative visual impact. That's what we're talking</p> <p>7 about here. We're not talking about do we want better</p> <p>8 cell service if with could hide the antenna in the</p> <p>9 Presbyterian Church where nobody can see it.</p> <p>10 The issue is nobody wants to look at this.</p> <p>11 I don't live in New Vernon any longer, as I mentioned</p> <p>12 the last time. I am here every day. As you can see</p> <p>13 I'm still here from this morning. I don't have to look</p> <p>14 at it from my house. I have to look at it when I get</p> <p>15 my mail. I have to look at it when I drive through the</p> <p>16 center of town. I don't -- I'm not proposing to speak</p> <p>17 for everybody else but I don't think anybody else is</p> <p>18 going to say anything different than what we're going</p> <p>19 it hear right now. None of us want to look at this and</p> <p>20 especially in a Historic District. (Applause.)</p> <p>21 MR. KOENEKE: Mike Koenke.</p> <p>22 CHAIRMAN FLANAGAN: Sir --</p> <p>23 THE WITNESS: Copper Tree Lane.</p> <p>24 MR. SIMON: Mr. Koenke is one of my</p> <p>25 clients.</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. MLENAK: Do you swear to tell the</p> <p>2 truth, the whole truth, and nothing but the truth?</p> <p>3 THE WITNESS: Yes.</p> <p>4 M I C H A E L K O E N E K E, is duly</p> <p>5 sworn.</p> <p>6 MR. KOENEKE: So question what I'm about</p> <p>7 red to say all has what happens tonight, okay. Why do</p> <p>8 I feel like this is Ground Hog Day 3.0?</p> <p>9 When we started this three years ago it was</p> <p>10 like it is tonight, a lot of confusion. And in my</p> <p>11 opinion we're no further along tonight than we were</p> <p>12 three years ago. You've heard thousands and thousands</p> <p>13 of pages of testimony. We have spent tens of thousands</p> <p>14 of dollars, all of us, and we're sort of back where we</p> <p>15 started from. Actually, I think we're worse.</p> <p>16 Let me just recap very briefly, Counselor.</p> <p>17 In November you let us speak. That was the first time,</p> <p>18 right? And I think you heard a pretty clear message</p> <p>19 that no one wanted a cell tower in Historic Harding.</p> <p>20 Period. Okay. And you had a vote in December which</p> <p>21 happened to be nine nothing, straw vote. It was nine</p> <p>22 nothing. And then an unforced error was committed.</p> <p>23 You couldn't pull the trigger. You let Verizon back in</p> <p>24 and they came back in in February and you opened the</p> <p>25 meeting and you looked down here to your right and it</p>

<p style="text-align: right;">Page 81</p> <p>1 was like it was a done deal. Okay. It's 80 feet and</p> <p>2 there it went. You wouldn't even let our Counselor get</p> <p>3 involved until the end of the meeting. It was done.</p> <p>4 So I'm sitting here, you know the old Vince</p> <p>5 Lombardi clip where his Packers are doing terrible on</p> <p>6 the field and he yells out "What the hell is going on</p> <p>7 here?" I sort of ask myself what happened? Hum, what</p> <p>8 happened?</p> <p>9 So how can nine nothing go 180 degrees?</p> <p>10 What happened? Well, I ask you, Counselor, you know,</p> <p>11 we're not allowed to talk, but the question I have is</p> <p>12 how much did the Honorable Chris Yates insert himself</p> <p>13 onto this process? Wait, he was the Mayor, Deputy</p> <p>14 Mayor. This is his baby. He's gone around this town</p> <p>15 for three years telling everybody we got it all. It's</p> <p>16 a done deal. It's a done deal. Then all of a sudden</p> <p>17 you vote nine nothing. I think he woke up and he said,</p> <p>18 whoa, my peeps, what are they doing? And I think he</p> <p>19 went to work.</p> <p>20 CHAIRMAN FLANAGAN: Mr. Koeneker, are you</p> <p>21 suggesting that this Board had conversations with the</p> <p>22 former Mayor?</p> <p>23 MR. KOENEKE: Yes.</p> <p>24 CHAIRMAN FLANAGAN: You are. So you're</p> <p>25 accusing us --</p>	<p style="text-align: right;">Page 82</p> <p>1 MR. KOENEKE: I'm not accusing, I'm just --</p> <p>2 CHAIRMAN FLANAGAN: Well, I just asked if</p> <p>3 you're suggesting that we had conversations with the</p> <p>4 former Mayor --</p> <p>5 MR. KOENEKE: I'm connecting the dots.</p> <p>6 CHAIRMAN FLANAGAN: -- and you said "yes."</p> <p>7 MR. KOENEKE: I'm connecting the dots. How</p> <p>8 do you go from nine to nothing --</p> <p>9 CHAIRMAN FLANAGAN: Enough. Stop. You're</p> <p>10 going to stand there after three years of this Board</p> <p>11 sitting on this dais listening to this testimony and</p> <p>12 then you're going to accuse us of having --</p> <p>13 MR. KOENEKE: I'm not accusing.</p> <p>14 CHAIRMAN FLANAGAN: You just admitted you</p> <p>15 did, and I don't appreciate it. And I think everyone</p> <p>16 out in that audience, in the gallery heard you do the</p> <p>17 same thing. I expect a little bit of courtesy here.</p> <p>18 We're your neighbors, right. Do you think that we're</p> <p>19 doing this -- we get some sort of kick doing this?</p> <p>20 MR. KOENEKE: No.</p> <p>21 CHAIRMAN FLANAGAN: We're doing this for</p> <p>22 the Township.</p> <p>23 MR. KOENEKE: I just don't see --</p> <p>24 CHAIRMAN FLANAGAN: No. I'm not going to</p> <p>25 sit here and be accused of doing something</p>
<p style="text-align: right;">Page 83</p> <p>1 inappropriate, and I'm not going to let anyone on this</p> <p>2 Board --</p> <p>3 MR. KOENEKE: I didn't say it was</p> <p>4 inappropriate.</p> <p>5 CHAIRMAN FLANAGAN: It absolutely would be.</p> <p>6 Enough. Thank you. You can sit down.</p> <p>7 MR. KOENEKE: Well, let me just finish.</p> <p>8 CHAIRMAN FLANAGAN: No. You are done. Sit</p> <p>9 down.</p> <p>10 MR. KOENEKE: You built yourself a trap.</p> <p>11 CHAIRMAN FLANAGAN: You're sitting down.</p> <p>12 Sit down.</p> <p>13 SECRETARY TAGLAIRINO: Five minutes. Thank</p> <p>14 you.</p> <p>15 CHAIRMAN FLANAGAN: Anyone next?</p> <p>16 MS. CONINE: I'll go next. I'm Sarah</p> <p>17 Conine. Lees Hill Road.</p> <p>18 MR. MLENAK: Do you swear to tell the</p> <p>19 truth, the whole truth, and nothing but the truth?</p> <p>20 MS. CONINE: I do.</p> <p>21 S A R A H C O N I N E, is duly sworn.</p> <p>22 MS. CONINE: I am one of his clients. I</p> <p>23 just want to start by saying I know it's been a long</p> <p>24 three years for all of us, and especially as the public</p> <p>25 it gets hard because we can't say anything. So in</p>	<p style="text-align: right;">Page 84</p> <p>1 three years this is only the second time we've talked.</p> <p>2 So I know it's been hard on all of us not to be able to</p> <p>3 say something inappropriate or not appropriate</p> <p>4 sometimes, but anyway, thank you for letting us talk</p> <p>5 again.</p> <p>6 I just want to say I am renovating -- so we</p> <p>7 have a home that we're renovating that I grew up in the</p> <p>8 Historic District in the least densely wooded area of</p> <p>9 most of Harding. And we have painstakingly gone to</p> <p>10 great lengths to preserve the history of that home. We</p> <p>11 had three builders come and tell us to knock it down.</p> <p>12 That it would be cheaper, and it would have been now</p> <p>13 that I'm almost done. But we really felt it was</p> <p>14 important to preserve the Historic Downtown area across</p> <p>15 the street from the Presbyterian Church, which is</p> <p>16 historic, where all the homes are close together</p> <p>17 because back in the 1800s they used to all be close</p> <p>18 together. We felt it really important for our town to</p> <p>19 preserve that so we've gone to great lengths to bring</p> <p>20 it up to today's living to but to preserve all that.</p> <p>21 We have saved the molding. We've saved the trim.</p> <p>22 We've saved the doors. We've added on the porch that</p> <p>23 was there again in the 1800s.</p> <p>24 So I beg of you, I beg, beg, beg with you</p> <p>25 to not put this tower in my backyard where I've lived</p>

<p style="text-align: right;">Page 85</p> <p>1 for 35 years. I've watched a lot of this town change 2 over the years in some wonderful ways, and some in 3 really bad ways. And I've watched the DPW grow and 4 grow and grow and my family has said nothing. They 5 said nothing. They've let it happen. It's part of 6 Town. It's part of what makes a town go. It's how it 7 operates. But this is enough. We don't need this 8 here. We all know, you guys are all smart people, we 9 all know there's other options.</p> <p>10 And the last thing I ask is down in your 11 hearts would any of you want this in your backyards? 12 Now my daughter would like to say 13 something.</p> <p>14 MR. MLENAK: Say your name, please. 15 MS. NORA CARIFA: Nora Carifa. 16 MR. MLENAK: Same address? 17 MS. NORA CARIFA: Yes. 18 MR. MLENAK: Do you swear to tell the 19 truth, the whole truth, and nothing but the truth? 20 MS. NORA CARIFA: I do. 21 N O R A C A R I F A, is duly sworn. 22 MS. NORA CARIFA: I just wanted to ask, 23 please -- I'm sorry -- not to put the cell phone tower 24 in my backyard. We really don't want it. My parents 25 have been working so hard to get you to say no and you</p>	<p style="text-align: right;">Page 86</p> <p>1 guys three for years now -- 2 MS. CONINE: Thank you. We've had a lot of 3 cell phone talk in our house. It's been a long few 4 years. Thank you. (Applause.) 5 MR. BANSAL: Hi. I'm Harsh Bansal, Copper 6 Tree Lane. I'm one of Mr. Simon's clients so I can 7 answer the question. 8 MR. MLENAK: Do you swear to tell the 9 truth, the whole truth, and nothing but the truth? 10 MR. BANSAL: I do. 11 H A R S H B A N S A L, is duly sworn. 12 MR. BANSAL: So there is a cell tower right 13 next to Basking Ridge School that you asked the 14 question about. It's very, very close to the playing 15 fields. In fact, I have photos on my cell phone I can 16 show you from I went there last time. 17 You will also find that if the Applicant 18 had done and done their due diligence and gone to the 19 school and said they wanted to put up an 86-foot tower 20 in their back fields you would find that the distance 21 from the center of the field, and you can ask them to 22 investigate, is roughly the same as it is from the 23 tower today to the building of the school. That may 24 surprise you but that is the case, very, very close. 25 We're talking about only a few feet of difference.</p>
<p style="text-align: right;">Page 87</p> <p>1 The other thing you will also notice if 2 they had done their due diligence and proposed it 3 properly is that the back field in the school is 4 actually 20- to 30-feet higher, there are portions, 5 areas that are 20- to 30-feet higher than the proposed 6 site of the DPW, which means that if the Applicant is 7 now okay with an 86-foot tower potentially it could be 8 something to 50- to 60 feet, maybe even 60 feet. That 9 will allow far less visual impact than is being 10 proposed now.</p> <p>11 I can see that tower in my backyard. Many 12 of you have been to my property. It is disgusting. 13 We're not talking about putting up a tower, a cell 14 tower at 120 versus 80. All of a sudden making it 15 40-feet lower makes it visually okay? No, it doesn't.</p> <p>16 For generations to come this tower will be 17 here and they will say our future generations will 18 wonder, jeez, what were those people in 2022 thinking 19 about. So please do not reverse your vote. Vote this 20 application down.</p> <p>21 My last point is, you all know, you've all 22 heard enough testimony today, it is not going to be an 23 86-foot tower. You asked the right question earlier 24 about what application should we consider? You are not 25 considering, in my humble opinion, my non-legal</p>	<p style="text-align: right;">Page 88</p> <p>1 opinion, an 86-foot tower. You're considering the 2 original 126-foot tower because the Applicant has very, 3 may I say, cleverly decided they will not amend and not 4 file a revised application because it comes with a lot 5 of burden. So conveniently comes out and says, gee, 6 accept this new one, and we'll do, you know, if you do 7 this we'll amend our application. We don't know if 8 they'll do it or not. So you are approving or denying 9 today a 126-foot tower which I must humbly submit you 10 already rejected even though in a straw poll.</p> <p>11 CHAIRMAN FLANAGAN: Before you go, may I 12 ask you one question? 13 MR. BANSAL: Yes, sir. 14 CHAIRMAN FLANAGAN: So along the lines of 15 what Alf asked Mr. Simon, and I don't know if you know 16 but you just alluded to, why do you think the Applicant 17 is not amending the application rather than just 18 offering this as a condition? Do you have a view on 19 that? 20 MR. BANSAL: Yes. My view is that they 21 don't want to do the work that is associated with it. 22 A new application potentially means they have to now go 23 through all the Sica Balancing Test that they're 24 supposed to do, provide the testimony that they have 25 gone ahead and investigated alternative sites and all</p>

<p style="text-align: right;">Page 89</p> <p>1 of those things associated with it which takes money, 2 time, and maybe even a new bidding process that they 3 don't want to do. I don't know all the legal answers 4 to it, but did they go to the firehouse and say, hey, 5 how about an 86-foot tower? Did they go to the school 6 and say how about putting it in the back field there 7 for you, and we know it's 20- to 30-feet higher and 8 maybe therefore it should be only 60 feet. They can 9 build a platform on which the tower can go. Build a 10 10-foot platform. 11 CHAIRMAN FLANAGAN: Okay. Thank you. 12 MS. RATLIFF: Hi, I'm Shauna Ratliff Road, 13 Long Hill Road. 14 SECRETARY TAGLAIRINO: Can you spell your 15 name, please? 16 MS. RATLIFF: S-h-a-u-n-a R-a-t-l-i-f-f. 17 SECRETARY TAGLAIRINO: And your street? 18 MS. RATLIFF: Long Hill. 19 MR. MLENAK: And you swear to tell the 20 truth, the whole truth, and nothing but the truth? 21 MS. RATLIFF: I do. 22 S H A U N A R A T L I F F, is duly sworn. 23 MS. RATLIFF: So 14 years ago we put in an 24 addition on our house and we are on Long Hill and so 25 this tower will be also in our backyard. And the Board</p>	<p style="text-align: right;">Page 90</p> <p>1 nearly did not approve our application at that time 2 because our roof line was going to be 2 inches under 3 the town ordinance for height. So I don't see -- it 4 took hours and hours and hours of arguing and it was 5 under, and finally somebody on the Board said that 6 height is under the town restrictions. I don't know 7 what we're fighting over. So I don't know at this 8 point why a cell tower, which is significantly over any 9 height restriction in town is so seriously being 10 considered. Thank you. 11 CHAIRMAN FLANAGAN: Thank you. Now, if you 12 present material -- 13 MR. O'DONNELL: I'm not presenting. I'm 14 good. 15 MR. MLENAK: State your name, please. 16 MR. O'DONNELL: Neil O'Donnell, 28 17 Millbrook. 18 SECRETARY TAGLAIRINO: I'm sorry. Wait. I 19 made an assumption and wrote Copper Tree. 20 MR. O'DONNELL: Am I allowed to sit? 21 CHAIRMAN FLANAGAN: Sure. 22 MR. MLENAK: Mr. O'Donnell, do you swear to 23 tell the truth, the whole truth and nothing but the 24 truth? 25 MR. O'DONNELL: I do.</p>
<p style="text-align: right;">Page 91</p> <p>1 N E I L O ' D O N N E L L, is duly sworn. 2 MR. O'DONNELL: So history of the DPW real 3 fast. I've been their neighbor since 1994. Like Ms. 4 Sarah Conine said, I've seen all the changes, 5 expansion, everything, and really didn't say too much 6 about it. Lost a Weeping Willow Tree right behind my 7 putting green there. I think a lot of you have been in 8 my backyard. Had a tree service come, contaminated, 9 bah, bah, bah. First thing in my mind, let's go look 10 at the well. Looked at the well water, guess what? 11 Contaminated. Where was all that water coming from? 12 We knew where it was coming from. The DPW. 13 Paul you were involved in a couple of those 14 meetings long ago. So just telling you the whole 15 history of the DPW living next to them. Tracy Toribio, 16 a good friend of mine. Like Tracy, but he never does 17 anything that I ask him to do. He tells me what I want 18 to hear. Never cleaned up anything. I've been looking 19 at abandoned police cars for over 25 years. Abandoned 20 stolen cars for over a year. I have weeds taller than 21 my fence. Every tree, Mr. Schneider, is dead back 22 there. I look at it all the time. 23 So the neighbor I am, an attorney we all 24 know lives on James Street said, I would sue the blank 25 out of that town. I'm not that type of guy. I come</p>	<p style="text-align: right;">Page 92</p> <p>1 here -- I moved here a long time ago because I like the 2 people in this town and people look after each other. 3 We have each other's back. 4 When Sandy hit here I was in Nashville 5 Tennessee. Thirty people showered in my house because 6 I had a generator. People at the post office were 7 coming to me when Cathy was there saying, thank you, 8 Mr. O'Donnell, for letting me shower in your house. I 9 had no idea who they were. That's the type of town 10 this is. We protect each other's back. 11 That being said, Green Village monopoly 12 compared to the one we want to put here, you know why 13 Green Village monopoly is not a big deal? Because you 14 have a blind curb going both ways. No one is looking 15 at a cell tower. No one is going to the recycling 16 center at a standstill waiting to unload their 17 cardboard, aluminum, or plastic and saying, oh my gosh, 18 can you believe the town let them put that cell tower 19 there? 20 Also, post office, you walk out you're 21 going to see every bit of that tower. You will see 22 every bit of that tower. My backyard, wow. You want 23 to talk about Rowing Dangler, Sotheby's sells million 24 dollar homes. Depreciation value, I know we are not 25 that stupid in this room. Let's be realistic about</p>

<p style="text-align: right;">Page 93</p> <p>1 this. People don't buy homes underneath cell towers 2 and they don't buy homes underneath power lines. Look 3 where they're located. They're located on highways and 4 they're set apart because no one wants to live by them. 5 Number three, let's all talk about 5G. All 6 new, exciting, every commercial you see it 5G, 5G, 5G. 7 What are the health effects of 5G. It's a new product. 8 Mr. Schneider, thanks for moving it 8.2 feet closer to 9 my master bedroom. You're unwelcome in my master 10 bedroom because I won't show it to you but it's closer 11 to my master bedroom. I will be sleeping underneath 12 that tower. Okay. We have military waves coming off 13 these cell towers at 5G, which is unknown. We have no 14 history of 5G, and now my master bedroom, my bed that 15 faces there is going to be closer to this 120 -- it's 16 not going to be 80 feet, let's be realistic -- 17 120 feet, 140-foot tower. Thank you, but no thank you. 18 My questions to the BOA, would you want 19 this tower less than 70 feet from your property line, 20 your backyard? 21 Number two, would the BOA let any owner, 22 architect, builder in New Vernon or Harding get 23 clearance on all these separate variances Verizon is 24 asking for? 25 Number three, would you like your children</p>	<p style="text-align: right;">Page 94</p> <p>1 and/or grandchildren playing underneath this cell 2 tower? 3 We all can sit here and listen, but if you 4 listen closely to my questions all the answers would 5 be, no. 6 I have heard in previous meetings already 7 nine Nos, so why after three years of meetings, Mr. 8 Chairman and the BOA, would you stop doing your job 9 protecting the town and surrounding neighbors. This 10 town puts trust in you and the BOA to maintain the 11 rural beauty of our Village. If you cannot see how a 12 cell tower located at the DPW would impact the heart of 13 New Vernon then I truly believe that you do not respect 14 and cherish what this community stands for. 15 Please vote no. Thank you. 16 BOARD MEMBER ADDONIZIO: Mr. O'Donnell, I 17 have a question. We talked this evening a lot about 18 the school property in the backyard there with the 19 field, right. So you talk about not having kids, 20 grandkids play underneath that tower. What are your 21 thoughts with the tower being within reason or some 22 site close to fields with kids in this town, kids 23 coming to play sports from other towns playing under a 24 cell tower? 25 MR. O'DONNELL: Well, my personal opinion</p>
<p style="text-align: right;">Page 95</p> <p>1 is I don't think it's going to be right underneath the 2 fields. It's going to be farther back in the distance. 3 And as Mr. Bansal said it is a higher point there than 4 any other location we have seen so it may not have to 5 even be that high. So putting it way back in those 6 fields I think is one location that should be 7 relocated. 8 And also, let's be realistic. Modern 9 technology changes every minute. So you guys don't 10 want to be hopefully known as the one who put this 11 eyesore in the center of town right behind my backyard. 12 So I think patients is a wonderful thing. And with 13 technology always changing and if we can't find a 14 location that suits it let's all be patient. We've 15 been living without cell phone service and dead spots 16 everywhere, including everywhere I traveled. I 17 traveled all the way from New England Patriots, all the 18 way down to the Miami Dolphins. Do you think I had 19 good cell service in all those towns? I do not. 20 Can we protect the children at the School 21 of Boosters and find a better way? I guarantee Verizon 22 can find a way to booster that up somehow. 23 CHAIRMAN FLANAGAN: Thank you. 24 MR. O'DONNELL: Thank for your time. 25 CHAIRMAN FLANAGAN: Thanks. All right.</p>	<p style="text-align: right;">Page 96</p> <p>1 Who's next? Come on down. 2 MS. ENGEL: Christel Engel, 32 Millbrook 3 Road. And yes, I will tell the truth and nothing else 4 but the truth. 5 MR. MLENAK: I'll ask you anyway. Do you 6 swear to tell the truth, the whole truth and nothing 7 but the truth? 8 MS. ENGEL: Yes, I will. 9 C H R I S T A L E N G E L, is duly sworn. 10 MS. ENGEL: All right. So rather than 11 reading this entire thing, because we have heard from 12 many people in the public already tonight, I really 13 don't want to double things up but I do want to tell 14 you that I absolutely love this town. I brought my 15 mother tonight who came from Germany, and she's 16 90-years old. She's sitting with me here in the 17 audience to support our cause and the causes to try to 18 convince you to say absolutely no. 19 I work in New York. I work very hard. I 20 spend all of my time every single weekend, every night 21 that I can in my garden. And for those who were able 22 to come to my garden and to my husband's garden last 23 year I believe you saw that we handstakingly (sic) 24 planted all of those little plants and trees. I'm 25 appalled to even hear, working in real estate, having</p>

<p style="text-align: right;">Page 97</p> <p>1 been in commercial real estate for the last 35 years in 2 New York, that we are even considering this application 3 without looking at new plans.</p> <p>4 We had testimony weeks and weeks and weeks 5 ago where we were looking at plans, we were looking at 6 photographs from three, four, five, six, seven years 7 ago. Honestly, it's an embarrassment to all of us. We 8 should not and we cannot allow this tower to happen.</p> <p>9 I want to say one more sentence or two more 10 things which my husband I believe gave a very, very 11 strong testimony already. I don't want to repeat it. 12 I want to use my one word and I'm just going to say two 13 more things okay.</p> <p>14 Harding has made a very, very unfortunate 15 mistake in expanding the DPW site. We have heard 16 tonight that several other people have never mentioned 17 anything because it is to the benefit of all of us that 18 we can go recycle and do something to give back. This 19 is too much. We cannot add anymore grievances to what 20 we're already dealing with. And I may tell you I get 21 up at five o'clock in the morning. There are trucks 22 that come in at 4:30. Thank you very much. 23 (Applause.)</p> <p>24 CHAIRMAN FLANAGAN: Okay. Who's next? 25 MR. CARIFA: James Carifa, Lees Hill Road.</p>	<p style="text-align: right;">Page 98</p> <p>1 MR. MLENAK: Do you swear to tell the 2 truth, the whole truth, and nothing but the truth? 3 MR. CARIFA: I do, so help me God. 4 J A M E S C A R I F A, is duly sworn.</p> <p>5 MR. CARIFA: Three years, long time, very 6 tiring three years. Yeah, this tower is proposed to go 7 right along our property line. Along the Bansal's 8 property line, the O'Donnell's property line. It 9 doesn't belong in Harding. It doesn't belong against a 10 residential property line or in a History District.</p> <p>11 If the roles were reversed would you guys 12 -- and I was in your shoes would you want me to vote 13 yes if this is against your property line? I mean, 14 Harding is a small town. We're all neighbors. I 15 certainly would not vote for this against one of my 16 neighbor's property. So please consider what we said 17 tonight.</p> <p>18 CHAIRMAN FLANAGAN: Anyone else? 19 SECRETARY TAGLAIRINO: Just for the record, 20 he's one of your clients? 21 MR. SIMON: He is. Yes. 22 CHAIRMAN FLANAGAN: Come on down. 23 MS. BLANCO: Aja Blanco, 14 Lees Hill Road. 24 SECRETARY TAGLAIRINO: Can you spell that, 25 please?</p>
<p style="text-align: right;">Page 99</p> <p>1 MS. BLANCO: First name A-j-a, last name 2 B-l-a-n-c-o.</p> <p>3 MR. MLENAK: Do you swear to tell the 4 truth, the whole truth, and nothing but the truth? 5 MS. BLANCO: I do. 6 A J A B L A N C O, is duly sworn.</p> <p>7 MS. BLANCO: I was here in November. We 8 were all here. Came back in it was after the New Year. 9 Whatever the first meeting was after the New Year. 10 It's all running together at this point. And I 11 couldn't believe when Verizon said they were going to 12 reduce the pole. Everybody agreed. I thought everyone 13 was in agreement in November. I was absolutely 14 shocked.</p> <p>15 And it's in everyone's backyard. It's in 16 my front yard. My daughter is asking me constantly, 17 constantly are we going to move? If there's a cell 18 phone tower are we going to move?</p> <p>19 I've lived in the house nine and a half 20 years, I was hoping to go to the nursing home or die in 21 that damn house. I want to live there as long as I 22 can. It needs so much repairs and so much work and 23 we're trying to keep it original. And I don't know 24 what to tell her. I don't know what to tell her. I 25 don't want that damn thing in my front yard. I don't</p>	<p style="text-align: right;">Page 100</p> <p>1 want it for my neighbors and you guys shouldn't want it 2 either. I haven't heard one testimony from one person 3 that has wanted this. Have you guys? 4 I read an opinion -- there was an opinion 5 piece, that's the only thing I've ever seen for people 6 that have wanted this. For all those people that want 7 it, I tell them to get AT&T. The service is much 8 better. Don't get Verizon. Thank you.</p> <p>9 CHAIRMAN FLANAGAN: Would you like to 10 speak? No, not you, Mr. Schneider. I'm sorry. Anyone 11 else? 12 MS. RILEY: Hi. I'm Jane Riley from Youngs 13 Road.</p> <p>14 MR. MLENAK: Do you swear to tell the 15 truth, the whole truth, and nothing but the truth? 16 MS. RILEY: I do. 17 J A N E R I L E Y, is duly sworn.</p> <p>18 MS. RILEY: I'm just here tonight to 19 support my neighbors. I have longed from the 20 beginning, I think you all know, I think this is the 21 wrong place for the tower. I don't think we need it. 22 The whole idea of Harding has been in the Master Plan 23 and every group that I've been involved I've been on 24 the host committee and historical society, the Shade 25 Tree Preservation Committee, and the whole idea of all</p>

<p style="text-align: right;">Page 101</p> <p>1 of these things that I've done over the years has been</p> <p>2 to preserve the rural character of this town and I</p> <p>3 think that's tantamount to why we all love living here.</p> <p>4 And I just see this tower as being an eyesore in the</p> <p>5 middle of our lovely little rural village, which is</p> <p>6 changing because of the trees that have been lost,</p> <p>7 because of ash borer and all these other things, and</p> <p>8 the commercial area's dried up. And we may be</p> <p>9 rethinking making that into a more residential area,</p> <p>10 which again I think would be a shame to have in the</p> <p>11 center of a residential area less of a commercial area</p> <p>12 a huge ugly tower like that. And just I can't even</p> <p>13 believe that we're entertaining this when we spend so</p> <p>14 much time at the Board of Adjustment talking about</p> <p>15 where windows should be on houses, what kind of trim</p> <p>16 you should use, the style and all of that kind of</p> <p>17 stuff.</p> <p>18 I mean, I had the Historic Preservation</p> <p>19 Commission we've done three houses on Lees Hill Road.</p> <p>20 They came every time and made suggestions. And I can't</p> <p>21 believe that you all -- I know it's been a long three</p> <p>22 years, but you can't look at that tower and say that</p> <p>23 you want something like that in the middle of our town.</p> <p>24 And that's all I have to say. I really</p> <p>25 encourage you not to vote for it because who knows what</p>	<p style="text-align: right;">Page 102</p> <p>1 will come next after that.</p> <p>2 CHAIRMAN FLANAGAN: Anyone else? Last</p> <p>3 chance.</p> <p>4 MS. LYON: I'm Meghan Lyon from Village</p> <p>5 Road.</p> <p>6 SECRETARY TAGLAIRINO: Can you spell your</p> <p>7 first and last name, please?</p> <p>8 MS. LYON: M-e-g-h-a-n Lyon, L-y-o-n.</p> <p>9 SECRETARY TAGLAIRINO: Thank you. I'm</p> <p>10 sorry, and what was your street again?</p> <p>11 MS. LYON: Village Road.</p> <p>12 MR. MLENAK: Do you swear to tell the</p> <p>13 truth, the whole truth, and nothing but the truth?</p> <p>14 MS. LYON: I do.</p> <p>15 M E G H A N L Y O N, is duly sworn.</p> <p>16 MR. LYON: I am just really thankful that</p> <p>17 everyone's taking the time to be so thorough tonight.</p> <p>18 I've learned a lot. And I just wanted to share with</p> <p>19 you I lived 20 years here. We love our town. We love</p> <p>20 our neighbors. The fact that 75 new families have</p> <p>21 moved here in the last year just shows that it's such a</p> <p>22 special place. And I think all of them are so new to</p> <p>23 the town they're just getting to know it and I've been</p> <p>24 here 20 years and gotten involved with my family with</p> <p>25 many organizations and hundreds of people try so hard</p>
<p style="text-align: right;">Page 103</p> <p>1 to keep this place so special. And everyone who comes</p> <p>2 to visit me says, I can't believe this is like a little</p> <p>3 magical place in the middle of a very urban area. And</p> <p>4 we're only 30 minutes from the City.</p> <p>5 And I just hope that you vote no for this</p> <p>6 proposal. It doesn't make any sense. And I think</p> <p>7 everyone knows that you've given a lot of time and</p> <p>8 thought about it and it's a very hard position you're</p> <p>9 in, but it really doesn't fit our beautiful town and I</p> <p>10 hope that you consider just saying no. Thank you.</p> <p>11 CHAIRMAN FLANAGAN: All right. Last</p> <p>12 chance.</p> <p>13 All right. What's up on the agenda next?</p> <p>14 We have summations. Who goes first.</p> <p>15 MR. MLENAK: Mr. Simon.</p> <p>16 CHAIRMAN FLANAGAN: Mr. Simon, would you</p> <p>17 like to give us your summation?</p> <p>18 MR. SIMON: Sure. And I will be briefer</p> <p>19 than normal, because I think you've heard my summation</p> <p>20 probably maybe twice already, maybe two and a half</p> <p>21 times. But --</p> <p>22 BOARD MEMBER BOYAN: I'm sorry. Can I</p> <p>23 interrupt? It's 9:30. Are we doing both summations</p> <p>24 this is evening or are we --</p> <p>25 CHAIRMAN FLANAGAN: Oh, I'm hoping we do</p>	<p style="text-align: right;">Page 104</p> <p>1 both summations and take a vote. Mr. Schneider?</p> <p>2 MR. SCHNEIDER: I will be brief.</p> <p>3 CHAIRMAN FLANAGAN: Do you agree?</p> <p>4 MR. SCHNEIDER: Yes.</p> <p>5 MR. SIMON: I'd like to sincerely first</p> <p>6 thank the Board, the Board Professionals, members of</p> <p>7 the public, certainly Mr. Schneider, his professionals.</p> <p>8 It's hard when you have a three-year application over</p> <p>9 22-plus hearings. It's a long slog and there's a lot</p> <p>10 of material, especially when you're dealing with a Use</p> <p>11 Variance, and especially when you're dealing with a</p> <p>12 cell tower application that's being proposed on public</p> <p>13 property.</p> <p>14 However, the idea that you can decide after</p> <p>15 20, maybe 21 hearings that I'm changing the application</p> <p>16 but I'm not changing the application. I'm going to</p> <p>17 agree as a condition of approval to go from 126 down to</p> <p>18 86 feet as a condition of approval without identifying</p> <p>19 how that impacts the positive criteria in terms of</p> <p>20 providing good-faith effort to look at alternate</p> <p>21 location, alternate technologies at the desired signal</p> <p>22 strength for the area that is proposed to being covered</p> <p>23 which is now changed with an 86-foot tower.</p> <p>24 I ask Mr. Masters, have you ever in your</p> <p>25 hundreds, he said hundreds, and I know he has been</p>

<p style="text-align: right;">Page 105</p> <p>1 involved in hundreds of cell tower applications over 2 his storied career, and I asked him, has there ever 3 been a time where an application that you were working 4 on agreed as a condition of approval and then relying 5 on it as the third prong of the Sica Balancing Test to 6 mitigate detrimental impacts to reduce the height of a 7 tower? The answer was, he could not recall. Hundreds. 8 And there's a reason why he cannot recall, 9 because it doesn't happen. Let alone for a use 10 variance, let alone where you're subject to the Sica 11 Balancing Test and for a use variance need to meet that 12 four-prong criteria, including balancing the positives, 13 the public interest that's at stake which is the first 14 prong, versus the second prong, versus the third prong, 15 and then you do the balancing for the forth prong. It 16 doesn't happen because it legally cannot happen without 17 the Applicant demonstrating what the impact is of 18 reducing the height to 86 feet in terms of the 19 coverage, in terms of its impact on the ability to use 20 ODAS technology. 21 Remember, you have an ordinance here in the 22 Township of Harding that promotes small cell 23 technology. I asked Ms. Boschulte, Ms. Boschulte, at 24 80 feet can you combine that such a tower -- and this 25 is well before they amended their application -- could</p>	<p style="text-align: right;">Page 106</p> <p>1 you -- which they really didn't do, can you combine the 2 80-foot tower with the ODAS technology that is 3 permitted as of right in the Township of Harding within 4 the locations that are being proposed, including within 5 the Historic District? And the answer was, it won't 6 work at that height. 7 And that's where you have an ordinance that 8 says that you can't have a pole that's greater than 35 9 feet. And now we're in a Historic District at more 10 than double that. The idea that 86 feet is doing 11 something better than nothing is not what the law 12 allows a Board to consider. 13 The law also doesn't allow the Board to 14 consider for a use variance. And you all as 15 experienced Board of Adjustment members think about one 16 time, whether it's a use variance, and dealing with the 17 mitigating factors and factor three of the Sica 18 Balancing Test, or when you memorialize a Resolution 19 and you have conditions of approval, have you ever let 20 alone for a use variance at 126 feet or higher or lower 21 said, oh, yeah, we'll approve this application with the 22 condition that the Applicant is going to lower the 23 building, the principal building, lower the principal 24 structure by a third. 25 If you lower it by a third we'll grant you</p>
<p style="text-align: right;">Page 107</p> <p>1 the approval for the Use Variance that requires five 2 affirmative votes. Has that ever happened? I don't 3 think so. I know it's never happened on my watch, and 4 there's a reason for that. The reason is that it's not 5 legally possible for a Board to have as a condition of 6 approval that the Applicant will just agree to lower 7 that principal building for which a use variance and as 8 a principal structure, having let alone for more than 9 one principal structure on the lot that's required -- 10 they're also required a use variance, if you lower it 11 we're fine, we're going to approve it without 12 demonstrating. 13 Well, what the heck is it going to look 14 like? How Mr. Simon, if I'm presenting the 15 application, are you possibly meeting the positive 16 criteria for the Use Variance that you seek without 17 demonstrating the impact of that 86-foot tower in this 18 case in terms of looking -- making a reasonable effort 19 to look at alternate sites, look at alternate 20 technologies, looking not just at the 86 feet but also 21 looking at the reduced size of the compound as was 22 stated by Mr. Steck. Even with the Applicant agreeing 23 not just to reduce it to 86 feet but making it 8 feet 24 further away from the O'Donnell property, 26 feet 25 further away from the Conine property. It doesn't</p>	<p style="text-align: right;">Page 108</p> <p>1 matter, Mr. Steck stated it. It doesn't make a 2 reasonable difference. 3 And it's frustrating, because you as Board 4 of Adjustment members will normally say, well, that 5 doesn't work. Now move it over here. Maybe if you 6 move it over here way in the back or you maybe do this 7 and you find another site maybe it's okay, but because 8 this is a publicly bid process the Applicant they 9 knew what they were getting into. In fact, some knew 10 what they were get into. They were the ones that 11 suggested to the Township in the first place to submit 12 this out for public bid at this particular property. 13 They came in with eyes well open that if -- 14 that this is what we're going to be stuck with within 15 the public bidding process, but they believed right or 16 wrong that they could go before the Board of Adjustment 17 and get five affirmative votes considering the fact 18 that this is adjacent to residential properties, 19 distinguished residential properties, and next to and 20 within a Historic District. 21 Think about Chief Heller in talking about 22 the need to cover the school, let alone whether there's 23 alternate ways to do that. And now all of a sudden the 24 Applicant is saying, okay, we'll accept an approval at 25 86 feet, and by the way we're not going to be able to</p>

<p style="text-align: right;">Page 109</p> <p>1 cover the school. And we haven't demonstrated under</p> <p>2 the first prong, second prong, third prong, fourth</p> <p>3 prong of the Sica Balancing Test how we're meeting the</p> <p>4 negative criteria. We have demonstrated site</p> <p>5 suitability at 86 feet and we have made a good-faith</p> <p>6 effort in terms of the positive criteria.</p> <p>7 There's been no propagation or drive test</p> <p>8 at 70 feet, at 60 feet. We heard testimony -- I'm</p> <p>9 sorry, public comment, I apologize -- the last go</p> <p>10 around that AT&T is fine at 45 feet at the firehouse.</p> <p>11 What we do know is that all the trees except two are</p> <p>12 going to be removed. And maybe we might be stuck with</p> <p>13 just one tree left and the biggest tree being removed,</p> <p>14 especially given what Mr. Mlenak just read to you,</p> <p>15 which is that the Applicant has the right to collocate</p> <p>16 without any approvals contractually with the Township,</p> <p>17 legally via the Municipal Land Use Law, legally via the</p> <p>18 Federal law, whether it's ten percent, whether it's</p> <p>19 20 feet, whether it's the fact that even if the</p> <p>20 Township -- because I've been part of this. If the</p> <p>21 Township says, oh, sure, we'll agree that we're not</p> <p>22 going to allow someone to collocate there is changes in</p> <p>23 governing body membership, political party majorities.</p> <p>24 And I will tell you that five years, 10 years from now,</p> <p>25 and there's a completely different makeup of the</p>	<p style="text-align: right;">Page 110</p> <p>1 Township Committee, and a carrier wants to come and</p> <p>2 they want to collocate, and even if there's a condition</p> <p>3 of approval they of course have the right to say, oh,</p> <p>4 well, no back in 2022 the Township Committee said that</p> <p>5 there's no collocation so that's it till the end of</p> <p>6 time. That's wrong. That's not correct as a matter</p> <p>7 certainly of law.</p> <p>8 With regard to a couple of people they</p> <p>9 mentioned about schools, Mr. Bansal talked about at</p> <p>10 Ridge High School, Governor Livingston High School. I</p> <p>11 know Montclair State University. I mean, there's</p> <p>12 plenty of schools that have cell towers on them. The</p> <p>13 difference is that in my experience they're not right</p> <p>14 on top of the school. And schools as you know they</p> <p>15 have bigger campuses, they have sporting fields and the</p> <p>16 like.</p> <p>17 So we believe that the Applicant has not</p> <p>18 made a good-faith effort under the positive criteria</p> <p>19 whether it was at 120 feet, and certainly not at 86</p> <p>20 feet. I'm glad I re-read the e-mail from the</p> <p>21 Superintendent that talked about that based on the</p> <p>22 height and based on the size of the compound we're not</p> <p>23 interested. Okay. But they haven't seen anything</p> <p>24 about 86 feet. Okay.</p> <p>25 We also know that the Township didn't</p>
<p style="text-align: right;">Page 111</p> <p>1 rezone the property to permit the use. They did an</p> <p>2 amendment Conditional Use section. They didn't make it</p> <p>3 part of the redevelopment plan. And you never -- Mr.</p> <p>4 Masters testified that he's never testified for a</p> <p>5 carrier, ever in his hundreds of cases in a case where</p> <p>6 a monopole even at 86 feet was proposed to be located</p> <p>7 within a Historic District in a redevelopment area and</p> <p>8 adjacent to residential homes on properties exceeding</p> <p>9 an acre of land.</p> <p>10 Bottom line here is that, and I'm not going</p> <p>11 to repeat myself because I stated it a number of times</p> <p>12 during my summation and a half that's brought us to</p> <p>13 this date, that there is a plethora of language in your</p> <p>14 ordinance, in the Wireless Telecommunications</p> <p>15 Ordinance, in the Master Plan, in the Historic</p> <p>16 Preservation elements of the Master Plan. In the</p> <p>17 Redevelopment Plan that talks about no wireless</p> <p>18 telecommunication towers at historic properties. No</p> <p>19 wireless telecommunication towers adjacent to</p> <p>20 residential properties. Collocation is encouraged.</p> <p>21 Right. Three things. You are "0" for three. You're</p> <p>22 not even batting 333, you're batting zero on this</p> <p>23 particular application.</p> <p>24 And based on the overwhelming amount of</p> <p>25 information that is in your ordinance, in your Master</p>	<p style="text-align: right;">Page 112</p> <p>1 Plan and those other documents certainly the Applicant,</p> <p>2 I talked about the positive criteria, cannot meet the</p> <p>3 four-prong Sica Balancing Test from -- for this</p> <p>4 application, in balancing the positive and negative the</p> <p>5 Applicant continues, even at 86 feet, even moving it 8</p> <p>6 feet further, even moving it 25 feet 9 inches further,</p> <p>7 right, but closer of course to the post office, closer</p> <p>8 to other activities at the DPW yard, that Verizon</p> <p>9 continues to fail to demonstrate that even at 86 feet</p> <p>10 and the reduction in compound that it will not result</p> <p>11 in substantial detriment to the surrounding</p> <p>12 neighborhood and the public good.</p> <p>13 You heard a lot of impassioned pleas, very</p> <p>14 eloquent intelligent pleas from members of the public.</p> <p>15 I'm not repeating them. I'm not trying to replicate</p> <p>16 them because I can't, because I don't live in Harding.</p> <p>17 I live nearby. I don't live here. But what I can tell</p> <p>18 you is that it's not just emotion that's at play here,</p> <p>19 these are intelligent comments that are based in fact,</p> <p>20 based in the law that requires respectfully that this</p> <p>21 application be denied. Thank you.</p> <p>22 MR. SCHNEIDER: Mr. Chairman, fellow</p> <p>23 members of the Board, before I get into the substance</p> <p>24 of my summation let me likewise thank you personally</p> <p>25 from the way you have professionally treated me and my</p>

<p style="text-align: right;">Page 113</p> <p>1 team during often dire or difficult circumstances.</p> <p>2 While we may ultimately have a disagreement as to</p> <p>3 whether the application is or should be approved, you</p> <p>4 have at least professionally treated me I think fairly.</p> <p>5 A famous historical figure once said, it</p> <p>6 was quoted as saying, be sincere, be brief, be seated.</p> <p>7 I will try to adhere to those guidelines for the</p> <p>8 following reason:</p> <p>9 UNIDENTIFIED PUBIC VOICE: Mr. Chairman, we</p> <p>10 can't hear.</p> <p>11 MR. SCHNEIDER: I'm sorry. Back in</p> <p>12 November of last year I delivered to you a summation</p> <p>13 which I respectfully submitted both factually and</p> <p>14 legally articulating the basis upon which I believe the</p> <p>15 application should be approved at the 126-foot height.</p> <p>16 I will be constrained not to repeat the sum and</p> <p>17 substance of what I indicated and maybe appeal to you</p> <p>18 back in November.</p> <p>19 Mr. Mlenak has made clear to me that the</p> <p>20 summation should be limited to the proffered condition</p> <p>21 of 86 feet, and I will adhere to those constraints</p> <p>22 because they're appropriate.</p> <p>23 Before I get into the substance of why the</p> <p>24 application should be approved at the lower height let</p> <p>25 me briefly, key word being "briefly" address at least</p>	<p style="text-align: right;">Page 114</p> <p>1 two of the comments or subject areas that have been</p> <p>2 brought up this evening.</p> <p>3 When I provided the summation back in</p> <p>4 November I covered a lot of areas. I covered what I</p> <p>5 thought was the significance of the public bidding</p> <p>6 process. I covered what I thought was important</p> <p>7 relative to the lack of bulk requirements in the PL</p> <p>8 Zone. I covered in detail alternate technologies and</p> <p>9 referenced testimony of the Board's expert. I also</p> <p>10 covered in large measure the issue of alternate sites.</p> <p>11 And let me address two of those issues that</p> <p>12 have been raised this evening in part by Mr. Simon.</p> <p>13 With respect to alternate sites, when I was last up</p> <p>14 here I quoted to you, Mr. Chairman, verbatim from the</p> <p>15 transcript, the series of events which took place</p> <p>16 relative to the school. There should be no amnesia or</p> <p>17 misunderstanding of how that process unfolded and we</p> <p>18 should dispel the notion that the Applicant said we</p> <p>19 only want it in the front. We're not going to be</p> <p>20 willing to consider any other aspect of that property.</p> <p>21 That wasn't the facts and no one should suggest to the</p> <p>22 contrary.</p> <p>23 Oftentimes during the whole entirety of</p> <p>24 this proceeding certain members of the Board have asked</p> <p>25 the Objectors or the interested parties, if not at the</p>
<p style="text-align: right;">Page 115</p> <p>1 DPW, where? And with all due respect, to suggest that</p> <p>2 there's a suitable residential piece of property that</p> <p>3 should be the appropriate siting of this facility I</p> <p>4 think is ridiculous.</p> <p>5 What does all that say as it relates to</p> <p>6 what the case law says? Some have suggested or appear</p> <p>7 to want to quote from the case law. The leading case,</p> <p>8 and I often don't quote cases in summations because I</p> <p>9 don't want to bore anybody, but here's what the leading</p> <p>10 case says as to the Applicant's responsibility relative</p> <p>11 to alternate sites.</p> <p>12 "What concerns us, however, is the prospect</p> <p>13 of arbitrary action based on the prior Court suggestion</p> <p>14 that a telecommunications provider must negate the</p> <p>15 possible existence of other sites that might, might,</p> <p>16 and they emphasize might, have served better and been</p> <p>17 less intrusive but were not discussed.</p> <p>18 "This observation might be wrongly</p> <p>19 interpreted as giving Zoning Boards carte blanche power</p> <p>20 to reject an application based on conjecture that a</p> <p>21 possible alternate site is both suitable and available,</p> <p>22 suitable and available. To require an applicant to</p> <p>23 disprove the possible existence of these sites may be</p> <p>24 daunting, if not impossible, because of the uncertainty</p> <p>25 as to the availability of such sites as well as the</p>	<p style="text-align: right;">Page 116</p> <p>1 physical variables that may render them unsuitable.</p> <p>2 "The grant of any variance on these sites</p> <p>3 is by no means predictable considering the</p> <p>4 fact-sensitive issues are implicated in proving special</p> <p>5 reasons."</p> <p>6 I think that citation, which in part by the</p> <p>7 way is referenced in Mr. Mlenak's memorandum, provide</p> <p>8 some parameters as to the Applicant's good-faith</p> <p>9 alternative to find alternate sites. I would make two</p> <p>10 further observations, both -- one relative to the</p> <p>11 school, one relative to this property, and this</p> <p>12 property I'm referring to the Harding Township</p> <p>13 Municipal building property. It is beyond silly to</p> <p>14 suggest that since the Applicant has or would agree to</p> <p>15 a condition of approval to locate it at a height of</p> <p>16 86 feet that the Township is not -- that the Township</p> <p>17 Committee is not aware of that. And if they were so</p> <p>18 interested would have reversed their previous confirmed</p> <p>19 in writing position that this site is not available.</p> <p>20 Second, relative to the school, let's for</p> <p>21 the moment put aside "A" the perception, albeit</p> <p>22 wrongly, of potential health effects that are often</p> <p>23 implicated when pursuing a school property. Let's deal</p> <p>24 with a practical reality of how that process unfolds,</p> <p>25 and let's put aside the fact that the school building</p>

<p style="text-align: right;">Page 117</p> <p>1 itself where the tower would be located under your own 2 Master Plan is deemed to be one of historical 3 significance, built in 1925, and remodeled in 1931. 4 Let's put that aside. If the Harding Township 5 Elementary School was truly interested in making 6 available its property back in 2019, or at any time 7 subsequent to November, they have the unfettered right 8 whether they cared about Verizon Wireless, cared about 9 T-Mobile or anybody else, they could have made 10 available the site under the local lands, under the 11 public bidding laws to make available the site at a 12 height not to exceed "X." They did not. The fact is 13 that that site is not available. The fact is that that 14 site would require a "D" Variance. The fact is that 15 Mr. Steck went on for about an hour talking about 16 multiple principal uses at the Harding Township DPW 17 property. 18 It would be a second or not third principal 19 use at the Harding Township Elementary School with 20 hundreds of school children every day. So I'm 21 confused. What's the more intensive existing principal 22 use: The school or Mr. Flanagan delivering his 23 recyclables Saturday morning? I'll let you make that 24 judgment other than to note it goes right to what the 25 Courts were saying. Go find an alternate site. In</p>	<p style="text-align: right;">Page 118</p> <p>1 this case every alternate site would have required a 2 D-1 Use Variance or a use not permitted in the zone, 3 and would have represented a second if not third 4 principal use. 5 Relative to the church, we're talking 6 about, well, maybe the church would have been 7 interested at a height of 86 feet. The church rejected 8 the inquiry of the Applicant as to the use of the 9 cupola. So what's the likelihood that the church 10 practically is going to allow an 86-foot tower when 11 they won't allow the use of their existing structure? 12 With all that being said, Mr. Chairman, 13 let's try to focus as to why we returned to the Board. 14 I indicated what my summation argued in November. I 15 trust you all recall that. You made clear in the 16 course of your deliberations that you were not -- that 17 you were not amenable -- more clearly than that -- 18 willing to approve a tower at that height. But, I 19 respectfully asked you whether a majority of the Board 20 felt it to be worth it to pursue it at a lower height. 21 And the majority of the Board, with some hesitancy and 22 making clear that they weren't committing to approving 23 anything thought it was an alternative worth pursuing. 24 That's why we returned. 25 So, frankly, and respectfully I resent the</p>
<p style="text-align: right;">Page 119</p> <p>1 implication that there's some bait and switch and 2 something nefarious about what we've done here. We 3 asked you and you could have said no. You didn't. You 4 didn't commit certainly to approving it, but you didn't 5 tell the Applicant go home, take your approval and use 6 whatever other available remedies you may choose to do. 7 You left the door open and we in an attempt to address 8 your concerns reduced the height. 9 To suggest as Mr. Simon suggests that we 10 haven't addressed the RF issues associated with 80 feet 11 is not supported by the record. Exhibit A-21 details 12 at your request what the respective coverage was at 13 120, 100 and 80 feet. So to suggest that we didn't 14 address it is just not correct. Did we bring back Ms. 15 Boschulte? No. After 22, 23, 24 hearings I don't need 16 to bring back Ms. Boschulte when she testified probably 17 no less than ten times, including submitting an expert 18 report, and subject to Mr. Simon's cross-examination at 19 what the coverage would be at 80 feet. 20 Let me conclude with the following. The 21 Sica Balancing Test is very clear. Everyone agrees 22 that the Sica Balancing Test governs this application. 23 The third prong of the Sica Balancing Test specifically 24 talks about conditions to ameliorate the impacts, if 25 any, that the Board identifies. That's what the third</p>	<p style="text-align: right;">Page 120</p> <p>1 prong says. It talks about conditions to ameliorate 2 impact. I suggested in November that while there was 3 clearly some visual impact, I didn't come here and tell 4 you no one is going to see it from anywhere. I 5 acknowledged that there was some visual impact, but I 6 suggested based on the entirety of the record that it 7 did not rise to the level of a substantial impact at 8 126 feet. You obviously disagreed with that ultimate 9 conclusion. But what I would suggest to you is that to 10 the extent that you had concerns relative to visual 11 impact they have been ameliorated in large measure and 12 certainly now don't rise to the level of substantial 13 impact at the 80- or 86-foot height that the Applicant 14 proposes, depending on the type of stealth structure 15 that is proposed. 16 And once you identify what the public 17 interest that's advanced, albeit not as significant at 18 80 versus 126, and you weigh that against the far more 19 limited visual impact, the forth prong of the Sica 20 Balancing Test asks you to balance that and in my 21 opinion supports a vote in favor of the application at 22 86 or 80 feet. I thank you. 23 CHAIRMAN FLANAGAN: All right. Thank you 24 both. Steve, I think next up is deliberation and a 25 vote. Any instructions before we start?</p>

<p style="text-align: right;">Page 121</p> <p>1 MR. MLENAK: I don't intend to belabor 2 this. You all have reviewed my memo from August 26th, 3 2021. Lori was kind enough to leave another physical 4 copy in front of you. It sets forth the deliberations 5 and each of the steps in the Sica Balancing Test you 6 have to consider. I don't want to belabor it any 7 further. I'm here for questions. 8 CHAIRMAN FLANAGAN: So let me say, we went 9 through this in December. The difference here is the 10 86 feet. You know -- and I think it's probably worth 11 we go very briefly. Step one, identify the public 12 interest. Right. We discussed this ad nauseam. It's 13 coverage -- it's presumed to be beneficial. 14 BOARD MEMBER ROSENBAUM: And they have an 15 FCC license. 16 CHAIRMAN FLANAGAN: And they have a 17 license. Right. I said regarding Step One identify 18 the public interest. 19 MR. MLENAK: Let's just not confuse things, 20 just for the record. The FCC license that goes to the 21 positive criteria and whether or not there's a 22 promotion of the general welfare. If you're starting, 23 Mr. Chairman, with the negative criteria that's 24 something different. 25 CHAIRMAN FLANAGAN: All right. So fine.</p>	<p style="text-align: right;">Page 122</p> <p>1 We'll start from the beginning. Positive criteria: 2 Promotes the general welfare. They have a license, so 3 the answer is yes. 4 Is there a gap in coverage? No one 5 disputes it. What is the signal strength necessary to 6 fill that gap? I think that's been the topic of a lot 7 of discussion. So I think that's one question. And 8 I'll tell you, the specific question I asked Mr. 9 Schneider, I said does this 80-foot tower cover your 10 need? He said, and I know it's not testimony, but the 11 Applicant's response to that was yes. It's not as good 12 as 120, but it fits the bill, it fits the need. So -- 13 and everybody stop me here if you disagree with this 14 analysis. 15 BOARD MEMBER ROSENBAUM: In step four it 16 says, will improve mobile wireless communications. It 17 doesn't say it will make it perfect, but it will 18 certainly improve it. 19 CHAIRMAN FLANAGAN: It will certainly 20 improve it. I think that's indisputable, right? If 21 anybody disagrees let me know. 22 Can the same result be achieved by placing 23 an antenna on some other existing structure using some 24 different technologies or by putting the tower in a 25 more suitable alternative site.</p>
<p style="text-align: right;">Page 123</p> <p>1 It's going backwards. We've discussed this 2 over and over again, and I hear Mr. Steck. It would be 3 great if there's some heavily wooded residential 4 property. Where is it? Right. It doesn't exist. 5 First of all, my personal view, this is 6 worse on a residential piece of property than it is at 7 the DPW. If anybody disagrees please speak up. 8 BOARD MEMBER NEWLIN: We don't have a 9 property to consider. So -- 10 CHAIRMAN FLANAGAN: You're right. Show me 11 that property. Where are you going to put it, you're 12 going to put it on Millbrook Road, at 62 Millbrook? 13 I mean, so the alternative using different 14 technologies, well, this comes at the discussion of 15 ODAS. So could they just go put ODAS -- I think Mr. 16 Simon has talked about this. Can they just go put ODAS 17 antennas throughout the town and cover it? I think we 18 have had testimony -- well, what do you guys think, can 19 we do that? There's been a lot of testimony on this. 20 MR. MLENAK: Just to be clear on the 21 standard here. Your job is not to determine 22 necessarily whether they can. Your job is to determine 23 whether the Applicant has undertaken a reasonable and 24 good-faith effort to find that alternative. And of the 25 alternatives proposed that this site and this</p>	<p style="text-align: right;">Page 124</p> <p>1 technology is the least intrusive. So the burden is on 2 the Applicant. 3 CHAIRMAN FLANAGAN: Well, one point of 4 reference is I know we had -- Dr. Eisenstein can tell 5 us. You can't just go fill this whole area with ODAS. 6 Dr. Eisenstein, as you sit there did I recall that 7 correctly? 8 DR. EISENSTEIN: It would require an 9 entirely new application, a whole new study and 10 application. You can't just sit here and say it would 11 or would not work. 12 BOARD MEMBER ADDONIZIO: But don't you need 13 a pole just to base the ODAS off to? 14 DR. EISENSTEIN: By a pole are you talking 15 about a monopole of some type? 16 BOARD MEMBER ADDONIZIO: A cell structure. 17 DR. EISENSTEIN: You can put an ODAS in 18 just along the right-of-way. But you're talking about 19 35- to 50-foot poles. And as I testified before, when 20 I drive through the Township the existing utility poles 21 are unsuitable for ODAS, because the power lines are at 22 the very top of the pole. So the poles are not 23 suitable. 24 Secondly, the areas along your streets, 25 particularly in the vicinity of the DPW site are</p>

<p style="text-align: right;">Page 125</p> <p>1 heavily wooded up to the right-of-way, up to the 2 street. So your ODAS antennas would have to go above 3 them. So you'd be talking about a set of new possibly 4 50-foot poles that would have to be put in. That's a 5 major new application. That's a whole different thing. 6 That's not something I can just say do that instead of 7 this. It would require an extensive study, and I'm not 8 certain it can be done as I sit here today.</p> <p>9 BOARD MEMBER ADDONIZIO: Thank you.</p> <p>10 CHAIRMAN FLANAGAN: I guess we don't need 11 to answer this, but this needs to go into the pot here 12 as we come to our final answer. So there's, you know, 13 ODAS is the other technology.</p> <p>14 Negative criteria: Identify the public 15 interest.</p> <p>16 BOARD MEMBER BOYAN: I'm sorry, Mike. The 17 last sentence of Step Five is "or by erecting the tower 18 in a more suitable alternative site." And for the life 19 of me as I think about this, we keep talking about what 20 if, what if, what if the school. The fact is all of 21 this could have been ameliorated by an e-mail from the 22 Applicant to Dr. Spelker saying, hey, what do you think 23 about 86 feet?</p> <p>24 And I can't for the life of me understand 25 why that didn't happen, but the fact is it didn't</p>	<p style="text-align: right;">Page 126</p> <p>1 happen. And that -- I was okay to say, you know, the 2 question to the school district was placed at 140 and I 3 was willing to say, okay, it was a good-faith effort 4 even though the application was 126, okay, fine. But 5 now that the application we're talking about an 86-foot 6 tower that is a third of the height. And Dr. Spelker 7 in his email said specifically that because of the 8 height of the structure proposed, among other things, 9 we're going to pass. And when you cut the height of it 10 by a third I think a good-faith effort will be to have 11 sent that follow-up email. The Applicant failed to 12 send that follow-up e-mail. And I think that Step Five 13 failed as a result of that oversight.</p> <p>14 BOARD MEMBER MASELLI: I agree.</p> <p>15 BOARD MEMBER NEWLIN: It's a problem.</p> <p>16 CHAIRMAN FLANAGAN: I guess the question 17 is, had the School Board known it would be at 80 -- you 18 guys keep presuming 86. I hate that fake tree.</p> <p>19 BOARD MEMBER NEWLIN: Actually, I don't 20 agree with 86. They said 80. We should stick with 80.</p> <p>21 CHAIRMAN FLANAGAN: Well, 80 is if it is 22 not a fake tree.</p> <p>23 BOARD MEMBER NEWLIN: I don't care. 24 Eighty.</p> <p>25 CHAIRMAN FLANAGAN: I agree with you.</p>
<p style="text-align: right;">Page 127</p> <p>1 BOARD MEMBER MASELLI: Why do we keep 2 talking about ODAS along poles throughout the town when 3 this application is specific for this area? Why do we 4 keep talking about the whole town?</p> <p>5 CHAIRMAN FLANAGAN: Why are we talking -- I 6 brought it up in the context of Step Five.</p> <p>7 BOARD MEMBER MASELLI: I know, but it 8 wasn't you, but even --</p> <p>9 BOARD MEMBER NEWLIN: It's a question if it 10 was ODAS only -- and Dr. Eisenstein correct me -- if it 11 was ODAS only you would have to propagate these units 12 all over the town. If it was a mixture, which they're 13 intending to do, then you wouldn't necessarily need to 14 propagate.</p> <p>15 BOARD MEMBER MASELLI: That's still not 16 clear to me. We're talking about one specific location 17 in this town.</p> <p>18 BOARD MEMBER NEWLIN: One location in 19 town --</p> <p>20 BOARD MEMBER MASELLI: So you're saying 21 that you need to erect an ODAS on every pole for every 22 public street to achieve that just in this specific 23 location?</p> <p>24 BOARD MEMBER NEWLIN: Something like that.</p> <p>25 DR. EISENSTEIN: So if you're going to put</p>	<p style="text-align: right;">Page 128</p> <p>1 in an ODAS system you have to put in poles, not every 2 single pole that could be used, but you have to put 3 them in at a distance where you get the correct 4 propagation from the pole.</p> <p>5 Let's say for example that the poles had a 6 radius range of coverage of let's say 700 feet, a 7 thousand feet. Then you'd locate your poles every 8 thousand feet along the right-of-way. What I'm saying 9 is around here, this area around here which is the area 10 we're talking about, the existing poles are unsuitable 11 because they have the power lines at the top. You 12 can't mount an antenna where there's power lines. So 13 you'd have to erect all new poles. So just think about 14 all your streets, the residential streets and the main 15 streets putting poles in every let's say thousand feet. 16 These would be new poles and they'd have to be above 17 the tree line. So it looks to me, again I'm just 18 estimating as I'm driving along, the trees are at least 19 40 feet and as I'm looking at them. We'd have to look 20 at 50-foot poles with antenna on the top of them and a 21 base station that sits under that on the ODAS system to 22 control the radios, and that would be in front of 23 residential properties all up and down just this area, 24 just this area. So it's a --</p> <p>25 BOARD MEMBER MASELLI: Thank you. You</p>

<p style="text-align: right;">Page 129</p> <p>1 answered my question.</p> <p>2 DR. EISENSTEIN: If you did it for the</p> <p>3 whole town you would just be need correspondingly more.</p> <p>4 BOARD MEMBER NEWLIN: You're talking about</p> <p>5 an ODAS only solution?</p> <p>6 DR. EISENSTEIN: ODAS only. That's what I</p> <p>7 thought I was asked.</p> <p>8 BOARD MEMBER SOVOLOS: And they would be in</p> <p>9 addition to the existing poles, not replacing the</p> <p>10 existing poles?</p> <p>11 DR. EISENSTEIN: They would have to be in</p> <p>12 addition to -- well, replacing I would think -- look,</p> <p>13 I'm not representing -- was it PSE&G out here? I don't</p> <p>14 know who your power company is, but they would have to</p> <p>15 decide whether or not they want their poles replaced.</p> <p>16 My guess would be no, they would not because that would</p> <p>17 be rewiring the poles. I think you have to put in new</p> <p>18 poles. And probably if you put it in you put in a</p> <p>19 steel structure so you can get them up a little higher.</p> <p>20 Not a wood structure.</p> <p>21 If I could just add one other thing. It is</p> <p>22 being done. I mean, this is not something which is off</p> <p>23 of science fiction somewhere some remote thing. There</p> <p>24 are areas all around, including in the vicinity of my</p> <p>25 office in Philadelphia where they're putting in brand</p>	<p style="text-align: right;">Page 130</p> <p>1 new poles and putting in essentially ODAS and 5G and</p> <p>2 other things in. It's going in all over. And it's not</p> <p>3 to say that at some future time there won't be exactly</p> <p>4 that in Harding.</p> <p>5 I don't see it coming and the current</p> <p>6 proposal has nothing to do with 5G. I heard someone</p> <p>7 mention that. They're not putting anything -- this is</p> <p>8 strictly a 4G system, the existing cell phone system.</p> <p>9 CHAIRMAN FLANAGAN: Going back to the</p> <p>10 school thing, though.</p> <p>11 BOARD MEMBER ROSENBAUM: I just want to</p> <p>12 clarify one thing. So we were talking about an all</p> <p>13 ODAS system. One of the propagation maps said 80 feet</p> <p>14 we saw that the coverage at it was 2100 megahertz it</p> <p>15 was nonexistent or substandard at the school. An</p> <p>16 80-foot tower could there be a scenario where you do</p> <p>17 ODAS at the school or across the street from the school</p> <p>18 or something like that to supplement the coverage</p> <p>19 there. So you get what the Chief wanted, but the</p> <p>20 80-foot tower is what you need rather than a</p> <p>21 hundred-foot tower a hundred --</p> <p>22 DR. EISENSTEIN: So the answer is -- yes,</p> <p>23 what you would do is, what I would recommend would be</p> <p>24 to put in what would be called a small cell site, not</p> <p>25 an ODAS. It would just be a small cell, which would be</p>
<p style="text-align: right;">Page 131</p> <p>1 essentially a repeater. It would receive signals from</p> <p>2 the -- we would call it an umbrella tower which would</p> <p>3 be the 80-foot one, and then the supplemental tower,</p> <p>4 the small cell would receive a signal from there and</p> <p>5 rebroadcast it in the area of the school. And that's</p> <p>6 done frequently.</p> <p>7 BOARD MEMBER ROSENBAUM: It's like a</p> <p>8 repeater?</p> <p>9 DR. EISENSTEIN: It's like a repeater. It</p> <p>10 would actually not be a separate cell site. So it</p> <p>11 would be a repeater off of that. So in that sense say</p> <p>12 a distributed antenna system, but you don't need a</p> <p>13 whole set of poles. You would need one pole let's say</p> <p>14 in the vicinity of the school to do the repeating.</p> <p>15 BOARD MEMBER ROSENBAUM: And that's outside</p> <p>16 the building?</p> <p>17 DR. EISENSTEIN: That would -- it would</p> <p>18 either be, again, I can't just design the network off</p> <p>19 the top of my head.</p> <p>20 BOARD MEMBER ROSENBAUM: I thought you were</p> <p>21 good.</p> <p>22 DR. EISENSTEIN: Not bad; not that good.</p> <p>23 You might be able to do it on the roof of a building.</p> <p>24 You might be able to do it on the existing building</p> <p>25 without a separate structure by having a receiving</p>	<p style="text-align: right;">Page 132</p> <p>1 antenna up there that would then rebroadcast within the</p> <p>2 building.</p> <p>3 But another way of doing it would be to put</p> <p>4 it on the right-of-way in the street not too far from</p> <p>5 the school. And you can cover other areas. Those</p> <p>6 would be called fill-in sites. They often put small</p> <p>7 cell sites along shopping centers or other places where</p> <p>8 you don't necessarily get the best cell phone coverage</p> <p>9 but you have a lot of density of traffic. So they'll</p> <p>10 put in a small cell site just to cover that limited</p> <p>11 area in there. And it works. It's commonly done.</p> <p>12 BOARD MEMBER ROSENBAUM: To be clear, it</p> <p>13 wouldn't be something inside the building, it would be</p> <p>14 external to the building. So if it was something that</p> <p>15 happened to the building, fire or something like that,</p> <p>16 you would still get cell phone coverage at the school?</p> <p>17 DR. EISENSTEIN: That would be my view of</p> <p>18 it. It would be a small cell site. It would be</p> <p>19 external to the building and not dependent on the</p> <p>20 building.</p> <p>21 CHAIRMAN FLANAGAN: Going back to this, the</p> <p>22 notification of the school that the application of the</p> <p>23 antenna had potentially changed to 80 feet. This seems</p> <p>24 to be the key point.</p> <p>25 Tom and Alf, you both said yes, that's an</p>

<p style="text-align: right;">Page 133</p> <p>1 issue, I think?</p> <p>2 BOARD MEMBER ADDONIZIO: You were about to</p> <p>3 say something before. Mr. Simon said --</p> <p>4 CHAIRMAN FLANAGAN: It is, but I may want</p> <p>5 to let it fester.</p> <p>6 MR. SIMON: My neurologist thanks you.</p> <p>7 CHAIRMAN FLANAGAN: I mean, if I misheard</p> <p>8 stop me. That's fine.</p> <p>9 BOARD MEMBER NEWLIN: I think it's a</p> <p>10 weakness.</p> <p>11 BOARD MEMBER ROSENBAUM: I was going to say</p> <p>12 I wouldn't mind hearing back again one more time that</p> <p>13 e-mail from the Superintendent. Is that possible?</p> <p>14 CHAIRMAN FLANAGAN: Could we hear Dr.</p> <p>15 Spelker's e-mail back? Who had that, was that you, Mr.</p> <p>16 Simon? Can you read that again?</p> <p>17 MR. SIMON: Yes. This is an e-mail from</p> <p>18 Dr. Spelker to Diane Enright dated Tuesday, May 28,</p> <p>19 2019. "Our Board has decided not to pursue this</p> <p>20 proposal any further. We appreciate you presenting to</p> <p>21 our Facilities and Finance Committee, but the Board was</p> <p>22 concerned with possible safety issues and the height</p> <p>23 and footprint that the site would require. Please let</p> <p>24 me know if you have any questions or concerns. Matthew</p> <p>25 Spelker."</p>	<p style="text-align: right;">Page 134</p> <p>1 BOARD MEMBER ROSENBAUM: It said safety</p> <p>2 and?</p> <p>3 MR. SIMON: "Was concerned with possible</p> <p>4 safety issues and the height and footprint that the</p> <p>5 site would require."</p> <p>6 BOARD MEMBER ROSENBAUM: Thank you.</p> <p>7 BOARD MEMBER ADDONIZIO: So you have the</p> <p>8 school, right. The school backs up to, abuts to, next</p> <p>9 to other residential homes that are within the national</p> <p>10 state and limits of the New Vernon Historical District.</p> <p>11 So do I think that in the wooded area would</p> <p>12 it look a little bit better? Probably. But again</p> <p>13 you'd have -- my feeling is when you read, you know,</p> <p>14 these Land Use books that we pay people to put together</p> <p>15 for us and give us guidance specifically to this, it</p> <p>16 says a lot of -- it's very much against it.</p> <p>17 So we're going through obviously the</p> <p>18 positive and negative criteria, but it's definitely</p> <p>19 going to, in my opinion, going to have to be very</p> <p>20 convincing.</p> <p>21 CHAIRMAN FLANAGAN: What is against what?</p> <p>22 What are you saying?</p> <p>23 BOARD MEMBER ADDONIZIO: I feel that there</p> <p>24 are points along the Redevelopment Plan, as well as</p> <p>25 some of the Land Use Telecommunications sections, that</p>
<p style="text-align: right;">Page 135</p> <p>1 is against putting a cell phone tower in the</p> <p>2 redevelopment section of Village Road, as well as in</p> <p>3 the Historic section of Harding.</p> <p>4 CHAIRMAN FLANAGAN: All right. You know,</p> <p>5 I'll tell you, on the school there's no question in my</p> <p>6 mind it would be a better site. No question. In the</p> <p>7 back fields, you're going to end up picking up</p> <p>8 everybody who lives over on Welch. I mean, there's a</p> <p>9 few neighborhoods back in there. It would be better if</p> <p>10 it's higher. It's further away from major roads. It</p> <p>11 would have a handful of people that would ever see it</p> <p>12 back there. So if you want to do the least harm,</p> <p>13 visually at least, that's the spot.</p> <p>14 BOARD MEMBER NEWLIN: And the setbacks,</p> <p>15 don't forget that there's huge potential setbacks.</p> <p>16 CHAIRMAN FLANAGAN: Setbacks. It would be</p> <p>17 way better. With that said, you have to have a willing</p> <p>18 landlord. Right.</p> <p>19 BOARD MEMBER BOYAN: But unless you ask the</p> <p>20 question how do we know if they're willing. We asked</p> <p>21 at 140.</p> <p>22 CHAIRMAN FLANAGAN: That's fair enough.</p> <p>23 BOARD MEMBER SOVOLOS: And three years ago</p> <p>24 and the Board has since changed, very slightly but the</p> <p>25 composition of the Board has changed since then.</p>	<p style="text-align: right;">Page 136</p> <p>1 CHAIRMAN FLANAGAN: Agreed.</p> <p>2 BOARD MEMBER NEWLIN: That's why I say it's</p> <p>3 a weakness.</p> <p>4 CHAIRMAN FLANAGAN: All right. What else?</p> <p>5 We're on the negative criteria. Identify the public</p> <p>6 interest. I think everyone here wants to see this</p> <p>7 tower go up so wouldn't that be the public interest?</p> <p>8 (Laughter.)</p> <p>9 Steve, what is the public interest?</p> <p>10 MR. MLENAK: You've seen the gap, and</p> <p>11 you've seen the exhibit that shows what various</p> <p>12 frequencies the tower at 80 feet would fill in that</p> <p>13 gap. Not all gaps are equal, though. You have to look</p> <p>14 to see what's in there and what the tower's going to</p> <p>15 fill. One acre of gap of wooded land is different than</p> <p>16 the highway and a heavily residential area and</p> <p>17 commercial areas.</p> <p>18 Clearly, you're also going to have to</p> <p>19 consider what the public interest was when it was</p> <p>20 proposed at 120 feet, and how that is diminished at 80</p> <p>21 feet. And the key difference there obviously is less</p> <p>22 height to be at the school. So you have to identify</p> <p>23 what exactly would this tower do to certain public</p> <p>24 interest in terms of identify the public interest. And</p> <p>25 then later we use that same interest in balancing</p>

<p style="text-align: right;">Page 137</p> <p>1 against the negative.</p> <p>2 CHAIRMAN FLANAGAN: That gets back to the</p> <p>3 fascinating point that George made last time, for all</p> <p>4 this discussion about how critical it is that we have</p> <p>5 cell phone service up at the school, where is the</p> <p>6 School Board putting their hand up saying please put a</p> <p>7 tower in my backyard so I can have cell service.</p> <p>8 Right.</p> <p>9 You just have to question -- I believe</p> <p>10 Chief Heller, and it's logical that you would want to</p> <p>11 have cell phone service there, but with that said where</p> <p>12 was the school saying please put it there? Right. I</p> <p>13 mean, their answer was the opposite. It was nope,</p> <p>14 don't want it at 120 because it's too high. Their</p> <p>15 answer was not, hey --</p> <p>16 BOARD MEMBER ROSENBAUM: But they're also</p> <p>17 not here saying we need it.</p> <p>18 CHAIRMAN FLANAGAN: They're not saying</p> <p>19 either.</p> <p>20 BOARD MEMBER ROSENBAUM: We need it -- we</p> <p>21 don't want it on our property but we need it. They</p> <p>22 haven't said this.</p> <p>23 CHAIRMAN FLANAGAN: Okay. Detrimental</p> <p>24 effects. We talked about this ad nauseam. The visual</p> <p>25 we talked about last time and I think that's where got</p>	<p style="text-align: right;">Page 138</p> <p>1 hung up on. I think that's what led us to this 80-foot</p> <p>2 proposal.</p> <p>3 BOARD MEMBER ROSENBAUM: It's out of</p> <p>4 character. Its unexpected.</p> <p>5 CHAIRMAN FLANAGAN: Reasonable conditions.</p> <p>6 Can they reduce the detrimental effects which led us to</p> <p>7 80 feet?</p> <p>8 BOARD MEMBER SYMONDS: I have one thing</p> <p>9 that has come up in today's -- especially in today's</p> <p>10 testimony. Yes, they have -- the Applicant has reduced</p> <p>11 said we'll build at 80 feet. The piece that we have</p> <p>12 also talked about a lot but that has not been presented</p> <p>13 is that the Township has not, you know, we have heard</p> <p>14 -- Steve read from the lease that said, you know, that</p> <p>15 as far as the lease is concerned they want collocation,</p> <p>16 and they have, you know, a much higher height than</p> <p>17 we're actually going with. We have not heard from the</p> <p>18 township to say that, yes, we agree with the Board --</p> <p>19 we agree with the Applicant and we will limit what we</p> <p>20 are leasing to 80 feet. And so that leaves us open,</p> <p>21 and just some of the concerns that we have heard is</p> <p>22 that, oh, well, they can, you know, Verizon can come</p> <p>23 in, they can build their tower. It will be 80 feet</p> <p>24 tall, and then the next thing we see is another</p> <p>25 Applicant comes in and immediately the tower and the</p>
<p style="text-align: right;">Page 139</p> <p>1 pad are larger. I won't get into whether it's 10 feet,</p> <p>2 20 feet, but its larger. And we have said, well, the</p> <p>3 answer -- the only thing you can do to protect against</p> <p>4 that is have the Township say, okay, we agree 80 feet</p> <p>5 is the end of the line. So that's my concern is we</p> <p>6 sort of got, we got 80 feet but we haven't sort of</p> <p>7 locked it in. We have both impacted parties haven't</p> <p>8 said, yes, we with agreed to that.</p> <p>9 MR. MLENAK: That's correct. If the Board</p> <p>10 was so inclined to grant this with an approval with a</p> <p>11 condition that they make best efforts or commercially</p> <p>12 reasonable effort to get the lease amended to cap the</p> <p>13 height. What was discussed by Mr. Simon tonight and</p> <p>14 what we talked about before is correct, that that is an</p> <p>15 agreement between two parties. And they were to</p> <p>16 fulfill their obligation by making the effort to get an</p> <p>17 amendment but five years from now --</p> <p>18 BOARD MEMBER SYMONDS: I understand that,</p> <p>19 yeah, we can't make it forever, but the lease isn't</p> <p>20 forever either. But you say that Verizon can make the</p> <p>21 best effort to get the Township to agree to it. Can we</p> <p>22 make it a condition that this variance requires that</p> <p>23 they get that agreement? That the lease be revised to</p> <p>24 80 feet?</p> <p>25 MR. MLENAK: I don't believe that would be</p>	<p style="text-align: right;">Page 140</p> <p>1 considered a reasonable condition to require an</p> <p>2 amendment to a private contract.</p> <p>3 BOARD MEMBER SYMONDS: Okay. Thank you.</p> <p>4 So Steve, I'll just weigh on this. I have a list of</p> <p>5 points which are a must for me. That's one of them.</p> <p>6 It's got to ironclad 80 feet. I understand all those</p> <p>7 points, but there has to be a way.</p> <p>8 And this is not the only thing, but this is</p> <p>9 one of the top ones. There's got to be huge odds in</p> <p>10 favor of not extending past 80 feet. It's a must,</p> <p>11 otherwise no.</p> <p>12 CHAIRMAN FLANAGAN: Is there a way to</p> <p>13 assure that then?</p> <p>14 BOARD MEMBER NEWLIN: It can't -- you know,</p> <p>15 commercially reasonable not even close. It means</p> <p>16 hardly nothing anymore. It's got to be with real teeth</p> <p>17 one way or another.</p> <p>18 CHAIRMAN FLANAGAN: Well, let's just talk</p> <p>19 that out then. What would have real teeth? How</p> <p>20 could --</p> <p>21 BOARD MEMBER NEWLIN: Why couldn't we --</p> <p>22 what you were saying I understand is --</p> <p>23 MR. MLENAK: Let's say we could require</p> <p>24 that. There's nothing we can require that they don't</p> <p>25 change it back.</p>

<p style="text-align: right;">Page 141</p> <p>1 BOARD MEMBER NEWLIN: There's nothing to 2 require that they come back to the Board, a different 3 Board and the Board approves it. What's the 4 difference? They're elected. 5 MR. MLENAK: That would be contractually 6 between those two parties not with us, and then they 7 can amend that. 8 BOARD MEMBER NEWLIN: What I'm saying is, 9 yes, you're saying that the future Township Committee 10 or same Township can change their mind or change the 11 lease, there's no question about that. My point is if 12 they come back to this Board this Board could also 13 change its mind, it's a different Board, and approve an 14 extension. Yes, there's no public hearing and it would 15 be much better to come back to the Board and they'll 16 still have a risk to change in the future. 17 CHAIRMAN FLANAGAN: Could we ask the 18 Applicants if you would be willing to agree? 19 MR. MLENAK: If that's what he proposes. 20 CHAIRMAN FLANAGAN: And I don't know how 21 many Boards Members feel this way, but would you be 22 amenable to place a condition on the approval that the 23 tower height does not exceed 80 feet? I feel like we 24 talked about this before. 25 Why not? Mr. Simon, I would love to know</p>	<p style="text-align: right;">Page 142</p> <p>1 what's going on inside your mind. Is that a crazy 2 question? 3 MR. MLENAK: I think that would be a 4 condition that runs afoul of the Federal law. 5 CHAIRMAN FLANAGAN: Okay. It runs afoul of 6 the Federal law. So I'm not going to ask you. All 7 right. So there you go, we can't do it without running 8 afoul of the Federal law. 9 BOARD MEMBER NEWLIN: I look at this as 10 this is not our problem to solve. It's somebody else's 11 problem to solve, but it's a very clear point. This is 12 clearly a very tough situation. There's reasons to 13 have the coverage. This is not a great location. It 14 can't be more than 80 feet. 15 SECRETARY TAGLAIRINO: It is 10:30. We 16 have to at least say on the record that you're agreeing 17 to go past 10:30. 18 CHAIRMAN FLANAGAN: We all agree to go past 19 10:30. 20 UNIDENTIFIED PUBLIC VOICE: Can you repeat 21 that? 22 CHAIRMAN FLANAGAN: We're going to continue 23 on to past 10:30, unless you guys want to come back 24 next month? 25 So how practically can one do that? It</p>
<p style="text-align: right;">Page 143</p> <p>1 would be -- and what is it, it's 20 percent? This gets 2 back to the same question. It's a 20 percent increase. 3 MR. MLENAK: You're talking 20 feet. 4 CHAIRMAN FLANAGAN: So you would need the 5 Applicant to go back and revise it to 60 feet knowing 6 that they by right can go up to 80 and that's how -- is 7 that right? Is that the only way to do it? 8 MR. MLENAK: That's not available here. 9 CHAIRMAN FLANAGAN: If the Applicant said 10 he wanted a 60-foot tower it could be done. 11 MR. MLENAK: That's a whole new application 12 60 feet. 13 CHAIRMAN FLANAGAN: Why is 80 feet? 14 MR. MLENAK: No, they did go back. We had 15 summations since November. It's now May. 16 BOARD MEMBER BOYAN: You didn't mean a new 17 application, you meant a new condition for approval. 18 MR. SCHNEIDER: If there were five 19 affirmative votes to approve the application -- sorry. 20 If there were five affirmative votes to approve the 21 application the Applicant would be willing as a 22 condition of that approval to go to the governing body 23 and ask them whether they would amend it to limit the 24 height to 80 feet. I can't do anything more than that. 25 MR. MLENAK: Isn't that what we already had</p>	<p style="text-align: right;">Page 144</p> <p>1 on the table? 2 MR. SCHNEIDER: Well -- 3 BOARD MEMBER MASELLI: We already had that 4 on the table. 5 MR. SCHNEIDER: Yes. But you just asked me 6 whether I'd be willing to do that. 7 CHAIRMAN FLANAGAN: No. We were going 8 down -- I think Alf said he would like to be ironclad 9 the height never exceeds 80 feet. That was his ask. 10 Then we sort of walked through how one could accomplish 11 that. The first thing was your consent to using 12 commercially reasonable terms to go get the lease 13 amended. It was not satisfactory in Alf's view. So 14 then I just started down the path of, well, what would 15 make it ironclad? And just knowing that you could by 16 right extend the tower 20 feet -- 17 MR. SCHNEIDER: I could only agree to that 18 condition if the governing body imposed that condition. 19 CHAIRMAN FLANAGAN: What condition? 20 MR. SCHNEIDER: That it would not be 21 extended past 80 feet, which I'm willing to do. 22 CHAIRMAN FLANAGAN: Understood. So there 23 you have it, I think. 24 BOARD MEMBER NEWLIN: I don't have it. 25 CHAIRMAN FLANAGAN: Well, you have your</p>

<p style="text-align: right;">Page 145</p> <p>1 answer.</p> <p>2 BOARD MEMBER NEWLIN: It depends what the</p> <p>3 text says, I'll tell you right now.</p> <p>4 MR. SCHNEIDER: I disagree with Mr. Simon</p> <p>5 and the Board. I don't think that -- the Township can</p> <p>6 impose an appropriate restriction binding in perpetuity</p> <p>7 not to extend the height of the tower.</p> <p>8 CHAIRMAN FLANAGAN: I think the discussion</p> <p>9 was, yes, we agree the Township Committee could do</p> <p>10 that, but then the Township Committee could change in</p> <p>11 the future.</p> <p>12 MR. SCHNEIDER: I don't agree with that.</p> <p>13 CHAIRMAN FLANAGAN: You think you can put</p> <p>14 an agreement in place that could never be changed?</p> <p>15 BOARD MEMBER NEWLIN: They are elected. We</p> <p>16 do vote, so it could --</p> <p>17 CHAIRMAN FLANAGAN: Why couldn't a future</p> <p>18 Township Committee have an another vote and say, you</p> <p>19 know what --</p> <p>20 MR. MLENAK: They can always amend.</p> <p>21 MR. SIMON: I've been part of any number of</p> <p>22 those. Not to mention whether another carrier comes in</p> <p>23 and says, hey, you know, Federal law, state law, I'm</p> <p>24 entitled -- it's public property, I'm entitled to</p> <p>25 collocate.</p>	<p style="text-align: right;">Page 146</p> <p>1 MR. SCHNEIDER: I don't see it any</p> <p>2 different than a deed restriction or anything of the</p> <p>3 like. But I'm suggesting that it can be binding. I'm</p> <p>4 also suggesting that I would do that. So if you're</p> <p>5 asking me to then to guarantee you something that I</p> <p>6 can't guarantee you.</p> <p>7 CHAIRMAN FLANAGAN: I know you can't. I</p> <p>8 was just recognizing the fact that there's no way that</p> <p>9 any Board or even this body could put something in</p> <p>10 place in perpetuity.</p> <p>11 BOARD MEMBER ROSENBAUM: But could the</p> <p>12 condition be that the Applicant makes a best effort to</p> <p>13 limit the tower height to 80 feet?</p> <p>14 MR. MLENAK: Well, that's what's on the</p> <p>15 table.</p> <p>16 BOARD MEMBER ROSENBAUM: But you still have</p> <p>17 the FCC. The FCC still has the ability to go another</p> <p>18 20 feet.</p> <p>19 MR. MLENAK: No. If the lease --</p> <p>20 MR. SCHNEIDER: How about this. The</p> <p>21 Applicant will agree as a condition of approval to</p> <p>22 approach the governing body to obtain their consent if</p> <p>23 the tower shall not exceed a height of 80 or 86 feet,</p> <p>24 whatever height you want to use as the base mark. And</p> <p>25 in the event anybody requires relief from that they</p>
<p style="text-align: right;">Page 147</p> <p>1 make the application to the appropriate Township</p> <p>2 Committee or Board. I can't do anything more than</p> <p>3 that.</p> <p>4 BOARD MEMBER NEWLIN: Then why is it we</p> <p>5 can't see an amendment to the lease to that effect as</p> <p>6 part of this application?</p> <p>7 MR. MLENAK: The Applicant hasn't submitted</p> <p>8 it as part of the record to date.</p> <p>9 BOARD MEMBER NEWLIN: That's not exactly</p> <p>10 the answer to my question.</p> <p>11 MR. MLENAK: Then I don't understand.</p> <p>12 BOARD MEMBER NEWLIN: So why can't we</p> <p>13 see -- why can't they go off and get this agreement</p> <p>14 done so we see it in writing, we see the lease</p> <p>15 modification? How hard is that?</p> <p>16 MR. MLENAK: So reserve vote until you see</p> <p>17 that?</p> <p>18 UNIDENTIFIED PUBLIC VOICE: No. Nobody</p> <p>19 wants it.</p> <p>20 CHAIRMAN FLANAGAN: Guys, please.</p> <p>21 BOARD MEMBER SYMONDS: I don't understand</p> <p>22 why it can't be a condition of approval that the lease</p> <p>23 is revised, not best efforts or anything like that,</p> <p>24 that the lease is revised and both parties to the lease</p> <p>25 agree that it will never go past 80 feet, granted</p>	<p style="text-align: right;">Page 148</p> <p>1 some -- I don't see why we can't --</p> <p>2 MR. MLENAK: What I'm hearing part of the</p> <p>3 issue is not that, but the other end which is it can</p> <p>4 always be changed.</p> <p>5 MR. SCHNEIDER: I didn't hear you, Steve.</p> <p>6 MR. MLENAK: It could always be amended</p> <p>7 back. I don't know how a private agreement, and you</p> <p>8 can tell -- I'm open. I don't know how a private</p> <p>9 agreement between Verizon and the town can instill this</p> <p>10 Board as some third-party beneficiary that gets rights</p> <p>11 to detail a future amendment.</p> <p>12 MR. BOYAN: Steven, though, it's a</p> <p>13 condition of approval that it's amended. And then if</p> <p>14 at some subsequent date it's amended back then the</p> <p>15 conditions of approval haven't been satisfied,</p> <p>16 therefore they don't have the "D" Variance, right?</p> <p>17 MR. MLENAK: Well, I would view it more as</p> <p>18 when the town ultimately says no they didn't.</p> <p>19 BOARD MEMBER BOYAN: You're right. I</p> <p>20 totally agree with that. But in that scenario, though,</p> <p>21 I just laid out if it's in there as a condition of</p> <p>22 approval and that condition is no longer met then the</p> <p>23 condition is no longer enforced.</p> <p>24 MR. MLENAK: I don't know --</p> <p>25 BOARD MEMBER BOYAN: Okay. Fair enough.</p>

<p style="text-align: right;">Page 149</p> <p>1 CHAIRMAN FLANAGAN: Alf, does that answer 2 your question? 3 BOARD MEMBER NEWLIN: Yes. It sounds like 4 we get what we want. 5 CHAIRMAN FLANAGAN: Okay. So what would 6 that condition read? 7 BOARD MEMBER NEWLIN: I don't know. We 8 would have to work on it. 9 CHAIRMAN FLANAGAN: Well, in attorney 10 language, but you're saying you would want the 11 Applicant -- put it in your words. What would you want 12 the Applicant to do? 13 BOARD MEMBER NEWLIN: So I might as well 14 tell you all of my things. I'm not a hundred percent 15 no, but this is one that's a must. This has to be -- 16 this risk might have to control. 17 CHAIRMAN FLANAGAN: The right risk? 18 BOARD MEMBER NEWLIN: The right risk. 19 Change right risk. Eighty, whatever type of tower it 20 is. 21 Secondly the setback. I'm a no at 66, 22 period. It's got to be -- I do not believe that 23 whether it's the town or Verizon or whoever has worked 24 hard enough to get that additional setback. And I 25 think we should -- if the Board were to go ahead with</p>	<p style="text-align: right;">Page 150</p> <p>1 this, and this is my opinion, is that we should require 2 a rear setback. Particularly the worst one, which is 3 to the O'Donnell property 66.3. The good faith this, 4 good faith that -- 5 CHAIRMAN FLANAGAN: Is that an up or down 6 issue for you the setback? 7 BOARD MEMBER NEWLIN: Yes. Absolutely. 8 CHAIRMAN FLANAGAN: So let's figure out 9 right now. Mr. Schneider, will you talk about this? 10 BOARD MEMBER NEWLIN: Well, let me just say 11 one more thing. If you look at that shed, I mean, this 12 is a shed for recycling, for dumpsters. It is not high 13 quality. It doesn't look expensive. Yes, I'm not an 14 engineer. Yes, I don't know. But they have to go 15 spend some money to extend that pad in there so they 16 can get that tower further away. They should 17 absolutely do it. And I do not believe that they've 18 tried hard enough. 19 MR. MLENAK: Was this the issue that we 20 heard testimony with respect to the geotech soil 21 issues? 22 BOARD MEMBER NEWLIN: Yes. But there's 23 another way to do that. It's a little more 24 traditional, but they'd have to eat into that recycling 25 facility.</p>
<p style="text-align: right;">Page 151</p> <p>1 BOARD MEMBER ROSENBAUM: Do you have a 2 number in mind, Alf? 3 BOARD MEMBER NEWLIN: Yes, 78. Minimum. 4 Because that's close to their property line. They said 5 they could do it. They said maybe 13 feet they could 6 do if they could figure out how to mount the pole. And 7 it's close to 80 feet. It's like a minimum. 8 CHAIRMAN FLANAGAN: All right. What else 9 have you got on your list? 10 BOARD MEMBER NEWLIN: The landscaping is 11 just pathetic. So if you look at the pictures of this 12 property, even the cost of this, look at the picture 13 from the O'Donnell property particularly, it's 14 horrible. Yes, of course, this is fully aware of the 15 composition of the cell tower itself. There's no 16 question about that. But that's one of the neighbor 17 views. Landscaping is relatively cheap. They can do a 18 lot more to try to shield this DPW site. 19 CHAIRMAN FLANAGAN: All right. So you want 20 the -- I think they proposed 5 and 6 foot. 21 BOARD MEMBER NEWLIN: I don't know. The 22 problem with this, I'm not even close to a professional 23 landscaping and I would have to fall back on Paul to be 24 aggressive with the landscaping issue to work very hard 25 to shield as much as possible.</p>	<p style="text-align: right;">Page 152</p> <p>1 BOARD MEMBER ROSENBAUM: Didn't we discuss 2 that or is that another Applicant, Paul's review? 3 MR. MLENAK: Mr. Schneider, I believe, 4 correct me if I misplace your words, had agreed to a 5 condition to work on a landscaping plan subject to 6 Paul's review and approval. 7 BOARD MEMBER NEWLIN: But this has to be -- 8 MR. MLENAK: And I think what you said was 9 to shield all the ground equipment; is that correct? 10 MR. SCHNEIDER: That is correct. And I 11 also offered to make a reasonable contribution to the 12 Shade Tree Commission, for the purpose of if it was 13 appropriate the Shade Tree Commission could do 14 additional plantings off-site. 15 BOARD MEMBER NEWLIN: That bar is too low. 16 MR. SCHNEIDER: Well, I said I would agree 17 to -- 18 BOARD MEMBER NEWLIN: No. I'm talking 19 about the language. This always go in. This is like 20 standard stuff. And this site, because of this tower, 21 it is outrageous in many ways. What we do with 22 setbacks with core residential properties and we 23 tortured that other guy the other night for 6 feet. A 24 lot of effort should be done on landscaping, much more 25 than we typically do. What that is, I'd have to say</p>

<p style="text-align: right;">Page 153</p> <p>1 would have to be up to Paul, but it wouldn't be the</p> <p>2 standard plants and a few evergreens and things like</p> <p>3 that.</p> <p>4 BOARD MEMBER SYMONDS: Can I ask a question</p> <p>5 that's related to this? One of the things that is</p> <p>6 looked at instead of landscaping, because you end up</p> <p>7 with a problem when the landscaping is done. What</p> <p>8 about actually extending the DPW shed in a manner such</p> <p>9 that the equipment was actually inside the shed as</p> <p>10 opposed to outside screened by landscaping. So in</p> <p>11 other words, put an addition -- put a shed addition on</p> <p>12 the shed. Would that be -- how would that be as a</p> <p>13 screen as opposed to saying we're putting the</p> <p>14 landscaping up, basically putting inside, you know,</p> <p>15 instead of landscaping, sorry, the recycling bin but</p> <p>16 far enough so the stuff could go inside.</p> <p>17 MR. MLENAK: That's certainly going to be a</p> <p>18 new application because that's a new improvement.</p> <p>19 CHAIRMAN FLANAGAN: We have spoken about</p> <p>20 it. I'll ask again. So one of Alf's concerns, and</p> <p>21 perhaps other people's concerns is the side-yard</p> <p>22 setback. Is it possible for you to move the tower any</p> <p>23 further away from the O'Donnell property, the Conine</p> <p>24 property or both?</p> <p>25 BOARD MEMBER NEWLIN: Well, the I'm looking</p>	<p style="text-align: right;">Page 154</p> <p>1 at the 66.3 is the O'Donnell property.</p> <p>2 CHAIRMAN FLANAGAN: Is it possible for you</p> <p>3 to move the tower further from the O'Donnell property?</p> <p>4 You've told us before, but I'll ask you again.</p> <p>5 MR. SCHNEIDER: No. But I could put the</p> <p>6 equipment -- if the Township made the shed available I</p> <p>7 can put the equipment in the shed.</p> <p>8 CHAIRMAN FLANAGAN: You guys should just</p> <p>9 talk directly.</p> <p>10 BOARD MEMBER NEWLIN: It's the tower, it</p> <p>11 isn't me.</p> <p>12 MR. SCHNEIDER: Not at this point.</p> <p>13 CHAIRMAN FLANAGAN: So what I'm hearing</p> <p>14 from Alf, because he's a no with that answer. Just</p> <p>15 keeping track.</p> <p>16 And ladies and gentlemen we're going to</p> <p>17 vote tonight. I should have said earlier, whatever the</p> <p>18 answer is, if you're really sad or really happy or</p> <p>19 somewhere in between don't do it here. Go home, okay?</p> <p>20 We're going to clear the room out. Don't hang out in</p> <p>21 the parking lot. Go home. You can celebrate or cry at</p> <p>22 home, okay?</p> <p>23 BOARD MEMBER ROSENBAUM: So we're voting</p> <p>24 tonight?</p> <p>25 CHAIRMAN FLANAGAN: I would like to get a</p>
<p style="text-align: right;">Page 155</p> <p>1 vote.</p> <p>2 BOARD MEMBER ROSENBAUM: I want to be done</p> <p>3 with this.</p> <p>4 CHAIRMAN FLANAGAN: All right. What else?</p> <p>5 MR. MLENAK: We were going to go back to</p> <p>6 voting in order. You were in the middle of detrimental</p> <p>7 effect.</p> <p>8 BOARD MEMBER ROSENBAUM: Alf, those are</p> <p>9 your thoughts?</p> <p>10 BOARD MEMBER NEWLIN: Yes.</p> <p>11 CHAIRMAN FLANAGAN: Detrimental effects, I</p> <p>12 think is the height is what we identified. We</p> <p>13 identified noise. They offered up conditions. Like</p> <p>14 noise-related generator. Right. They're going to do</p> <p>15 it on Tuesdays at noon or something to that effect;</p> <p>16 right?</p> <p>17 MR. SCHNEIDER: Correct.</p> <p>18 CHAIRMAN FLANAGAN: And to that point, do</p> <p>19 you have a list of all these conditions we spoke about</p> <p>20 over the course of these three years, Steve?</p> <p>21 MR. MLENAK: I may just have that. So we</p> <p>22 have -- subject to language that we may have to</p> <p>23 discuss. The very first thing on my list to discuss is</p> <p>24 because I've heard this agreement before, is stealth</p> <p>25 tree versus flagpole.</p>	<p style="text-align: right;">Page 156</p> <p>1 CHAIRMAN FLANAGAN: The stealth tree looks</p> <p>2 like a fake tree. It looks worse than -- it you're</p> <p>3 going to do this the tree looks worse. It sticks out</p> <p>4 bigger. It doesn't look like a tree. And I agree with</p> <p>5 you, there's some pretty ones but at the end they don't</p> <p>6 look like trees.</p> <p>7 BOARD MEMBER ROSENBAUM: I think they're</p> <p>8 both hideous. And I think the tree is less hideous.</p> <p>9 CHAIRMAN FLANAGAN: Anyone have a strong</p> <p>10 view one way other another, the tree versus the pole?</p> <p>11 BOARD MEMBER ADDONIZIO: Why do you think</p> <p>12 the tree is less hideous?</p> <p>13 BOARD MEMBER ROSENBAUM: Because otherwise</p> <p>14 it looks like this tall monolith with no purpose. I</p> <p>15 mean, you know what it is. It's aesthetics, so it is</p> <p>16 what it is.</p> <p>17 CHAIRMAN FLANAGAN: If we were to go this</p> <p>18 path, pole or a tree?</p> <p>19 BOARD MEMBER SYMONDS: Eighty feet is what</p> <p>20 I like.</p> <p>21 CHAIRMAN FLANAGAN: All right. Elizabeth?</p> <p>22 BOARD MEMBER SOVOLOS: This is not my vote,</p> <p>23 but I would say a flagpole.</p> <p>24 CHAIRMAN FLANAGAN: So let me ask you by</p> <p>25 the way, what I was going to say earlier by the way,</p>

<p style="text-align: right;">Page 157</p> <p>1 you guys know how this works, voting tonight are Tom, 2 Alf, me, Aric, you, Elizabeth, Donato. Sorry, George. 3 MR. BOYAN: That's quite all right. 4 CHAIRMAN FLANAGAN: They need five votes to 5 get an approval here. So three or more Nos is a no. 6 Donato, what do you say about pole versus tree? If you 7 were to say yes, say you had to say yes to one of them. 8 BOARD MEMBER MASELLI: Definitely not a 9 tree. But I don't even know why we're discussing that 10 if we haven't even voted. 11 CHAIRMAN FLANAGAN: Well, fine. So 12 detrimental effects, we talked about it. Can we impose 13 reasonable conditions, that's what we're talking about 14 the 80 feet. Final step, let's get there right now. 15 BOARD MEMBER MASELLI: It's not just the 16 80 feet. I mean, Alf identified other items. And I 17 don't disagree with Alf. I actually agree and 18 emphasize. The setback is a huge issue. 19 CHAIRMAN FLANAGAN: Are you a no if you 20 don't get the setback? 21 BOARD MEMBER MASELLI: Are you asking me to 22 vote right now? 23 CHAIRMAN FLANAGAN: Well, don't answer, 24 whatever, but Alf said if the setback does not increase 25 --</p>	<p style="text-align: right;">Page 158</p> <p>1 BOARD MEMBER MASELLI: I just think that 2 there hasn't been a big enough effort to increase the 3 setback. Whether it's just the pole next to the shed, 4 or whether the Town gets involved to actually use the 5 shed's footprint to increase that setback. We're going 6 around and around here in circles. 7 CHAIRMAN FLANAGAN: Well, I'm trying to get 8 to the end here and I think I know where this going. 9 BOARD MEMBER NEWLIN: You know what, I feel 10 like the Board is -- somehow we're given to make this 11 work in this small section part of the property. We 12 have this big other section of industrial property and 13 that's in a way why I think we should push back on the 14 setback and say you make it work. 15 CHAIRMAN FLANAGAN: Okay. 16 BOARD MEMBER NEWLIN: It's not our problem. 17 Why is it our problem? Seventy-eight is like the bare 18 minimum. It should be a hundred. 19 CHAIRMAN FLANAGAN: I'm with you, and we 20 have discussed this many times. We have asked the 21 Applicant many times. And I believe the Applicant, I 22 believe, and I don't see why the Applicant would care 23 where on the property it goes. 24 BOARD MEMBER NEWLIN: Because Mike, I 25 remember from his testimony that there's two methods,</p>
<p style="text-align: right;">Page 159</p> <p>1 right, and there's one method which gets involved with 2 the type of soil and the slate and all that kind of 3 stuff, shale, whatever. The other method is extending 4 the pad. The reason I can't extend the pad is because 5 that nasty old shed is there. 6 CHAIRMAN FLANAGAN: Well, what I was going 7 to say, if I can finish, I think it's the Township 8 that's saying no, put it here and that's it. I think 9 if you ask -- if Mr. Schneider had his right he'd put 10 it wherever you wanted to. 11 BOARD MEMBER NEWLIN: That may be, but 12 extending the pad is not moving the pole. 13 MR. MLENAK: That shed is not in the lease 14 area, right? 15 MR. SCHNEIDER: No. 16 MR. MLENAK: I don't know why we're even -- 17 CHAIRMAN FLANAGAN: I don't believe that 18 Mr. Schneider has any ability whatsoever to move it 19 from what's being proposed. 20 BOARD MEMBER NEWLIN: I think if they will 21 put in just for the base to extend the base and leave 22 the shed because of the money. 23 MR. MLENAK: I don't know if it's a 24 question of money. I think it's a question of bidding 25 too. When the Applicant was asked he said no, so</p>	<p style="text-align: right;">Page 160</p> <p>1 rather than a condition -- 2 BOARD MEMBER SOVOLOS: At some point 3 there's so many conditions that this thing looks 4 entirely different than what we have been seeing for 5 the past three years. So it leaves me very 6 uncomfortable to vote on something this big and this 7 important with all these floating conditions and what 8 ifs and maybes in the air. 9 CHAIRMAN FLANAGAN: Okay. Tell you what. 10 I think we got our answer. Someone want to make a 11 motion? 12 BOARD MEMBER ROSENBAUM: One last question. 13 So the aspect of suitable site could also potentially 14 mean, did they look at alternate sites that could be 15 within the site as well, right? It doesn't necessarily 16 need to be a different block and lot? 17 MR. MLENAK: Alternate sites. 18 BOARD MEMBER ROSENBAUM: Alternate sites. 19 CHAIRMAN FLANAGAN: Alf, can I ask you to 20 make a motion? 21 BOARD MEMBER NEWLIN: What I would do 22 probably is change these -- I would make it a condition 23 to get that setback. 24 CHAIRMAN FLANAGAN: Mr. Schneider, are you 25 willing to concede -- what am I asking -- would you --</p>

<p style="text-align: right;">Page 161</p> <p>1 what's he going to do, is he going say he'll go back</p> <p>2 and ask the DPW to move it?</p> <p>3 BOARD MEMBER NEWLIN: I don't know what</p> <p>4 they're going to do. They can figure it out. They can</p> <p>5 go back to their engineer. They cannot go back to</p> <p>6 their engineer.</p> <p>7 CHAIRMAN FLANAGAN: I hear you. Mr.</p> <p>8 Schneider --</p> <p>9 BOARD MEMBER NEWLIN: 66.3 is a no for me.</p> <p>10 CHAIRMAN FLANAGAN: Mr. Schneider, have you</p> <p>11 asked the Township if you can move the pole to a</p> <p>12 different location?</p> <p>13 MR. SCHNEIDER: We're not willing to do</p> <p>14 that after four years. I can't tell you what's going</p> <p>15 to happen in the future.</p> <p>16 CHAIRMAN FLANAGAN: All right. I would</p> <p>17 like to vote tonight.</p> <p>18 MR. SCHNEIDER: I agree. So I think</p> <p>19 someone should make a motion.</p> <p>20 CHAIRMAN FLANAGAN: Okay. Do you want to</p> <p>21 make a motion?</p> <p>22 BOARD MEMBER NEWLIN: No.</p> <p>23 CHAIRMAN FLANAGAN: Anyone want to make a</p> <p>24 motion? The motion could be that we deny this.</p> <p>25 BOARD MEMBER ROSENBAUM: I make a motion</p>	<p style="text-align: right;">Page 162</p> <p>1 that we vote on it. (Laughter.)</p> <p>2 CHAIRMAN FLANAGAN: All right. Let's go</p> <p>3 this way. Does anyone want to make a motion? You want</p> <p>4 me to make a motion? Vote whichever way you want.</p> <p>5 I vote we approve this with the conditions</p> <p>6 stipulated.</p> <p>7 MR. ROSENBAUM: Do you want a read out of</p> <p>8 those conditions?</p> <p>9 CHAIRMAN FLANAGAN: Does the person who</p> <p>10 seconded have to vote yes for the motion.</p> <p>11 SECRETARY TAGLAIRINO: Yes.</p> <p>12 CHAIRMAN FLANAGAN: Okay. Does anybody</p> <p>13 second it?</p> <p>14 BOARD MEMBER ROSENBAUM: I will second it.</p> <p>15 BOARD MEMBER NEWLIN: We need a list of</p> <p>16 conditions, no?</p> <p>17 BOARD MEMBER ROSENBAUM: I do want to get</p> <p>18 the conditions.</p> <p>19 MR. MLENAK: Well, I can read out what I've</p> <p>20 been writing throughout out the process, but of course</p> <p>21 the person making the motion you're making a motion on</p> <p>22 your condition. What I've written down is stealth</p> <p>23 tree, but I hear monopole.</p> <p>24 CHAIRMAN FLANAGAN: So my motion is a pole</p> <p>25 at 80 feet.</p>
<p style="text-align: right;">Page 163</p> <p>1 MR. MLENAK: There was a condition that the</p> <p>2 cable bridge --</p> <p>3 MR. SCHNEIDER: Flagpole, Mr. Chairman?</p> <p>4 CHAIRMAN FLANAGAN: Flagless flagpole.</p> <p>5 MR. MLENAK: That the height of the cable</p> <p>6 bridge would be reduced to 8 feet.</p> <p>7 CHAIRMAN FLANAGAN: Okay. That's part of</p> <p>8 my motion.</p> <p>9 MR. MLENAK: That the lease -- that the</p> <p>10 applicant make good-faith and commercially reasonable</p> <p>11 efforts to have the lease amended to 80 feet.</p> <p>12 That there are new landscaping plans that</p> <p>13 is reviewed by and approved by the Township Engineer</p> <p>14 and Planner.</p> <p>15 That a geotechnical analysis of the</p> <p>16 property be conducted and provided to the Township</p> <p>17 Engineer for review and if such conditions permit that</p> <p>18 the Applicant relocate the facility as close as</p> <p>19 possible to the existing recycling shed to increase the</p> <p>20 setback from adjacent residential lots.</p> <p>21 And I believe there's also the condition</p> <p>22 that was mentioned, which I don't have on this list</p> <p>23 earlier, about the generator maintenance.</p> <p>24 CHAIRMAN FLANAGAN: Generator would be run</p> <p>25 Tuesdays at Noon?</p>	<p style="text-align: right;">Page 164</p> <p>1 MR. SCHNEIDER: Tuesday afternoons.</p> <p>2 CHAIRMAN FLANAGAN: The pole would be</p> <p>3 painted a color as to be -- we talked about this --</p> <p>4 gray?</p> <p>5 MR. SCHNEIDER: Sky gray.</p> <p>6 CHAIRMAN FLANAGAN: Somebody testified to</p> <p>7 some color during the course of the hearings.</p> <p>8 BOARD MEMBER NEWLIN: Mr. Masters.</p> <p>9 CHAIRMAN FLANAGAN: Mr. Masters. How about</p> <p>10 Mr. Fox gets to pick the color. So as to reduce the --</p> <p>11 so as to make it as unnoticeable as possible. I don't</p> <p>12 think all this matters, but -- so anyway, these are all</p> <p>13 conditions, okay?</p> <p>14 BOARD MEMBER NEWLIN: What about the -- how</p> <p>15 are you going to deal that 80-foot?</p> <p>16 CHAIRMAN FLANAGAN: Steve had in there that</p> <p>17 they're going to do best-faith commercially</p> <p>18 reasonable -- can you re-read that condition, please?</p> <p>19 MR. MLENAK: Applicant should make</p> <p>20 good-faith and commercially reasonable efforts to have</p> <p>21 the lease amended to limit the total height of the</p> <p>22 tower to 80 feet.</p> <p>23 And then I can include that the amended</p> <p>24 lease or those efforts undertaken be provided to me for</p> <p>25 review prior to permit.</p>

<p style="text-align: right;">Page 165</p> <p>1 BOARD MEMBER NEWLIN: How can you make it</p> <p>2 stronger?</p> <p>3 MR. MLENAK: I'm open to suggestions.</p> <p>4 BOARD MEMBER NEWLIN: I don't know what's</p> <p>5 legal.</p> <p>6 MR. MLENAK: I asked Mr. Schneider if he</p> <p>7 had suggestions. I don't see how you can put the Board</p> <p>8 into that two-party disagreement as a third-party</p> <p>9 beneficiary, which is what would be required to prevent</p> <p>10 future amendments.</p> <p>11 BOARD MEMBER NEWLIN: Even if they didn't</p> <p>12 require future amendment can we require to see the</p> <p>13 amendment -- actually see the amendment as part of the</p> <p>14 condition of approval. Yes, we don't have protection</p> <p>15 against the change in the future, but at least you see</p> <p>16 that as it gets done as part of the agreement.</p> <p>17 MR. MLENAK: Mr. Schneider do you have a</p> <p>18 position as to whether or not --</p> <p>19 MR. SCHNEIDER: I was having trouble</p> <p>20 hearing. I'm sorry.</p> <p>21 MR. MLENAK: Mr. Newlin asked if the</p> <p>22 condition instead of being in good faith and</p> <p>23 commercially reasonable efforts be an add on, an</p> <p>24 objective requirement that the lease be amended as a</p> <p>25 condition.</p>	<p style="text-align: right;">Page 166</p> <p>1 MR. SCHNEIDER: What happens if the</p> <p>2 governing body doesn't agree?</p> <p>3 MR. MLENAK: That's what Mr. Newlin's</p> <p>4 asking.</p> <p>5 BOARD MEMBER NEWLIN: I mean, commercially</p> <p>6 reasonable efforts to me is not strong enough. It</p> <p>7 should be best efforts. No. I think we ought to have</p> <p>8 this. I think it's crucial.</p> <p>9 BOARD MEMBER SYMONDS: I agree that the</p> <p>10 very -- that as a minimum that the approval is</p> <p>11 conditional that the lease be amended to limit it to</p> <p>12 80 feet.</p> <p>13 CHAIRMAN FLANAGAN: Isn't it a violation of</p> <p>14 Federal law to put conditions on towers be only</p> <p>15 80 feet? So again, in fact, are we not violating</p> <p>16 Federal law by requiring that there's a lease term?</p> <p>17 MR. MLENAK: I don't believe that's the</p> <p>18 case.</p> <p>19 CHAIRMAN FLANAGAN: How is that possible?</p> <p>20 MR. MLENAK: If you have a condition that</p> <p>21 you're waiving your rights under that Federal law that</p> <p>22 would be a violation.</p> <p>23 CHAIRMAN FLANAGAN: Okay. So this is your</p> <p>24 condition, guys. So you tell me what you want it to</p> <p>25 read.</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. MLENAK: I don't think that's the only</p> <p>2 issue, though, on the table.</p> <p>3 CHAIRMAN FLANAGAN: I think there's a lot</p> <p>4 of other issues, which is why I don't think it matters</p> <p>5 what these conditions are, to be completely honest.</p> <p>6 BOARD MEMBER NEWLIN: I had three. That's</p> <p>7 one of them. Setback was the other. And then I think</p> <p>8 enhanced language on the landscaping, which doesn't</p> <p>9 seem what the setback is.</p> <p>10 CHAIRMAN FLANAGAN: All right. Guys, let's</p> <p>11 move it along. Let's do a show of hands, all right.</p> <p>12 This is not the official vote. All right. But you've</p> <p>13 got to give your answer here.</p> <p>14 Based on what we've seen, would you vote no</p> <p>15 to this application? One No. Two Nos. Three Nos. Four</p> <p>16 Nos.</p> <p>17 BOARD MEMBER NEWLIN: On the setbacks.</p> <p>18 CHAIRMAN FLANAGAN: All right. So that's</p> <p>19 enough. So that's why I'm going through this quickly,</p> <p>20 because those conditions are irrelevant. What can we</p> <p>21 change, Donato -- Tom, what can we change or what can</p> <p>22 the Applicant change to get you to a yes?</p> <p>23 BOARD MEMBER ADDONIZIO: The reason for</p> <p>24 my -- the reasons for me, there's a major loose end, we</p> <p>25 talked about it all night, is the fact that there's</p>	<p style="text-align: right;">Page 168</p> <p>1 communication out there between Mr. Spelker, the Board</p> <p>2 of Education, that lays out specifically height</p> <p>3 and size. So that's -- that is an open ended --</p> <p>4 BOARD MEMBER ROSENBAUM: So Tom, you think</p> <p>5 the Applicant didn't evaluate other sites? That's your</p> <p>6 point and that's why --</p> <p>7 BOARD MEMBER ADDONIZIO: I think that the</p> <p>8 site is still on the table until it's closed.</p> <p>9 CHAIRMAN FLANAGAN: Okay. Fair enough.</p> <p>10 BOARD MEMBER ADDONIZIO: It's a whole new</p> <p>11 height and size.</p> <p>12 BOARD MEMBER ROSENBAUM: Just going based</p> <p>13 on this document. I just want to be clear. Based on</p> <p>14 this document you feel the Applicant hasn't satisfied</p> <p>15 its obligations to look at alternate sites and that's</p> <p>16 why you would be a no?</p> <p>17 BOARD MEMBER ADDONIZIO: I think that the</p> <p>18 applicant has -- I think that based on the new</p> <p>19 testimony that we have heard since November that the</p> <p>20 Applicant has not tied up any loose ends with the</p> <p>21 alternate sites. I think the only alternate site that</p> <p>22 we would all consider based on prior testimony would</p> <p>23 have been the back of the school. So that's -- that's</p> <p>24 a major point.</p> <p>25 Also, too, the language in the Land Use</p>

<p style="text-align: right;">Page 169</p> <p>1 Law, but again, I think that if the Board of Ed was 2 approached in an email, meeting you can't -- I can't 3 keep -- I can't vote on something that I don't think is 4 complete.</p> <p>5 BOARD MEMBER ROSENBAUM: So regardless of 6 all the other conditions that Alf brought up, in your 7 mind -- and I'm not trying to push anything, I'm just 8 trying to understand.</p> <p>9 BOARD MEMBER ADDONIZIO: No. I appreciate 10 that. I think that landscaping, you know, you're not 11 going to put in 120-foot trees, 20 of them in whatever.</p> <p>12 BOARD MEMBER ROSENBAUM: Stack them on top.</p> <p>13 BOARD MEMBER ADDONIZIO: Right. There you 14 go.</p> <p>15 In regards to, you know, the Applicant and 16 the setback, that's something that sounds to me based 17 on the conservation it would be very difficult. If we 18 were to do something about it then it could easily be 19 changed again. So it's just something that if we were 20 to make a requirement of the change it could be changed 21 back. So I'm not really --</p> <p>22 BOARD MEMBER ROSENBAUM: So for you the 23 line in the sand is --</p> <p>24 BOARD MEMBER ADDONIZIO: For me it's just a 25 lose end on the school.</p>	<p style="text-align: right;">Page 170</p> <p>1 MR. MLENAK: I just don't recall, because 2 people -- you made a motion, Mr. Chairman. I don't 3 recall if there was a second.</p> <p>4 CHAIRMAN FLANAGAN: There was. Aric 5 seconded.</p> <p>6 MR. MLENAK: There should be a vote.</p> <p>7 CHAIRMAN FLANAGAN: I agree. I want to 8 see -- how many motions have I made where people start 9 pointing to me discussing after I make the motion? 10 Every time, right?</p> <p>11 Alf -- I know why, and there's nothing we 12 can do as we sit here tonight to fix what Alf wants to 13 fix.</p> <p>14 Who else said no down there? Elizabeth, is 15 there something that the Applicant can fix as we sit 16 here tonight?</p> <p>17 BOARD MEMBER SOVOLOS: No.</p> <p>18 CHAIRMAN FLANAGAN: Donato, is there 19 something the Applicant can do as we sit here tonight?</p> <p>20 BOARD MEMBER MASELLI: I don't want to 21 repeat myself from the last time we had the straw poll, 22 but it's not like I'm objecting to the site. I'm not 23 objecting to the DPW as the site, I just don't like 24 where it is on the DPW.</p> <p>25 CHAIRMAN FLANAGAN: The setback you're</p>
<p style="text-align: right;">Page 171</p> <p>1 concerned about.</p> <p>2 BOARD MEMBER MASELLI: Yeah. It just 3 encroaches -- the side-yard setback is a big no for me.</p> <p>4 CHAIRMAN FLANAGAN: Okay.</p> <p>5 BOARD MEMBER MASELLI: The height, of 6 course, but just dropping it down 20, 30 feet that can 7 go back up 20 feet is not enough, because I think when 8 you are able to put it into the interior of the site it 9 mitigates it at an exponential rate for me, as 10 evidenced by the pole that's in the middle of the site.</p> <p>11 I've said this before, and I don't think 12 there has been a big enough effort by the town to 13 actually work with us -- work with us on this. It's 14 getting late, isn't it?</p> <p>15 CHAIRMAN FLANAGAN: Yes, it is.</p> <p>16 BOARD MEMBER SOVOLOS: And then we're 17 entrusting them to change the lease according to the 18 issue that --</p> <p>19 BOARD MEMBER MASELLI: Also there's other 20 factors here too. There is these what ifs. There's 21 the Spelker issue. Why wouldn't we write an e-mail or 22 make a phone call? It's a different application to 23 make, even if it's just an amended one.</p> <p>24 CHAIRMAN FLANAGAN: That's fair. I think 25 that's one of the points.</p>	<p style="text-align: right;">Page 172</p> <p>1 BOARD MEMBER MASELLI: That's a huge point.</p> <p>2 CHAIRMAN FLANAGAN: This guy needed to be 3 reached out to when this thing changed to 80 feet 4 because this was -- I shouldn't say this guy -- the 5 Board of Ed should have been reached out to.</p> <p>6 Let's just keep moving. Hugh, is there 7 anything that's going to change?</p> <p>8 BOARD MEMBER SYMONDS: Again, the height. 9 If we have to get the Mayor to come in and testify the 10 Township will limit the height to 80 feet that's what 11 we have to do.</p> <p>12 CHAIRMAN FLANAGAN: So your thing is you 13 want to lock it to 80 feet so it can never be changed?</p> <p>14 BOARD MEMBER SYMONDS: Yes.</p> <p>15 CHAIRMAN FLANAGAN: Okay. Fair enough. 16 All right. So listen, I'm going to make a motion. We 17 have to make a motion.</p> <p>18 Does anybody want to make a motion along 19 the lines of what you all want to do, or do you want me 20 to make a motion and you can vote no to? All right. 21 I'm going to make a motion. If you don't want this 22 tower you're going to vote no to this motion.</p> <p>23 I move we approve it with the conditions 24 listed by Steve. Is there a second?</p> <p>25 BOARD MEMBER ROSENBAUM: I'll second that.</p>

<p style="text-align: right;">Page 173</p> <p>1 CHAIRMAN FLANAGAN: Lori, would you call 2 the roll? 3 SECRETARY TAGLAIRINO: Yes. Ms. Sovolos? 4 BOARD MEMBER SOVOLOS: No. 5 SECRETARY TAGLAIRINO: Mr. Maselli? 6 BOARD MEMBER MASELLI: No. 7 SECRETARY TAGLAIRINO: Mr. Symonds? 8 BOARD MEMBER SYMONDS: No. 9 SECRETARY TAGLAIRINO: Mr. Newlin? 10 BOARD MEMBER NEWLIN: No. 11 SECRETARY TAGLAIRINO: Mr. Addonizio? 12 BOARD MEMBER ADDONIZIO: No as well. 13 SECRETARY TAGLAIRINO: Mr. Rosenbaum? 14 BOARD MEMBER ROSENBAUM: Yes. 15 SECRETARY TAGLAIRINO: Chairman Flanagan? 16 CHAIRMAN FLANAGAN: Yes. All right. So 17 the application is denied. Mr. Schneider, I appreciate 18 all the time you've spent. I appreciate your 19 professionalism with us. Mr. Simon, likewise. And I 20 do like you. I tease you, but thank you. 21 Next steps I don't know, but I'll leave 22 that for you Steve, and Steve thank you. 23 MR. MLENAK: I'll prepare a Resolution. 24 CHAIRMAN FLANAGAN: You'll get the 25 Resolution written up, and that's all we have. And Dr.</p>	<p style="text-align: right;">Page 174</p> <p>1 Eisenstein, thank you. 2 DR. EISENSTEIN: Thank you very much. 3 CHAIRMAN FLANAGAN: And Paul, McKinley and 4 everyone. We appreciate it. 5 BOARD MEMBER ROSENBAUM: And the public at 6 large. 7 CHAIRMAN FLANAGAN: All right. Is there 8 any other business? All right. We're adjourned. 9 (Whereupon, the hearing on this application 10 concludes at 11:10 p.m.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 175</p> <p>1 C E R T I F I C A T E 2 3 4 I, IRIS LA ROSA, a Notary Public and 5 Certified Shorthand Reporter of the State of New 6 Jersey, do hereby certify that the foregoing is a true 7 and accurate transcript of the testimony as taken 8 stenographically by and before me at the time, place, 9 and on the date hereinbefore set forth. 10 I DO FURTHER CERTIFY that I am neither a 11 relative nor employee nor attorney nor counsel of any 12 of the parties to this action, and that I am neither a 13 relative nor employee of such attorney or counsel, and 14 That I am not financially interested in the action. 15 16 17 18 _____ 19 IRIS LA ROSA, CSR, RPR 20 Certificate No. 30XI 00162800 21 22 23 Dated: _____ 24 25</p>	

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A-12 59:19 62:14	175:7 accuse 82:12	33:16 63:18 68:19 69:21	72:2 103:13 aggressive	88:15 132:25 144:8 149:1
A-21 119:11	accused 82:25	77:21 85:16	151:24	151:2 154:14
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