

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
JUNE 5, 2023
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.

PLEDGE OF ALLEGIANCE

REGULAR MEETING

ROLL

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

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

The Board Attorney, Mr. Mlenak, the Board Engineer, Mr. Fox and Board Planner Ms. Mertz were present. Also present was the Board Secretary, Ms. Taglairino.

OLD BUSINESS

PUBLIC HEARING ON PROPOSED STIPULATION OF SETTLEMENT

Application BOA# 17-18

New York SMSA Limited Partnership d/b/a Verizon Wireless
8 Millbrook Road, B17/L1

Presenting:

Richard Schneider, Attorney

William Masters, Planner

Peter Steck, Objector Planner

Robert Simon, Objecting Attorney for the following:

Ms. Conine & Mr. Carifa of Lees Hill Road

Ms. Engel & Mr. Saganic of Millbrook Road

Mr. & Mrs. Bansal of Coppertree Lane

Mr. O' Donnell of Millbrook Road

Mr. Simon continued to question Mr. Master's planning testimony.

The following resident had a question for Mr. Masters:

Scott Noyes of 22 Sand Spring Road

The Board took a break around 8:00 p.m. Ms. Taglairino called the roll after the break. The roll went as follows:

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

Mr. Steck presented planner testimony for the objectors.

Exhibits Presented:

Exhibit O-10, 9 pages of planner photos of the surrounding area.

Mr. Mlenak and Mr. Schneider had questions for Mr. Steck.

Mr. Rosenbaum, Mr. Newlin, Mr. Symonds, Ms. Sovolos and Mr. Boyan had questions regarding Mr. Steck's testimony.

The follow residents had questions for Mr. Steck:

Mr. Weppler of Lees Hill Road

Mr. Wilkerson of Long Hill Road

Mr. Kovacs of Village Road

Mr. Noyes of Sand Spring Road

The meeting was then opened for public comment. The following residents voiced their concerns:

Alex Anastasiou of Post House Road

Leslie Wade of Village Road

James and Justine Kovacs of Village Road

Christina McKittrick of Millbrook Road

Scott Noyes of Sand Spring Road

Jane Riley of Youngs Road

Elizabeth Nicholson of Youngs Road

Maddie Devine of Lees Hill Road

Larry Weppler of Lees Hill Road

Linda Meister of Fawn Hill Road

Aja Blanco of Lees Hill Road

Sarah Conine of Lees Hill Road

James Carifa of Lees Hill Road

John Wilkerson of Long Hill Road

Livio Saganic of Millbrook Road

Doris Dinsmore of Red Gate Road

Harsh Bansal of Coppertree Lane

Nora Carifa of Lees Hill Road

Tyler Carifa of Lees Hill Road

There was a break around 9:30. Ms. Taglairino called the roll after the break. The roll went as follows:

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

Mr. Schneider and Mr. Simon gave their summations.

Mr. Mlenak opined on the details of the consent order.

The Board deliberated the testimony.

A motion was made by Mr. Flanagan to approve the consent order with additional conditions. The motion was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Flanagan, Rosenbaum, Symonds, Sovolos, Newlin, Addonizio and Boyan

Against: None

A copy of the transcripts is appended to the minutes.

OTHER BUSINESS

The meeting adjourned at 11: 50.

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, June 5, 2023 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 THOMAS ADDONIZIO ARIC ROSENBAUM HUGH SYMONDS ELIZABETH SOVOLOS GEORGE BOYAN</p> <p>ALSO PRESENT:</p> <p>LORI TAGLAIRINO, Board Administrator PAUL D. FOX, P.E., CME McKINLEY MERTZ, PP, AICP</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 A P P E A R A N C E S: 2 3 GREENBAUM, ROWE, SMITH & DAVIS, LLP BY: STEVEN G. MLENAK, ESQUIRE Attorneys for the Board 4 5 VOGEL, CHAIT, COLLINS & SCHNEIDER, ESQUIRES BY: RICHARD SCHNEIDER, ESQUIRE Attorneys for the Applicant 6 7 8 HEROLD LAW, PA BY: ROBERT F. SIMON, ESQUIRE Attorneys for the Objectors: 9 James M. Carifa and Sarah G. Conine; Neil O'Donnell; Livio Saganic; and Harsh and Nina Bansal 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">Page 3</p> <p>1 I N D E X 2 WITNESS PAGE 3 WILLIAM MASTERS, JR. By Mr. Simon..... 8 4 By Mr. Schneider..... 29 5 PETER STECK By Mr. Simon..... 33 6 By Mr. Schneider..... 74 7 S U M M A T I O N S B Y: Mr. Simon..... 140 8 Mr. Schneider..... 159 9 10 E X H I B I T S 11 12 EXHIBIT DESCRIPTION PAGE 13 A-37 Visual analysis prepared by Mr. Masters 88 14 O-10 Handouts by Mr. Steck 34 15 16 PUBLIC MEMBER COMMENTS: 17 Scott Noyes.....page 30/106 18 John Wilkerson.....page 101/129 19 James Kovacs.....page 104/113 20 Larry Weppner.....page 105/123 21 Alex Anastasiou.....page 110 22 Leslie Ann Wade.....page 113 23 Christina McKittrick.....page 117/137 24 Jane Riley.....page 121 Elizabeth Nicholson.....page 122 25 Madeline Devine.....page 122 Linda Meister.....page 124 Aja Blanco.....page 125 Sarah Conine.....page 126 James Carifa.....page 128 Livio Saganic.....page 133 Doris Dinsmore.....page 134 Justine Kovacs.....page 135 Harsh Bansal.....page 136 Nora Carifa.....page 138 Tyler Carifa.....page 138</p>	<p style="text-align: center;">Page 4</p> <p>1 CHAIRMAN FLANAGAN: All right. Everybody 2 welcome. It is 7:00. Tonight is June 5th, and this is 3 a Special Meeting of the Harding Township Board of 4 Adjustment, heard in accordance with the New Jersey 5 Open Public Meetings Act, noticed in the Observer 6 Tribune and other sites. 7 As everyone can see, we're in the library 8 tonight as opposed to the courtroom. The reason being 9 tomorrow is election day, so all the voting machines 10 are set up in the courtroom right now, so we're going 11 to be down here tonight. My plan is we're just going 12 to open this. Why don't we say the Pledge of 13 Allegiance. 14 (Pledge of Allegiance is recited.) 15 So as we are over here tonight, for the 16 record, a good for the record, 40 yards from the normal 17 meeting spot, what I'd like to do is just go off the 18 record for a few moments in a moment just to give 19 anyone time to get here who may have gone to the wrong 20 place and then we'll come right back on the record. We 21 will call a roll and we'll get back to the meeting. 22 Sounds good? 23 MR. SCHNEIDER: Could I -- just for the 24 record, Richard Schneider of the law firm of Vogel, 25 Chait, Collins and Schneider on behalf of the</p>

<p style="text-align: right;">Page 5</p> <p>1 Applicant, Verizon. I appreciate, and I think Rob</p> <p>2 probably likewise extends his appreciation,</p> <p>3 specifically to Lori for the efforts made to get this</p> <p>4 room. And I'm sure I speak for Rob, that we extend our</p> <p>5 appreciation not knowing that we'd have to be</p> <p>6 transferred to this room.</p> <p>7 One point, I think for the record we should</p> <p>8 indicate, if you weren't going to already, Steve, that</p> <p>9 a rather large notice was posted on the original</p> <p>10 Municipal Building directing people very clearly to</p> <p>11 where this meeting was held, of course, referencing</p> <p>12 that it is the same property, but I just wanted to note</p> <p>13 that for the record.</p> <p>14 MR. MLENAK: And one additional thing to</p> <p>15 note for the record is that we don't have the audio.</p> <p>16 So the official recording of this meeting is going to</p> <p>17 be the transcript that Iris is preparing. So more so</p> <p>18 that ever be clear. And, Iris, stop anybody at any</p> <p>19 time if you're not able to understand them.</p> <p>20 SECRETARY TAGLAIRINO: And that goes for</p> <p>21 inter-conversations. They really will hinder what's</p> <p>22 going on here tonight. I know it's hard, but let's</p> <p>23 focus on what's at hand.</p> <p>24 (Whereupon, there is a brief pause in</p> <p>25 proceedings.)</p>	<p style="text-align: right;">Page 6</p> <p>1 (Back on the record at 7:09 p.m.)</p> <p>2 CHAIRMAN FLANAGAN: It is nine minutes</p> <p>3 after. We can go back on the record. Lori, will you</p> <p>4 call the roll?</p> <p>5 SECRETARY TAGLAIRINO: Ms. Sovolos?</p> <p>6 BOARD MEMBER SOVOLOS: Here.</p> <p>7 SECRETARY TAGLAIRINO: Mr. Maselli is not</p> <p>8 here.</p> <p>9 CHAIRMAN FLANAGAN: Mr. Maselli is stuck in</p> <p>10 traffic on the way home from Long Island. So I do not</p> <p>11 think he's going to make it tonight.</p> <p>12 SECRETARY TAGLAIRINO: Mr. Symonds?</p> <p>13 BOARD MEMBER SYMONDS: Here.</p> <p>14 SECRETARY TAGLAIRINO: Mr. Rosenbaum?</p> <p>15 BOARD MEMBER ROSENBAUM: Here.</p> <p>16 SECRETARY TAGLAIRINO: Mr. Newlin?</p> <p>17 BOARD MEMBER NEWLIN: Here.</p> <p>18 SECRETARY TAGLAIRINO: Mr. Addonizio?</p> <p>19 BOARD MEMBER ADDONIZIO: Here.</p> <p>20 SECRETARY TAGLAIRINO: Mr. Flanagan?</p> <p>21 CHAIRMAN FLANAGAN: Here.</p> <p>22 SECRETARY TAGLAIRINO: Mr. Cammarata is</p> <p>23 excused. And Mr. Boyan?</p> <p>24 BOARD MEMBER BOYAN: Here.</p> <p>25 CHAIRMAN FLANAGAN: We're back for</p>
<p style="text-align: right;">Page 7</p> <p>1 Application 17-18 Verizon Wireless, and Steve we're</p> <p>2 back here for -- is it our third night back?</p> <p>3 MR. MLENAK: This is our third night of</p> <p>4 meetings on the Whispering Woods hearing. We concluded</p> <p>5 last meeting, last week during the cross-examination of</p> <p>6 Mr. Masters, which is where we'll begin tonight.</p> <p>7 CHAIRMAN FLANAGAN: All right. So Mr.</p> <p>8 Simon, Mr. Schneider, welcome back. You were in the</p> <p>9 midst of cross-examining Mr. Masters. Do you want to</p> <p>10 pick it up? Now let me say, my intension is to finish</p> <p>11 this tonight, all right. So once again, working</p> <p>12 backwards we need to vote. We need to deliberate. We</p> <p>13 need time for public comments. You have the</p> <p>14 cross-examination. I think you have one witness you're</p> <p>15 going to present?</p> <p>16 MR. SIMON: Yes.</p> <p>17 CHAIRMAN FLANAGAN: Mr. Schneider, do you</p> <p>18 have any more witnesses?</p> <p>19 MR. SCHNEIDER: I do not.</p> <p>20 CHAIRMAN FLANAGAN: You may or may not want</p> <p>21 to cross Mr. Steck. I guess it's your choice.</p> <p>22 MR. SCHNEIDER: Depending on time.</p> <p>23 CHAIRMAN FLANAGAN: And I think in addition</p> <p>24 you want to present some of the neighbors as witnesses</p> <p>25 in addition to their public comment?</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. SIMON: Well, during the public comment</p> <p>2 portion to the extent that any of my clients who are</p> <p>3 present wish to speak then I will technically have them</p> <p>4 be presented as witnesses, but that's up to the Board</p> <p>5 how formal or informal.</p> <p>6 CHAIRMAN FLANAGAN: That's what we did last</p> <p>7 time, and that seems fine. Mr. Schneider, any</p> <p>8 objection to that?</p> <p>9 MR. MLENAK: Yes, we did.</p> <p>10 MR. SCHNEIDER: No.</p> <p>11 CHAIRMAN FLANAGAN: Okay. Do you want to</p> <p>12 continue with your cross-examination?</p> <p>13 MR. SIMON: Sure. Yes.</p> <p>14 EXAMINATION BY MR. SIMON:</p> <p>15 Q. Mr. Masters, good evening. Good to see you</p> <p>16 as always.</p> <p>17 A. Likewise.</p> <p>18 Q. Do you have a recollection at the end of</p> <p>19 the first set of hearings that the Applicant when was</p> <p>20 asked about the issue of shale formations and seeing</p> <p>21 what they could do about moving the tower further away</p> <p>22 from the neighbors, that the Applicant said, stated to</p> <p>23 the Board that to the extent that that was possible</p> <p>24 they would be in agreement to do that?</p> <p>25 A. I seem to recall discussions relative to</p>

<p style="text-align: right;">Page 9</p> <p>1 the shale aspect of it, vaguely. It's been a long</p> <p>2 time.</p> <p>3 Q. And by virtue of the most recent location</p> <p>4 for the tower, it has in fact been shifted closer to</p> <p>5 the post office, the propane tank, and the gas station,</p> <p>6 correct, by 8 feet?</p> <p>7 A. Well, it's been shifted 6 feet further away</p> <p>8 from the O'Donnell property.</p> <p>9 Q. So it's closer to the driveway and to the</p> <p>10 recycling shed?</p> <p>11 A. Well, it's closer to the recycling shed.</p> <p>12 Q. And in terms of the equipment compound is</p> <p>13 it your understanding as the professional planner on</p> <p>14 the project that the compound currently, as configured,</p> <p>15 has no room for extra equipment for the carriers?</p> <p>16 A. That is correct.</p> <p>17 Q. And that's smaller than the ultimate lease</p> <p>18 area, is that your understanding?</p> <p>19 A. That is correct.</p> <p>20 Q. And the original size of the compound, as</p> <p>21 proposed, was large enough to fit the currently</p> <p>22 proposed number of carriers; right?</p> <p>23 A. I'm not sure if it was big enough to fit</p> <p>24 all of the proposed number of carriers, but it was</p> <p>25 certainly larger, it was 1,800-square feet.</p>	<p style="text-align: right;">Page 10</p> <p>1 Q. Do you have any recollection as to the</p> <p>2 testimony at the time as to how many collocators could</p> <p>3 fit within the compound as then configured?</p> <p>4 A. I don't recall. I want to say two.</p> <p>5 Q. And you're not -- you're still not aware of</p> <p>6 any investigation of alternate sites outside the</p> <p>7 Historic District at 86 feet; correct?</p> <p>8 MR. SCHNEIDER: Objection. Asked and</p> <p>9 answered. We went through this last time.</p> <p>10 MR. SIMON: I don't think I asked him</p> <p>11 actually that about alternate locations. Do you</p> <p>12 recall?</p> <p>13 MR. SCHNEIDER: Do you recall, Rick?</p> <p>14 THE WITNESS: I don't recall -- well, I</p> <p>15 mean, we obviously had looked at the alternate</p> <p>16 candidates early on the Christ the King Church, the</p> <p>17 Presbyterian Church, the Harding School, the Township</p> <p>18 Municipal Building.</p> <p>19 BY MR. SIMON:</p> <p>20 Q. So other than what was testified to at the</p> <p>21 first round of hearings you're not aware of any</p> <p>22 investigation of alternate sites; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And other than what was testified to at the</p> <p>25 original set of hearings you're not aware of any</p>
<p style="text-align: right;">Page 11</p> <p>1 further investigation looking into the possibility of</p> <p>2 an ODAS system as a replacement or a supplement</p> <p>3 regarding vis-a-vis the height of this currently</p> <p>4 proposed tower; correct?</p> <p>5 MR. SCHNEIDER: Objection again. Go ahead.</p> <p>6 MR. SIMON: I didn't ask him the last time.</p> <p>7 MR. SCHNEIDER: The objection is not based</p> <p>8 necessarily on what you asked him last time. The</p> <p>9 objection is based on the scope of the settlement</p> <p>10 hearing.</p> <p>11 MR. SIMON: My response to that is that the</p> <p>12 Applicant, even in the settlement hearing, has the</p> <p>13 burden of proof. And Mr. Masters during his direct</p> <p>14 examination went into the positive criteria. He went</p> <p>15 into the negative criteria. He went into the Sica</p> <p>16 Balancing Test. And certainly by offering those proofs</p> <p>17 I'm asking him questions with regard to those proofs</p> <p>18 that he proffered to the Board in support of this</p> <p>19 settlement application.</p> <p>20 MR. SCHNEIDER: And my response to that,</p> <p>21 council, members of the Board, is that his testimony</p> <p>22 relative to the statutory criteria was very</p> <p>23 specifically and expressly limited to what the</p> <p>24 revisions to the plans were. Not -- I did not</p> <p>25 specifically go through the entirety of the statutory</p>	<p style="text-align: right;">Page 12</p> <p>1 criteria, but I would remind the Board that the</p> <p>2 entirety of the record below is deemed to be</p> <p>3 incorporated into the settlement hearing. So if that's</p> <p>4 the case we're going to go another 27 years. So that's</p> <p>5 the basis of my objection.</p> <p>6 MR. SIMON: Understanding the fact that the</p> <p>7 prior record is still of record with regard to these</p> <p>8 proceedings. One of the criteria that we believe that</p> <p>9 the Applicant needs to meet is that the settlement is</p> <p>10 reasonable in its circumstances besides demonstrating</p> <p>11 or meeting the burden of proof. And certainly if I'm</p> <p>12 asking just to verify for the record that between the</p> <p>13 time of the last set of hearings, which concluded in</p> <p>14 2022, and now, whether certain facts are still in place</p> <p>15 or they're not in place.</p> <p>16 CHAIRMAN FLANAGAN: Mr. Masters, are they</p> <p>17 still in place, do you know? Can you answer the</p> <p>18 question quickly?</p> <p>19 THE WITNESS: Well, I can tell you that</p> <p>20 Item Two of the Stipulation of Settlement on page five</p> <p>21 specifically requires Verizon Wireless to investigate</p> <p>22 the engineering feasibility of improving service</p> <p>23 capacity at the Harding Township Elementary School</p> <p>24 property through the installation of ODAS units,</p> <p>25 similar to the ODAS units Verizon Wireless intends on</p>

<p style="text-align: right;">Page 13</p> <p>1 installing elsewhere in the Township as previously</p> <p>2 mentioned during the hearing.</p> <p>3 BY MR. SIMON:</p> <p>4 Q. When it was previously mentioned during the</p> <p>5 hearing by Ms. Boschulte, did she not in fact say that</p> <p>6 that ODAS system would not work with or is independent</p> <p>7 of any installation at the DPW yard?</p> <p>8 A. I honestly don't recall the specific nature</p> <p>9 of her testimony in that regard.</p> <p>10 Q. And with regard to your comment about the</p> <p>11 ODAS system at the Harding Elementary School with</p> <p>12 regard -- that you're referring to, that's in the</p> <p>13 context of the Stipulation of Settlement?</p> <p>14 A. Yes. I'm merely reciting what's in the</p> <p>15 Stipulation of Settlement; right.</p> <p>16 Q. And with regard to that proposal that</p> <p>17 merely requires Verizon to do an investigation and</p> <p>18 write a report; correct?</p> <p>19 A. Well, I don't know if they have to write a</p> <p>20 report, but they have to do an investigation.</p> <p>21 Q. Do they have to do anything further other</p> <p>22 than conduct an investigation regarding that ODAS</p> <p>23 system?</p> <p>24 A. I honestly don't know. At the outset of my</p> <p>25 direct testimony I specifically indicated that the</p>	<p style="text-align: right;">Page 14</p> <p>1 extent of my scope of services with regard to these</p> <p>2 settlement hearings was to modify the photo simulations</p> <p>3 to depict the branching habit as shown in Exhibit-2 of</p> <p>4 the Stipulation of Settlement.</p> <p>5 Q. So are you then not presenting a</p> <p>6 professional planning expert opinion as to whether the</p> <p>7 application as modified via the proposed settlement</p> <p>8 meets the positive and negative criteria for variance</p> <p>9 relief?</p> <p>10 A. I think common sense dictates it meets the</p> <p>11 statutory criteria both with regard to the Sica</p> <p>12 Balancing Test, the positive criteria, particular</p> <p>13 suitability of the site.</p> <p>14 Q. And is the ODAS system that you testified</p> <p>15 to a moment ago to be investigated with regard to the</p> <p>16 elementary school have anything to do with providing</p> <p>17 coverage that is proposed to be provided by the</p> <p>18 proposed tree pole at the DPW site?</p> <p>19 MR. SCHNEIDER: Objection.</p> <p>20 MR. SIMON: If he knows. He testified as</p> <p>21 to the ODAS system investigation at the elementary</p> <p>22 school. I'm asking --</p> <p>23 THE WITNESS: I simply recited the verbatim</p> <p>24 language contained in the Stipulation of Settlement.</p> <p>25 BY MR. SIMON:</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. So other than the verbatim language</p> <p>2 contained in the Stipulation of Settlement, do you have</p> <p>3 any other independent knowledge of any investigation</p> <p>4 with regards to an ODAS system?</p> <p>5 A. I do not.</p> <p>6 Q. And with regard to the prior Resolution</p> <p>7 that was issued by this Board with regard to the prior</p> <p>8 application there was recitations of your testimony,</p> <p>9 including the fact that you had never testified with</p> <p>10 regard to a wireless communication tower within a</p> <p>11 Historic District or redevelopment area. Is that still</p> <p>12 the case today?</p> <p>13 A. It is.</p> <p>14 Q. And the Resolution also states that you had</p> <p>15 not ever testified with regard to a wireless</p> <p>16 communication tower proposed to be located within a</p> <p>17 hundred feet of a residential property at that time</p> <p>18 within the past ten years. Is that still the case</p> <p>19 today?</p> <p>20 A. I don't recall that testimony.</p> <p>21 Q. Okay. Well, I'm going to ask you, are you</p> <p>22 aware of a wireless communication tower proposed to be</p> <p>23 located within a hundred feet of a residential</p> <p>24 property?</p> <p>25 A. I haven't done an analysis. I would say</p>	<p style="text-align: right;">Page 16</p> <p>1 that for one, the Saddle Brook case in Bergen County</p> <p>2 the pole is within a hundred feet of a residential</p> <p>3 property.</p> <p>4 Q. What year is that case, Mr. Masters?</p> <p>5 A. I don't know, but I could check it and get</p> <p>6 back to you.</p> <p>7 Q. Other than the Saddle Brook, is it Saddle</p> <p>8 Brook or Saddle River?</p> <p>9 A. Saddle River.</p> <p>10 Q. Other than the Saddle River case, are you</p> <p>11 aware of any tower within a hundred feet of a</p> <p>12 residential property?</p> <p>13 A. Off the top of my head, no.</p> <p>14 Q. And the Saddle River case, that did not</p> <p>15 involve a -- any properties within a Historic District;</p> <p>16 correct?</p> <p>17 A. I believe it did not.</p> <p>18 Q. And there is recitations throughout the</p> <p>19 Resolution that talk about the DPW property being</p> <p>20 located within the Historic Preservation District --</p> <p>21 the Historic District, excuse me. Is that still the</p> <p>22 case today to your knowledge?</p> <p>23 A. Yes, it is.</p> <p>24 Q. And the Resolution also talked about the</p> <p>25 fact that the Federal National Historic Preservation</p>

<p style="text-align: right;">Page 17</p> <p>1 Act requires potential historic preservation impacts to</p> <p>2 be taken into account through a process involving the</p> <p>3 State Historic Preservation Office. Are you aware of</p> <p>4 that?</p> <p>5 A. Yes, SHPO requirement.</p> <p>6 Q. SHPO, right. Was this application ever</p> <p>7 submitted for SHPO review?</p> <p>8 MR. SCHNEIDER: If you know.</p> <p>9 Q. If you know. Everything is if you know.</p> <p>10 A. I believe it was.</p> <p>11 Q. And when was that?</p> <p>12 A. I don't know the date.</p> <p>13 Q. Could you approximate what year it was?</p> <p>14 A. I can not.</p> <p>15 Q. And was it more than three years ago, if</p> <p>16 you know?</p> <p>17 A. I don't know.</p> <p>18 Q. Whenever it was submitted was there a</p> <p>19 response from the State Historic Preservation Office to</p> <p>20 that application at the time?</p> <p>21 A. I believe Verizon Wireless got a SHPO hit.</p> <p>22 Q. A SHPO hit. And what does that mean?</p> <p>23 A. Meaning a finding of impact.</p> <p>24 Q. Finding of impact to a Historic District;</p> <p>25 correct?</p>	<p style="text-align: right;">Page 18</p> <p>1 A. Correct. Yes.</p> <p>2 Q. And once that -- once Verizon received that</p> <p>3 hit or impact to Historic District what, if anything,</p> <p>4 did Verizon do about it?</p> <p>5 A. Well, for one thing the original pole</p> <p>6 height was 146 feet as per the bid specifications for</p> <p>7 the bid that was awarded to Verizon Wireless by the</p> <p>8 Township. The height of the pole was reduced from 140</p> <p>9 feet, top of branching 146, to 80 feet, top of</p> <p>10 branching 86 feet.</p> <p>11 Q. My question then wasn't clear. What, if</p> <p>12 anything, to your knowledge, did Verizon do vis-à-vis</p> <p>13 the SHPO hit or finding of impact?</p> <p>14 A. I don't believe that they have reapplied or</p> <p>15 resubmitted to SHPO.</p> <p>16 Q. So since SHPO declared a finding of impact</p> <p>17 there hasn't been any further submissions to your</p> <p>18 knowledge?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. And with regard to the zoning that's</p> <p>21 impacting this application and wireless</p> <p>22 telecommunications facilities generally, to your</p> <p>23 knowledge has there been any change in the zoning in</p> <p>24 Harding Township relative to the installation of a</p> <p>25 wireless telecommunications facility or the zoning of</p>
<p style="text-align: right;">Page 19</p> <p>1 the subject property?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. And has there been any amendment to the</p> <p>4 Redevelopment Plan that involves the public works</p> <p>5 facility?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. And you were present when there was</p> <p>8 testimony earlier relative to the subject settlement</p> <p>9 proceedings about extending the tower; do you recall</p> <p>10 that, Bill?</p> <p>11 A. Yes.</p> <p>12 Q. And what's your -- your understanding is</p> <p>13 that there is certain language in the Settlement</p> <p>14 Agreement relative to coming back before this Board.</p> <p>15 My question for you is, are you familiar with</p> <p>16 applications in the wireless telecommunications field</p> <p>17 for extensions of towers?</p> <p>18 A. Yes. I'm familiar with the FCC opinions</p> <p>19 relative to extending towers for collocation purposes.</p> <p>20 Q. Once they're installed; right?</p> <p>21 A. Correct.</p> <p>22 Q. And have you participated in any of those</p> <p>23 applications?</p> <p>24 A. I have not. I have participated in</p> <p>25 collocation applications but not ones relative to the</p>	<p style="text-align: right;">Page 20</p> <p>1 FCC opinion.</p> <p>2 Q. So when you say you participate in</p> <p>3 collocation applications, you're talking about</p> <p>4 applications where a second or a third carrier wishes</p> <p>5 to collocate at the tower?</p> <p>6 A. Correct.</p> <p>7 Q. And that tower location where they want to</p> <p>8 collocate to is one that has been previously identified</p> <p>9 through prior applications?</p> <p>10 A. Correct.</p> <p>11 Q. Have you ever been involved in one of those</p> <p>12 applications where the collocation application is</p> <p>13 denied?</p> <p>14 A. Not that I can recall.</p> <p>15 Q. And how many approximate collocation</p> <p>16 applications have you been involved with?</p> <p>17 A. Probably over a hundred.</p> <p>18 Q. So in over a hundred you have not -- you</p> <p>19 don't recall one where the collocation was denied;</p> <p>20 right?</p> <p>21 A. I don't. Collocation is usually a desired</p> <p>22 objective of the wireless telecommunications community,</p> <p>23 as well as the land use planning community.</p> <p>24 Q. And in those hundred applications for</p> <p>25 collocation there were no concurrent applications to</p>

<p style="text-align: right;">Page 21</p> <p>1 increase the height, or the size of the tower?</p> <p>2 A. I don't recall.</p> <p>3 Q. And are you familiar with the proposed</p> <p>4 green plastic covering to mimic an evergreen tree</p> <p>5 that's being proposed for this application?</p> <p>6 A. The green plastic covering?</p> <p>7 Q. The material that's being proposed?</p> <p>8 A. Only to the extent of the photograph that</p> <p>9 was identified as Exhibit-2 in the Stipulation of</p> <p>10 Settlement.</p> <p>11 Q. The one that's in California, that picture?</p> <p>12 A. That one, yes.</p> <p>13 Q. So you don't have any familiarity or</p> <p>14 knowledge of the materials proposed to be used or their</p> <p>15 ability to retain the proposed color, maintenance, et</p> <p>16 cetera?</p> <p>17 A. Not for that specific installation.</p> <p>18 Q. And you're familiar -- so you have not done</p> <p>19 any type of visual -- I know I asked you last time</p> <p>20 about visual impact with the trees that are supposed to</p> <p>21 be removed being removed and you said you didn't do</p> <p>22 that.</p> <p>23 Have you done any type of visual analysis</p> <p>24 that I've seen where you do a visual impact study of</p> <p>25 what the view is going to look like every five years,</p>	<p style="text-align: right;">Page 22</p> <p>1 every ten years given the landscaping that's being</p> <p>2 proposed?</p> <p>3 A. I have not. I would think that that would</p> <p>4 be a very complicated analysis since different plant</p> <p>5 species grow at different rates.</p> <p>6 Q. And other than the tree pole that is being</p> <p>7 proposed here did you investigate any alternative</p> <p>8 designs in connection with this current application,</p> <p>9 whether it is a flagpole, a clock tower, or other cell</p> <p>10 tower design that would look like something other than</p> <p>11 the tree pole that is being proposed here?</p> <p>12 A. Other than back during the course of the</p> <p>13 hearing photo simulations were prepared of flagless</p> <p>14 flagpoles. But beyond that I have not -- since the</p> <p>15 Stipulation of Settlement I have not investigated any</p> <p>16 other alternative antenna structures beyond a tree</p> <p>17 pole.</p> <p>18 Q. And my recollection is that with regard to</p> <p>19 a flagless flagpole, that you introduced photo</p> <p>20 simulations, I think particularly A-30, showing the</p> <p>21 visual impact of a flagless flagpole at certain</p> <p>22 heights. I think mainly 100 feet and 120 feet?</p> <p>23 A. Yeah. I've done like six or seven</p> <p>24 different variations, but yeah, at varying heights.</p> <p>25 Q. And my recollection is that you opined to</p>
<p style="text-align: right;">Page 23</p> <p>1 this Board in regard to the flagless flagpole that you</p> <p>2 did not believe that there would be an adverse visual</p> <p>3 impact that would rise to the level of being</p> <p>4 substantially detrimental to the public; correct?</p> <p>5 A. Yes, that's correct. I think the flagpole</p> <p>6 simulations, along with the tree pole simulations I</p> <p>7 reached the same conclusion.</p> <p>8 Q. And from a planning perspective with regard</p> <p>9 to the current site plan, you're familiar with that;</p> <p>10 correct?</p> <p>11 A. I am.</p> <p>12 Q. And the 67 trees that are identified in the</p> <p>13 current site plan, you're familiar with that?</p> <p>14 MR. SCHNEIDER: How many?</p> <p>15 MR. SIMON: I think approximately 67, Rich.</p> <p>16 You know the one in the chart, the three pages, the</p> <p>17 three columns of the chart.</p> <p>18 A. There was an inventory done, I believe, of</p> <p>19 67, but of course we're not removing anywhere near 67.</p> <p>20 But I think the tree survey surveyed a total, I believe</p> <p>21 it was 67 trees.</p> <p>22 Q. And of the 67 trees surveyed do you</p> <p>23 remember how many of those 67 were evergreen trees?</p> <p>24 A. I don't off the top of my head.</p> <p>25 Q. So if I told you that of the 67 trees only</p>	<p style="text-align: right;">Page 24</p> <p>1 nine are evergreen trees, does that refresh your</p> <p>2 recollection?</p> <p>3 A. It does not.</p> <p>4 Q. Okay. Do you recall of the trees that were</p> <p>5 identified as evergreen trees or trees that are not</p> <p>6 losing their leaves in the winter-time how many had a</p> <p>7 diameter breast height of 12 inches or greater?</p> <p>8 A. Again, at the outset of my testimony I</p> <p>9 indicated I had no participation whatsoever in the</p> <p>10 preparation of the landscaping plan. L-1, L-2, L-3,</p> <p>11 the landscaping removal plan, my services were limited</p> <p>12 to the modification to the photo simulations, and</p> <p>13 Exhibits 1G through 8G.</p> <p>14 Q. Of the trees at that are to remain, based</p> <p>15 on your review and familiarity with the site plan, are</p> <p>16 there any mature evergreen trees of the 67 that this</p> <p>17 proposed monopole tree are going to be able to blend in</p> <p>18 with?</p> <p>19 A. I again did not survey the existing</p> <p>20 evergreen trees. I can tell you that there's 15</p> <p>21 proposed Norway Spruce or 14 proposed Norway Spruce,</p> <p>22 and 15 proposed arborvitae that are going to provide a</p> <p>23 continuous buffer along the property adjacent to the</p> <p>24 O'Donnell property.</p> <p>25 Q. Those are the ones that are 8 feet to</p>

<p style="text-align: right;">Page 25</p> <p>1 10 feet at the time at the time of planting?</p> <p>2 A. Correct.</p> <p>3 Q. So other than those you are not aware of</p> <p>4 any mature evergreen trees or Norway Spruce; right?</p> <p>5 A. No. Again, the majority of the current</p> <p>6 space behind the recycling center is occupied with</p> <p>7 various pieces of construction equipment and building</p> <p>8 materials, not a lot of plant material.</p> <p>9 Q. I neglected to ask you. When you -- with</p> <p>10 regard to Exhibit-2 that you refer to of the proposed</p> <p>11 fake tree, did you ask the company that produced that</p> <p>12 photo whether there were any options that would</p> <p>13 allegedly mitigate against visual impact other than</p> <p>14 what they showed you, other than Exhibit-2?</p> <p>15 A. You're talking about in the Stipulation of</p> <p>16 Settlement?</p> <p>17 Q. No. I'm asking you whether the company</p> <p>18 that produced that photo offered any other alternatives</p> <p>19 in terms of --</p> <p>20 A. I was not asked to contact the company and</p> <p>21 ask if there were other examples.</p> <p>22 Q. And you recall at the conclusion of the</p> <p>23 last set of hearings that Verizon agreed as a condition</p> <p>24 of approval they would accept the flagless flagpole</p> <p>25 design; correct?</p>	<p style="text-align: right;">Page 26</p> <p>1 MR. SCHNEIDER: Repeat the question,</p> <p>2 please?</p> <p>3 BY MR. SIMON:</p> <p>4 Q. Sure. That you recall that at the end of</p> <p>5 the last set of hearings back in 2022, that Verizon</p> <p>6 actually agreed as a stipulation to accept as a</p> <p>7 condition of approval a flagless flagpole design;</p> <p>8 correct?</p> <p>9 A. I believe that was agreed upon, but it's</p> <p>10 not contained in the Stipulation of Settlement.</p> <p>11 Q. And what was stipulated to at that same</p> <p>12 time you recall was a height of 86 feet; correct?</p> <p>13 A. I believe that was the height.</p> <p>14 Q. And with regard to Exhibit-2 versus I</p> <p>15 believe it was the DelBarton tree pole you testified to</p> <p>16 at the last set of hearings, the difference between the</p> <p>17 two is just some plastic branches that are put in to</p> <p>18 your knowledge; correct?</p> <p>19 A. Well, the difference is clearly comparing</p> <p>20 Exhibit-2 of the Stipulation of Settlement the</p> <p>21 California tree pole is a much better example of a</p> <p>22 evergreen tree than the one that exists at the</p> <p>23 DelBarton School.</p> <p>24 Q. And why is that?</p> <p>25 A. Why is that?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Yes. Is it because of the number of</p> <p>2 plastic branches?</p> <p>3 A. It's just because of the overall character</p> <p>4 of the tree as it appears in Exhibit-2. It clearly is</p> <p>5 an example of a tree pole that looks like what an</p> <p>6 evergreen tree should look like.</p> <p>7 Q. And the last time we were before the Board</p> <p>8 back in 2022, the Applicant proposed collocation then;</p> <p>9 correct?</p> <p>10 A. I'm sorry?</p> <p>11 Q. Back in 2022 when the application was</p> <p>12 denied the Applicant proposed collocation at that time</p> <p>13 as well; correct?</p> <p>14 A. It did.</p> <p>15 Q. And there was also a landscaping plan that</p> <p>16 was being proposed then; right?</p> <p>17 A. There was.</p> <p>18 Q. And there was tree removal that is being</p> <p>19 proposed. There were either eight trees proposed to be</p> <p>20 removed and now we're up to 33; correct?</p> <p>21 A. Correct, but the amount of additional trees</p> <p>22 at that time was far less than what is being proposed</p> <p>23 on the current plan.</p> <p>24 Q. And my recollection is that you testified</p> <p>25 back in 2022 that the tree pole had a larger diameter</p>	<p style="text-align: right;">Page 28</p> <p>1 at the bottom of the pole than the flagless flagpole;</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. And regarding your visual impact study that</p> <p>5 you're proposing today, is it A-34, Rich?</p> <p>6 MR. SCHNEIDER: A-37.</p> <p>7 MR. SIMON: A-37.</p> <p>8 BY MR. SIMON:</p> <p>9 Q. Your visual impact study. The trees that</p> <p>10 you're showing without the leaves with photos taken on</p> <p>11 February 27, 2018, again, you don't know whether --</p> <p>12 which of those trees are dead, diseased, dying or</p> <p>13 alive; correct?</p> <p>14 A. I don't know specifically what they are,</p> <p>15 but they've all been identified in the current</p> <p>16 landscaping drawings L-1, L-2, L-3. And actually of</p> <p>17 the 32 additional trees that we're removing only five</p> <p>18 of those trees are neither dead, dying, or invasive</p> <p>19 species.</p> <p>20 Q. But you don't know -- you can't identify</p> <p>21 for me in your visual impact study for this current</p> <p>22 settlement application which ones are which; correct?</p> <p>23 A. No. But again, the Board hired an arborist</p> <p>24 with a certified --</p> <p>25 Q. I'm just asking you for the visual impact</p>

<p style="text-align: right;">Page 29</p> <p>1 study. I'm not asking you about --</p> <p>2 A. There's no way for me to determine the</p> <p>3 impact of removing site specific existing deciduous</p> <p>4 trees for purposes of the tree photo simulations.</p> <p>5 MR. SIMON: Okay. I have no further</p> <p>6 questions of this witness.</p> <p>7 CHAIRMAN FLANAGAN: Great.</p> <p>8 MR. SCHNEIDER: Just one question.</p> <p>9 EXAMINATION BY MR. SCHNEIDER:</p> <p>10 Q. Mr. Masters, you indicated that you were</p> <p>11 aware that Verizon Wireless had made application to</p> <p>12 SHPO, that being the State Historic Preservation</p> <p>13 Office; correct?</p> <p>14 A. Correct.</p> <p>15 Q. But you weren't at all involved in that</p> <p>16 process; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you indicated that "Verizon had a hit"</p> <p>19 in conjunction with their application; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Just for purposes of clarity, do you recall</p> <p>22 what the height of that application to SHPO was to the</p> <p>23 extent you're aware?</p> <p>24 A. One hundred forty feet, with a top of</p> <p>25 branching of 146 feet.</p>	<p style="text-align: right;">Page 30</p> <p>1 MR. SCHNEIDER: Thank you. No further</p> <p>2 questions.</p> <p>3 SECRETARY TAGLAIRINO: Could we just take a</p> <p>4 moment to see if anyone wants to file in and sit down?</p> <p>5 Just so you know, the window is open over there.</p> <p>6 CHAIRMAN FLANAGAN: I don't want to risk</p> <p>7 that we set off the alarm.</p> <p>8 SECRETARY TAGLAIRINO: But there are a few</p> <p>9 seats and there is a window over there, if you're warm.</p> <p>10 CHAIRMAN FLANAGAN: There are four seats</p> <p>11 next to Mr. Schneider. He won't bite. And kids, if</p> <p>12 older people are here then give them your seats, okay.</p> <p>13 Any members of the public have any questions for Mr.</p> <p>14 Steck who are not represented by Mr. Simon?</p> <p>15 MR. SCHNEIDER: Mr. Masters.</p> <p>16 CHAIRMAN FLANAGAN: I'm sorry. Mr.</p> <p>17 Masters. Are you represented by Mr. Simon?</p> <p>18 PUBLIC VOICE: I am not.</p> <p>19 CHAIRMAN FLANAGAN: Excellent. What is</p> <p>20 your name?</p> <p>21 MR. NOYES: My name is Scott Noyes, Noyes,</p> <p>22 22 Sand Spring Road. You're very thorough comment, I</p> <p>23 appreciate that. One comment you made is that you</p> <p>24 haven't looked at alternatives to the pole. It's my</p> <p>25 understanding that the technology has evolved past</p>
<p style="text-align: right;">Page 31</p> <p>1 putting up large poles to putting them on the different</p> <p>2 -- what do you call it -- different telephone poles</p> <p>3 instead of cell towers. And that we're dealing with</p> <p>4 something that's five-year-old technology where the</p> <p>5 technology going forward is going to be something</p> <p>6 totally different. And we're basically talking about</p> <p>7 installing something that's old, outdated.</p> <p>8 So to me my question is, are there</p> <p>9 alternatives to this that can be on a telephone basis</p> <p>10 or what --</p> <p>11 CHAIRMAN FLANAGAN: Let me answer the</p> <p>12 question for you. So we spent the last three years</p> <p>13 discussing alternatives, including ODAS systems, which</p> <p>14 Mr. Simon referred to which are those things that go on</p> <p>15 top of the telephone pole. We have a whole lot of</p> <p>16 testimony from the RF people, RF engineer, not Mr.</p> <p>17 Masters who is a planning person. And the testimony</p> <p>18 over the last three years is that will not cover what</p> <p>19 needs to be covered.</p> <p>20 MR. NOYES: That will not cover for how</p> <p>21 long, since the technology is moving pretty quickly?</p> <p>22 CHAIRMAN FLANAGAN: I don't know if it's a</p> <p>23 question of how long. If you know the answer you can</p> <p>24 give it.</p> <p>25 MR. NOYES: And is this telephone pole for</p>	<p style="text-align: right;">Page 32</p> <p>1 the 30 years or is it a five-year approval?</p> <p>2 MR. SCHNEIDER: In any event, it's well</p> <p>3 beyond Mr. Masters --</p> <p>4 THE WITNESS: That's a question for the RF</p> <p>5 expert.</p> <p>6 CHAIRMAN FLANAGAN: To answer your</p> <p>7 question, he doesn't know and he's the planning person,</p> <p>8 the RF person would have known, over the last three</p> <p>9 years we would have discussed it, but no. Do you have</p> <p>10 any other questions?</p> <p>11 MR. NOYES: One comment.</p> <p>12 CHAIRMAN FLANAGAN: All right. Comments</p> <p>13 will come later. So the way we operate is that if you</p> <p>14 have a question for the testimony that was given you</p> <p>15 can ask it now. Everybody has a chance to comment</p> <p>16 later. Any other questions for Mr. Masters? Thank</p> <p>17 you, Mr. Masters.</p> <p>18 MR. SIMON: Thank you, Mr. Masters.</p> <p>19 MR. MASTERS: Than you.</p> <p>20 CHAIRMAN FLANAGAN: Mr. Simon, Mr. Mlenak,</p> <p>21 now we have Mr. Simon's witness; is that right?</p> <p>22 MR. MLENAK: Provided -- Mr. Schneider, you</p> <p>23 have nothing further; right?</p> <p>24 MR. SCHNEIDER: I have no further</p> <p>25 witnesses.</p>

<p style="text-align: right;">Page 33</p> <p>1 MR. MLENAK: You'll reserve for summation?</p> <p>2 MR. SCHNEIDER: That's correct.</p> <p>3 MR. SIMON: Mr. Steck.</p> <p>4 MR. MLENAK: Lori, did you get the laptop</p> <p>5 working?</p> <p>6 SECRETARY TAGLAIRINO: I did. I guess it's</p> <p>7 sleeping at the moment.</p> <p>8 MR. SIMON: I'm going to call Peter Steck,</p> <p>9 our professional planning witness.</p> <p>10 MR. MLENAK: Mr. Steck, you testified prior</p> <p>11 in this application and you understand you remain under</p> <p>12 oath?</p> <p>13 THE WITNESS: I do. And I have testified</p> <p>14 before and I understand I'm still under oath.</p> <p>15 MR. SIMON: You want me to qualify him?</p> <p>16 MR. SCHNEIDER: We'll stipulate to Mr.</p> <p>17 Steck's qualifications.</p> <p>18 CHAIRMAN FLANAGAN: He's still an expert.</p> <p>19 P E T E R S T E C K, having been</p> <p>20 previously sworn, testifies as follows:</p> <p>21 MR. SIMON: Before you start, Mr. Steck, do</p> <p>22 you want to hand this out or what do you want to do?</p> <p>23 THE WITNESS: I'd like to hand that out.</p> <p>24 MR. SIMON: Okay. So we're going to have</p> <p>25 -- I don't know how --</p>	<p style="text-align: right;">Page 34</p> <p>1 CHAIRMAN FLANAGAN: Are the handouts you're</p> <p>2 providing the ones that are on the agenda?</p> <p>3 MR. SIMON: Correct.</p> <p>4 SECRETARY TAGLAIRINO: We're going to mark</p> <p>5 that O-9; correct.</p> <p>6 MR. SCHNEIDER: No, I think we're up to --</p> <p>7 MR. SIMON: No, we're up to O-10. Because</p> <p>8 I think O-9 was his last --</p> <p>9 MR. SCHNEIDER: I have a recollection of it</p> <p>10 being O-9, so this should be O-10.</p> <p>11 (Exhibit O-10 is received and marked.)</p> <p>12 CHAIRMAN FLANAGAN: Lori, do you have a</p> <p>13 copy of these photos?</p> <p>14 SECRETARY TAGLAIRINO: I do, but I do need</p> <p>15 a hard copy so that I can --</p> <p>16 MR. SCHNEIDER: I'll give you mine.</p> <p>17 MR. MLENAK: O-10, Yes.</p> <p>18 CHAIRMAN FLANAGAN: Pass them out to the</p> <p>19 public, if you wouldn't mind.</p> <p>20 MR. SIMON: Do you have one for yourself?</p> <p>21 THE WITNESS: I do.</p> <p>22 MR. SIMON: I'll look on with you.</p> <p>23 CHAIRMAN FLANAGAN: Here, take mine.</p> <p>24 SECRETARY TAGLAIRINO: I'll relocate myself</p> <p>25 over here to change photos.</p>
<p style="text-align: right;">Page 35</p> <p>1 MR. SCHNEIDER: And just for the record,</p> <p>2 Mr. Chairman, Counsel, you can mark it as O-10 but I'm</p> <p>3 reserving the right to object as to beyond the scope as</p> <p>4 to certain aspects of O-10.</p> <p>5 MR. MLENAK: So we have all been handed a</p> <p>6 copy that was circulated earlier today electronically.</p> <p>7 It's on the screen now of objectors, an exhibits that I</p> <p>8 premarked O-10. Mr. Schneider has reserved to object</p> <p>9 to its admissibility.</p> <p>10 MR. SCHNEIDER: Or at least a portion of</p> <p>11 it.</p> <p>12 MR. MLENAK: At least a portion of it. So</p> <p>13 we'll do is premark it as O-10 but let's get through</p> <p>14 the testimony and should the time come when you want to</p> <p>15 object you can decide then as to its admissibility.</p> <p>16 BY MR. SIMON:</p> <p>17 Q. Okay. So Mr. Steck, you've been retained</p> <p>18 by my clients to perform a professional planning</p> <p>19 analysis relative to the current version of the</p> <p>20 application that's being presented by Verizon; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you understand that accompanying the</p> <p>23 current version was a Stipulation of Settlement; right?</p> <p>24 A. Yes.</p> <p>25 Q. With these exhibits?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I understand.</p> <p>2 Q. And you've had an opportunity to review the</p> <p>3 latest submissions by the Applicant?</p> <p>4 A. Yes.</p> <p>5 Q. You were present for Mr. Masters' entire</p> <p>6 direct and cross-examination relative to this</p> <p>7 application?</p> <p>8 A. That's correct.</p> <p>9 Q. And you listened to the tapes for the first</p> <p>10 hearings on the application?</p> <p>11 A. Yes.</p> <p>12 Q. And you've been to the site recently?</p> <p>13 A. Yes, within the last three days.</p> <p>14 Q. So why don't you provide your planning</p> <p>15 conclusions relative to the most recent submission by</p> <p>16 Verizon relative to the proposed settlement?</p> <p>17 A. All right. What I'll do is give a little</p> <p>18 narrative and then I'll go to the exhibit and identify</p> <p>19 the pages, because that will help me in the</p> <p>20 presentation.</p> <p>21 Q. And when you identify the pages for Lori's</p> <p>22 benefit also, do it by page number so she can put it up</p> <p>23 on the screen.</p> <p>24 A. Yes. So just in general O-10 is dated</p> <p>25 June 5th of this year and it has nine pages identified</p>

<p style="text-align: right;">Page 37</p> <p>1 as P-1 through P-9 in the upper right-hand corner and 2 it was prepared by me.</p> <p>3 As the Board is aware this application was 4 denied, and a memorializing Resolution was adopted on 5 June 16th of 2022. And this is a Whispering Woods 6 hearing as they call it with essentially three parties 7 involved: The Board of Adjustment which we'll hear 8 this evening, Verizon the Applicant, and the Township 9 of Harding. Seeking to be approved is this cell tower, 10 but also a site plan. And the site plan involves the 11 entirety of Lot 1 and Block 17, which is owned by the 12 Township of Harding. And while the focus of the 13 Applicant is on the lease area, which is I believe 30 14 by 60 feet part of this proposal involves land on this 15 Lot 1, but outside of the leased area. And the 16 proposed site plan shows improvements outside of the 17 leased area, as well as inside the leased area. And I 18 understand that the Township has responsibilities 19 because some of the, for example, landscaping proposed 20 is not the responsibility of the Applicant but of the 21 Township for those plantings outside of the leased 22 areas.</p> <p>23 And I think for starters it's important to 24 analyze what has changed or what compromises are on the 25 table compared to what was denied previously by the</p>	<p style="text-align: right;">Page 38</p> <p>1 Board. And I just want to run through my understanding 2 of the changes that have occurred since the denial of 3 this application.</p> <p>4 The Applicant has said multiple times that 5 this faux tree is now lowered to 86 feet. And that's 6 true that when the bid specs were out it was 140 feet 7 and over time the Applicant proposed both a flagless 8 flagpole, as well as various tree arrangements that 9 went down to a height of a total of 86 feet. What was 10 before the Board was a faux tree at 86 feet. That was 11 denied. And so there really hasn't been, in my 12 opinion, any movement in terms of those dimensions. 13 The Applicant is still proposing only a tree, not a 14 flagpole, and that tree is 86-feet tall. So that's 15 really not a change from what this Board found worthy 16 of a denial.</p> <p>17 What has changed is the look of the tree, 18 and the Applicant as you know attached to the 19 settlement is a picture of we'll call it the California 20 tree. No one in this room has seen -- to my knowledge 21 has seen that tree first hand. Mr. Masters has not 22 seen the tree. He did not know how tall it was. He 23 did not know how many carriers were on that tree. He 24 did not volunteer any information about how far away 25 that photograph was taken, because if you shoot up to a</p>
<p style="text-align: right;">Page 39</p> <p>1 tree it looks denser, for example, than what it would 2 really look like from like a horizontal or a more 3 distant point of view. It is suspicious to me that you 4 can't see any cellular panels in that graphic.</p> <p>5 So the Applicant is proposing a tree that 6 the Applicant's planner has never seen and doesn't know 7 the characteristics of. It's a mystery to what it 8 would look like in real life. Now, that model 9 apparently was given to a graphic artist that 10 superimposed it on an older arrangement, an older 11 exhibit. And I'll talk about that in a minute. So 12 there has been a change in that the plans show this 13 California tree. And in addition the Applicant has 14 indicated that the greenery in the column around the 15 pole will go down to a height of 30 feet above the 16 ground. So even the graphics that are proposed in the 17 Applicant's plans don't represent what is being 18 proposed at the moment. That's changed from what was 19 submitted.</p> <p>20 The Stipulation of Settlement says that the 21 cable bridges can't be in the compound. The equipment 22 compound, can't be more than 7-feet high. Nothing in 23 the stipulation talks about the height of the cabinets. 24 I don't know if those are going to be limited to 7 feet 25 or not, but the fact that the Applicant is limiting the</p>	<p style="text-align: right;">Page 40</p> <p>1 height of the equipment supporting the electronics of 2 the tower tells me that if there are anymore providers 3 that lease area has to be expanded. And I'll show that 4 in graphics in a minute, but the total lease area is 30 5 by 60 feet, and the graphics that were part of this 6 record in the earlier application show rectangles for 7 four carriers, three additional carriers in addition to 8 the equipment needed for Verizon.</p> <p>9 Part of the stipulation is an improved 10 buffering both in the leased area and outside of the 11 leased area. I'll note that the buffering, the Red 12 maples that are proposed in the leased area the 13 Applicant is responsible to plant, but if the leased 14 area has to be used for more providers those trees 15 disappear. You can't have collocators and equipment on 16 the same area you have a tree.</p> <p>17 MR. MLENAK: Which trees are you referring 18 to?</p> <p>19 THE WITNESS: I will show some graphics 20 that will probably indicate that clearly.</p> <p>21 That area behind the recycling building is 22 poorly maintained. As indicated before, there are 23 vines that have climbed up trees that have never been 24 taken down. There is construction equipment in the 25 back there. It's kind of a no-man's land but it</p>

<p style="text-align: right;">Page 41</p> <p>1 happens to be relatively low to the ground. The sewer 2 grates, the concrete blocks are not more than 3-feet 3 high over the ground, so they're not apparent to the 4 surrounding property.</p> <p>5 As already on the record, and not indicated 6 earlier, there are 33 trees that are going to be 7 removed, and these are taller trees. And the testimony 8 at the last hearing indicated, at least from the town's 9 Arborist, how tall he thought those trees were. The 10 trees that are going to be provided, and I'll refer to 11 them on the graphics in a minute, are split between 12 deciduous trees which are helpful in shielding the 13 compound in the summertime. There are evergreens that 14 range in maximum from 8-to-0 feet tall. And those 15 obviously will have some benefit in the winter-time.</p> <p>16 And I'm jumping the on one issue. The 17 issue of landscaping and shielding is intimately 18 related to the height of the structure. There's 19 nothing that's proposed that's going to come close to 20 shielding or masking the 86-foot faux tree.</p> <p>21 The settlement says that collocators have 22 to apply to the Board of Adjustment. That doesn't mean 23 that you have control to turn down a collocator. There 24 is a provision in the Municipal Land Use Law. There 25 are provisions in the Federal legislations, state and</p>	<p style="text-align: right;">Page 42</p> <p>1 Federal legislation that say when you have an existing 2 tree the cellular community has a leg up. They can 3 increase the height by 10 feet or 10 percent, but not 4 more than 20 feet on the Federal side. And there is a 5 uniform policy of encouraging collocation. And as Mr. 6 Masters testified in the hundred or so applications for 7 collocation he can't remember one that was denied. 8 And, in fact, he said he didn't really appear on any of 9 them. And you really don't need a planner if the law 10 says it's a good thing to collocate. And in fact the 11 state law allows you to increase the height.</p> <p>12 One of the provisions in the settlement is 13 that Verizon gets to be top dog or geographically the 14 highest tier. So if a second provider comes in and 15 says I need to be at least 80 feet and they come before 16 you to say, well, we're going to bump the tower up to 17 96 feet Verizon gets to go at that top slot.</p> <p>18 Part of the settlement agreement is that 19 Verizon is to study how to provide cell service to the 20 elementary school. And it's not going to be providing 21 any service, but it's going to educate the community 22 about how possibly cell service can be provided. On 23 its face that tells you that the largest concentration 24 of people in this municipality, meaning the elementary 25 school, is not really going to benefit from this cell</p>
<p style="text-align: right;">Page 43</p> <p>1 tower at this location. It's also on the record that 2 this cell tower will not solve the wider area problem 3 that a distributed antenna system inevitably is going 4 to have to be used to provide what it believes is 5 adequate service to the municipality.</p> <p>6 There is an emergency generator rule in the 7 settlement because these facilities have generators 8 that have to be exercised, and there are certain 9 standards in the settlement about when they can be 10 exercised, which means when they can make a lot of 11 noise -- make noise when they're running periodically.</p> <p>12 One would suspect that absent this 13 application if the Public Works Department said we need 14 a generator to make sure we can pump gas during an 15 emergency I'm hard pressed to say that they would 16 locate a generator in this location near residential 17 properties, but that's what is inevitably part of this 18 application.</p> <p>19 There is also a provision in the settlement 20 that says no other conditions shall be imposed. Now, 21 normally Mr. Masters talked about the Sica Balancing 22 Test and went through the four steps. And one of the 23 steps in judging whether the Sica Balancing Test is met 24 is that the municipality is, under the normal 25 situation, entitled to add reasonable conditions which</p>	<p style="text-align: right;">Page 44</p> <p>1 would mitigate the adverse effects. And again, there 2 are issues here that are not really addressed, because 3 this is a site plan. The application indicates that 4 that storage container that's back there, it's about 5 9-by-42 feet, that's going to be removed. Now, no one 6 knows where it's going to go. That's the 7 responsibility of the Township, but if it's going on 8 this property that's part of the site plan. Are they 9 going to put it right next to a Historic District? A 10 national district? We don't know where that container 11 is going to be moved. We don't know where the 12 equipment that's being stored outdoors behind the 13 building is going to be improved. We don't know if 14 there are other locations that may be more sensitive to 15 the septic disposal system that's right by here that's 16 going to have some plantings by it. There are a lot of 17 mysteries here that are not being answered. And that's 18 again, the application is not just within the 30-by-60 19 leased area, it's the whole property as part of the 20 site plan.</p> <p>21 Now, within the last week Mr. Masters 22 testified, and I was here. And I want to make certain 23 comments -- before I do that I think it's best to go 24 through my Exhibit O-10. 25 BY MR. SIMON:</p>

<p style="text-align: right;">Page 45</p> <p>1 Q. So Peter, why don't you just walk through 2 O-10 identifying by page number what is depicted on the 3 page and what it represents, and what you're intending 4 to show by virtue of presenting that particular slide? 5 A. Okay. And I'll refer to it by the upper 6 right-hand corner. P-1 is a reproduction of the 7 Applicant's exhibit where I've shown in red the limits 8 of the state and National Historic District. And in 9 yellow the limits of the local Historic District. And 10 on the lower right-hand corner you see a reproduction 11 of your local historic map which shows the subject 12 property in blue. So locally this site is within the 13 New Vernon Historic District, and it is a key property. 14 CHAIRMAN FLANAGAN: Mr. Steck, we have 15 discussed this extensively in previous hearings. It's 16 not new since we entered into the Settlement Agreement. 17 So if we're discussing simply what the borders are can 18 we move on, please? 19 MR. SIMON: No, but Mr. Masters has 20 introduced a photo array exhibit with a key map in the 21 front relative to this application, and Mr. Steck, we 22 respectfully believe, has the right to identify within 23 that key map that Mr. Masters produced where the 24 Historic District is and any significance to it. 25 CHAIRMAN FLANAGAN: It's identified, so can</p>	<p style="text-align: right;">Page 46</p> <p>1 we move on? 2 THE WITNESS: Well, you will note from the 3 map there are yellow circles with numbers. None of the 4 circles are taken right at the Historic District 5 boundary. So while Mr. Masters did take photos within 6 the National Historic District and some outside 7 Historic District but inside the local district I'll 8 just note that none of the photos that were taken for 9 simulation are right at the Historic District boundary. 10 MR. MLENAK: Those circles and the photos 11 that correspond with them haven't changed in five 12 years; correct? 13 THE WITNESS: That's correct. 14 MR. MLENAK: And I know that because there 15 was extensive questioning about that. 16 THE WITNESS: Yes. 17 MR. SCHNEIDER: And we went through ad 18 nauseam through six, that six of the eight were within 19 the National and state -- 20 CHAIRMAN FLANAGAN: I couldn't agree more. 21 So if we're discussing -- 22 MR. SCHNEIDER: We spent a half a meeting 23 discussing the distinction between the national state 24 and local. Ms. Mertz weighed in. So it's unfathomable 25 to me that we're going to go through this again.</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. SIMON: What is unfathomable 2 respectfully is the fact that Mr. Steck is arguably 3 precluded from showing via the current version of the 4 visual impact study the fact that not one photo was 5 taken from the border of the Historic District. That's 6 all he's trying to show you, and he was in the middle 7 of it. 8 MR. MLENAK: The image has a date of 2016 9 on it. 10 MR. SIMON: I understand, but he's 11 demonstrating it in the context of the testimony that 12 Mr. Masters is providing for this settlement 13 application that Mr. Masters and the Applicant is 14 relying on. 15 CHAIRMAN FLANAGAN: Okay. So -- 16 UNIDENTIFIED PUBLIC VOICE: Where is the 17 new photo that we need to see? 18 CHAIRMAN FLANAGAN: Excuse me. Go ahead. 19 THE WITNESS: Second page, if I may. One 20 of the issues that Mr. Masters was questioned about is 21 the thoroughness of the search for sites. And what 22 this is is a topographic map that shows in red line 23 where the state and National Historic District is. 24 MR. SCHNEIDER: Objection. I'm just 25 befuddled.</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. SIMON: Well -- 2 MR. SCHNEIDER: Let me finish, Rob, please. 3 I don't think I've interrupted you for 27 hearings. 4 The whole purpose of the settlement was to incorporate 5 the record below. So if we're going to now go through 6 a process where we're going to start to investigate 7 alternate sites after 27 hearings what was the purpose 8 of the settlement agreement? 9 MR. SIMON: While the record below is still 10 the record of these proceedings the difference is that 11 the Applicant is now coming in and presenting a new 12 proposal that is -- it's requesting that the Board 13 weigh in on and vote on, subject to a Whispering Woods 14 hearing that allows the public to participate in that 15 process. They still need to meet the burden of proof. 16 And this Board still needs to find the positive and 17 negative criteria for their burden of proof. And one 18 of the issues is whether there are alternate sites, 19 alternate locations. And wait, let me finish, please. 20 And so the fact that the Applicant is 21 coming back in and not showing -- and part of the 22 settlement, and I will get to this when I provide my 23 concluding remarks, is that the settlement needs to be 24 reasonable under the law in relation to what was 25 originally presented to the Board and denied. And what</p>

<p style="text-align: right;">Page 49</p> <p>1 we are presenting and are going to conclude with is</p> <p>2 that it is an unreasonable settlement under the law in</p> <p>3 terms of the differences between what was denied and</p> <p>4 what the Applicant is now requesting that the Board</p> <p>5 approve.</p> <p>6 And I will tell you because I've reviewed</p> <p>7 them, that every single one of Mr. Steck's slides go to</p> <p>8 that very settlement reasonableness issue. We</p> <p>9 understand fully well that all of Mr. Steck's prior</p> <p>10 testimony and the prior 27 hearings or whatever it is,</p> <p>11 that's in the proverbial can. We get it, okay. It</p> <p>12 will be a lot faster if he can go through these</p> <p>13 exhibits to demonstrate what we believe to be the</p> <p>14 unreasonableness of this proposed settlement.</p> <p>15 MR. SCHNEIDER: May I be heard?</p> <p>16 CHAIRMAN FLANAGAN: Go head.</p> <p>17 MR. SCHNEIDER: The focus of the</p> <p>18 settlement, where there's a fundamental disagreement as</p> <p>19 to what Mr. Simon believes the scope of the settlement</p> <p>20 really is and what the Applicant and I think the Board</p> <p>21 believes the scope of the hearing is. The scope of the</p> <p>22 settlement hearing is, as Mr. Simon alluded to in his</p> <p>23 last comment, is whether the conditions as set forth in</p> <p>24 the Stipulation of Settlement justified approval of the</p> <p>25 settlement. That being the conditions relating to</p>	<p style="text-align: right;">Page 50</p> <p>1 landscaping, change of design, together with such</p> <p>2 additional conditions as we stipulated to during this</p> <p>3 process, including the branching, et cetera.</p> <p>4 Not to go through all of the radio</p> <p>5 frequency testimony. Not to go through the alternate</p> <p>6 sites. Not to go through everything that was presented</p> <p>7 in 27 hearings. The focus of the hearing should be on</p> <p>8 those revisions that are to the application that have</p> <p>9 been reflected in the settlement, and the Board to make</p> <p>10 a decision as to whether that justifies the agreement</p> <p>11 to the stipulation of settlement and consent.</p> <p>12 MR. MLENAK: So the one thing I agree with</p> <p>13 Mr. Simon on, and I hope he's right, is that we can go</p> <p>14 through this quicker than arguing this out. And I hope</p> <p>15 that will be the case, Mr. Steck. But I do think we</p> <p>16 have gone through this testimony before, and if it</p> <p>17 wasn't a Whispering Woods hearing and we were saying at</p> <p>18 the 28th or 29th hearing of the original application</p> <p>19 would be the same argument that we have had this in the</p> <p>20 record, this line of questioning as to the alternative</p> <p>21 sites. So I would ask that you just move it along, but</p> <p>22 I don't want to belabor the argument.</p> <p>23 THE WITNESS: The only issue that I wanted</p> <p>24 to show that puts this in context is that this -- the</p> <p>25 base of this tower is 346 feet above sea level. The</p>
<p style="text-align: right;">Page 51</p> <p>1 top of the tower is 450 feet above sea level. There</p> <p>2 are areas near here where the ground elevation is over</p> <p>3 400 feet, which means that if other sites maybe in</p> <p>4 residential zones were looked at you don't have to have</p> <p>5 this tall a tower.</p> <p>6 MR. SIMON: And those wouldn't be in the</p> <p>7 Historic District; correct?</p> <p>8 THE WITNESS: Correct.</p> <p>9 MR. SIMON: Move on.</p> <p>10 THE WITNESS: The next page, P-3, is a</p> <p>11 reproduction of part of the Applicant's submission.</p> <p>12 And the Applicant likes to measure setbacks from the</p> <p>13 center of the pole. And again, in every other</p> <p>14 situation where you measure zoning setbacks you measure</p> <p>15 to the closest point. And that's why I say less than</p> <p>16 "X" amount, less than -- so here I demonstrate where</p> <p>17 the pole is proposed just below that 6-foot away.</p> <p>18 Now, the last hearing there was evidence</p> <p>19 that the Applicant was compromising by moving the pole</p> <p>20 I think it was 12.7-feet away. This is being shifted 6</p> <p>21 feet from the prior location. So it's hard to see,</p> <p>22 there's a blue circle that's 6 feet away. That was the</p> <p>23 compromised location. The red circle is where the</p> <p>24 current proposal is. And it is 72.3 feet from one of</p> <p>25 my clients, which is the O'Donnell property. The</p>	<p style="text-align: right;">Page 52</p> <p>1 O'Donnell property is in your local Historic District</p> <p>2 but not in the state or National District. This is</p> <p>3 somewhat less than 200 and -- excuse me, 120 feet from</p> <p>4 the closest boundary of a state and National Historic</p> <p>5 District.</p> <p>6 The next page, and I'll do this briefly,</p> <p>7 this was the Applicant's proposed landscaping</p> <p>8 submission. Now, this is before --</p> <p>9 Q. When you say -- let's be clear. The</p> <p>10 landscaping submission originally submitted in</p> <p>11 connection with the settlement hearing?</p> <p>12 A. That's correct. So when the last hearing</p> <p>13 occurred this was on the table because it was submitted</p> <p>14 14 days before the hearing a few days ago. And I just</p> <p>15 wanted to point out that not really emphasized is where</p> <p>16 the septic field is. So this is an issue of</p> <p>17 credibility on the landscaping issue, in that the trees</p> <p>18 were placed 10 feet center-on-center. There was a row</p> <p>19 of trees in the ditch that was already there. The</p> <p>20 fence that the Township put up was not on the plans.</p> <p>21 Now, I'll grant you -- and the lower</p> <p>22 right-hand corner shows you the character of the area.</p> <p>23 That fence was put in the Township correctly. The good</p> <p>24 side face is out. It's too tall. It's taller than 6</p> <p>25 feet because there's about a 6-inch gap underneath it</p>

<p style="text-align: right;">Page 53</p> <p>1 and there's a drainage channel that is cut there that 2 drains to the east and not to any detention basin. It 3 goes off the site to other properties.</p> <p>4 The next page P-5 is the modified 5 landscaping plan where I generally labeled by color the 6 plans that are proposed. You'll note that the 7 Applicant is proposing, there's a large tree -- I 8 concentrate first on the lease area. There's a smaller 9 leased area that's needed just for Verizon, but there's 10 a larger 30-by-60 foot leased area. So the Applicant 11 here is saying that I'm going to preserve a big tree 12 that exists now and had I'm going to preserve -- that's 13 tree 48 I believe. And I'm going to plant four Red 14 maples. But by the way, if a collocator comes in that 15 tree 48 gets removed and those four maple trees, Red 16 maples get removed. So the Applicant has proposed no 17 buffering potentially in that area.</p> <p>18 The area outside of that where the 19 Arborvitae, Norway Spruce, whatever, Sweetgum are 20 proposed, that's on the site plan but not the 21 responsibility of the Applicant. And the lower 22 right-hand corner I reproduced the planting schedule. 23 And as you see, there are three types of deciduous 24 trees that are helpful in the summertime at least for 25 the compound, and there are evergreens in three</p>	<p style="text-align: right;">Page 54</p> <p>1 varieties. The tallest one at the time of planting is 2 10 feet. Next page, please. This is a --</p> <p>3 Q. Just identify the page number.</p> <p>4 A. P-6. Thank you. P-6 shows where my 5 current clients are. They're labeled with lot and 6 block numbers in yellow. In yellow with a yellow 7 circle and an arrow I show a potential -- a photo that 8 I took on May 29th of this year of standing at the 9 border of the state and National Historic District 10 looking toward the site where the cell tower is. And 11 remember that most of these trees will be removed, 12 especially the deciduous ones because there are very 13 few evergreens there now.</p> <p>14 And my point is that a proper analysis, in 15 my opinion, ought to concentrate on the view, the 16 visual impact, not only from the closest property 17 owner, but from the Historic District.</p> <p>18 P-7 on the left-hand side shows you the 19 landscaping that was proposed, which the Board found to 20 be not, not warranting approval. So that was denied to 21 the left. To the right is the so-called settlement 22 plan. And again, while the testimony at the last 23 meeting is we're going to move it 12 and a fraction 24 feet it's being moved 6 feet. And this highlights the 25 fact that the plantings are very near the septic field.</p>
<p style="text-align: right;">Page 55</p> <p>1 If that fails the Township is going to have a difficult 2 time trying to find another septic field to replace 3 that.</p> <p>4 Most of the plantings that are to the 5 northeast outside of the leased area don't really help 6 the surrounding property owners.</p> <p>7 Q. You're talking about the Settlement Plan?</p> <p>8 A. Yes. Thank you. Next page P-8.</p> <p>9 MR. FOX: Is there a north arrow on your 10 Exhibit that we can identify where is northeast?</p> <p>11 THE WITNESS: North is up to the top of the 12 page.</p> <p>13 MR. FOX: North is up.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 SECRETARY TAGLAIRINO: Okay. We're going 16 to P-8?</p> <p>17 THE WITNESS: P-8. So on the left-hand 18 side if you remember my clients had a crane that 19 appeared. And for scale there are two people at the 20 bottom right corner and one of them is me. And this is 21 a photo taken about 190 feet right next to the 22 O'Donnell house that has a patio area with chairs.</p> <p>23 I point to tree 48, which is a tree that 24 while it's proposed to be saved will disappear if in my 25 opinion additional providers, collocators arrive and</p>	<p style="text-align: right;">Page 56</p> <p>1 are approved.</p> <p>2 To the right is the -- a reproduction of 3 the Applicant's photo showing the difference in 4 February, and that's February 2018. And you can see in 5 that picture there are no evergreens there. And again, 6 some of those trees are dead, but they're all going to 7 be removed. The dead ones are going to be removed, and 8 again, there are no evergreens that are going to 9 replace that and be close to -- anything close to the 10 height.</p> <p>11 On the right-hand side I show you the 12 graphic that the Applicant's plans have, an 86-foot 13 faux tree. On the right, I took the photo on G-2, that 14 was the photo simulation from across where the post 15 office is, and I simply reproduced parts of it and 16 added it to the bottom. So this is what potentially 17 the tree that's proposed is going to look like when the 18 branching goes down to 30 feet from the ground.</p> <p>19 BY MR. SIMON:</p> <p>20 Q. And do you have an opinion about that in 21 terms of the branching going lower?</p> <p>22 A. The answer is no one -- if this tree is not 23 near other evergreens that have some reasonable height, 24 60 feet, no one is going look at this and say, oh, what 25 a nice natural tree. This is going to look like a</p>

<p style="text-align: right;">Page 57</p> <p>1 plastic tube, in my opinion, in the air. No one is 2 going to be fooled that this is a natural tree. 3 These natural trees, in my judgment, look 4 well when they're in a forested environment. But here 5 we're taking away the forest, the taller items. 6 The next page P-9 reproduces an exhibit 7 that's already before the Town's record. The yellow 8 lines, so there's a date at the bottom of each photo, 9 and the yellow line highlights tree 48, which is again 10 the one that is in the leased area. And as you see, 11 there's one evergreen on the left-hand side, but I went 12 out to the site this past weekend and took photos of 13 where the 6.5-foot top of the fence would be, and 14 that's shown in a solid line on the left-hand side. 15 And then I show in a dotted line where the 10-foot high 16 planting line would be. So you're going to have the 17 tops of a Norway Spruce, maybe 12, 15 feet back from 18 the fence that are going to be popping above the fence 19 line. And because of the nature of these trees that's 20 not the big diameter of the tree, that's the smallest 21 part of the tree that's going to be poking up above it. 22 This wonderful landscaping that's proposed is behind 23 the fence. None of the surrounding property owners are 24 going to see it. You might as well just have a fence. 25 It's great for the people that go to the recycling</p>	<p style="text-align: right;">Page 58</p> <p>1 center, I suppose, or when the crew comes to maintain 2 the compound they'll enjoy the landscaping, but the 3 general public is not going to benefit from this. It's 4 all blocked with a 6-and-a-half-foot tall 5 board-on-board fence. 6 So I'm going to offer my conclusions. 7 Q. Well, did you -- I don't know if you 8 covered Mr. Masters' testimony. You were about to say, 9 I reviewed Mr. Masters' testimony and then you went to 10 the photos. 11 A. Thank you. I skipped a point. Mr. Masters 12 testified that this, I guess -- not I guess. That this 13 continued to meet the Sica criteria. And I disagree 14 with his conclusions. Again, this is largely from a 15 planning point of view an aesthetic issue. Is there 16 adverse impact from this facility not because of 17 microwaves or whatever, it's because of the look of 18 this. And the analysis that's being done is a tree 19 that no one in this room has seen or know the 20 characteristics of. So there's no reliability that 21 that is actually what you're going to see, because that 22 photograph has no -- you can't see one cellular panel 23 in it. That's unrealistic in my opinion. 24 Number two is, as I mentioned, none of the 25 sites that were analyzed, those yellow dots, eight</p>
<p style="text-align: right;">Page 59</p> <p>1 sites, were at the edge of the state or National 2 Historic District. None of them were on nearby 3 properties such as the O'Donnell property. Now, the 4 Applicant testifies, well, we don't go on private 5 properties to take photographs. Well, they went on 6 private roads. You're not allowed to go on the private 7 roads. And there was no effort to even apparently 8 contact Mr. O'Donnell to say, may I take a photograph 9 from your property? In fact, when we had our own crane 10 they did not participate in that visual analysis. 11 There is no update of any of the photographs showing 12 the removal of trees. 13 Now, the Applicant not present, but the 14 artist who worked on these simulations could carefully 15 apparently take the tree that was in California and put 16 it behind existing trees, but you wonder why couldn't 17 they use the same talent and show what it's going to 18 look like with 33 trees removed. That seems to be in 19 the same expertise if someone can go one way by keeping 20 trees there they could certainly remove it and have a 21 more accurate view of what this visual impact is. 22 Mr. Masters says he's never seen a tree as 23 good looking as this faux tree, but he never even saw 24 this faux tree. No one here knows what it really looks 25 like when you're not at the base looking up. We don't</p>	<p style="text-align: right;">Page 60</p> <p>1 know anything about the height of that. 2 He says it's the best landscaping plan he's 3 seen in 27 years, and that may well be the case, but 4 when you're on the other side of the 6-and-a-half-foot 5 fence it doesn't make any difference because you can't 6 see it. It does nothing and it only screens the base. 7 The impact of this tree is this column of plastic that 8 starts 30 feet from the ground and goes up to 86 feet, 9 and it is isolated from any kind of forested 10 environment. If you plant at 10 feet and the Norway 11 Spruce grows, let's say, a foot and a half a year and 12 you want maybe a 60-foot tree you've got to wait 13 33 years. I'm going to be retired by then, and maybe 14 not even around. But that's a long time considering 15 how technology changes, considering the impact on the 16 surrounding area. 17 So my conclusions. There should be a focus 18 on what concession -- in my opinion, there should be a 19 focus on what planning concessions have been made since 20 this Board denied the application. What has changed 21 that now would cause you to almost 180 degrees approve 22 something that you deny? 23 There is no change that in my opinion 24 satisfies the Sica test. There are 33 trees that are 25 going to be removed, and even if a dead tree is there</p>

<p style="text-align: right;">Page 61</p> <p>1 and standing there it does mask the environment where, 2 let's say, a flagpole is installed. It makes it less 3 apparent if that's done.</p> <p>4 The fact that the Applicant is extending 5 the plastic down 30 feet from the ground in my opinion 6 makes this a more intrusive visual impact. It's going 7 to look more, in my opinion, unnatural. The Applicant 8 off the table, even though at one time a flagless 9 flagpole was offered, it is not part of this 10 settlement, but in my opinion that would clearly be a 11 superior result if this site is indeed the only one 12 that can accommodate the cellular service that's being 13 proposed.</p> <p>14 There is no recognition in the testimony so 15 far that this site is still in your local Historic 16 District. And when you think -- when you approved the 17 development of, let's say, the post office I'm sure 18 there was a lot of discussion about the scale of the 19 windows, and the slope of the roof, and all those kind 20 of details. It astounds me that this tree could be 21 proposed without that same level of analysis of impact.</p> <p>22 And finally, this proposal we all recognize 23 is not going to solve the greatest need, which is the 24 elementary school. That still has to be studied. It's 25 still going to need a Distributed Antenna System on</p>	<p style="text-align: right;">Page 62</p> <p>1 other parts of the municipality. So the way this is 2 being proposed is kind of an all-or-nothing, accept it, 3 but the answer is there are shades of gray here and in 4 my opinion the changes that have been proposed do not 5 warrant this Board signing off on the settlement, 6 because in my opinion there will be substantial adverse 7 impact to both your local and state And national 8 Historic District. I think there will be substantial 9 adverse impact to the surrounding properties in terms 10 of its -- the negative aesthetics.</p> <p>11 Q. So with regard to your prior testimony over 12 the 20-something hearings, do you still believe that 13 the Applicant has failed to meet not just the negative 14 criteria under the Sica Balancing Test, but also the 15 positive criteria in terms of particular suitability?</p> <p>16 A. Right. While the Applicant indeed has 17 demonstrated that there is a gap here this doesn't 18 solve the problem. The site in my opinion, the 19 location on the DPW site is ill-suited, is not 20 particularly suited, because it's close to a 21 residential use. They're taking down trees to do it. 22 It's by the septic field, and you have to relocate 23 containers and outdoor storage to another part of this 24 local Historic District. That in my opinion shows that 25 it's ill-suited and I don't think the evidence</p>
<p style="text-align: right;">Page 63</p> <p>1 presented by the Applicant meets the test that was 2 anticipated under the Sica decision and under the 3 peculiar suitability standard.</p> <p>4 Q. And that incompetent includes but is not at 5 all limit today the proposed design of the monopole to 6 hook like a fake tree?</p> <p>7 A. Right. In my opinion by this, by having 8 this density of plastic in a cylinder it will look less 9 and less like a tree, and there really is no evidence 10 on the record of what this is going look like. No one 11 knows what it's going to look like other than there is 12 a photograph from California.</p> <p>13 Q. And I neglected to ask you. Of the 14 opinions, the various planning opinions that you 15 provided for the prior application that culminated in a 16 denial of that application by this Board in 2022, there 17 are no opinions contained in your prior testimony that 18 have changed?</p> <p>19 A. That's correct. I stands by my prior 20 testimony, but as I say the fact that this is a denser 21 plastic tree and the fact that now we know that more 22 trees are going to be removed, and again the issue of 23 landscaping is height. This tree if it was in a 24 forested environment one might be able to accept it, 25 but this is going to be standing out in the open and</p>	<p style="text-align: right;">Page 64</p> <p>1 it's going to take at least my lifetime in order for 2 the surrounding areas, trees, to at least have a chance 3 of masking it.</p> <p>4 MR. SIMON: I have nothing further for Mr. 5 Steck at this time.</p> <p>6 CHAIRMAN FLANAGAN: So why don't we take a 7 five-minute break and start again at 8:39.</p> <p>8 (Whereupon, a break is taken at 8:34 p.m.) 9 (Back on the record at 8:39 p.m.)</p> <p>10 CHAIRMAN FLANAGAN: All right. Ladies and 11 gentlemen, welcome. It is -- ladies and gentlemen, can 12 we please take our seats so we can begin the hearing 13 again? It is 8:40. We're back on the record. Lori, 14 would you call the roll, please?</p> <p>15 SECRETARY TAGLAIRINO: Ms. Sovolos? 16 BOARD MEMBER SOVOLOS: Here.</p> <p>17 SECRETARY TAGLAIRINO: Mr. Symonds? 18 BOARD MEMBER SYMONDS: Here.</p> <p>19 SECRETARY TAGLAIRINO: Mr. Maselli is 20 excused. Mr. Cammarata is excused. MR. Flanagan? 21 CHAIRMAN FLANAGAN: Here.</p> <p>22 SECRETARY TAGLAIRINO: Mr. Rosenbaum? 23 BOARD MEMBER ROSENBAUM: Here.</p> <p>24 SECRETARY TAGLAIRINO: Mr. Boyan? 25 BOARD MEMBER BOYAN: Here.</p>

<p style="text-align: right;">Page 65</p> <p>1 SECRETARY TAGLAIRINO: Who am I missing?</p> <p>2 Mr. Newlin?</p> <p>3 BOARD MEMBER NEWLIN: Here.</p> <p>4 SECRETARY TAGLAIRINO: Mr. Addonizio?</p> <p>5 BOARD MEMBER ADDONIZIO: Here.</p> <p>6 SECRETARY TAGLAIRINO: Did I miss anything?</p> <p>7 Okay.</p> <p>8 CHAIRMAN FLANAGAN: I think you got them</p> <p>9 all. Steve, do you have some questions for the</p> <p>10 witness?</p> <p>11 MR. MLENAK: Yes. This application is</p> <p>12 being reviewed by the Board under up the Sica standard,</p> <p>13 as you know. In your testimony you seem to suggest in</p> <p>14 parts that there's a separate standard that needs to be</p> <p>15 reviewed in light of this being Whispering Woods</p> <p>16 hearing. Did I hear this correctly?</p> <p>17 THE WITNESS: It's not a separate standard,</p> <p>18 but I think, as I said, the concentration on -- is what</p> <p>19 are the modifications or the concessions that are on</p> <p>20 the table that would motivate the Board to reverse its</p> <p>21 opinion.</p> <p>22 MR. MLENAK: Could the Board change its</p> <p>23 mind without any modifications? And not conceding that</p> <p>24 there aren't any. Could the Board simply change its</p> <p>25 mind?</p>	<p style="text-align: right;">Page 66</p> <p>1 THE WITNESS: It would seem to me that the</p> <p>2 Board would have to explain why it changed its mind,</p> <p>3 because this is an evidentiary hearing. So I would say</p> <p>4 that just because, you know, the governing body would</p> <p>5 like to settle should be irrelevant because it has</p> <p>6 nothing to do with the evidence on the record, and when</p> <p>7 the governing body put this out to bid they didn't have</p> <p>8 any idea about the visual impact study or how many</p> <p>9 trees were going to be moved. They in a sense, I don't</p> <p>10 want to say they winged it, but essentially they had</p> <p>11 very little information.</p> <p>12 So my focus is on what concessions are on</p> <p>13 the table that would -- that a reasonable person --</p> <p>14 that a Board member would say I now have greater</p> <p>15 flexibility in voting than I had before.</p> <p>16 MR. MLENAK: Right. The point of my</p> <p>17 question though is just to understand that the Board's</p> <p>18 still reviewing this under the Sica standards.</p> <p>19 THE WITNESS: That's my understanding.</p> <p>20 MR. MLENAK: And if they determine now</p> <p>21 based on the litigation and the settlement, which</p> <p>22 courts have encouraged parties to settle, as opposed --</p> <p>23 you understand that, right, Mr. Steck?</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. MLENAK: Okay. And determined based on</p>
<p style="text-align: right;">Page 67</p> <p>1 that litigation and the certainties of that in terms of</p> <p>2 both time, cost, and result, that the Board determined</p> <p>3 in review of the record that has been incorporated here</p> <p>4 that the Sica standard has been established could they</p> <p>5 do that?</p> <p>6 THE WITNESS: I think it's a evidentiary</p> <p>7 based decision. If you're suggesting to me that</p> <p>8 because there's a settlement and because courts like</p> <p>9 settlements because it lessens litigation, just because</p> <p>10 there's a settlement offered the Board could switch</p> <p>11 from a denial to an approval, I think there has to be</p> <p>12 a -- an analysis of how the public interest is being</p> <p>13 benefited by these concessions. And I think the</p> <p>14 application is headed in the wrong direction because of</p> <p>15 the new evidence. I think it's harder to meet the Sica</p> <p>16 standard based on these modifications.</p> <p>17 MR. MLENAK: Did you review the complaint</p> <p>18 that was filed by Verizon?</p> <p>19 THE WITNESS: I --</p> <p>20 MR. SIMON: In terms of, are you asking him</p> <p>21 as a planner?</p> <p>22 MR. MLENAK: To give the testimony that</p> <p>23 he's given today. As part of preparation, did you</p> <p>24 review the complaint that was filed in Federal Court?</p> <p>25 THE WITNESS: I don't recall reviewing the</p>	<p style="text-align: right;">Page 68</p> <p>1 complaint.</p> <p>2 MR. MLENAK: Well, you gave testimony</p> <p>3 earlier that there was no concession on the height.</p> <p>4 That the height was exactly the same. Do you recall</p> <p>5 before the Board voted the first time that I believe</p> <p>6 you advocated, Mr. Simon advocated that the Applicant</p> <p>7 should have amended its application to reduce the</p> <p>8 height to 86 feet, but you took umbrage with the fact</p> <p>9 that they did not. Do you recall that?</p> <p>10 THE WITNESS: That's a procedural issue.</p> <p>11 It seems to me that's legal, not planning. All I know</p> <p>12 is that when this Board denied the application it was</p> <p>13 an 86-foot tall faux tree.</p> <p>14 MR. MLENAK: To refresh your recollection</p> <p>15 would it surprise you to recall that the application</p> <p>16 was actually 140 feet. What was on the table was a</p> <p>17 Verizon offered condition to reduce it to 86 feet.</p> <p>18 MR. SIMON: Let's just be clear that the</p> <p>19 Applicant amended their application, at least verbally,</p> <p>20 to 120 feet, and then agreed as a condition of approval</p> <p>21 to reduce the height to I believe it was 86 feet, and</p> <p>22 the Board denied the application based on that proposed</p> <p>23 condition of 86 feet.</p> <p>24 MR. MLENAK: The complaint -- the point I'm</p> <p>25 trying to understand --</p>

<p style="text-align: right;">Page 69</p> <p>1 MR. SIMON: The reason why I'm saying to</p> <p>2 you, it's not to be argumentative --</p> <p>3 MR. MLENAK: I understand.</p> <p>4 MR. SIMON: -- is that he's giving planning</p> <p>5 testimony, and he was there at the hearings and all of</p> <p>6 at that. So his planning testimony is not that -- it</p> <p>7 was originally submitted at 140 feet. The bottom line</p> <p>8 is that the Board denied and the Resolution states that</p> <p>9 the denial is based on the 86 feet. And the reasons</p> <p>10 we'll talk about later as to why the Board denied it at</p> <p>11 86 feet. And that's what I believe he testified to.</p> <p>12 MR. MLENAK: Well, the planning testimony</p> <p>13 that he just gave is that there needs to be concessions</p> <p>14 and there was no concession on height. And for the</p> <p>15 record, the settlement here does reflect a concession</p> <p>16 in height from what the lawsuit was seeking approval</p> <p>17 from. So we can move on.</p> <p>18 THE WITNESS: My focus is on the starting</p> <p>19 point being -- before the Board voted what was on the</p> <p>20 table was an 86-foot tall faux tree. And everyone here</p> <p>21 including me knows that there were shrinkages over</p> <p>22 time. And they're somewhat inconsistent, you know,</p> <p>23 early on in the testimony is we can't shrink it anymore</p> <p>24 and then it got shrunk. But the jumping off spot in</p> <p>25 terms of the settlement is, in my mind, what has</p>	<p style="text-align: right;">Page 70</p> <p>1 changed that is in the public interest since you denied</p> <p>2 the 86-foot tall tree.</p> <p>3 MR. MLENAK: You testified that if there</p> <p>4 was a collocator you'd have to expand the lease area?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. MLENAK: What in the record supports</p> <p>7 that conclusion?</p> <p>8 THE WITNESS: Well, first of all, there's a</p> <p>9 change in that the Applicant in the settlement says,</p> <p>10 the cable transfer can't be more than 7-feet tall.</p> <p>11 That means you can't stack -- I presume that means that</p> <p>12 the cabinets can't be more than 7 feet. You wouldn't</p> <p>13 just say you can run your cables -- it doesn't make any</p> <p>14 sense to say I'm going to limit the height of the cable</p> <p>15 transfer to 7 feet and then be silent about the</p> <p>16 cabinets. It tells me that the intent there is to make</p> <p>17 this landscaping effective, to make the 6-foot fence</p> <p>18 effective there's a limit of 7 feet. That means that</p> <p>19 you can't stack anything there. And the initial</p> <p>20 application of the Applicant that showed a sample build</p> <p>21 out of a 30-by-60-foot lease area had four rectangles</p> <p>22 for four providers. And I think even the testimony</p> <p>23 this evening was that the current compound area at the</p> <p>24 moment can only accommodate Verizon. I think that was</p> <p>25 said this evening.</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. MLENAK: So if the leased area had to</p> <p>2 be expanded what would have to happen?</p> <p>3 THE WITNESS: Well, the Applicant doesn't</p> <p>4 have to do anything, because the Applicant -- if this</p> <p>5 is approved part of the lease area isn't changed. The</p> <p>6 Applicant as I understand it has the right to use that</p> <p>7 entire 30-by-60-foot lease area. Now, they may have to</p> <p>8 come back to this Board to say, you know, I want to</p> <p>9 increase it by 10 feet or 10 percent because I have a</p> <p>10 collocator coming in, but I think that they have a</p> <p>11 right because of that bid document to expand it to</p> <p>12 30-by-60 feet.</p> <p>13 MR. MLENAK: But under the terms of the</p> <p>14 settlement agreement it would have to come before the</p> <p>15 Board and the Township would have to approve that. You</p> <p>16 testified that this Board may have to approve it based</p> <p>17 on Mr. Masters' testimony having over a hundred and</p> <p>18 never seen one denied. Doesn't mean this Board could</p> <p>19 not review and opine and impose reasonable conditions</p> <p>20 upon that; whereas, they couldn't necessarily --</p> <p>21 THE WITNESS: But the problem is, as I said</p> <p>22 in my testimony, is that once the tower is there the</p> <p>23 Applicant in a sense has a leg up. Because the law</p> <p>24 says we like to collocate and the law says it's okay to</p> <p>25 increase the height of the tower. It's like, you know,</p>	<p style="text-align: right;">Page 72</p> <p>1 once you approve a helipad in your town you've lost</p> <p>2 control because the FAA covers everything else. And</p> <p>3 that's the same thing here. Once there's a tower</p> <p>4 approved while someone may have to apply to this Board</p> <p>5 in my opinion this Board would have a harder time</p> <p>6 denying an application for collocation. Because all of</p> <p>7 the law says that's a good thing to stuff these towers</p> <p>8 with more providers.</p> <p>9 MR. MLENAK: You talked about the site plan</p> <p>10 extending beyond the lease area and needing to review</p> <p>11 the whole lot in terms of the site plan. What</p> <p>12 improvements are proposed outside the lease area that</p> <p>13 would trigger site plan approval?</p> <p>14 THE WITNESS: Well, there's landscaping</p> <p>15 that's proposed. There's drainage basins being</p> <p>16 proposed. Apparently the town put up fencing which is</p> <p>17 normally shown on the site plan. There's aseptic area.</p> <p>18 If this were a private application for a commercial use</p> <p>19 you would require a septic area, you might require a</p> <p>20 reserved septic area in case that fails. You would</p> <p>21 require landscaping. You would require drainage. All</p> <p>22 those things would be part and parcel of the site plan</p> <p>23 approval.</p> <p>24 MR. MLENAK: But not for property owned by</p> <p>25 the Township?</p>

<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: I'm not sure if it's</p> <p>2 automatically exempt. Some ordinances say that</p> <p>3 municipal property is exempt. I don't recall that</p> <p>4 Harding Township does exempt municipal projects. They</p> <p>5 would likely have to go before the Planning Board for a</p> <p>6 --</p> <p>7 MR. SIMON: Capital review.</p> <p>8 THE WITNESS: Capital improvement review.</p> <p>9 MR. MLENAK: And just to understand on the</p> <p>10 trees -- my last question -- was it your testimony that</p> <p>11 it would be preferential to leave dead trees?</p> <p>12 THE WITNESS: It's preferential -- it's not</p> <p>13 preferential to leave dead trees, but on trees that</p> <p>14 let's say an invasive species, if that's a 30-foot tree</p> <p>15 and the concern is aesthetics, no one looking at this</p> <p>16 from their backyard is going to say, oh, how ugly.</p> <p>17 It's an invasive tree. The answer is, it has an</p> <p>18 aesthetic effect of modifying the look of this plastic</p> <p>19 tube. And in my opinion it certainly is worthwhile</p> <p>20 taking down dead trees, especially if they're going to</p> <p>21 fall on someone or a building, but in the discussions</p> <p>22 that went in here the arborist for the town was saying,</p> <p>23 oh, you can leave it, it's fine, but you're doing me a</p> <p>24 favor if you're going to pay for its removal. The</p> <p>25 arborist didn't even know how tall this tower was going</p>	<p style="text-align: right;">Page 74</p> <p>1 to be. And in my opinion if you look at the current</p> <p>2 landscaping there, even the dead trees with the vines</p> <p>3 on them, it has a modifying effect. And that's all</p> <p>4 going to disappear.</p> <p>5 MR. MLENAK: Okay.</p> <p>6 CHAIRMAN FLANAGAN: Board, if we have any</p> <p>7 questions we'll think about it. I think we'll ask Mr.</p> <p>8 Schneider to ask his question then we'll come back to</p> <p>9 the floor.</p> <p>10 Mr. Schneider, do you have any questions?</p> <p>11 MR. SCHNEIDER: A couple, very briefly.</p> <p>12 I'll save -- in the interest of time I'll save most of</p> <p>13 it for summation.</p> <p>14 BY MR. SCHNEIDER:</p> <p>15 Q. Mr. Steck, referring to what has been</p> <p>16 marked as O-10, and specifically Sheet P-1, the red</p> <p>17 represents the boundaries of the state and the national</p> <p>18 district as distinct from the local district; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And I believe, and correct me if I'm wrong,</p> <p>21 you indicated that Mr. Masters did not take any photos</p> <p>22 from the point which is the border of the state and</p> <p>23 National District; did I understand your testimony?</p> <p>24 A. The border closest to the proposed site,</p> <p>25 yes.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Okay. But he did take -- but photos one,</p> <p>2 eight, and four in essence represent photos taken at</p> <p>3 the border of the state and National District; correct?</p> <p>4 A. Yes, but far afield from the closest border</p> <p>5 to the subject site.</p> <p>6 Q. But nevertheless at the border. Referring</p> <p>7 to Sheet P-8. The photograph on the right, I'll let</p> <p>8 you get there. I'm sorry. Did you take that picture?</p> <p>9 A. The one on -- the February 27th, 2018 one?</p> <p>10 Q. Yes.</p> <p>11 A. No. That was taken by Mr. O'Donnell.</p> <p>12 Q. Okay. And did you ask Mr. O'Donnell</p> <p>13 whether the crane that is depicted on that photo</p> <p>14 accurately represents the crane that was on-site at the</p> <p>15 time?</p> <p>16 A. I did not ask Mr. O'Donnell about the crane</p> <p>17 height. I showed that -- I would have shown it even</p> <p>18 without the crane because it shows what the winter view</p> <p>19 of the existing tree cover is.</p> <p>20 Q. I want to show you what was marked</p> <p>21 previously as A-37. That being the Applicant's photo</p> <p>22 simulations, and I'm going to refer you to the photos</p> <p>23 at that are reflected in photographs one, two, three,</p> <p>24 et cetera. And take a look at the crane, if you may.</p> <p>25 SECRETARY TAGLAIRINO: Mr. Schneider, do</p>	<p style="text-align: right;">Page 76</p> <p>1 you need me to find those?</p> <p>2 MR. SCHNEIDER: No. It's not worth it.</p> <p>3 A. There's an extension on the cranes there.</p> <p>4 Q. Does that look like the same crane that is</p> <p>5 depicted on P-8?</p> <p>6 A. It does not. That doesn't appear to be an</p> <p>7 extension on it.</p> <p>8 Q. So in fact, the crane that's depicted on</p> <p>9 P-8 is not the same crane that was the subject of the</p> <p>10 visual analysis taken on February -- in February of</p> <p>11 2018; is that correct?</p> <p>12 A. That's correct. I took it to identify what</p> <p>13 the trees looked like in the winter-time with</p> <p>14 respect -- and the orientation is I show where tree 48</p> <p>15 was.</p> <p>16 Q. But for purposes of the record that's not</p> <p>17 an accurate depiction of the crane on-site on</p> <p>18 February 17, 2018?</p> <p>19 A. That's correct. There's no extension on</p> <p>20 the top.</p> <p>21 Q. What is -- just so there's no</p> <p>22 misunderstanding, putting aside the Tulip tree that was</p> <p>23 the subject of some discussion, what's the total number</p> <p>24 of trees that are proposed to being removed by the</p> <p>25 Applicants?</p>

<p style="text-align: right;">Page 77</p> <p>1 A. I think it's 33.</p> <p>2 Q. Right. And if you left -- it will be 34, I</p> <p>3 think, and if you left the Tulip it will be 33, does</p> <p>4 that sound --</p> <p>5 A. Yes. That sounds numerically correct.</p> <p>6 Q. And of the 33 or 34 have any of them been</p> <p>7 removed already?</p> <p>8 A. Yes.</p> <p>9 Q. How many?</p> <p>10 A. I think four, if I recall correctly.</p> <p>11 Q. Two.</p> <p>12 MR. SIMON: It's two.</p> <p>13 Q. So that takes us down to either 32 or 31.</p> <p>14 Of the remaining 31 how many are dead?</p> <p>15 A. I know it's on the record. I don't recall</p> <p>16 the number, but as shown in the upper right-hand corner</p> <p>17 of -- well, let me just -- as shown in the upper</p> <p>18 right-hand corner of P-6 the area is, at least as of</p> <p>19 May 29th of this year, heavily wooded when it's in</p> <p>20 leaf.</p> <p>21 Q. Would it refresh your recollection if I</p> <p>22 told you that the testimony reflected -- the testimony</p> <p>23 based on Mr. Linson and Mr. Reynolds was that of the</p> <p>24 trees proposed to be removed 20 were designated as</p> <p>25 dead, would that refresh your recollection?</p>	<p style="text-align: right;">Page 78</p> <p>1 A. I don't recall them as being dead. I think</p> <p>2 the testimony was not that cut and dry. It was that</p> <p>3 some of them may die in the future. But I'm not sure</p> <p>4 that that many were dead today.</p> <p>5 Q. Would it refresh your recollection if I</p> <p>6 told you that four were designated as dying; correct?</p> <p>7 A. As like dying within the next ten years I</p> <p>8 think was the testimony.</p> <p>9 Q. For a short period of time. And how many</p> <p>10 were designated as invasive species?</p> <p>11 A. Maybe that's where I got my four. I can't</p> <p>12 remember the number.</p> <p>13 Q. I'll be help you along. It was five.</p> <p>14 A. I was close.</p> <p>15 Q. So as of the total of 33 that are proposed</p> <p>16 to be removed, and putting aside the expansion of the</p> <p>17 compound, how many trees are proposed -- how many trees</p> <p>18 in good condition are proposed to be removed?</p> <p>19 A. I don't have those numbers handy. I'd have</p> <p>20 to study them. I know it's on the record numerically,</p> <p>21 but I did not count them up for my testimony.</p> <p>22 Q. Would it refresh your recollection if I</p> <p>23 told you that the testimony equated to five live trees</p> <p>24 proposed to be removed?</p> <p>25 A. Again, I didn't total up the numbers, and I</p>
<p style="text-align: right;">Page 79</p> <p>1 didn't testify to that this evening so I'm not sure.</p> <p>2 Q. And how many trees are proposed to be</p> <p>3 planted as part of the revised landscaping plan?</p> <p>4 A. It's on page P-5 and I'll have to add them</p> <p>5 up. I think 47. The numbers on page P-5 of the lower</p> <p>6 right-hand corner there is a quantity count.</p> <p>7 Q. I'll ask you to add it up one more time.</p> <p>8 A. Okay.</p> <p>9 MR. SIMON: Can I --</p> <p>10 CHAIRMAN FLANAGAN: Jamie, can you shut the</p> <p>11 door? The bugs are starting to come in.</p> <p>12 MR. SIMON: Mr. Steck, if I told you that</p> <p>13 the number adds up to 57, does that seem -- without</p> <p>14 looking at your Casio calculator.</p> <p>15 A. I want to look at my calculator.</p> <p>16 CHAIRMAN FLANAGAN: I think he just gave</p> <p>17 you the answer, Mr. Steck.</p> <p>18 MR. SIMON: I don't know much.</p> <p>19 MR. SCHNEIDER: It may be one of the few</p> <p>20 things that Mr. Simon and I agree upon.</p> <p>21 THE WITNESS: It's 57 trees are being</p> <p>22 proposed. Certain number are deciduous, and a certain</p> <p>23 number are evergreens.</p> <p>24 Q. Just so I'm clear because math was never my</p> <p>25 strong point. Five live trees are being removed as a</p>	<p style="text-align: right;">Page 80</p> <p>1 result of the installation of the initial compound, and</p> <p>2 57 in total are proposed, correct, to be replaced?</p> <p>3 A. Well, these are -- the 57 includes -- well,</p> <p>4 the planting schedule is not just tall trees, again.</p> <p>5 Q. But a total of 57 trees, right?</p> <p>6 A. Fifty-seven items are being planted.</p> <p>7 Q. So the replacement ratio equates</p> <p>8 approximately as a ten-to-one replacement ratio; is</p> <p>9 that correct? Fifty-seven trees being proposed, five</p> <p>10 live trees being removed; correct?</p> <p>11 A. Numerically, but aesthetically it's night</p> <p>12 and day.</p> <p>13 Q. Tree 48 which you refer to in your exhibit</p> <p>14 O-10, that is only going to be required to be removed</p> <p>15 if, in fact, the compound is expanded; correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. You talked about Verizon's -- I want</p> <p>18 to be clear on your verbiage -- always being the top</p> <p>19 dog in terms of height if there is --</p> <p>20 A. I didn't say always. I said in the</p> <p>21 settlement agreement you have the right to be the top</p> <p>22 tier. So if someone comes in below you have the right</p> <p>23 to be the highest carrier on the tower.</p> <p>24 Q. That's correct. So if, in fact -- so</p> <p>25 Verizon -- if in fact there was an extension of the</p>

<p style="text-align: right;">Page 81</p> <p>1 tower, correct, Verizon would have the right under the 2 settlement to the "higher height"; correct? 3 A. To even be higher than 80 feet. 4 Q. That's correct. And if there was an 5 extension any such collocator and/or Verizon would be 6 required to come before this Board; correct? 7 A. Yes. 8 Q. Okay. Now, Mr. Simon asked Mr. Masters a 9 series of questions about his knowledge as to what 10 rights, if any, wireless carriers have to automatically 11 extend the tower either under Federal law or state law. 12 You heard that testimony; correct? 13 A. Yes. 14 Q. Are you likewise familiar with the 15 processes relating to applications for extensions of 16 towers? 17 A. I'm generally familiar that by state law 18 and the Municipal Land Use Law I think they can be 19 increased by 10 feet. And the Federal law says 10 20 percent but not more than 20 -- 10 ten percent or 21 20 feet, whichever is larger I think is the way it 22 reads. 23 Q. Right. And under that procedure the right 24 to extend is essentially automatic; correct? 25 A. That's my understanding.</p>	<p style="text-align: right;">Page 82</p> <p>1 Q. So any such applicant for an extension 2 would not have to come before a Board such as the 3 Harding Township Board of Adjustment; correct? 4 A. Well, the stipulation -- 5 Q. I'm not asking you about the stipulation. 6 I'm asking you as a matter of law? 7 A. Yes. 8 Q. And you read the Stipulation of Settlement 9 consent order; correct? 10 A. Yes. 11 Q. Does the Stipulation or the Consent, and 12 Consent Order address a variation on the rights of the 13 collocator to automatically extend the tower? 14 A. It says that there must be an application 15 to the Board of Adjustment. 16 Q. Which otherwise such application would not 17 be required as a matter of law; correct? 18 A. That's correct. 19 Q. So -- and in fact, the stipulation says 20 that "Verizon Wireless hereby waves any applicable 21 right of authority to extend the height without further 22 zoning approval under applicable law; correct? 23 A. Yes. 24 Q. So in fact, Verizon Wireless has waived the 25 statutory right in conjunction with any extension of</p>
<p style="text-align: right;">Page 83</p> <p>1 the tower requiring such collocator to come before the 2 Board; correct? 3 A. But it hasn't waived its right to appeal 4 any adverse decision from the Board. 5 Q. Fine. If a -- when -- from a planning -- 6 Mr. Stuck (sic) -- Mr. Steck -- 7 A. I answer to any name. 8 Q. You previously have served, as I recall, as 9 a planning consultant to various municipalities; 10 correct? 11 A. A number of municipalities, yes. 12 Q. Correct. And, in fact, if I recall many, 13 many years ago you indicated that you actually might 14 have testified in favor of a couple of wireless 15 communication applications? 16 A. Yes. I did some work for Verizon early on, 17 but when I took one opposition case I seem to never get 18 the calls anymore. 19 Q. Both in conjunction with your municipal 20 experience and having testified for wireless 21 communications carriers, do you believe it is an 22 appropriate planning consideration to encourage 23 collocation where towers are going to be built? 24 A. Yes. 25 Q. So it would certainly be in the interest of</p>	<p style="text-align: right;">Page 84</p> <p>1 the community, the Board, and other parties to 2 encourage the availability of the tower to accommodate 3 future collocators; correct? 4 MR. SIMON: I'm going to object in terms of 5 the way you characterized that. Mr. Steck, if you -- 6 BY MR. SCHNEIDER: 7 Q. Do you believe that collocation advances 8 appropriate planning purposes where there is a proposed 9 tower? 10 A. It does if the tower is put in an 11 appropriate location to start with. 12 Q. So even if you disagreed with where the 13 tower was located you would be of the opinion that 14 collocation is not an appropriate goal if, for example, 15 a collocator proposed to locate on this tower at 70 16 feet? 17 A. Would you ask that again, please? 18 Q. If this tower was approved by this Board, 19 is it a appropriate planning consideration to encourage 20 a collocator to locate on this tower at 70 feet? 21 A. Assuming that the location meets the 22 standards today, absent everything else, my concern is 23 that this is in a Historic District which makes it 24 unique, and there's been no evidence about what that 25 would look like.</p>

<p style="text-align: right;">Page 85</p> <p>1 Q. Let me rephrase the question. If in fact 2 this Board approved the tower in question, and all 3 litigation was concluded, and all other governmental 4 approvals were obtained, and the tower exists at a 5 height of 80 feet, 86 feet to top of branches, would it 6 be consistent with good planning to encourage 7 collocation at a lower height on the approved and 8 constructed tower? 9 A. If you isolate or extract all other 10 considerations and just looked at collocation and 11 didn't care about historic districts or anything else 12 or proximity to residential property lines, yes. 13 MR. SCHNEIDER: I have no further 14 questions. 15 MR. SIMON: Just a couple of follow ups. 16 BY MR. SIMON: 17 Q. With regard to the agreement that you 18 testified to earlier, the Settlement Agreement, you 19 recall that it states in pertinent part that if there's 20 a conflict between the terms of the agreement and 21 Municipal Land Use Law the Municipal Land Use Law 22 controls; correct? 23 A. That's one of the -- 24 MR. SCHNEIDER: I don't recall him 25 testifying to that.</p>	<p style="text-align: right;">Page 86</p> <p>1 MR. SIMON: You just asked him a question, 2 Rich, as to the contents of the agreement and I'm 3 asking him a follow-up question regarding the contents 4 of the agreement. 5 MR. MLENAK: It's an appropriate question. 6 Go ahead. 7 Q. Number two, that a third-party carrier is 8 not a party to that agreement; correct? 9 A. That's correct. 10 Q. And with regard to the collocation 11 questions that Mr. Schneider asked you, collocation was 12 similarly proposed the first time around when the 13 application was denied in 2022; correct? 14 A. That's correct. 15 MR. SIMON: Nothing further. Thank you. 16 CHAIRMAN FLANAGAN: Does the Board have any 17 questions? 18 BOARD MEMBER ROSENBAUM: I have one 19 question. So on Exhibit A-37 there's a number of photo 20 sims, 2G, 3G, et cetera, et cetera. 21 THE WITNESS: Yes. 22 BOARD MEMBER ROSENBAUM: I've heard your 23 testimony with regard to some trees dying and still 24 provide some cover based on the time of year and stuff 25 like that. My question is really limited to in your</p>
<p style="text-align: right;">Page 87</p> <p>1 experience, is the height shown here on those photo 2 sims, 2G, 3G, et cetera, representative of the height? 3 THE WITNESS: I would trust that the 4 Applicant has accurately represented the height. 5 BOARD MEMBER ROSENBAUM: So you don't feel 6 -- you have no reason to doubt -- 7 THE WITNESS: I have no reason to doubt the 8 height. What I -- what I question is the nature of the 9 tree that was superimposed. 10 BOARD MEMBER ROSENBAUM: Understood. 11 THE WITNESS: Because no one here has seen 12 it. And the fact that the applicant chose not to do a 13 rendering with trees removed. 14 BOARD MEMBER ROSENBAUM: Understood. Okay 15 that was just my question. Thank you. 16 CHAIRMAN FLANAGAN: Anyone else? 17 BOARD MEMBER SYMONDS: I have one for Mr. 18 Steck, I guess it's A-37 P-2. 19 MR. MLENAK: This is O-10. 20 BOARD MEMBER SYMONDS: O-10, sorry. The 21 one you're showing. On P-2 you indicate a tower base 22 at 346 feet and a tower top at 450 feet. The delta 23 being 104 feet. Is that a recognition of the fact that 24 the monopole flagpole has to be 20-feet taller than the 25 tree or is that the fact that; is that an error?</p>	<p style="text-align: right;">Page 88</p> <p>1 THE WITNESS: That's an error. 2 MR. SIMON: So in terms of P-2 in terms of 3 the numbers -- 4 THE WITNESS: So 346 feet is the base of 5 the tower, plus 86 feet gives me 432 feet. So the top 6 of this tower, including the overage of branching, is 7 432 feet above sea level. And I just highlighted the 8 areas that are already 400 feet. 9 BOARD MEMBER SYMONDS: But I'm more curious 10 about, like I said, because the flagpole has to be 11 taller than the tree to get the same radio frequency 12 performance. We have heard testimony to that effect 13 and I wondered if you took that into account in your 14 planning. 15 MR. MLENAK: I think he just didn't have 16 his Casio with him that day. 17 BOARD MEMBER SYMONDS: Okay. Fine. 18 THE WITNESS: Thank you. I only analyzed 19 this on the tree that's being proposed. And thank you 20 for -- 21 MR. SIMON: When you say this? 22 THE WITNESS: P-2. And thank you for the 23 correction, that the tower top should not be 450 it 24 should be 432. 25 CHAIRMAN FLANAGAN: Anyone else?</p>

<p style="text-align: right;">Page 89</p> <p>1 BOARD MEMBER BOYAN: Mike, I have a 2 question for Steve with respect to Mr. Steck's 3 testimony. So Mr. Steck testified that no one's seen 4 the tree with their own eye, and that the photograph 5 that's been taken is shown that to his eye doesn't show 6 any cell nodes. If a tower hypothetically is built and 7 it looks dissimilar from this picture and/or cell nodes 8 are visible is that not a violation of the Stipulation 9 Agreement? And what would be the remedy for that? 10 MR. MLENAK: The condition that would be in 11 the Resolution, should this Board approve it as 12 reflected in the Stipulation of Settlement number two, 13 does not merely provide that the tower has to be built 14 in accordance with the specifications that are attached 15 as Exhibit-3, but it also provides specifically that 16 the tree has to be consistent with the specific design 17 style shown in the sample tree photo. 18 It would be akin to if this Board had an 19 application with architectural renderings and it had a 20 specific condition saying it has to look like that. 21 That is a condition. And if it doesn't look like that 22 or it has antennas poking out I would say that would be 23 a violation of that condition that the Zoning Officer 24 could enforce. 25 BOARD MEMBER BOYAN: I'm sorry, so the</p>	<p style="text-align: right;">Page 90</p> <p>1 Zoning Officer could enforce means what exactly is the 2 remedy in that situation? 3 MR. MLENAK: Well, they would go out and 4 issue violations of the zoning permit. But it would 5 start even earlier than that if they were to present 6 building plans, for example, that were to show 7 something inconsistent with this conceivably shouldn't 8 get a building permit. But after building permits are 9 issued and it's constructed and it looks nothing like 10 this that would be a violation of that condition, just 11 like any other conditions the Board could impose. 12 BOARD MEMBER BOYAN: So the Board has some 13 assurances that if it perceives that the -- what's 14 built is going to look like in the picture. 15 MR. MLENAK: Yes. The Stipulation of 16 Settlement is clear that the photo is a very important 17 Exhibit that will be included as part of the Resolution 18 if this Board were to approve. 19 BOARD MEMBER BOYAN: My second question is 20 about the testimony about the five trees that would 21 need to be removed in the instance of a collocator. Is 22 the removal of those trees, four of which is in the 23 Stipulation of Agreement that Verizon is going to 24 plant, would the removal of those five trees be also a 25 violation of this Stipulation of Agreement.</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. MLENAK: It's very speculative and it's 2 difficult to say because they would only be removed, as 3 Mr. Steck testified to, if the lease area itself was 4 expanded, which of course is not before us. The Town 5 would have to go out and expand that. 6 BOARD MEMBER BOYAN: It's not in the 7 existing lease area. 8 MR. MLENAK: Correct. 9 BOARD MEMBER BOYAN: And expansion of that 10 lease area would come before this body? 11 MR. MLENAK: No. It would come before this 12 body if the tower had to be extended height-wise. 13 Otherwise say, for example, a collocator wanted to come 14 in and go at 70 feet, there's no extension of the 15 tower, that would be something that would not 16 necessarily need to come back before this Board. 17 BOARD MEMBER BOYAN: Understood. Thank 18 you. 19 BOARD MEMBER NEWLIN: I have a question for 20 Rich, Mike. 21 CHAIRMAN FLANAGAN: Sure. 22 BOARD MEMBER NEWLIN: Mr. Speck brought up 23 the aspect of maintenance of the tree. What is 24 Verizon's answer to that with regard to maintaining the 25 quality of the tree?</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. SCHNEIDER: The answer is that Verizon 2 will maintain the tree consistent with its initial 3 design. 4 BOARD MEMBER NEWLIN: So the Board can be 5 assured that the quality is going to be maintained 6 during the lease term. That if the plastic suddenly 7 starts to degrade and fall off -- 8 MR. SCHNEIDER: Correct. 9 BOARD MEMBER NEWLIN: -- that's not 10 something that Verizon would allow to remain 11 unaddressed? 12 MR. SCHNEIDER: Correct. 13 CHAIRMAN FLANAGAN: Anyone else? Mr. 14 Steck, just one question for you. You mentioned that 15 this tree was, I think, out of place being that it was 16 a pine tree, a fake pine tree, whatever, because there 17 were no other pine trees in the area, did I hear that 18 correctly? 19 THE WITNESS: There is -- I showed you on 20 one of the photographs, on the left-hand side, and I'll 21 get to the page in a moment. 22 BOARD MEMBER ROSENBAUM: Eight? 23 THE WITNESS: P-9, on the left-hand side 24 there is a evergreen. And so that's the closest one. 25 And you'll note that even with the 10-foot planting</p>

<p style="text-align: right;">Page 93</p> <p>1 height you still see the whole roof of the recycling 2 building. 3 CHAIRMAN FLANAGAN: All right. So you've 4 seen Exhibit A-37. That's this one. That's the photo 5 sims done by Verizon. 6 THE WITNESS: I have seen them, yes. 7 CHAIRMAN FLANAGAN: Do you have a copy of 8 them? 9 THE WITNESS: I think out of courtesy I may 10 be handed one. 11 MR. SCHNEIDER: Here you go. 12 CHAIRMAN FLANAGAN: I'm looking at the 13 photo titled number one. Lori, I don't know if it's 14 worth bringing that up. 15 SECRETARY TAGLAIRINO: Do you want me to 16 bring it up? 17 CHAIRMAN FLANAGAN: No -- well, maybe for 18 the public. 19 SECRETARY TAGLAIRINO: I'm sorry, which one 20 am I looking for? 21 MR. SIMON: Photo one. 22 MR. SCHNEIDER: A-37. 23 CHAIRMAN FLANAGAN: A-37 1G. 24 MR. MLENAK: Should be page three. 25 CHAIRMAN FLANAGAN: That's it. So in there</p>	<p style="text-align: right;">Page 94</p> <p>1 there are pine trees, correct, or evergreens? 2 THE WITNESS: Yes. 3 CHAIRMAN FLANAGAN: So going to page two, 4 and page two is before they put in the photo sim. 5 There are pine trees in that view as well, correct? 6 Evergreens maybe, I should say, above the roof of the 7 post office maybe? 8 THE WITNESS: Yes. 9 CHAIRMAN FLANAGAN: Okay. If you flip to 10 2G you can see the tree in that? 11 THE WITNESS: Yes. 12 CHAIRMAN FLANAGAN: Then from page three, 13 photo number three, are there pine trees in that photo? 14 THE WITNESS: They're all to the west of 15 the site. The closest one, as I've said -- 16 CHAIRMAN FLANAGAN: But hold on. From this 17 perspective are there pine trees in that shot? 18 THE WITNESS: There are pine trees in this 19 shot but the closest one is shown on the left-hand side 20 of the left photo on P-9. 21 CHAIRMAN FLANAGAN: So if you go to 3G then 22 with the tree superimposed could you point to that 23 tree? Lori, where is that? That's the one. Not you 24 Lori. This was a test. 25 SECRETARY TAGLAIRINO: Did I pass?</p>
<p style="text-align: right;">Page 95</p> <p>1 CHAIRMAN FLANAGAN: Where's the tree? 2 MR. SIMON: Are you asking him to go 3 through each page and identify where the tree is? 4 CHAIRMAN FLANAGAN: No. No. He testified 5 that there weren't any pine trees in the area. And I 6 wanted to understand what his testimony was. 7 THE WITNESS: No. What I said is the 8 closest evergreen is shown on P-9 on the left-hand 9 side. 10 CHAIRMAN FLANAGAN: But the viewscape is 11 what's important here, right? So isn't what it looks 12 like when it's viewed from whatever perspective? 13 THE WITNESS: From some locations it will 14 not be as visible. And in my opinion the Applicant 15 cherry-picked photos, and I picked photos which I think 16 were more accurately describing the impact on the 17 closest residential properties. 18 CHAIRMAN FLANAGAN: So you think they 19 cherry-picked photos that we show pine trees in the 20 background but you did the not cherry-pick when you 21 chose your photos without pine trees? 22 THE WITNESS: I didn't take this -- well, 23 the photos are what the photos are, but I already 24 testified that the applicant did not take photos that 25 were close to the property at the Historic District</p>	<p style="text-align: right;">Page 96</p> <p>1 line. And the locations in yellow were partly -- 2 CHAIRMAN FLANAGAN: I'm not questioning the 3 historic line or not. I'm just questioning your 4 statement about there's no pine trees in this photo. 5 Because I see in A-37 every photo in there has a pine 6 tree. Maybe I'm being misled? 7 THE WITNESS: If you look from the other 8 direction there are pine trees. But my point is that I 9 wanted to analyze where the greatest impact was rather 10 than ignoring that. 11 CHAIRMAN FLANAGAN: And that's from your 12 client's property, I guess? 13 THE WITNESS: From one of my client's 14 properties, yes. 15 CHAIRMAN FLANAGAN: What about planning 16 perspective, what about the rest of the town? Should 17 we be concerned about what it looks like from other 18 vantage points? 19 THE WITNESS: Well, someone who's a half 20 mile away is not going to be able to see this. 21 CHAIRMAN FLANAGAN: What about the vantage 22 points shown in these photos? Let's go to the front 23 page of this slide. It's the same slide actually. 24 THE WITNESS: In my opinion when you go -- 25 the proper analysis is where the impact is greatest.</p>

<p style="text-align: right;">Page 97</p> <p>1 CHAIRMAN FLANAGAN: Now, okay. So how do</p> <p>2 you define that? Is that where your client resides or</p> <p>3 is that the locations on the main road?</p> <p>4 THE WITNESS: Those are locations where</p> <p>5 there is private property that is close to the subject</p> <p>6 site.</p> <p>7 CHAIRMAN FLANAGAN: Did you take any photos</p> <p>8 from any private property close to the subject site</p> <p>9 that was not your client's? I'm looking at the photos,</p> <p>10 so here it is.</p> <p>11 THE WITNESS: Did I? Yes.</p> <p>12 CHAIRMAN FLANAGAN: You did? Which sites?</p> <p>13 THE WITNESS: When we did our walking tour</p> <p>14 I took photos all the way along when we did our walking</p> <p>15 tours.</p> <p>16 CHAIRMAN FLANAGAN: But have you presented</p> <p>17 those?</p> <p>18 MR. SIMON: Hold on a second. Let's make</p> <p>19 sure the record's clear. He presented an exhibit at</p> <p>20 the last hearing, the last set of hearings that</p> <p>21 included photos. Are you talking about the Exhibit</p> <p>22 O-10?</p> <p>23 CHAIRMAN FLANAGAN: I'm talking about he</p> <p>24 just stated that you need to look from a perspective</p> <p>25 where it's most impactful, and I asked where is it most</p>	<p style="text-align: right;">Page 98</p> <p>1 impactful from? Is it from where most people will see</p> <p>2 this when they're driving down the road or the post</p> <p>3 office, or is most impactful defined in some other</p> <p>4 fashion? And I think what he is telling me it is most</p> <p>5 impactful from your client's property. That's what I</p> <p>6 want to understand.</p> <p>7 MR. SIMON: If you understand the question</p> <p>8 answer it.</p> <p>9 THE WITNESS: It's most impactful in my</p> <p>10 opinion where it is proximate to the tower, where it is</p> <p>11 private property, and where there is not shielding by</p> <p>12 existing trees.</p> <p>13 CHAIRMAN FLANAGAN: All right. Thank you.</p> <p>14 Any members of the public? Anybody else on the Board</p> <p>15 have any questions?</p> <p>16 MR. SIMON: Mr. Flanagan, can I follow up</p> <p>17 with two quick questions?</p> <p>18 BY MR. SIMON:</p> <p>19 Q. The photo simulations that Mr. Flanagan was</p> <p>20 asking was from various vantage points, and any</p> <p>21 evergreen trees that are shown in those photographs</p> <p>22 those are not necessarily on-site, on the DPW site;</p> <p>23 correct?</p> <p>24 A. No. Many of them are on private</p> <p>25 properties. So there's no guarantee that they'll stay</p>
<p style="text-align: right;">Page 99</p> <p>1 there.</p> <p>2 Q. Right. And the photo simulations from</p> <p>3 the -- that Mr. Masters provided at the last set of</p> <p>4 hearings that culminated in the denial of the fake tree</p> <p>5 at 86 feet similarly showed the evergreen trees in the</p> <p>6 area; correct?</p> <p>7 A. Yes. They were aware by the Board when it</p> <p>8 made its decision to deny.</p> <p>9 Q. And the only difference between the photo</p> <p>10 sims of the 86-foot high fake tree that were denied and</p> <p>11 the current photo simulation is just superimposing</p> <p>12 Exhibit-2?</p> <p>13 A. The California tree.</p> <p>14 Q. California tree for presumably something</p> <p>15 that looked like the DelBarton tree; correct?</p> <p>16 A. It looks nothing like the DelBarton tree,</p> <p>17 because in the DelBarton tree you can see the radiating</p> <p>18 panels.</p> <p>19 Q. Thank you. Nothing further.</p> <p>20 CHAIRMAN FLANAGAN: Any member of the</p> <p>21 public --</p> <p>22 BOARD MEMBER SOVOLOS: I actually have one</p> <p>23 more question. Sorry. In O-10 on P-4 you show a</p> <p>24 photograph with the existing 6- to 7-foot fence. And I</p> <p>25 believe this is pointing to the border with the</p>	<p style="text-align: right;">Page 100</p> <p>1 O'Donnell property. Am I reading that correctly?</p> <p>2 THE WITNESS: You are correct.</p> <p>3 BOARD MEMBER SOVOLOS: Okay. Then you go</p> <p>4 to P-8 and you said that the photo on the right was</p> <p>5 taken from the O'Donnell property?</p> <p>6 THE WITNESS: Yes, but at approximately</p> <p>7 2018.</p> <p>8 BOARD MEMBER SOVOLOS: So has the fence</p> <p>9 changed?</p> <p>10 THE WITNESS: The town only put up the</p> <p>11 board-on-board fence within the last year and a half.</p> <p>12 It's not really board-on-board, it's just like a</p> <p>13 stockade fence.</p> <p>14 BOARD MEMBER SOVOLOS: So the view is</p> <p>15 different than is shown in this photo.</p> <p>16 THE WITNESS: Yes. That fence that they</p> <p>17 put up it's, again, about 6-and-a-half-feet tall.</p> <p>18 There's testimony in the record that it was installed</p> <p>19 within the last year and a half.</p> <p>20 BOARD MEMBER SOVOLOS: Thank you.</p> <p>21 CHAIRMAN FLANAGAN: Any members of the</p> <p>22 public not represented by Mr. Simon? Do you have any</p> <p>23 questions relating to the testimony Mr. Steck gave?</p> <p>24 And remember, there's time for public comment later.</p> <p>25 So it has it be a question directly related to what he</p>

<p style="text-align: right;">Page 101</p> <p>1 testified to. State your name and --</p> <p>2 MR. WILKERSON: John Wilkerson. I live on</p> <p>3 Long Hill Road. W-i-l-k-e-r-s-o-n.</p> <p>4 I just want to understand something. So</p> <p>5 you talked about the famous 57 trees. And I did the</p> <p>6 calculation and 35 of those are Norway spruce, Red</p> <p>7 maple, and green giant arborvitae. Those are the three</p> <p>8 big ones.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. WILKERSON: And they're going in at, I</p> <p>11 would assume, probably 10 feet?</p> <p>12 THE WITNESS: On P-5 on the bottom</p> <p>13 right-hand side where it says size for the --</p> <p>14 MR. WILKERSON: Okay. So the one time</p> <p>15 talking about anywhere from 6 to 10 feet. So they grow</p> <p>16 around a foot-and-a-half a year. And you mention in</p> <p>17 your comments that you hoped you would live another</p> <p>18 30-years, but that would add us up to 40, 45, 50 feet?</p> <p>19 THE WITNESS: They grow -- well, according</p> <p>20 to documentation in the let's say the Green Village</p> <p>21 they market them and say they'll grow to 60 feet.</p> <p>22 MR. WILKERSON: So what I'm trying to</p> <p>23 understand is, I was confused as to what the arborist</p> <p>24 said and what you thought, but it sounds like a mess.</p> <p>25 They're not really healthy trees. And so that kind of</p>	<p style="text-align: right;">Page 102</p> <p>1 leads me to say we're starting with a clean slate after</p> <p>2 all the things you have moved around and you end up</p> <p>3 having these 57 trees. So am I correct that we're</p> <p>4 going to have to wait 30 years to get things up to 60</p> <p>5 feet and the proposed is 80 feet?</p> <p>6 THE WITNESS: The arborist said one foot a</p> <p>7 year. And then the Applicant's landscape architect</p> <p>8 said 2 foot a year. So I picked the middle point and</p> <p>9 that's where I came to 33 years in order to get up to a</p> <p>10 mature height of 60 feet.</p> <p>11 MR. WILKERSON: So my question is we're</p> <p>12 going to have to wait. I'm 80 years old. I have</p> <p>13 longevity in my family. So I'm going to make it to a</p> <p>14 hundred. So for the next 20 years I'm going to be</p> <p>15 looking at whatever it is, whether it's a flagpole or a</p> <p>16 synthetic plastic California tree.</p> <p>17 THE WITNESS: Well, depending upon where</p> <p>18 you are the answer is, yes, it will be very visible.</p> <p>19 And again, as you ride around the state you see these</p> <p>20 faux trees and they don't fool you when they're so far</p> <p>21 above the existing vegetation. I've done cell towers</p> <p>22 out in Byram where you can see over the horizon. At a</p> <p>23 distance they're effective, but when you don't have a</p> <p>24 nesting with other tall vegetation in my opinion they</p> <p>25 look -- what's the technical term -- goofy. They know</p>
<p style="text-align: right;">Page 103</p> <p>1 --</p> <p>2 MR. WILKERSON: So I just want to -- some</p> <p>3 of the discussion is designed to lead us to believe</p> <p>4 that there's plenty of trees there and we'll add more,</p> <p>5 and that we won't be able to -- it won't be that</p> <p>6 visually obnoxious. But the fact is we're going to</p> <p>7 plant 57 trees. Most of what's there according to your</p> <p>8 arborist -- somebody's arborist, are crap and they're</p> <p>9 going to die, those numbers that the attorney gave --</p> <p>10 THE WITNESS: That's why this is a bad</p> <p>11 location. That should be left the way it is an someone</p> <p>12 should pick a location that's, in my opinion, that at</p> <p>13 least evaluates a nesting in existing trees that are</p> <p>14 healthy.</p> <p>15 MR. WILKERSON: So my question is we</p> <p>16 shouldn't fool ourselves thinking that because of all</p> <p>17 the hocus-pocus about the trees coming and going that</p> <p>18 if this is approved we're not going to see that much.</p> <p>19 It's not going to be --</p> <p>20 THE WITNESS: You shouldn't fool yourself,</p> <p>21 you're correct. And again, from the point of view of</p> <p>22 some of my clients, they're never going to see many of</p> <p>23 the trees because there's a 6-and-a-half foot fence in</p> <p>24 front of them that blocks the view. It really</p> <p>25 addresses the compound but not the cell tower.</p>	<p style="text-align: right;">Page 104</p> <p>1 CHAIRMAN FLANAGAN: Okay. You got your</p> <p>2 answers, Mr. Wilkerson? Who else has their hand</p> <p>3 raised? Somebody else. Just name and street, please.</p> <p>4 MR. KOVACS: James Kovacs, K-o-v-a-c-s.</p> <p>5 Village Road, 207. We live at 17, which is number two</p> <p>6 on the sims that we own. I've looked at the sims.</p> <p>7 I've walked the property. I've listened to the</p> <p>8 testimony saying that they couldn't eliminate the trees</p> <p>9 that were going to be cut down from the sims. It took</p> <p>10 me about a half an hour to figure out exactly which</p> <p>11 ones would come out from my viewscape. So my question</p> <p>12 is, do you think it would have been proper and possible</p> <p>13 to eliminate the trees that are going to be cut down</p> <p>14 and in preparing the sims?</p> <p>15 THE WITNESS: I've seen many architectural</p> <p>16 renderings that reflect what is proposed. And again,</p> <p>17 if the Applicant can hide the California tree behind</p> <p>18 branches a skilled person with graphics can remove the</p> <p>19 trees and show you a more accurate vision of what</p> <p>20 you're going to see.</p> <p>21 MR. KOVACS: Right. Thank you.</p> <p>22 CHAIRMAN FLANAGAN: You're up. Name and</p> <p>23 address, please.</p> <p>24 MR. WEPPLER: Larry Weppeler, Lees Hill</p> <p>25 Road, W-e-p-p-l-e-r. Is there any testimony -- you</p>

<p style="text-align: right;">Page 105</p> <p>1 raised --</p> <p>2 THE WITNESS: You've got to ask me a</p> <p>3 question.</p> <p>4 MR. WEPPLER: I'll ask you a question. Is</p> <p>5 there any testimony in the record, and I have to admit</p> <p>6 I haven't been at all of these hearings. I've been</p> <p>7 just to a couple of them. What the other -- and Mr.</p> <p>8 Flanagan raised the issue with you, that there are</p> <p>9 other evergreen trees in the surrounding area. Has</p> <p>10 anyone calculated or looked at the height of those</p> <p>11 evergreen trees in comparison with this tree?</p> <p>12 THE WITNESS: There is some evidence of the</p> <p>13 record, and the Board did a tour of several sites, but</p> <p>14 I don't think there's a quantification of -- and again,</p> <p>15 what's important to me is not only the height of</p> <p>16 another evergreen but where it is positioned. Do you</p> <p>17 see it in the same viewscape as this faux tree? And in</p> <p>18 my opinion, for a number of locations the fact that</p> <p>19 there are existing evergreens there the ones in the</p> <p>20 immediate area are not as tall as 86 feet in my</p> <p>21 opinion, and it depends on where you stand but they're</p> <p>22 not proximate to this. This is not going to be nested</p> <p>23 amongst other evergreens.</p> <p>24 MR. WEPPLER: Okay. Thank you.</p> <p>25 CHAIRMAN FLANAGAN: And to answer your</p>	<p style="text-align: right;">Page 106</p> <p>1 question, in the record there's an exhibit called A-37</p> <p>2 which Lori had up there, which is the exhibit I went</p> <p>3 through with Mr. Steck. And it identifies on the cover</p> <p>4 where certain photos were taken. And I'll tell you,</p> <p>5 there on Village Road right from the post office, by</p> <p>6 the side of the post office. The entrance to the</p> <p>7 recycling center. A couple from Conine's property,</p> <p>8 from the O'Donnell property, I think it is. And when</p> <p>9 you look at that you can see in those photo sims that</p> <p>10 the canopy, the tree line is above what this is. No</p> <p>11 disagreement. There are certainly going to be</p> <p>12 perspectives that you're going to see that thing</p> <p>13 sticking out, but if you want the answer to your</p> <p>14 question Exhibit A-37 really shows you how the new one</p> <p>15 compares.</p> <p>16 MR. WEPPLER: Thank you.</p> <p>17 CHAIRMAN FLANAGAN: Anyone else have any</p> <p>18 questions? Name and street, please.</p> <p>19 MR. NOYES: Scott Noyes, 22 Sand Spring</p> <p>20 Road. From a land use standpoint the property -- we're</p> <p>21 not seeking control of the land to the --</p> <p>22 THE WITNESS: No. There's a lease area</p> <p>23 that's being proposed.</p> <p>24 MR. NOYES: And the lease is for how long,</p> <p>25 20 years?</p>
<p style="text-align: right;">Page 107</p> <p>1 MR. SCHNEIDER: Five years with four</p> <p>2 additional options, or rights to extend.</p> <p>3 MR. NOYES: So 20 years at Verizon's</p> <p>4 choice, 25 years?</p> <p>5 MR. SCHNEIDER: Correct.</p> <p>6 MR. NOYES: Does the town have a right to</p> <p>7 stop it at any of those points in time?</p> <p>8 MR. SCHNEIDER: No.</p> <p>9 MR. NOYES: So we seem control no matter</p> <p>10 what the developer needs over that property for the</p> <p>11 next 25 years. We basically can't -- Verizon can just</p> <p>12 say this is what we have, this is what it's going to</p> <p>13 be. Do we have the ability to relocate it within that</p> <p>14 area, or make changes, or are we pretty much receding</p> <p>15 control?</p> <p>16 CHAIRMAN FLANAGAN: Yes, so do you have a</p> <p>17 question for Mr. Steck?</p> <p>18 MR. NOYES: The question is have we</p> <p>19 receding control of the property?</p> <p>20 CHAIRMAN FLANAGAN: Are you in a position</p> <p>21 to answer that question? Are you an attorney?</p> <p>22 THE WITNESS: I'm not an attorney. There's</p> <p>23 a lease area. The Applicant has certain rights. And</p> <p>24 as I said, the real issue with my mind is once there is</p> <p>25 a tower there the Applicant has a leg up on changes to</p>	<p style="text-align: right;">Page 108</p> <p>1 it, because there's a policy of promoting collocation.</p> <p>2 So once you approve it -- it was like my example with</p> <p>3 the helipad. You can approve locally where a helipad</p> <p>4 is, but once you approve it the FCC takes over.</p> <p>5 MR. NOYES: So Verizon will basically own</p> <p>6 us for 25 years?</p> <p>7 THE WITNESS: Well, they incur valuable</p> <p>8 rights.</p> <p>9 MR. SIMON: Can I have ask follow-up</p> <p>10 question quickly? Mr. Steck, with regards to your</p> <p>11 experience as a professional planner, in 25 years if</p> <p>12 the lease "expires" and the Township decides to renew</p> <p>13 the lease, right, and Verizon decides to renew the</p> <p>14 lease, that would not require anyone to go back to this</p> <p>15 Board for any type of approvals because approvals,</p> <p>16 variances, et cetera, run with the land; correct?</p> <p>17 THE WITNESS: That's correct.</p> <p>18 MR. SIMON: Thank you.</p> <p>19 CHAIRMAN FLANAGAN: Any other questions for</p> <p>20 Mr. Steck? All righty. What's next?</p> <p>21 MR. SIMON: So I think in terms of public</p> <p>22 comment, I see younger people, I see middle-aged</p> <p>23 people, et cetera. I think that in terms of the time,</p> <p>24 that I would recommend that in fairness to the public</p> <p>25 that the order of public comment shouldn't necessarily</p>

<p style="text-align: right;">Page 109</p> <p>1 start with any of my clients. If there's people with</p> <p>2 younger children or younger people want to say</p> <p>3 something, et cetera, I would suggest to sort of do it</p> <p>4 in order depending on whoever wants to speak.</p> <p>5 CHAIRMAN FLANAGAN: That sounds like a</p> <p>6 fantastic idea.</p> <p>7 MR. SIMON: I come up with one.</p> <p>8 CHAIRMAN FLANAGAN: Steve, so we're going</p> <p>9 to do public comment now then we're going to closing</p> <p>10 arguments.</p> <p>11 MR. MLENAK: The order would be public</p> <p>12 comment. Anybody that is represented by Mr. Simon</p> <p>13 would come in as a witness to Mr. Simon after everybody</p> <p>14 else. Then there would be summations for Mr. Simon and</p> <p>15 then concluding with Mr. Schneider.</p> <p>16 CHAIRMAN FLANAGAN: So Mr. Simon had a</p> <p>17 fantastic idea. So whoever has an early bedtime should</p> <p>18 come and speak.</p> <p>19 SECRETARY TAGLAIRINO: Can I make a</p> <p>20 suggestion that people come and stand so we can see</p> <p>21 them.</p> <p>22 MR. SIMON: Do you want me to move?</p> <p>23 CHAIRMAN FLANAGAN: You're welcome to, but</p> <p>24 people are going to be standing behind you.</p> <p>25 MR. SIMON: Let me move as a courtesy to</p>	<p style="text-align: right;">Page 110</p> <p>1 the public.</p> <p>2 SECRETARY TAGLAIRINO: You can slide back.</p> <p>3 So keep the area clear for people to come into the</p> <p>4 center so we can see them or they can come stand here</p> <p>5 but keep an area clear so people can pass through.</p> <p>6 CHAIRMAN FLANAGAN: As we discussed,</p> <p>7 five-minutes is the allocation for public comments. We</p> <p>8 talked about this the last time. This is what we did</p> <p>9 the last time through. Come on up. You can just tell</p> <p>10 us what you think. Whoever has the earliest bedtime</p> <p>11 needs to go.</p> <p>12 SECRETARY TAGLAIRINO: Just so you know,</p> <p>13 you're going to stand. You're being to come to the</p> <p>14 middle. You're going to give your name, your address,</p> <p>15 and please spell your name for the record.</p> <p>16 MR. ANASTASIOU: Alex Anastasiou. I'm at</p> <p>17 35 Post House Road. Just briefly to the Board. I've</p> <p>18 been at a couple Township events recently, both the</p> <p>19 Memorial Day Parade and the steak and lobster dinner,</p> <p>20 and just hearing a lot of the public comment and</p> <p>21 chitter-chatter about this whole issue with this tower.</p> <p>22 And there seems to be a general feeling among some</p> <p>23 Township residents that the only people that are</p> <p>24 against the cell phone tower are the people where it's</p> <p>25 going to be in their backyards and it's going to be in</p>
<p style="text-align: right;">Page 111</p> <p>1 their sightline. I live nowhere near it, and I don't</p> <p>2 the want it there.</p> <p>3 However, I'll make a very brief statement.</p> <p>4 If the Board and Verizon are going to reach an</p> <p>5 agreement on this and it's going up I would just beg</p> <p>6 the Board to please have them put the monopole design</p> <p>7 in versus a fake tree. You drive around the state, you</p> <p>8 drive around the country, fake trees look like fake</p> <p>9 trees. I don't care what they say or what visual</p> <p>10 representatives via their photos that they come up</p> <p>11 with, it's going to look like a fake tree and we're all</p> <p>12 going to see it in the center of town in a Historic</p> <p>13 District. So I would just beg of the Board have them</p> <p>14 put the monopole up versus a fake tree.</p> <p>15 MR. SIMON: Sir, when you say a monopole</p> <p>16 you mean the flagless flagpole?</p> <p>17 MR. ANASTASIOU: Yes.</p> <p>18 CHAIRMAN FLANAGAN: Thank you.</p> <p>19 MR. ANASTASIOU: And it is my bedtime.</p> <p>20 CHAIRMAN FLANAGAN: All right. Who's next?</p> <p>21 Who's next off to bed? Larry's going to be up all</p> <p>22 night.</p> <p>23 MS. WADE: I am Leslie Ann Wade, W-a-d-e,</p> <p>24 and I live at One Village Road in the Historic District</p> <p>25 in the farmhouse on the corner, which is nearly 200</p>	<p style="text-align: right;">Page 112</p> <p>1 years old. That is my peace. I mean, that is my</p> <p>2 neighborhood. That's why I live in this town. I walk</p> <p>3 those streets. I walk those streets with my kids and</p> <p>4 it's part of my neighborhood. And I feel really</p> <p>5 violated that it's not being protected by my neighbors</p> <p>6 in town.</p> <p>7 I just came from my son's bachelorette mass</p> <p>8 at Madison High School where a number of Harding people</p> <p>9 sat together, and I ran off first probably because it's</p> <p>10 the most important because I live the closest, but</p> <p>11 everybody from all over town that was there at the</p> <p>12 Madison High School graduation said the same thing,</p> <p>13 don't let them do this.</p> <p>14 So it's hard for me. I've been to so many</p> <p>15 of these, but it does feel like you are our neighbors</p> <p>16 and you are here to protect this town. And while I</p> <p>17 know this isn't exact it does feel like an outsider is</p> <p>18 coming and deciding what this place is going to be like</p> <p>19 for a very long time.</p> <p>20 This technology will disappear and change</p> <p>21 in five years like everything does and we will</p> <p>22 permanently at the historic crossroads of our town have</p> <p>23 a monument to this time and this Board making this</p> <p>24 decision. It won't go away. So that's it for me.</p> <p>25 CHAIRMAN FLANAGAN: Thank you. Anybody?</p>

<p style="text-align: right;">Page 113</p> <p>1 Who's next? Don't be shy. Come on down.</p> <p>2 MR. KOVACS: Jim Kovacs, Village Road, 207</p> <p>3 and also 17 Village Road, which is our gallery now.</p> <p>4 All I can say is I'm incredibly disappointed that the</p> <p>5 Township Committee caved in on this. I heard they</p> <p>6 didn't want to bear the cost of a lawsuit. I can only</p> <p>7 say that as a resident and a taxpayer I would have</p> <p>8 happily kicked in money to defend the town on this. I</p> <p>9 think it's terrible what's happening.</p> <p>10 Secondly, if we have to have a cell tower I</p> <p>11 can't believe there's a worse place to put it than</p> <p>12 where we're doing it. The most densely populated</p> <p>13 Historic District in town. We have been here for</p> <p>14 42 years. Throughout that time one group after another</p> <p>15 Township Committee after another have been making every</p> <p>16 effort to try to revitalize downtown New Vernon.</p> <p>17 People, including myself have invested money to try to</p> <p>18 do that and then to have this happen, it's just not</p> <p>19 right. It's not right.</p> <p>20 There's certainly other places in town that</p> <p>21 would be preferable. And I wasn't even aware of the</p> <p>22 elevation issues. It seems ridiculous that you can</p> <p>23 build a shorter tower in other places.</p> <p>24 There was the potential or discussion of</p> <p>25 the corner of Glen Alpin and 202 where the town's got a</p>	<p style="text-align: right;">Page 114</p> <p>1 large forested piece of land. Nobody living there. It</p> <p>2 seems to me that what happened was that people have had</p> <p>3 it after 29 meetings, and we have the lawsuit and we're</p> <p>4 doing the settlement and we're picking the quickest</p> <p>5 answer because that's what was on the table at the</p> <p>6 time. And having invested that much time and that much</p> <p>7 effort I think it would have been worthwhile to have</p> <p>8 spent a little bit more time to see if we could have</p> <p>9 come up with a better answer.</p> <p>10 And then finally, if it has to be, and it</p> <p>11 has to be where we're talking about, the proposed</p> <p>12 landscaping is ridiculous. I mean, it's going to look</p> <p>13 like a little nursery in the middle of rural Harding</p> <p>14 Township with tall trees and hedgerows every place.</p> <p>15 And we're going to have 57, 8- to 10-foot trees, lined</p> <p>16 up like little soldiers in a field. It's not going to</p> <p>17 accomplish anything. It misses the elephant in the</p> <p>18 forest. You're going to have an 86-foot tower with</p> <p>19 nothing to screen it.</p> <p>20 I went out as I mentioned earlier, I looked</p> <p>21 from the vantage point of the front steps of 17</p> <p>22 Village, the only trees that are there now are going to</p> <p>23 be gone. So you're just going to have this big fake</p> <p>24 tree sticking up over the post office. That's it.</p> <p>25 It's a shame. And I just can't believe we're going to</p>
<p style="text-align: right;">Page 115</p> <p>1 let this happen. Thank you.</p> <p>2 CHAIRMAN FLANAGAN: Mr. Kovacs, thank you,</p> <p>3 first of all. Second of all, you understand this is</p> <p>4 not the Township Committee?</p> <p>5 MR. KOVACS: No, I understand that. I do.</p> <p>6 CHAIRMAN FLANAGAN: And the second part, we</p> <p>7 had a lot of testimony over the last three years that</p> <p>8 that location over on Glen Alpin and 202, right, that</p> <p>9 doesn't come anywhere close to reaching the area that</p> <p>10 Verizon would argue needs coverage. And frankly, I</p> <p>11 don't think anyone denied that there's gaps in this</p> <p>12 area, but so you know, the testimony was that an</p> <p>13 antenna from there would not reach here, to let you</p> <p>14 know.</p> <p>15 MR. KOVACS: Okay. What about the other</p> <p>16 location that the expert pointed out?</p> <p>17 CHAIRMAN FLANAGAN: So we went through lots</p> <p>18 of conversation about that. Yes, Mr. Simon?</p> <p>19 MR. SIMON: Yes. I think that in fairness</p> <p>20 to the record that people for or against let them come</p> <p>21 up and say, but I think to have the interaction with</p> <p>22 Board members based on the public comment I think</p> <p>23 muddies the record.</p> <p>24 MS. WADE: You also made a decision so why</p> <p>25 are we even doing this?</p>	<p style="text-align: right;">Page 116</p> <p>1 CHAIRMAN FLANAGAN: Hold on a second.</p> <p>2 Steve, is it not reasonable to address a possible</p> <p>3 misconception from a resident?</p> <p>4 MR. MLENAK: Well, this is public comment,</p> <p>5 not public question and answer. But there's nothing</p> <p>6 wrong with you in your opinion correcting a</p> <p>7 misstatement. My opinion.</p> <p>8 CHAIRMAN FLANAGAN: So there we go. Thank</p> <p>9 you, Mr. Kovacs.</p> <p>10 BOARD MEMBER NEWLIN: And Mike, I prefer</p> <p>11 that you do that.</p> <p>12 CHAIRMAN FLANAGAN: Thank you, Alf.</p> <p>13 MR. KOVACS: I do appreciate the difference</p> <p>14 and I was going to say that it's been difficult to sit</p> <p>15 through two of these meetings and you guys have been</p> <p>16 through 29.</p> <p>17 CHAIRMAN FLANAGAN: Well, it's a great</p> <p>18 segue.</p> <p>19 MR. KOVACS: God bless you and thank you</p> <p>20 for your efforts.</p> <p>21 CHAIRMAN FLANAGAN: So the Board Of</p> <p>22 Adjustment is accepting applications, so you can be --</p> <p>23 (Laughter from the public.)</p> <p>24 MR. KOVACS: I know better than that.</p> <p>25 CHAIRMAN FLANAGAN: Who's next? You can</p>

<p style="text-align: right;">Page 117</p> <p>1 stands there.</p> <p>2 MS. MCKITTRICK: Christina McKittrick, 14</p> <p>3 Millbrook Road. I just have a question about sort of</p> <p>4 long-term. So you were talking about the lease is</p> <p>5 potentially for 25 years. At the end of the lease does</p> <p>6 Verizon have an obligation to restore the site to its</p> <p>7 original state, to remove the tower --</p> <p>8 MR. SCHNEIDER: Yes.</p> <p>9 CHAIRMAN FLANAGAN: There you go. The</p> <p>10 answer was yes.</p> <p>11 MS. MCKITTRICK: Okay.</p> <p>12 BOARD MEMBER BOYAN: Provided that the</p> <p>13 lease is not renewed.</p> <p>14 MR. MLENAK: Yes. The lease is attached.</p> <p>15 It's, I believe, Exhibit A-1.</p> <p>16 MR. SCHNEIDER: A-2.</p> <p>17 MR. MLENAK: A? That is in the record.</p> <p>18 MS. MCKITTRICK: Okay. Thank you.</p> <p>19 CHAIRMAN FLANAGAN: Already. Who's next?</p> <p>20 MR. NOYES: Scott Noyes, 22 Sand Spring</p> <p>21 Road. Again, it strikes me as we're permitting it on</p> <p>22 this property where we're losing control of the</p> <p>23 property to Verizon for a 25-year time frame. I</p> <p>24 presume the 25 years is at their choice, not ours?</p> <p>25 CHAIRMAN FLANAGAN: I believe the lease is</p>	<p style="text-align: right;">Page 118</p> <p>1 written that both -- either party can choose to not</p> <p>2 extend.</p> <p>3 MR. NOYES: He said it was his choice for</p> <p>4 25 years.</p> <p>5 CHAIRMAN FLANAGAN: For 25 years I believe</p> <p>6 that's the case, but --</p> <p>7 MR. NOYES: Twenty-five years is a long</p> <p>8 time to lose control of site development on that</p> <p>9 property.</p> <p>10 MR. MLENAK: Just to be clear, the lease</p> <p>11 isn't with this body.</p> <p>12 MR. SCHNEIDER: And I must correct one</p> <p>13 thing. It's five years with three, five-year options.</p> <p>14 So it's 20, not 25 years.</p> <p>15 CHAIRMAN FLANAGAN: So you understand what</p> <p>16 Steve just said, this Board did not sign that lease.</p> <p>17 Does it make sense? So the Township Committee years</p> <p>18 ago signed the lease with the Applicant and then said</p> <p>19 Applicant needs to come to this Board to figure out the</p> <p>20 details and for this Board to decide whether or not to</p> <p>21 allow it to happen. So this Board, Board of</p> <p>22 Adjustment, did not sign that lease. We're not a party</p> <p>23 to that lease.</p> <p>24 MR. NOYES: This Board's job is just to</p> <p>25 find the location?</p>
<p style="text-align: right;">Page 119</p> <p>1 CHAIRMAN FLANAGAN: No. No. There has</p> <p>2 been much discussion about a location. There's been</p> <p>3 much discussion about alternative sites over the last</p> <p>4 three years. I can tell you the answer on each of the</p> <p>5 alternative sites discussed was it was either not</p> <p>6 feasible or the property owner didn't want it. But,</p> <p>7 no, this Board was to review the application for a</p> <p>8 variance for the tower.</p> <p>9 MR. NOYES: So it strikes me as you're</p> <p>10 losing control of the property site for 20 years.</p> <p>11 CHAIRMAN FLANAGAN: Sir, what I'm trying to</p> <p>12 say is this Board does not have, never did, and never</p> <p>13 will have control of that property site. That resides</p> <p>14 in the Township Committee. This Board has no --</p> <p>15 nothing to do with that lease.</p> <p>16 MR. NOYES: But the site that it's located</p> <p>17 at if it needs the septic moved or some other type</p> <p>18 function on that property for 20 years the Verizon</p> <p>19 piece will be pretty much removable.</p> <p>20 CHAIRMAN FLANAGAN: That is a true</p> <p>21 statement.</p> <p>22 MR. NOYES: So the flexibility for the use</p> <p>23 of the property has been lost.</p> <p>24 CHAIRMAN FLANAGAN: I think that's a true</p> <p>25 statement as well. But I'm just taking exception to</p>	<p style="text-align: right;">Page 120</p> <p>1 this Board having given up control of the property.</p> <p>2 MR. NOYES: So the other Board gave up</p> <p>3 control. Okay. Gotcha.</p> <p>4 MR. MLENAK: The Township COMMITTEE.</p> <p>5 MR. NOYES: I get it, but that site could</p> <p>6 have been somewhere where there's less flexibility.</p> <p>7 MS. WADE: But this Board can decide that</p> <p>8 it won't happen; is that right?</p> <p>9 CHAIRMAN FLANAGAN: Why don't you let him</p> <p>10 finish.</p> <p>11 MS. WADE: That's a question.</p> <p>12 CHAIRMAN FLANAGAN: Are you relinquishing</p> <p>13 your time?</p> <p>14 MR. NOYES: Yes.</p> <p>15 MS. WADE: This Board can decide that it</p> <p>16 won't happen?</p> <p>17 CHAIRMAN FLANAGAN: This Board has the</p> <p>18 power to grant or not grant variances.</p> <p>19 MS. WADE: Correct. So it's sort of like</p> <p>20 my brother can.</p> <p>21 MR. MLENAK: Pursuant to the legal</p> <p>22 standards that apply.</p> <p>23 MR. NOYES: I suggest you don't grant one</p> <p>24 because the property site might need other uses than</p> <p>25 Verizon for such a period of time.</p>

<p style="text-align: right;">Page 121</p> <p>1 CHAIRMAN FLANAGAN: Okay. Who's up next?</p> <p>2 MS. RILEY: Jane Riley, Youngs Road. And</p> <p>3 I've spoken before. I can say that I concur with Jim</p> <p>4 about the landscaping. We're never going to see it,</p> <p>5 and it will look like a farm. But the big reason I</p> <p>6 came tonight is I think it's sort of, almost seems like</p> <p>7 it is impossible to turn it down, but I really think a</p> <p>8 flagpole would look so much better and would disappear</p> <p>9 much more in the center of our Historic District. And</p> <p>10 I really think we need to consider that.</p> <p>11 We have spent a lot of time in Vermont, and</p> <p>12 even in Vermont the plastic trees on a hill of mountain</p> <p>13 covered with evergreens you know where the Verizon or</p> <p>14 whatever monopoly is. So I would really request that</p> <p>15 we do the right thing and have as understated as</p> <p>16 possible a cell tower in the center of our town.</p> <p>17 Because it's not -- I said this before, it's everyone's</p> <p>18 front yard over there. Because we use that property --</p> <p>19 everyone in town uses that property almost every day.</p> <p>20 And I think you need to think about that for all of our</p> <p>21 residents. Thank you.</p> <p>22 CHAIRMAN FLANAGAN: Thank you. Whoever is</p> <p>23 next come on -- stand right up.</p> <p>24 MS. NICHOLSON: This is Elizabeth</p> <p>25 Nicholson, 44 Youngs Road. (Ms. Nicholson is a minor</p>	<p style="text-align: right;">Page 122</p> <p>1 presented by a public member.) The cell phone tower,</p> <p>2 if we have to have it I would rather have it in the</p> <p>3 flagpole shape, because it's most fitting with the</p> <p>4 landscape.)</p> <p>5 CHAIRMAN FLANAGAN: Thank you very much.</p> <p>6 MR. MLENAK: Good job.</p> <p>7 CHAIRMAN FLANAGAN: Who's up next?</p> <p>8 MS. DEVINE: Madeline Devine, D-e-v-i-n-e,</p> <p>9 Lees Hill Road. Over 30 years ago when I moved to this</p> <p>10 town one of the first events I attended was Keep</p> <p>11 Harding Rural. Now, I know we have come a long way</p> <p>12 since then, but we have continued to preserve</p> <p>13 viewscales in this town. Many people have been</p> <p>14 invested time, money and efforts to preserve the unique</p> <p>15 nature of Harding.</p> <p>16 So I'm here to plead for the pole. When</p> <p>17 you drive past Green Village Fire Department, after a</p> <p>18 while you ignore the flagpole. You never ignore the</p> <p>19 ugly tree, ever. I don't care who you are, you're</p> <p>20 going to drive by it and say it's, eww, it's ugly,</p> <p>21 whether it's today or 15 years from now, so I'm just</p> <p>22 pleading for the flagpole.</p> <p>23 CHAIRMAN FLANAGAN: Thank you. All right.</p> <p>24 MR. WEPPLER: Larry Weppeler, Lees Hill</p> <p>25 Road. I'm going to agree with my wife. I understand</p>
<p style="text-align: right;">Page 123</p> <p>1 you guys don't have the power or the authority to do</p> <p>2 this, and I understand it's totally up to Verizon, but</p> <p>3 a flagpole would be a better solution to this problem.</p> <p>4 We need a cell tower in this town. It's absolutely</p> <p>5 imperative. I am on the first aid squad. There are</p> <p>6 places in town where I don't get cell communication,</p> <p>7 and I think it's important that we build a cell tower.</p> <p>8 I think this location -- there's never</p> <p>9 going to be an ideal location. It's always going to be</p> <p>10 in somebody's backyard, but the fact of the matter is</p> <p>11 an ugly tree is a toilet brush no matter how you</p> <p>12 describe it. So I'd go for the flagpole, but I know</p> <p>13 you don't have any authority to do that.</p> <p>14 MS. WADE: No, they do.</p> <p>15 MR. WEPPLER: They do not have that</p> <p>16 authority.</p> <p>17 MS. WADE: Yes or no, Michael?</p> <p>18 CHAIRMAN FLANAGAN: I don't know. What was</p> <p>19 --</p> <p>20 MS. WADE: Are you guys allowed to decide</p> <p>21 what it's supposed to look like?</p> <p>22 CHAIRMAN FLANAGAN: No.</p> <p>23 MR. MLENAK: We're here on a Whispering</p> <p>24 Woods hearing for the settlement that's part of this</p> <p>25 consent order which is a tree, not a flagless flagpole.</p>	<p style="text-align: right;">Page 124</p> <p>1 MS. WADE: But you had a place earlier</p> <p>2 where you could have decided for a flagpole.</p> <p>3 MR. MLENAK: The application was previously</p> <p>4 denied during that time.</p> <p>5 CHAIRMAN FLANAGAN: We'll discuss that in a</p> <p>6 little bit. I'll answer that question for you.</p> <p>7 MS. WADE: But I think that's really</p> <p>8 important that these guys did have a place where they</p> <p>9 could decide the flagpole.</p> <p>10 MR. WEPPLER: They could have but it's not</p> <p>11 --</p> <p>12 CHAIRMAN FLANAGAN: Okay. It's not an open</p> <p>13 forum. Anybody else want to talk about their feelings?</p> <p>14 Sure. Stand right up.</p> <p>15 MS. MEISTER: Linda Meister, M-e-i-s-t-e-r,</p> <p>16 4 Fawn Hill Drive. I would like to know about the</p> <p>17 stability of a tree pole in a hurricane or some other</p> <p>18 catastrophic event? Is there a record of these things</p> <p>19 falling over?</p> <p>20 CHAIRMAN FLANAGAN: So I asked that same</p> <p>21 exact question and they laughed at me. So in several</p> <p>22 hearings ago, and it's in the record and I'm sure Lori</p> <p>23 can point it to you, there was discussion about the</p> <p>24 stability and safety of these things. Mr. Schneider at</p> <p>25 the time told me something to the effect that they're</p>

<p style="text-align: right;">Page 125</p> <p>1 built to a certain engineering standard. There's never 2 been a history of one falling over. My take away from 3 it was that they're pretty darn stable. 4 It's in the record. Ask Lori, she can 5 point you to the hearing. 6 MS. WADE: Can they catch on fire? 7 CHAIRMAN FLANAGAN: You have to stop. 8 MS. WADE: I can ask. You can just say no. 9 What can you do, throw me out? It's okay. I can go 10 home. 11 CHAIRMAN FLANAGAN: No. I don't want to 12 throw anybody out. Okay. Who else wants to make their 13 comments. 14 MS. BLANCO: Aja Blanco, B-l-a-n-c-o, 14 15 Lees Hill Road. You guys have seen me here. You know 16 how I feel. I don't want any of it. But if I have to 17 pick, I do not want to see that tree. That's it. 18 CHAIRMAN FLANAGAN: Fair enough. Okay. 19 Thank you. Who else? Is there anybody over on that 20 side that wants to talk? No? 21 MS. CONINE: We're clients. 22 CHAIRMAN FLANAGAN: If you have something, 23 go ahead. 24 MR. SIMON: Do you want me to introduce 25 them?</p>	<p style="text-align: right;">Page 126</p> <p>1 MS. CONINE: I can introduce myself. 2 MR. MLENAK: I will just say, I'm fine with 3 this procedure. If you are going to speak and you are 4 a client just identify that you are a client. 5 MS. CONINE: All right. I am a client of 6 Mr. Simon's. My name is Sarah Conine, C-o-n-i-n-e, and 7 I live at 7 Lees Hill Road in the state and National 8 Historic District, which is bordering the property of 9 the cell phone tower. We live in an 1819 home and it's 10 one of the oldest homes in Harding, and we have spent 11 two years renovating a historic home. And I hope 12 everyone drives by and enjoys it and sees it and it's 13 preserved for another hundred years for another 14 generation to see. 15 And I don't want this in my backyard, just 16 like nobody else in this room wants this in their 17 backyard. We never choose to have this, and of course 18 it saddens me that my neighbors are going to sit in my 19 backyard. 20 And the most important thing to me is that 21 if it has to go there that it looks right. We live in 22 a town where there's so much care taken to how things 23 look. How Bayne Park looks. How our churches look. 24 How our municipal buildings look. How things are kept. 25 It is so important to us in this town. We have land</p>
<p style="text-align: right;">Page 127</p> <p>1 preservation that are active and create a beautiful 2 landscape for all of us to enjoy and we're going to go 3 stick a plastic tree in the middle of our town? 4 That to me is beyond something I even 5 thought I would be here fighting. It's beyond 6 something I'd be emailing all my friends and neighbors 7 begging them to be here tonight to say please, we don't 8 want to look at this as we drive down the middle of our 9 town. We don't want to look at this as we do our 10 recycling, as we do our mail. You guys don't want to 11 look at this. You don't. 12 There's other options. And the settlement 13 is -- there's no settlement. There was nothing that 14 was changed. It's valid if the settlement came back to 15 you with something that was different. It's a flagless 16 flagpole, it's a silo, it's a bell tower. They're 17 coming back to you with exactly what you turned down 18 already. You should make them go back and have a 19 settlement that is a true settlement. This is not a 20 settlement. This is exactly what you looked at before 21 with hardly any changes. 22 So I really want you to think about what 23 you're voting on tonight. And really think if that's 24 what you want to look at. And I will also say in the 25 only two years that we have lived in our property we</p>	<p style="text-align: right;">Page 128</p> <p>1 have had micro birds come through and take down huge 2 trees. And those huge trees that you're looking at in 3 those photographs, a lot of them are on our property. 4 And there's no guarantee, I can promise you they're 5 going to be there. With our climate change there's 6 absolutely no guarantee that they're going to hide that 7 cell phone. So please think long and hard about what 8 you're voting on tonight. Thank you. 9 MR. CARIFA: I'm also one of Mr. Simon's 10 clients. James Carifa, 7 Lees Hill Road, husband of 11 Sarah. Yes, the agreement that you guys are voting on 12 is essentially not changed at all since we were here a 13 year ago listening to the same arguments, the same 14 public comment. In fact, it's probably worse because 15 you've taken all those trees out. A lot more trees 16 which will expose this even more from any viewpoint 17 regardless of what any simulations say by a guy who 18 does not know the history of the picture. 19 But you know, about what Sarah said, if 20 there's anything -- if it has to be done, you know, a 21 flagless flagpole, a silo, some other design that just 22 doesn't ruin the viewscape of our town would be ideal. 23 Please consider it. We really don't want to look at it 24 at all. So if it's something that blends away it would 25 be appreciated.</p>

<p style="text-align: right;">Page 129</p> <p>1 MR. WILKERSON: John Wilkerson, Long Hill 2 Road. I agree with so many of the comments and 3 observations and their heart felt. Jim Kovacs, I agree 4 right to every syllable, not every word. But the 5 elephant in the room here is this yet to be described 6 in the same plastic tree from California. And I have 7 no idea what it's going to look like. 8 So simple question is why doesn't -- I 9 mean, it's living. It's out there and there are plenty 10 of pictures. Somebody's selling it, why can't we see 11 it. And I assume it's really ugly. So my view is that 12 by allowing that it's like throwing a stink bomb in the 13 middle of town. It's just what I have to assume. I 14 can't be more polite than that, but why haven't you 15 asked to see the picture? Why haven't you shown it to 16 us? 17 MR. MLENAK: This picture? 18 CHAIRMAN FLANAGAN: We do have a picture. 19 MR. WILKERSON: I don't have that. 20 CHAIRMAN FLANAGAN: So it's in the agenda. 21 MR. WILKERSON: And it wasn't up here. 22 CHAIRMAN FLANAGAN: We didn't show it up on 23 the screen. It's in the agenda. Just ask Lori and she 24 can certainly point you -- 25 MR. WILKERSON: I mean, I haven't been to</p>	<p style="text-align: right;">Page 130</p> <p>1 27 meetings. So I've been to three. 2 MR. MLENAK: You're forgiven. 3 CHAIRMAN FLANAGAN: It's okay but there's a 4 photo. It's right there. We can show it to you, if 5 you want. 6 MR. WILKERSON: Well, this doesn't look 7 like the picture that was in -- 8 CHAIRMAN FLANAGAN: In what? 9 MR. WILKERSON: In your handout. 10 CHAIRMAN FLANAGAN: It sure doesn't, does 11 it? 12 MR. WILKERSON: Pardon? 13 CHAIRMAN FLANAGAN: No, it sure doesn't. 14 MR. WILKERSON: So can somebody clarify? 15 CHAIRMAN FLANAGAN: Who prepared the photo 16 that you're referring to this doesn't look like? 17 MR. WILKERSON: It was in the right-hand 18 margin of your handout. 19 MR. SCHNEIDER: Right. But that's not the 20 one that's proposed. 21 CHAIRMAN FLANAGAN: The person who's trying 22 to fight the building of the tower showed you a photo 23 that looks very different from this one. 24 MR. SIMON: See -- 25 CHAIRMAN FLANAGAN: Well, I mean, it's a</p>
<p style="text-align: right;">Page 131</p> <p>1 fact. 2 MR. SIMON: See, that's exactly why I 3 objected, because the public should have the right to 4 say what they want and to have characterizations from 5 the Board based on the public comment I believe 6 respectfully is improper. It's one thing to say 7 factually it's incorrect, but then to start turning to, 8 well, what picture did you look at, I just don't think 9 it's right. 10 MR. MLENAK: The Chairman is giving his 11 opinion. 12 MR. WILKERSON: I think it's embarrassing 13 for you that we sat through here for now three hours 14 and we have not seen this, and everybody's lambasting 15 -- 16 CHAIRMAN FLANAGAN: I understand, but this 17 photo's been viewed many times. We have seen this I 18 don't know how many different meetings. 19 MR. WILKERSON: How many people in the room 20 have seen this? 21 MR. SCHNEIDER: This is improper. 22 CHAIRMAN FLANAGAN: All right. Who's next? 23 Thank you, Mr. Wilkerson. 24 MR. WILKERSON: No. I'd like to know. How 25 many people?</p>	<p style="text-align: right;">Page 132</p> <p>1 UNIDENTIFIED PUBLIC VOICE: I've been to 2 four or five meetings. It should be more public. You 3 should have put it in the Observer Tribune. 4 SECRETARY TAGLAIRINO: It's been linked to 5 the agenda for viewing. 6 CHAIRMAN FLANAGAN: Hold on. Hold on. 7 Hold on one second. So everybody knows, this photo is 8 in the agenda which is published in the website with 9 every other agenda we do. There's a link of it. It is 10 widely available. I don't know if we can add more from 11 here. You want to pass it around you're welcome to, 12 but it's out there, Mr. Wilkerson. 13 BOARD MEMBER NEWLIN: It's been in the last 14 three agendas, Mike. 15 CHAIRMAN FLANAGAN: Yes, last three 16 agendas. 17 MS. CONINE: It's a plastic tree. 18 CHAIRMAN FLANAGAN: Whatever it is, but the 19 question is whether the photo is available and it 20 certainly is. 21 MS. WADE: It's still a plastic tree. 22 CHAIRMAN FLANAGAN: All right. Who else 23 wants to speak? 24 MR. SAGANIC: I'm a client of Mr. Simon's. 25 Livio Saganic, 32 Millbrook. I'm very bad at</p>

<p style="text-align: right;">Page 133</p> <p>1 adlibbing so I'm just going to read, if you don't</p> <p>2 mind.</p> <p>3 CHAIRMAN FLANAGAN: That's fine.</p> <p>4 MR. SAGANIC: I have already spoken at</p> <p>5 length against this misguided effort at the end of the</p> <p>6 first round so I'll be very brief. I think it's been</p> <p>7 clearly demonstrated that the upper layers of our</p> <p>8 municipal administration are lacking resourcefulness</p> <p>9 and will and are certainly short on imagination and</p> <p>10 ethics. Had they ever seriously asked the question as</p> <p>11 to why we have an industrial dump in the middle of</p> <p>12 pristine residences. Rather than doing the right thing</p> <p>13 and relocating the DPW facility away from its</p> <p>14 residential and historic location to somewhere maybe</p> <p>15 along 287 they're hell bent to keep adding insult to</p> <p>16 injury.</p> <p>17 The relentless expansion of DPW to the very</p> <p>18 edges of the boundary is an ongoing cause of anxiety</p> <p>19 for us. They are apparently immune to simple rules of</p> <p>20 privacy, sensitivity to the environment, as well as</p> <p>21 visual and oral pollution. And now we're facing this.</p> <p>22 The icing on the cake. The mother load of ongoing</p> <p>23 insults.</p> <p>24 Please vote with your conscience, assert</p> <p>25 your independence, and it's always good to keep mind a</p>	<p style="text-align: right;">Page 134</p> <p>1 bit of ethical wisdom. Don't do to others what you</p> <p>2 don't want to be done to you. Thank you.</p> <p>3 CHAIRMAN FLANAGAN: Thank you. Okay. Who</p> <p>4 else? Anyone else? (No response.) All right. I'm not</p> <p>5 seeing any takers. Last chance. Okay. Go ahead, just</p> <p>6 name and address, please.</p> <p>7 MS. DINSMORE: Doris Dinsmore,</p> <p>8 D-i-n-s-m-o-r-e, Red Gate Road. I think many of us are</p> <p>9 here just to oppose the tree. And maybe you can take a</p> <p>10 little survey with a show of hands who is in favor of</p> <p>11 the tree?</p> <p>12 CHAIRMAN FLANAGAN: Go ahead. Who wants</p> <p>13 the tree instead of --</p> <p>14 MR. SCHNEIDER: I think that's</p> <p>15 inappropriate.</p> <p>16 CHAIRMAN FLANAGAN: Oh, is that</p> <p>17 inappropriate?</p> <p>18 MS. WADE: Because it's going to be a tree.</p> <p>19 CHAIRMAN FLANAGAN: You know what, if you'd</p> <p>20 like the tree tell us when you stand up, if you haven't</p> <p>21 already.</p> <p>22 MR. MLENAK: It's not that it's</p> <p>23 inappropriate. The Board can't consider it.</p> <p>24 MS. DINSMORE: So how many people would</p> <p>25 like the pole? Show of hands? A bit overwhelming?</p>
<p style="text-align: right;">Page 135</p> <p>1 Thank you.</p> <p>2 MR. SCHNEIDER: I think we're going a</p> <p>3 little far afield here.</p> <p>4 BOARD MEMBER NEWLIN: Mike, I think you</p> <p>5 have to correct the record. It's not an option for us</p> <p>6 to do.</p> <p>7 CHAIRMAN FLANAGAN: I'm sorry?</p> <p>8 BOARD MEMBER NEWLIN: The pole is not in</p> <p>9 the Settlement Agreement.</p> <p>10 CHAIRMAN FLANAGAN: I think we need to</p> <p>11 address that in our deliberations. That's my</p> <p>12 intention. Is that it, Mrs. Dinsmore?</p> <p>13 MS. DINSMORE: That's it. That's why I'm</p> <p>14 here.</p> <p>15 CHAIRMAN FLANAGAN: Okay. Who else?</p> <p>16 MS. KOVACS: Hi. I'm Justine Kovacs. I</p> <p>17 also live at 207 Village Road and I have a gallery at</p> <p>18 17 Village Road, which is your site two that you've</p> <p>19 been referring to. The cell tower will be in the front</p> <p>20 yard of my historic gallery that's 250-years old. And</p> <p>21 I'm really disappointed in the town, and my husband has</p> <p>22 given logical reasons. Mine are all emotional. We</p> <p>23 have lived here since 1981. I've worked on the Land</p> <p>24 Trust and the Shade Tree Committee and the</p> <p>25 Environmental Committee and the Open Space Committee to</p>	<p style="text-align: right;">Page 136</p> <p>1 save rural Harding, and this cell tower does not belong</p> <p>2 here.</p> <p>3 CHAIRMAN FLANAGAN: Thank you.</p> <p>4 (Applause by the public.)</p> <p>5 CHAIRMAN FLANAGAN: All right. Who else?</p> <p>6 MR. BANSAL: I am Harsh Bansal, 6</p> <p>7 Coppertree Lane. I will just echo what Sarah said</p> <p>8 earlier already, that the settlement you have here is</p> <p>9 really no different than what you denied. Each one of</p> <p>10 you has denied that. If I came to you for a variance</p> <p>11 application, you denied it, and I sued you -- I'm not</p> <p>12 sure I could -- but if I did, instead of defending your</p> <p>13 decision I think the Board and the town has caved in.</p> <p>14 You cannot possibly go back and call it a settlement</p> <p>15 when it's exactly the same thing that you denied.</p> <p>16 So please reconsider it. There are other</p> <p>17 options. Technology is changing faster than we can</p> <p>18 think. So embrace those and we don't want it in the</p> <p>19 middle of town. It's not just my backyard, it's</p> <p>20 everybody's backyard. Thank you.</p> <p>21 CHAIRMAN FLANAGAN: Thank you. Anybody</p> <p>22 else?</p> <p>23 MS. MCKITTRICK: Christina McKittrick, 14</p> <p>24 Mill Brook Road. So you're not the Township Committee.</p> <p>25 You're not the ones who did the settlement, you're not</p>

<p style="text-align: right;">Page 137</p> <p>1 the ones who did the RFP.</p> <p>2 CHAIRMAN FLANAGAN: We are the ones that</p> <p>3 are part of the settlement.</p> <p>4 MS. McKITTRICK: All right. But one of the</p> <p>5 things is a lot of disagreement, the settlement was not</p> <p>6 done with the public's input during the settlement</p> <p>7 phase. My understanding is a lot of this was not</p> <p>8 discussed at an open Township Committee meeting. It</p> <p>9 was one of the executive sessions behind closed doors.</p> <p>10 And so I think what everybody in this room,</p> <p>11 and those of us who -- I haven't been to 27. I've been</p> <p>12 to enough of these to respect the time and effort that</p> <p>13 you guys put into this. A lot of the objection is the</p> <p>14 process and the feeling that we have made our voices</p> <p>15 known or opinions known again and again and again, and</p> <p>16 feel that we have been ignored again and again and</p> <p>17 again. And even when I think that most of us in this</p> <p>18 room are resigned to this fact that -- to the fact that</p> <p>19 we're going to get the cell tower whether we want it or</p> <p>20 not, but the aesthetics of it are important to us. And</p> <p>21 we -- the Township Committee doesn't seem to be</p> <p>22 listening to that. No Township Committee member comes</p> <p>23 to these meetings.</p> <p>24 CHAIRMAN FLANAGAN: They're not allowed to.</p> <p>25 MS. McKITTRICK: They're not allowed to.</p>	<p style="text-align: right;">Page 138</p> <p>1 Okay. But the whole process has been a little -- I</p> <p>2 mean, Whispering Woods? I mean, the whole thing seems</p> <p>3 a little dodgy to me. I don't know the whole process,</p> <p>4 but all I'm asking is to take into consideration the</p> <p>5 views of the Township and the people who you are</p> <p>6 supposed to be representing the interest of.</p> <p>7 CHAIRMAN FLANAGAN: Thank you. Anybody</p> <p>8 else?</p> <p>9 MS. CARIFA: Nora Carifa. Just don't want</p> <p>10 to have the tree. It's ugly. It's plastic. That's</p> <p>11 it.</p> <p>12 CHAIRMAN FLANAGAN: Thank you. Is that it?</p> <p>13 MR. TYLER CARIFA: My name is Tyler Carifa,</p> <p>14 also 7 Lees Hill Road. I just want to say that I've</p> <p>15 been living at seven now -- we've been living there for</p> <p>16 a year. I've been swimming and going down there my</p> <p>17 whole life because my grandparents have been living</p> <p>18 there before. I want to say, like, seeing a big tree</p> <p>19 there with all plastic needles and whatnot pretty much</p> <p>20 can't be hidden environmentally without, you know,</p> <p>21 well, without making it is subtle. So I just want to</p> <p>22 ask if you guys can make it as minimalistic as</p> <p>23 possible, like a monopole or something.</p> <p>24 CHAIRMAN FLANAGAN: Okay. Thank you. All</p> <p>25 right. Who else?</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. BANSAL: Am I allowed to --</p> <p>2 CHAIRMAN FLANAGAN: No.</p> <p>3 MR. BANSAL: No?</p> <p>4 CHAIRMAN FLANAGAN: No. Sorry. You</p> <p>5 already went. It's not fair to other people. We still</p> <p>6 have stuff to do. All right. If no one else has any</p> <p>7 comments we're going to continue moving on here.</p> <p>8 MR. MLENAK: Are we going to take a break</p> <p>9 for Iris?</p> <p>10 CHAIRMAN FLANAGAN: Why don't we take a</p> <p>11 five-minute break.</p> <p>12 (Whereupon, a break is taken at 10:19 p.m.)</p> <p>13 (Back on the record at 10:25 p.m.)</p> <p>14 CHAIRMAN FLANAGAN: Ladies and gentlemen,</p> <p>15 we're ready to start back up again. We have to call a</p> <p>16 roll call again.</p> <p>17 SECRETARY TAGLAIRINO: Ms. Sovolos?</p> <p>18 BOARD MEMBER SOVOLOS: I'm still here.</p> <p>19 SECRETARY TAGLAIRINO: Mr. Maselli is still</p> <p>20 not here. Mr. Symonds?</p> <p>21 BOARD MEMBER SYMONDS: I'm here.</p> <p>22 SECRETARY TAGLAIRINO: Mr. Rosenbaum?</p> <p>23 BOARD MEMBER ROSENBAUM: Here.</p> <p>24 SECRETARY TAGLAIRINO: Mr. Newlin?</p> <p>25 BOARD MEMBER NEWLIN: Here.</p>	<p style="text-align: right;">Page 140</p> <p>1 SECRETARY TAGLAIRINO: Mr. Addonizio?</p> <p>2 BOARD MEMBER ADDONIZIO: Here.</p> <p>3 SECRETARY TAGLAIRINO: Mr. Flanagan?</p> <p>4 CHAIRMAN FLANAGAN: Here.</p> <p>5 SECRETARY TAGLAIRINO: Mr. Cammarata is</p> <p>6 still not here. Mr. Boyan?</p> <p>7 BOARD MEMBER BOYAN: Here.</p> <p>8 CHAIRMAN FLANAGAN: Steve, we have the</p> <p>9 summations from the two attorneys. Customarily who</p> <p>10 goes first, the Applicant or --</p> <p>11 MR. SCHNEIDER: Mr. Simon will first.</p> <p>12 CHAIRMAN FLANAGAN: Mr. Simon, you're up.</p> <p>13 MR. SIMON: So certainly as I stated during</p> <p>14 my -- I think I've given now, this is probably maybe my</p> <p>15 third summation, but I will start the same way, which</p> <p>16 is certainly to thank the Board members, the Board</p> <p>17 professionals, Mr. Schneider, and the Applicant's</p> <p>18 witnesses for your patience and participation with</p> <p>19 regard to what we believe remains an incredibly</p> <p>20 important job for each one of you to do in your role as</p> <p>21 Board of Adjustment members.</p> <p>22 And understanding, of course, that you are</p> <p>23 volunteers and you've taken a lot of time over a number</p> <p>24 of years to participate with regard to this</p> <p>25 application. And knowing -- being on both sides of the</p>

<p style="text-align: right;">Page 141</p> <p>1 table in many different capacities when you have long, 2 drawn out applications that encompass many years and 3 many hearings there is a tendency to have, you know, 4 what we say in the business as deal fatigue. You're 5 negotiating with someone and at some point it's like, 6 eh, screw it. Let's just get it over with and be done 7 with it. We've been at this long enough.</p> <p>8 And I credit each one of you for continuing 9 to, as I can tell, listen and consider and be 10 thoughtful with regard to the testimony that you're 11 hearing from all sides, and most recently, of course, 12 from the members of the public who again should be 13 commended for their heartfelt and thoughtful and 14 measured comments with regard to this application 15 regardless of their positions.</p> <p>16 So, now, I start by saying to each of you 17 for purposes of the settlement agreement, why are we 18 here? And I don't mean that sarcastically. I mean it 19 sincerely. And I mean it because none, respectfully, 20 of your factual and legal contentions that form the 21 basis for your denial of this application back in 2022 22 have been meaningfully addressed or mitigated by the 23 settlement plan.</p> <p>24 So let me go first and talk about the legal 25 standard. And I don't need to talk about the positive</p>	<p style="text-align: right;">Page 142</p> <p>1 and negative criteria. We've talked about that between 2 myself, Mr. Schneider, who I have a lot of respect for, 3 and Mr. Mlenak, who of course I have a lot of respect 4 for. I'm going to talk to you about something that you 5 haven't heard yet, which is the legal standard with 6 regard to settlements.</p> <p>7 So the case law talks about the fact that 8 there is a concern that a settlement between a private 9 party such as Verizon and a governing body or its 10 subdivision, in this case the Township Committee and 11 the Board of adjustment, not bargain away important 12 governmental duties or functions. And it's stated that 13 once litigation commences during -- with regard to a 14 land use matter it's believed that the public interest 15 will be protected by the adversary process implicated 16 in that litigation.</p> <p>17 And the cases go on to say it would be 18 unthinkable that a Board charged with the proper 19 enforcement of the local Planning and Zoning Ordinance 20 deny an application only to turn around and negotiate a 21 final binding approval of it in a modified form to 22 settle the very litigation that ensued upon its denial 23 without proper safeguards. And while settlement is to 24 be encouraged, and I believe that whether it was Mr. 25 Flanagan and Mr. Mlenak asked Mr. Steck a question</p>
<p style="text-align: right;">Page 143</p> <p>1 about that, which is an appropriate question of course, 2 a settlement must not be permitted to frustrate 3 important public rights inherent in zoning disputes, 4 and that's why those cases are litigated in the first 5 place. So if you do have a settlement that it must 6 comply with zoning and planning principals and 7 procedural safeguards set forth in Municipal Land Use 8 Law, applicable Land Use Law, and applicable local 9 laws, and also common law.</p> <p>10 So to be fair, so what are we looking at 11 right now. Is the settlement fair? It has to be 12 examined in the context of those principals and in 13 accordance with statutory criteria, and the case law 14 says that otherwise the public will be shortchanged.</p> <p>15 In this case we respectfully contend that 16 the so-called settlement as currently proposed does not 17 comply with these legal standards. It's unfair, and 18 it's not in the public interest. And somebody asked a 19 question earlier about, can you do this? Can you do 20 this? Can you have a tree? Can you have a flagless 21 flagpole? And I believe Mr. Mlenak said you're here to 22 view the settlement. Keep in mind, not only are you 23 here to view the settlement, but the settlement 24 agreement itself says you can't even impose conditions 25 beyond what was agreed to outside of the public forum</p>	<p style="text-align: right;">Page 144</p> <p>1 unless the Applicant agrees to that condition.</p> <p>2 So what are you left with with regard to, 3 for example, you heard a number of members of the 4 public talk about a flagless flagpole. You have two 5 choices. You can either decide to, if you feel that 6 the flagless flagpole, for example, is superior to the 7 plastic tree you can either ask the Applicant, would 8 you agree as a condition of approval, which we need 9 your consent for under the settlement agreement to 10 change the style of the cell tower to a flagless 11 flagpole.</p> <p>12 If the Applicant says no, then it comes 13 back to you whether you believe the Settlement 14 Agreement is fair and appropriate, and you would have 15 the right to say we don't believe that the settlement 16 agreement with the fake tree is appropriate under the 17 circumstances; therefore, we're denying the settlement. 18 And you can deny the settlement for any number of 19 reasons. Of course, that would be just one reason that 20 you can deny a settlement. So that procedurally, 21 that's the way, if you were inclined to determine that 22 a flagless flagpole was superior to a fake tree that 23 would be respectfully the process that you would 24 undertake.</p> <p>25 In this case, though, what we have is a</p>

<p style="text-align: right;">Page 145</p> <p>1 settlement agreement that basically is exactly the same</p> <p>2 as what you denied back about a year ago. Same height</p> <p>3 that was stipulated to. A revised design that we</p> <p>4 believe respectfully is much worse than the flagless</p> <p>5 flagpole proposed by the Applicant. And keep in mind,</p> <p>6 before the vote on the application back in 2022, the</p> <p>7 Applicant said we would agree to either the tree or the</p> <p>8 flagless flagpole at 80 feet. That's what was</p> <p>9 stipulated to. There was some testimony about the fact</p> <p>10 that when you had the flagless flagpole you had to</p> <p>11 raise the height somewhat to get the extra level of the</p> <p>12 antennas, because they had to be on two levels, on one</p> <p>13 level and then 10 feet below. That is completely true.</p> <p>14 But other than that, they agreed to either one. And</p> <p>15 now what you're left with by virtue of a settlement</p> <p>16 agreement is just one version and it's a yes or a no.</p> <p>17 And what do we have? We have -- even with</p> <p>18 the tree we have a tree that has basically extra</p> <p>19 plastic branches. No one has seen it at 86 feet. And</p> <p>20 you can put up and you can hand out Exhibit-2 and say</p> <p>21 this has been available in the public domain. I</p> <p>22 wouldn't disagree with that. Here's the problem,</p> <p>23 what's not in the public domain is any specification</p> <p>24 with regard to that tree. You can't come out and see</p> <p>25 the tree. You have idea what's in the tree in terms of</p>	<p style="text-align: right;">Page 146</p> <p>1 antennas. You don't know about collocators. You don't</p> <p>2 know the height, the size, the circumference, the</p> <p>3 diameter, you don't know anything about that tree.</p> <p>4 And with regard to what your Counsel, Mr.</p> <p>5 Mlenak, said about, well, we can stipulate as a</p> <p>6 condition of approval that you've got to make it look</p> <p>7 like this. And if it doesn't look like this we can</p> <p>8 cite them and make them -- make it look like this.</p> <p>9 First of all, that's not the way that a</p> <p>10 Whispering Wood hearing works, let alone a Municipal</p> <p>11 Land Use Law Board of Adjustment hearing works. Okay.</p> <p>12 That is not subject to reasonable input from the</p> <p>13 public. That is not subject to when you get a --</p> <p>14 whatever, a photo sim or a diagram saying, look, we</p> <p>15 want this house to look like this. What's it</p> <p>16 accompanied with? It's accompanied with plans by an</p> <p>17 architect who testifies as to the floor plan, as to the</p> <p>18 elevations, as to the type of materials that are used</p> <p>19 with regard to the proposed construction.</p> <p>20 We have none of that. We have a situation</p> <p>21 where we don't know, of course, about collocation and</p> <p>22 that the compound is currently not accommodating</p> <p>23 collocation. And we know that if there is collocation</p> <p>24 that's going to result in the removal of even more</p> <p>25 trees than the 33, which is a far cry from what was</p>
<p style="text-align: right;">Page 147</p> <p>1 originally proposed to be removed, which I believe was</p> <p>2 about eight in favor of what I will describe at 8 to</p> <p>3 10 feet at the time of planting as saplings.</p> <p>4 A Board such as this is not permitted, we</p> <p>5 respectfully contend as a matter of law, to abruptly</p> <p>6 change its collective mind so substantially based on</p> <p>7 such minimal plan revisions in this case, and as was</p> <p>8 repeated by a number of the members of the public,</p> <p>9 propose an inferior plan. And we believe that this</p> <p>10 settlement does not represent a reasonable compromise</p> <p>11 on the issue of Verizon's required burden of proof</p> <p>12 before this Board, rather, we believe that it's the</p> <p>13 public's rights that -- and I don't use this word very</p> <p>14 often, I'm going to use the word unconscionably</p> <p>15 compromised if this settlement is approved as proposed.</p> <p>16 We were all as a members of the public led</p> <p>17 to believe that the Board would vigorously defend its</p> <p>18 decision in the resulting litigation. And instead</p> <p>19 where we are is that Verizon and the Board have now</p> <p>20 tentatively agreed to virtually all of the relief</p> <p>21 sought by Verizon prior to the vote to deny the</p> <p>22 application. And while settlement is certainly</p> <p>23 permitted it's only we contend when the settlement</p> <p>24 takes into consideration the public's interest in the</p> <p>25 subject matter of the dispute, and provides appropriate</p>	<p style="text-align: right;">Page 148</p> <p>1 mitigation to offset the detrimental impacts and the</p> <p>2 reasons why an application is denied by the Board in</p> <p>3 the first instance.</p> <p>4 So if an application is denied for a</p> <p>5 building because it's too tall and there's a litigation</p> <p>6 and the settlement is you reduce the height of the</p> <p>7 building and you change other components of the site</p> <p>8 plan, that is typically a reasonable settlement that we</p> <p>9 all see. Not certainly in this case.</p> <p>10 Now, there's things in that Resolution, and</p> <p>11 think about it, the Resolution states, your Resolution</p> <p>12 that Verizon failed to undertake a reasonable</p> <p>13 good-faith effort to identify an alternative, less</p> <p>14 intrusive site for the proposed wireless</p> <p>15 telecommunications facility and talks about all the</p> <p>16 different examples in the Resolution. Verizon has done</p> <p>17 nothing to address that deficiency.</p> <p>18 The Resolution states that Verizon failed</p> <p>19 to undertake a reasonable and good-faith effort to</p> <p>20 identify alternative, less intrusive technologies for</p> <p>21 the proposed wireless telecommunications facility such</p> <p>22 as ODAS. Verizon has done nothing to address that</p> <p>23 deficiency. The Resolution, your Resolution states</p> <p>24 that the approval of the application would</p> <p>25 substantially impair the intent and the purpose of the</p>

<p style="text-align: right;">Page 149</p> <p>1 Master Plan and Zoning Ordinance of the Township and 2 that when balanced against the public need for the 3 proposed tower the presence of the tower at the DPW 4 property contravenes the Master Plan and Zoning 5 Ordinance to a degree that weighs in favor of a denial. 6 And it goes on to say, your Resolution goes 7 on to talk about different sections of the Master Plan 8 in terms of preservation of the rural historic 9 character, of the high-quality, natural environment, 10 perpetuation of the established pattern of development. 11 And that with regard to wireless telecommunications 12 that it should be located in commercial areas where 13 there will be no substantial impact on adjacent 14 residential or historic areas. That is all in, not in 15 my argument, it's in your Resolution, and Verizon has 16 done nothing to address those deficiencies. 17 The Resolution goes on to talk about the 18 fact that the DPW properties located in the New Vernon 19 redevelopment area, in the New Vernon Historic 20 District. And goes on to state, your Resolution states 21 no expert that testified during the public hearing 22 could ever recall a wireless communications tower being 23 constructed within a thousand feet of a Historic 24 District, let alone on property located within a 25 Historic District or adjacent to a Federal or a state</p>	<p style="text-align: right;">Page 150</p> <p>1 registered Historic District. And you note that the 2 DPW property is stated in the Master Plan as a key 3 contributing property by the Township's Historic 4 Preservation Plan. None of that has changed. The 5 Historic District has not been altered. There's been 6 no evidence submitted that there was any effort to try 7 to locate a tower, ODAS, anything outside of the 8 Historic District. Nothing has been changed from what 9 you have denied the first time around with regard to 10 this application. 11 And I remind you that the Wireless 12 Telecommunications Ordinance, and this is your words, 13 permits small cell sites in all zones except the PL 14 Zone which the Board of Adjustment interprets as an 15 expression of the Township's goal to especially 16 prohibit wireless communications facilities in the PL 17 Zone. The ordinance hasn't changed and there been no 18 evidence submitted with regard to this application that 19 warrants a different determination. 20 The Resolution states, the visibility of 21 the wireless communications tower from adjacent 22 residential areas can constitute a significant negative 23 impact to those properties and the surrounding area. 24 And then talks about the visual photo 25 simulations submitted by Verizon, acknowledged to be in</p>
<p style="text-align: right;">Page 151</p> <p>1 precise with regard to the location of the proposed 2 tower and did not account for trees planned to be 3 removed by Verizon. 4 I don't need to go into the fact that what 5 we looked at in comparing Verizon's photo simulation 6 that you refer to in your Resolution that led to a 7 denial, and the current photo simulation for purposes 8 of this settlement agreement has one difference. The 9 only difference is there's a couple of extra pieces of 10 plastic on the tree. Same height, same photo sims, 11 same locations. The only difference is we now have 33 12 trees that are proposed to be removed. Whether they 13 should be removed because they're dead, diseased or 14 dying is not the issue. The issue is they're going to 15 be removed and it's going to alter even what you see 16 with the photo simulation. And Verizon has done 17 nothing to address this deficiency, and now as stated 18 by a couple of members of the public and certainly Mr. 19 Steck, things are now much worse. 20 Your Resolution states, that the Board of 21 Adjustment finds that the proposed setbacks of the 22 neighboring residential properties are wholly 23 insufficient for the height of the tower. The public 24 benefit of the proposed tower does not outweigh the 25 negative impact to the adjacent residential properties</p>	<p style="text-align: right;">Page 152</p> <p>1 that would result from an approval and the proposed 2 location located as near as 58 feet from the nearest 3 property line. 4 Now we're talking a difference of what, 6 5 more feet that Mr. Masters himself said, well, I don't 6 see that as a discernible difference and that's why I 7 used the exact same photo sims from the same location. 8 Verizon has done nothing to address these deficiencies. 9 The location is virtually identical to the original 10 lease proposal. And what most recently was before the 11 Board that resulted in the denial of this application. 12 I'm also going to remind you that we 13 haven't talked about, is that your Resolution actually 14 states in part, since the application as proposed was 15 denied the Board of Adjustment did not need to reach a 16 conclusion during the public hearing as to whether 17 additional use variance pursuant to Section D-1 in the 18 Municipal Land Use or 70D-1 for multiple principal uses 19 on a single lot was required and if so whether such 20 additional variance was subject to the enhanced burden 21 of proof as set forth in the Medici Case as proffered 22 by the Objectors. The Board of Adjustment nevertheless 23 finds that if such variance relief was required Verizon 24 has failed to satisfy its burden to obtain such relief 25 for the reason set forth above in the preceding</p>

<p style="text-align: right;">Page 153</p> <p>1 paragraphs of the Resolution.</p> <p>2 Verizon has done nothing to address those</p> <p>3 deficiencies. It's still the third or fourth principal</p> <p>4 use on the lot. You've heard nothing about anything</p> <p>5 that's going on at the DPW site that would eliminate,</p> <p>6 mitigate, reduce the intensity of use that was present</p> <p>7 at the time the application was denied. And it's 86</p> <p>8 feet again, as we originally argued that you originally</p> <p>9 put forth in your Resolution, it's still a different</p> <p>10 height, scale and proportion as compared to other</p> <p>11 buildings or structures in the Historic District.</p> <p>12 In terms of collocation, we again have no</p> <p>13 propagation of drive test at 70 feet, 60 feet, et</p> <p>14 cetera, the person who did the photo sims, Mr.</p> <p>15 Berardesco, he's never been here to testify. Mr.</p> <p>16 Masters is still relying on the same photographs and</p> <p>17 the same locations.</p> <p>18 Certainly, there's been no engineered</p> <p>19 elevation of this proposed tree. You can state that</p> <p>20 Mr. Steck's plan, or I'm sorry, Exhibit O-10 in page I</p> <p>21 think it's P-7 that shows the difference between the</p> <p>22 heights of the trees as proposed and in terms of how</p> <p>23 many feet are going to be covered by the fake plastic.</p> <p>24 That's not intended to show this is what the tree's</p> <p>25 going to look like. It's to demonstrate the fact that</p>	<p style="text-align: right;">Page 154</p> <p>1 what you're only doing is adding more plastic to a tree</p> <p>2 that looks out of place in the first place.</p> <p>3 You have -- if you look at those 67 trees</p> <p>4 there are hardly any evergreen trees. And those trees,</p> <p>5 like I stated in terms of my cross-examination of Mr.</p> <p>6 Masters, do not -- none of them have a DbH of greater</p> <p>7 than 12 inches. These are small little trees still.</p> <p>8 And you may see evergreen trees in some of the photo</p> <p>9 simulations but there's been no evidence as to where</p> <p>10 they are, where they are in terms of property lines and</p> <p>11 location to the subject property. Whether those trees</p> <p>12 need to be removed. Whether they need to be trimmed.</p> <p>13 Right. We have no evidence of that whatsoever. We</p> <p>14 have no evidence of any effort to look at a location</p> <p>15 outside the Historic District.</p> <p>16 The bottom line is this pole was moved by</p> <p>17 like 6 or 8 feet, remains within the Historic District.</p> <p>18 It's close to residents. It's close to recycling</p> <p>19 patrons. It's close to the DPW workers who now have</p> <p>20 sleeping accommodations. It's close to a gas station.</p> <p>21 It's close to the post office. And why is it still</p> <p>22 there by virtue of a settlement agreement? It is there</p> <p>23 because the location. The property by virtue of it</p> <p>24 being a public bidding process the Applicant is</p> <p>25 constrained. They can't meaningfully move it. So</p>
<p style="text-align: right;">Page 155</p> <p>1 unlike an application where there may be resulting</p> <p>2 litigation and there may be a settlement that results</p> <p>3 in a Whispering Woods hearing that shows real</p> <p>4 mitigation, reducing the height of the tower, moving</p> <p>5 the tower to a different location on-site which</p> <p>6 sometimes happens, and other mitigating efforts</p> <p>7 changing the style of the pole, none of that is present</p> <p>8 here.</p> <p>9 The consent order even says that you have</p> <p>10 to go back to this Board. Well, I asked the question,</p> <p>11 and Mr. Schneider to his credit appropriately objected</p> <p>12 because it was not an appropriately worded question</p> <p>13 that I asked, but I'll make it in the form of a</p> <p>14 statement. Why is anyone going to this Board?</p> <p>15 The Board needs to have jurisdiction. Why</p> <p>16 is the Applicant, AT&T, T-Mobile, why are they before</p> <p>17 the Board? I don't know. And what is the Stipulation</p> <p>18 of Settlement say? It says, if there's any conflict</p> <p>19 between the agreement and the MLUL, MLUL controls.</p> <p>20 What's to stop T-Mobile, AT&T, and another carrier from</p> <p>21 saying we weren't a party to this. And even if we were</p> <p>22 a party it says between the agreement and the MLUL,</p> <p>23 MLUL controls. We're going in with our state and</p> <p>24 Federal statutory rights that Mr. Masters has never</p> <p>25 seen be denied for collocation, which also includes an</p>	<p style="text-align: right;">Page 156</p> <p>1 extension to extend the height of the tower. And there</p> <p>2 is nothing, zero, that anyone would be able to do about</p> <p>3 it. That is why what you did back in 2022 was so</p> <p>4 important and why that consideration still holds true</p> <p>5 in importance today.</p> <p>6 You have to think about what -- what are</p> <p>7 they coming for before the BOA? The fact that it's in</p> <p>8 the agreement and, oh, we agreed to this as an extra</p> <p>9 condition. We contend respectfully it is absolutely</p> <p>10 meaningless. The bottom line is that we have the same</p> <p>11 zone. We have the same ordinance. We have the same</p> <p>12 Historic District. We have the same Redevelopment</p> <p>13 Plan. We have the same exact proofs in terms of the</p> <p>14 positive criteria in terms of particular suitability.</p> <p>15 We have the same proofs in terms of the Sica Balancing</p> <p>16 Test in terms of the negative criteria with the one</p> <p>17 exception that we have a picture, we have a photo that</p> <p>18 I could find on the Internet when I get home tonight as</p> <p>19 a picture of a fake tree. That is not the way I know</p> <p>20 that this Board operates, whether it's a cell tower</p> <p>21 application or whether it's a single-family home</p> <p>22 application to basically -- can you imagine somebody</p> <p>23 coming in, a homeowner and saying, this is what we're</p> <p>24 going to build, and it's going to look like this. And</p> <p>25 you can include a condition that if it doesn't look</p>

<p style="text-align: right;">Page 157</p> <p>1 like this that will be made to make it look like this.</p> <p>2 Please approve this. It's a photo. That's what you</p> <p>3 got.</p> <p>4 And I know that this Board would never for</p> <p>5 other applications approve that. And we believe that</p> <p>6 that's not appropriate to do in this case either.</p> <p>7 So I do not believe that they have met the</p> <p>8 positive criteria for all the reasons why we stated.</p> <p>9 We don't think that they've met, for all the reasons</p> <p>10 why we stated the first time, and I'm not going to bore</p> <p>11 you because it's late, in terms of the negative</p> <p>12 criteria, or the Sica Balancing Test, or a finding</p> <p>13 that's not substantially detrimental to the Zoning</p> <p>14 Ordinance or the Master Plan.</p> <p>15 Again, any benefit of coverage for this --</p> <p>16 by this 86-foot tower is overwhelmingly outweighed by</p> <p>17 the substantial detriment to the public good and that</p> <p>18 reasonable conditions cannot be, and in this case have</p> <p>19 not been, implemented to mitigate against those</p> <p>20 detrimental conditions. And we threw out statements,</p> <p>21 you know, where in New Jersey or let alone in Morris</p> <p>22 County or Somerset County are there residential</p> <p>23 properties in Historic Districts in such close</p> <p>24 proximity to the cell tower? We said there's not. It</p> <p>25 still holds true today. And just because you have a</p>	<p style="text-align: right;">Page 158</p> <p>1 piece of paper and it says Stipulation of Settlement</p> <p>2 and Consent Order, that does not mean that you can</p> <p>3 find, we believe, that there was a reasonable</p> <p>4 settlement in this case. Especially where this Board</p> <p>5 is handcuffed from imposing conditions on a Whispering</p> <p>6 Woods settlement where you need the Applicant's</p> <p>7 approval. And if the Applicant unilaterally says I'm</p> <p>8 not agreeing to that condition you can't impose it.</p> <p>9 For that reason alone the settlement we believe is</p> <p>10 improper.</p> <p>11 So for all of these reasons we have a</p> <p>12 settlement that is unreasonable, unconscionable. It's</p> <p>13 not even requiring the barest of minimums a flagless</p> <p>14 flagpole design to take the place of a fake, ugly tree</p> <p>15 that was originally proposed in 2017.</p> <p>16 We believe that the burden of proof has not</p> <p>17 been met. It's the wrong site. It's in the wrong</p> <p>18 location. And for all those reasons and all the</p> <p>19 reasons very thoughtfully expressed by members of the</p> <p>20 public this evening and in other hearings we</p> <p>21 respectfully ask that the settlement be rejected.</p> <p>22 Thank you.</p> <p>23 CHAIRMAN FLANAGAN: All right. Mr.</p> <p>24 Schneider? Thank you, Mr. Simon.</p> <p>25 MR. SCHNEIDER: Members of the Board, it's</p>
<p style="text-align: right;">Page 159</p> <p>1 interesting. I have to mirror Mr. Simon in perhaps</p> <p>2 only one way in that this is my third summation to you,</p> <p>3 and I trust that none of you will take this personally</p> <p>4 when I say respectfully that it is my sincere hope that</p> <p>5 it is my last summation to you.</p> <p>6 As I reflected on preparing this summation</p> <p>7 I had a number of comments in order, but what hit me</p> <p>8 most significantly was the recent -- not the recent --</p> <p>9 the discussion tonight between Mr. Mlenak and Mr. Steck</p> <p>10 as to the concept of a settlement. As Mr. Mlenak asked</p> <p>11 Mr. Steck, and as even Mr. Simon acknowledged,</p> <p>12 settlements are recognized in our law, and even in Land</p> <p>13 Use matters as something that should be encouraged as a</p> <p>14 matter of public policy.</p> <p>15 And the essence of a settlement is that</p> <p>16 each party makes compromises to its legal position even</p> <p>17 when that respective party may strongly believe that</p> <p>18 its original legal position is valid, sustainable, and</p> <p>19 would have prevailed in a court of law.</p> <p>20 Verizon Wireless sincerely believed that</p> <p>21 its position throughout the course of 27 public</p> <p>22 hearings demonstrated unequivocally that it was</p> <p>23 entitled to the relief notwithstanding the original</p> <p>24 denial by this Board.</p> <p>25 It accordingly commenced litigation in the</p>	<p style="text-align: right;">Page 160</p> <p>1 Federal District Court of New Jersey, but ultimately</p> <p>2 after extensive negotiations between Verizon Wireless,</p> <p>3 this Board, and the Township Council a settlement was</p> <p>4 agreed to. Recognizing by all parties that a</p> <p>5 compromise was significant in light of what the</p> <p>6 potential results would be if the matter was fully</p> <p>7 litigated. And in doing so each party gained certain</p> <p>8 benefits. I am constrained to dispel the notion that</p> <p>9 the concessions that were made by Verizon are</p> <p>10 insignificant and do not justify the approval of the</p> <p>11 settlement.</p> <p>12 Let me address them both in terms of what</p> <p>13 the concessions were under the settlement agreement,</p> <p>14 and what the additional concessions that had been</p> <p>15 offered during this not concise settlement hearing</p> <p>16 process.</p> <p>17 With respect to the issue of the future</p> <p>18 extension of the tower, with all due respect to Mr.</p> <p>19 Simon, and perhaps certain members of the public, let's</p> <p>20 not have amnesia about the significance of that issue.</p> <p>21 I among perhaps a few, but certainly all</p> <p>22 the Board members, were most cognizant of the</p> <p>23 importance of that issue. I sat through however many</p> <p>24 public hearings where certain members of the Board were</p> <p>25 fixated on ensuring that there would not be a right of</p>

<p style="text-align: right;">Page 161</p> <p>1 automatic extension of the tower height. It was the 2 subject of extensive negotiations. You sought at the 3 time the advice of Dr. Eisenstein. You sought the 4 advice of your Counsel as to what the rights were of 5 the respective parties.</p> <p>6 And contrary to what Mr. Simon has 7 acknowledged the Applicant has given up a significant 8 right, and the right is significant. It would have 9 allowed as a matter of law the right of Verizon 10 Wireless to administratively, in conjunction with any 11 collocation application, go to the Building Department 12 and say under Section 6409 of the Middle Class Tax 13 Relief Act I'm entitled to a 20-foot extension. Here's 14 my permit. That is a right that was established as a 15 matter of Federal law and a right that Verizon had as a 16 matter of law, and Verizon Wireless under the terms of 17 that consent order waived that statutory right. 18 Meaning, that any collocator who chooses to seek an 19 extension, whether it be 90 feet or a hundred feet must 20 come before this Board.</p> <p>21 And perhaps in recognition of all the 22 people who are here today and the potential 23 representation of Mr. Simon, coming before this Board 24 may not be viewed by that particular collocator as a 25 very pleasurable experience.</p>	<p style="text-align: right;">Page 162</p> <p>1 The point being that the right given up by 2 Verizon is not insignificant. I could have a lot to 3 say about service, wireless service as it relates to 4 the Harding Township Elementary School, and whether 5 ultimately the reduction in height reflects or results, 6 I should say, in service that was not originally sought 7 to be achieved by Verizon, but I would note that 8 clearly the Board thought it was a material provision 9 to require as part of the settlement a specific RF 10 analysis as to service to the Harding Township 11 Elementary School. That is contained within the 12 consent order and it is a requirement, I should note, 13 prior to the issuance of a building permit.</p> <p>14 In addition to those stipulations let me -- 15 and I will try to do so in light of the late hour -- 16 concisely recite some of the additional considerations 17 which we believe are material and support the 18 settlement. We have relocated the tower essentially 19 and summarily 7 feet from the prior location as to the 20 O'Donnell property line.</p> <p>21 To quote one of your Board members who made 22 this comment prior to the denial, "every foot matters." 23 That was a comment made by the Board prior to executing 24 and agreeing to the Stipulation of Settlement. The 25 point being that the Board was focused on relocating as</p>
<p style="text-align: right;">Page 163</p> <p>1 close as possible the facility away from the O'Donnell 2 property line, and that was achieved. Verizon having 3 gone through the process of a complete geotech analysis 4 at an earlier stage of the proceeding and ultimately by 5 virtue of that geotech analysis being able to relocate 6 the facility closer to the recycling shed and further 7 away from the O'Donnell property line.</p> <p>8 Let me take a moment to discuss what I 9 think has been some, frankly, unfair shots at the issue 10 relating to the tree design. You yourself as Board 11 members clearly had a focus on what the tree was going 12 to look like. You, and I say this honestly, you 13 reasonably criticized the Applicant at the outset of 14 the process for not having come forward at that early 15 stages with specific specifications as it relates to 16 what the tree would look like.</p> <p>17 It is evident from this Stipulation of 18 Settlement and Consent Order that the Board was 19 extremely focused on what the tree would look like, and 20 was not otherwise satisfied with the prior depictions 21 of the tree, resulting ultimately in a tree based on 22 this design.</p> <p>23 Now, I must say, I'm baffled, honestly, by 24 the comments here tonight, including the comments in 25 Mr. Simon's summation. Because if you just listen to</p>	<p style="text-align: right;">Page 164</p> <p>1 the summation you would think that all the Applicant 2 was coming forward was saying we're going to construct 3 a tree that looks like Exhibit-2 to the Stipulation of 4 Settlement and Consent Order. I have immense respect 5 contrary to my arguing with him, with Mr. Simon, but 6 I'm constrained to note it's almost as if no one looked 7 at Exhibit-3, the tree specifications.</p> <p>8 This is not a tree where we just presented 9 a photo. This is a tree that I am making a rather 10 large but I think appropriate assumption that the 11 Board, as part of its settlement considerations, was 12 focused on ensuring that there were documented 13 specifications to ensure that the tree that's depicted 14 in this photo were consistent with the tree 15 specifications. We have specific specifications 16 providing every level of detail that is imaginable. 17 They are specifications for the tree to be constructed 18 based on the geotech analysis. This is not where we 19 said, oh, let's go take a picture of a nice tree in 20 California and we'll hope that it turns out that way. 21 You can hold the Applicant's feet to the fire to ensure 22 that the tree is going to be based on these 23 specifications attached as Exhibit-3 to the Stipulation 24 of Settlement.</p> <p>25 I also heard tonight criticism by I guess</p>

<p style="text-align: right;">Page 165</p> <p>1 it was Mr. Steck as to the proposed branching being 2 lowered to 30 feet. I would remind the Board that that 3 was one of your Board members who made the request, 4 albeit not here this evening, he made the request and 5 the Applicant agreed to it. The Stipulation of 6 Settlement provides that there can -- Mr. Simon's 7 correct in a certain limited sense, that there can be 8 no additional conditions imposed on Verizon unless they 9 consented.</p> <p>10 So what did we do? A request was made. We 11 surmised that the Board was in favor of lowering the 12 branches to 30 feet so we agreed to it. So that's yet 13 an additional condition that the Applicant has agreed 14 to, us taking the lead from your Board or at least one 15 of your Board members, and a believe an opinion shared 16 by the Board, to offer yet an additional condition.</p> <p>17 Let me spend a moment on the issue of 18 landscaping, and I'll try to be brief. I guess we're 19 at the third or the fourth hearing. I lose track after 20 a while. And if I just sat here tonight I would think 21 that after all was said and done that the whole 22 landscaping process was much to do about nothing. I'm 23 befuddled by that. With all due respect, we must have 24 spent, and I would remind the Board not on direct, we 25 must have spent four and a half hours discussing</p>	<p style="text-align: right;">Page 166</p> <p>1 landscaping and now to suggest, eh, it's really not a 2 big deal is befuddling to me.</p> <p>3 The Board obviously was focused on ensuring 4 a landscaping plan in a manner that attempted to 5 mitigate both the visual impact of the tower and to 6 shield the ground equipment. It arrived with input 7 from the Township with a specific landscaping plan as 8 part of the consent order. And realistically you had 9 some concerns based on the initial public hearing as 10 part of the settlement process as to either the 11 sufficiency or the expertise relating to that 12 landscaping.</p> <p>13 So what did we do? We went back and we 14 sought the further input as you suggested from the town 15 tree conservation officer and developed yet a further 16 landscaping plan. It clearly was of importance to you, 17 and I don't think that anyone objectively would suggest 18 that the landscaping plan as ultimately reflected in 19 the final plans before you does not represent a 20 material improvement than that which was (A) originally 21 submitted, and (B), contained within -- and (B), 22 contained within the settlement.</p> <p>23 Let me make a couple of concluding final 24 comments. I must say that I'm bemused, is the only 25 word that I can think of, of the argument advanced by</p>
<p style="text-align: right;">Page 167</p> <p>1 Mr. Steck which essentially equates that as to the 2 presence of what I'll charitably characterize as a 3 bunch of junk being in the area of the proposed leased 4 premises that we should just leave it as it is.</p> <p>5 I find it incredulous that someone would 6 want to advocate that sewer grates, abandoned cars, and 7 everything else that Mr. Masters testified to exists is 8 a preferable alternative to that of the proposed 9 equipment compound, et cetera. And, in essence, the 10 equipment compound will serve to get rid of that junk. 11 And to suggest as was responded to by Mr. Steck that 12 the replacement of the junk with the equipment compound 13 impairs the particular suitability of the property is 14 incredulous to me. To suggest that the property is 15 more suitable if the junk remains versus the compound, 16 that one goes over my head.</p> <p>17 Lastly, having practiced in this area for 18 33 years I cannot imagine or fathom the opposition that 19 has been advocated by Mr. Simon through Mr. Steck as to 20 the disadvantages of collocation. We could not have 21 spent -- strike that. We must have spent a multitude 22 of public hearings addressing how we were going to deal 23 with collocation. I can remember vividly the Chair 24 among others asking both Mr. Mlenak and Dr. Eisenstein 25 how do we deal with collocation? What we should want</p>	<p style="text-align: right;">Page 168</p> <p>1 to do is if there's going to be a tower here we want to 2 ensure that the tower is able to accommodate 3 collocators.</p> <p>4 To suggest now, as Mr. Steck has, that 5 somehow collocation at this is a negative belies every 6 aspect of the case law which advocates collocation in 7 every aspect of proper planning which reflects a -- the 8 strongest objective of ensuring that facilities 9 accommodate collocation.</p> <p>10 Reflect for a moment why the FCC provided 11 for automatic extensions of towers. Because they 12 wanted to encourage collocation. Now to suggest that 13 because the tower may be constructed in a Historic 14 District that collocation is not an objective to be 15 served makes no planning sense.</p> <p>16 I will conclude with two final comments. 17 In the midst of the ongoing discussion and emotional 18 comments that have been made by various parties as it 19 relates to the design of the tower I offer the 20 following: The Board made the decision in its 21 Stipulation of Consent and Consent Order that it should 22 be a tree, and a specific design of a tree.</p> <p>23 The determination to provide for a tree was 24 not picked out of left field by the Board. Let us all 25 be mindful of and cognizant of the fact that the</p>

<p style="text-align: right;">Page 169</p> <p>1 Township Committee, as part of the bid specs as 2 reflected in the lease agreement, provided for a tree. 3 It made that very specific determination, albeit 4 requiring the approval process to go through this 5 Board. But let there be no misunderstanding at all 6 that it was the clear intent of the governing body who 7 had no obligation to make this property available and 8 had no obligation necessarily to specify a particular 9 design that it mandated as part of the bid specs as 10 reflected in the lease a tree. And not a tree, I mind 11 you, of 86 feet, but up to 140 feet.</p> <p>12 So the decision which leads us here this 13 evening to a tree is not something that was not 14 considered extensively by the town fathers resulting in 15 both the public bid and the original application by 16 this particular applicant.</p> <p>17 I would respectfully suggest in conclusion 18 members of the Board that each of the conditions that I 19 have summarized this evening, either alone but 20 certainly taken together, represent material provisions 21 which substantiate the approval of the Stipulation of 22 Consent under the Consent Order and I urge you to 23 approve the application as amended during this 24 settlement process with the stipulated conditions.</p> <p>25 I would note that I have not taken the time</p>	<p style="text-align: right;">Page 170</p> <p>1 here this evening to address all of the reasons why 2 Verizon believed it was entitled to the relief sought 3 as originally applied for. Mr. Simon chose to do that. 4 I rest on my summation as part of the first public 5 hearing process in which I articulated to you 6 strenuously why I believe the application should be 7 submitted, and I urge you to approve the application.</p> <p>8 CHAIRMAN FLANAGAN: Thank you, Mr. 9 Schneider.</p> <p>10 Okay. So this is the part where the Board 11 is going to discuss this. We'll deliberate. At the 12 end of that we're going to vote. I want to say, 13 whatever the result is, just as last time, if we can 14 all just move on to the parking lot after you get the 15 vote whether you love the answer or hate the answer 16 because we're all going to want to go home at that 17 point, okay. All right. Or if you want to go now 18 you're welcome to go now. You're not obligated.</p> <p>19 Steve, any instruction from you before we 20 start?</p> <p>21 MR. MLENAK: Mr. Schneider, Mr. Simon 22 outlined the relevant standard by which you have to 23 review this application, and it's no different than the 24 last time you reviewed the application which is the 25 positive and negative criteria as viewed by the test</p>
<p style="text-align: right;">Page 171</p> <p>1 set forth in Sica versus Wall which you're all familiar 2 with. The difference here is we're here on a specific 3 plan that's attached to a Stipulation of Settlement 4 that was reached between the Applicant and the Board -- 5 and the -- Applicant and the Board and the Township 6 pursuant to a Federal lawsuit that the Applicant 7 brought after this Board denied the original 8 application.</p> <p>9 As Mr. Schneider pointed out, and Mr. Simon 10 conceded, the settlement of litigation is encouraged as 11 a matter of public policy, and it is a legal basis to 12 consider settling when there is concern about the 13 uncertainty of what will happen in that litigation as 14 well as time and cost, and every litigation, of course, 15 is uncertain.</p> <p>16 The litigation that was filed here by 17 Verizon did not seek the court to invalidate the 18 Board's decision and provide an approval of an 86-foot 19 tower, but rather of its 140- or 120-foot variety with 20 no landscaping, no conditions, not the location 21 provided here, not the type of tree provided here or 22 any of the landscape buffering or any of the other 23 conditions that are set forth in the application.</p> <p>24 And as Mr. Schneider said, settling does 25 not necessarily reflect an admission of your being</p>	<p style="text-align: right;">Page 172</p> <p>1 wrong in the initial denial, or that you would have not 2 been successful had you continued to litigation, but 3 rather that the settlement reflects that both sides 4 gave up some of their bargaining power and resulted in 5 something that is fair to the public. And when viewing 6 what is fair to the public that can include an analysis 7 of what could have happened had the Board lost that 8 litigation.</p> <p>9 So with that there were a number of 10 conditions that the Board -- that is in the Consent 11 Order that the Board is considering. They include the 12 tree quality, including exhibits two and three. I know 13 there was a comment that you can't see the antennas. I 14 think that's a good thing. There was comment about the 15 height we talked about. There was comment about the 16 location being removed at the original hearing. There 17 was uncertainty as to where it could be moved because 18 the geotechnical analysis hadn't been done. There was 19 testimony about the requirement before building permits 20 of the RF testing and reporting at the school location 21 for the public's benefit.</p> <p>22 As the Board will recall there was 23 extensive time spent discussing how this Board can 24 somehow control future extension of the tower in light 25 of the state and Federal parameters, and it was</p>

<p style="text-align: right;">Page 173</p> <p>1 discussed at the time one way to do that would be to</p> <p>2 amend the lease, which this Board could not require at</p> <p>3 the time. It could only require good-faith efforts</p> <p>4 from the Applicant because the township was not a party</p> <p>5 at the time. Now the settlement can require it and</p> <p>6 does require it. And of course, all the testimony and</p> <p>7 changes that have gone to the landscaping. So the</p> <p>8 Board can consider all those when evaluating whether or</p> <p>9 not to approve the settlement.</p> <p>10 CHAIRMAN FLANAGAN: Can I ask Mr. Simon,</p> <p>11 Mr. Schneider a question?</p> <p>12 MR. MLENAK: Yes.</p> <p>13 CHAIRMAN FLANAGAN: Can I get a yes or no</p> <p>14 answer from you, both of you? Do you agree that the</p> <p>15 uncertainty and cost of litigation is a valid</p> <p>16 consideration when we consider this application, Mr.</p> <p>17 Schneider?</p> <p>18 MR. SCHNEIDER: Yes.</p> <p>19 CHAIRMAN FLANAGAN: Mr. Simon?</p> <p>20 MR. SIMON: No. Not based on the record</p> <p>21 here that when you settle a litigation --</p> <p>22 MR. SCHNEIDER: I thought it was a yes or</p> <p>23 no answer.</p> <p>24 CHAIRMAN FLANAGAN: I didn't really think I</p> <p>25 was going to get a yes or no.</p>	<p style="text-align: right;">Page 174</p> <p>1 MR. SIMON: No, but it's not a simple -- I</p> <p>2 mean, for Rich it's of course what he's going to say,</p> <p>3 but it is not -- to have a settlement while the law</p> <p>4 encourages settlement because of the unknowns regarding</p> <p>5 litigation what you have right now is with regard to</p> <p>6 that litigation concerning the hundred, you know, the</p> <p>7 possibility of 140 feet, keep in mind I asked Mr.</p> <p>8 Masters this, and Mr. Schneider asked him questions in</p> <p>9 response, the State Historic Preservation Office</p> <p>10 rejected --</p> <p>11 CHAIRMAN FLANAGAN: And I do appreciate</p> <p>12 this, Mr. Simon. I didn't really expect a yes or no</p> <p>13 answer.</p> <p>14 MR. SIMON: But the point being, and I'm</p> <p>15 passionate about it because it the truth, which is that</p> <p>16 just because, okay, we have somebody files a complaint,</p> <p>17 we don't want to spend money, let's encourage</p> <p>18 settlement of litigation, there's a reason why we have</p> <p>19 --</p> <p>20 BOARD MEMBER NEWLIN: Mike, he's taking up</p> <p>21 our time. Please.</p> <p>22 CHAIRMAN FLANAGAN: Okay. Thank you.</p> <p>23 MR. MLENAK: The Board still needs to have</p> <p>24 substantial credible evidence to support the Sica</p> <p>25 Balancing Test.</p>
<p style="text-align: right;">Page 175</p> <p>1 CHAIRMAN FLANAGAN: Okay. Who wants to</p> <p>2 talk first? Who's voting on this, by the way? So</p> <p>3 Maselli is --</p> <p>4 MR. MLENAK: You have seven present Board</p> <p>5 members and you have seven that are eligible to vote.</p> <p>6 CHAIRMAN FLANAGAN: So all seven will vote.</p> <p>7 That's it. Every vote counts. Congratulations,</p> <p>8 George.</p> <p>9 BOARD MEMBER BOYAN: Thank you very much.</p> <p>10 CHAIRMAN FLANAGAN: Who wants to start the</p> <p>11 discussion?</p> <p>12 BOARD MEMBER NEWLIN: Are we allowed to ask</p> <p>13 a question of the attorneys?</p> <p>14 CHAIRMAN FLANAGAN: Of course.</p> <p>15 BOARD MEMBER NEWLIN: So Rich, the</p> <p>16 implication is that Verizon doesn't care whether it's a</p> <p>17 tree or a pole.</p> <p>18 MR. SCHNEIDER: Verizon doesn't care --</p> <p>19 BOARD MEMBER NEWLIN: Your summary seemed</p> <p>20 to imply that Verizon doesn't really care whether it's</p> <p>21 a tree or a pole, but that actually the Board of</p> <p>22 Adjustment prefers a tree.</p> <p>23 MR. SCHNEIDER: No. Verizon -- if I</p> <p>24 created that impression I didn't mean to. Verizon is</p> <p>25 only before this Board for approval of the tree.</p>	<p style="text-align: right;">Page 176</p> <p>1 BOARD MEMBER NEWLIN: So Mike, I don't know</p> <p>2 if we're going to develop that a little bit further. I</p> <p>3 leave that up to you.</p> <p>4 CHAIRMAN FLANAGAN: Go ahead. Go with it.</p> <p>5 BOARD MEMBER NEWLIN: My understanding is</p> <p>6 that Verizon insists on a tree as part of the</p> <p>7 settlement.</p> <p>8 MR. SCHNEIDER: Correct.</p> <p>9 CHAIRMAN FLANAGAN: I think further, right,</p> <p>10 there's discussions about whether a pole is an option,</p> <p>11 right. And it was not, or it became not an option.</p> <p>12 MR. SCHNEIDER: Correct.</p> <p>13 CHAIRMAN FLANAGAN: I know I've asked you,</p> <p>14 you know, what happens -- here's a good question for</p> <p>15 Steve. There are certain things that were discussed as</p> <p>16 part of the settlement discussions. Are those</p> <p>17 privileged?</p> <p>18 (Whereupon, Mr. Mlenak nods in the</p> <p>19 affirmative.)</p> <p>20 CHAIRMAN FLANAGAN: But is it okay to come</p> <p>21 out here then?</p> <p>22 MR. MLENAK: You can ask the Applicant if</p> <p>23 they were, at this point, willing to consider a</p> <p>24 condition to make it a flagless flagpole.</p> <p>25 CHAIRMAN FLANAGAN: Okay. Are you willing</p>

<p style="text-align: right;">Page 177</p> <p>1 to make it --</p> <p>2 MR. SCHNEIDER: No.</p> <p>3 CHAIRMAN FLANAGAN: -- a condition to make</p> <p>4 it a flagless flagpole? The answer was no.</p> <p>5 BOARD MEMBER NEWLIN: And Rich, why is</p> <p>6 that? That's not a disingenuous question, there's</p> <p>7 technical reasons.</p> <p>8 MR. SCHNEIDER: The answer is the matter</p> <p>9 was given significant consideration. And for the</p> <p>10 technical reasons that you alluded to the answer is no.</p> <p>11 How's that concisely?</p> <p>12 BOARD MEMBER NEWLIN: That's not a very</p> <p>13 good engineering answer, I would say.</p> <p>14 MR. SCHNEIDER: Well, I can't re-summarize</p> <p>15 27 hearings, but the matter was -- I'm not going to</p> <p>16 reveal -- I want to be careful about not revealing</p> <p>17 anything that was the subject of the negotiations with</p> <p>18 the -- Verizon made the determination that a flagpole</p> <p>19 does not work technologically and they would only</p> <p>20 settle based on the tree design.</p> <p>21 BOARD MEMBER NEWLIN: So Steve, is it</p> <p>22 acceptable to summarize it that you can fit a lot more</p> <p>23 collocators in a shorter distance --</p> <p>24 MR. MLENAK: That was part of the testimony</p> <p>25 under the first 27 hearings.</p>	<p style="text-align: right;">Page 178</p> <p>1 BOARD MEMBER NEWLIN: -- for a tree than</p> <p>2 you can with a pole. In fact, it's 30 feet for a pole</p> <p>3 and 10 feet for a tree, if I remember correctly, right?</p> <p>4 That's the reason.</p> <p>5 BOARD MEMBER SYMONDS: I'd like to explore</p> <p>6 that also, because that was, you know, when we were</p> <p>7 hearing the summations there were statements made that,</p> <p>8 oh, yeah, well, we can have an 80-foot tree or we can</p> <p>9 have an 80-foot pole. And that was -- I don't know --</p> <p>10 CHAIRMAN FLANAGAN: Before you go on</p> <p>11 though, Steve, is there not some risk of discussing in</p> <p>12 public what was part of the settlement as it may make</p> <p>13 the entire discussion not --</p> <p>14 BOARD MEMBER SYMONDS: I'm discussing what</p> <p>15 I --</p> <p>16 MR. SCHNEIDER: I chose not to discuss --</p> <p>17 CHAIRMAN FLANAGAN: Just for the Board, I'd</p> <p>18 advise any discussions that took place as part of our</p> <p>19 settlement discussions with Verizon I'd avoid, and</p> <p>20 don't bring the matter here.</p> <p>21 MR. MLENAK: Hugh, I don't know. I got the</p> <p>22 sense you were asking about the prior hearings.</p> <p>23 BOARD MEMBER SYMONDS: Yes, I was. I</p> <p>24 wanted to confirm with other members that were here,</p> <p>25 but, you know, throughout the hearings, the regular</p>
<p style="text-align: right;">Page 179</p> <p>1 public hearings which we all could have come to, there</p> <p>2 was every -- at every step of the game it said you could</p> <p>3 have a tree that was this height, or you could have a</p> <p>4 pole that was this height. That you could not fit the</p> <p>5 same amount of radio stuff in a short pole. You know,</p> <p>6 you had to have -- because basically the antennas on a</p> <p>7 tree they can be spread in a larger circle; whereas,</p> <p>8 you know, a pole you have to stack the one on top of</p> <p>9 each other. So for the same amount of radio</p> <p>10 penetration a pole, a flagpole has to be taller than a</p> <p>11 tree. And hopefully I'm not the only one that</p> <p>12 remembers this, because otherwise I'll think I'm losing</p> <p>13 my mind. And I'd really hope --</p> <p>14 CHAIRMAN FLANAGAN: I remember it as well.</p> <p>15 MR. MLENAK: To the best of my</p> <p>16 recollection, how you summarize it is the testimony</p> <p>17 that was before the denial. At this point we're on a</p> <p>18 settlement after the denial and the Applicant has</p> <p>19 declined to entertain that option.</p> <p>20 BOARD MEMBER ROSENBAUM: But am I correct</p> <p>21 that whatever was discussed during those 20 prior</p> <p>22 hearings it's all discussed, that's in the public</p> <p>23 record. What's in front of us is this particular</p> <p>24 paper, this Consent Order. And what we need to do is</p> <p>25 effectively a yea or nay vote on whether we think we</p>	<p style="text-align: right;">Page 180</p> <p>1 want to approve or reject this Consent Order.</p> <p>2 MR. MLENAK: That's correct.</p> <p>3 BOARD MEMBER ROSENBAUM: And it's a take it</p> <p>4 or leave it.</p> <p>5 MR. MLENAK: Well, the Consent Order is</p> <p>6 approved. You're approving the application --</p> <p>7 BOARD MEMBER ROSENBAUM: Based on the</p> <p>8 Consent --</p> <p>9 MR. MLENAK: Based on the language of the</p> <p>10 Stipulation of Settlement.</p> <p>11 BOARD MEMBER BOYAN: If I may just</p> <p>12 elaborate on that point. A yes vote is an 86-foot</p> <p>13 tree, and a no vote is a litigation that may result in</p> <p>14 140-foot tower with the possibility of a ten percent or</p> <p>15 20-foot extension?</p> <p>16 MR. MLENAK: Correct.</p> <p>17 BOARD MEMBER NEWLIN: A 140-foot tree,</p> <p>18 potentially.</p> <p>19 BOARD MEMBER BOYAN: A 140-foot structure</p> <p>20 with up to a 20-foot extension. One hundred sixty</p> <p>21 feet, potentially.</p> <p>22 BOARD MEMBER SOVOLOS: I was just going to</p> <p>23 say, couldn't it be 140 feet with the antenna showing</p> <p>24 like the one on 287? It doesn't necessarily have to be</p> <p>25 a tree.</p>

<p style="text-align: right;">Page 181</p> <p>1 BOARD MEMBER NEWLIN: Yes. It could be 2 worse. 3 BOARD MEMBER ROSENBAUM: For me, you know, 4 I was a yes vote before. I mean, as the public -- as 5 the record reflects. For me this represents an 6 improvement other than that. We have an increase in 7 setback, albeit 6 feet. It's not a major one, but it 8 is an increase in setback, which was a concern for us 9 the first time around. 10 There's improved controls on the height. 11 We had a lot of conversations about that. Prior it was 12 up to Verizon and the Town Council about the height 13 changes, now it includes the Board of Adjustment's. So 14 that's an improvement in my view. 15 We have an engineering study for the 16 elementary school, which was a point of contention and 17 a point of concern for all of us here about the safety 18 of the school. So Verizon is doing an engineering 19 study. 20 And lastly, I know there's questions, I 21 know there's concerns about the height of certain trees 22 and the landscaping, it is an improvement over the 23 landscaping that we had before. So in my mind this is 24 an improvement from what we had before and I will be a 25 yes.</p>	<p style="text-align: right;">Page 182</p> <p>1 CHAIRMAN FLANAGAN: Okay. Who else? 2 BOARD MEMBER NEWLIN: I'll go. Similar to 3 what Aric said. The major advantage is that the Board 4 now has the opportunity to conduct a hearing if the 5 pole gets extended. Didn't have that before. That's 6 probably the number one advantage, and we couldn't get 7 it before. 8 The landscape plan it is what it is. I 9 mean, it's gone through the -- members of the audience 10 may not like it. Verizon has pretty much done whatever 11 the town wanted for the landscape plan. So to the 12 extent it's been requested a certain way it went to the 13 arborist, it went to the town. Verizon has been very 14 accommodating on the landscape plan. 15 The ODAS piece is an important component. 16 So it's been clear in testimony from our own radio 17 frequency engineer that having ODAS or small cells 18 instead of this tower is just not feasible. It's not 19 commercially feasible, period. That's our own expert. 20 So members of the public that had asked about this new 21 technology, et cetera, it's not feasible. 22 There is a concern about the high frequency 23 coverage at the school, not the ability to get cell 24 service, but the capacity because of potentially not 25 having coverage. This ODAS study will let this school</p>
<p style="text-align: right;">Page 183</p> <p>1 get some data about what's possible. It should be 2 noted the school was not interested in hosting the cell 3 tower site on their property even though cell service 4 has been a concern for the school. So this is a 5 solution for them to get data and potentially the town 6 or the school can do something about increased 7 coverage, not for getting cell phone service but having 8 additional capacity. And whether they do it in-house 9 or outside, we'll see. That study is going to be 10 written up. It's going to be acceptable to the 11 Township Engineer and it will be a public document. 12 And as Rich said, Verizon will provide that as part of 13 building the tower. 14 The setback is modest at best. The other 15 stakeholders couldn't relocate the tower, can't do that 16 anymore. So I agree with Aric. This is substantially 17 different from my perspective. I was a no vote before. 18 I was on the knife's edge before, and I'm a yes now. 19 CHAIRMAN FLANAGAN: Thank you, Alf. Who 20 else? 21 BOARD MEMBER SOVOLOS: I'll go, Mike. I'm 22 not going to add too much more to what Aric and Alf 23 said tonight. I agree with everything they said. I'm 24 not sure that we specifically called out that in 25 addition to requiring that any amendment to the tower</p>	<p style="text-align: right;">Page 184</p> <p>1 height come in front of the Board of Adjustment. The 2 lease has also been amended to limit the height 3 currently at the 86 feet that we're discussing. That 4 was not a provision before and I think it's a very 5 important one because the height of the tower has been 6 essential to our discussions since the very beginning. 7 And I think we should really lift the setback being 8 infringed upon. We need to make sure that that height 9 remains as low as possible. 10 The other thing I'd say is that we tried 11 very hard to get the best looking tree design out 12 there. And Verizon was accommodating to negotiating 13 that with us. And I think we have come up with the 14 best option, and the landscape plan is really only 15 going to make that more robust. 16 So I'm not sure I have anything else to 17 add, because I think that we have done our very best to 18 make this the best possible solution and I don't want 19 to see a 140-foot tower, even if the risk is minimal, 20 go up in Harding Township, so I would be a yes. 21 CHAIRMAN FLANAGAN: Thank you. Tom or 22 Hugh? 23 BOARD MEMBER ROSENBAUM: Let George go. 24 CHAIRMAN FLANAGAN: Well, you got skipped 25 last time. This is your moment to shine.</p>

<p style="text-align: right;">Page 185</p> <p>1 BOARD MEMBER ROSENBAUM: He's also</p> <p>2 articulate. More than me.</p> <p>3 BOARD MEMBER BOYAN: Listen, Verizon is a</p> <p>4 huge multi-national company. Harding Township is a</p> <p>5 small bucolic municipality which is an oasis in an</p> <p>6 over-developed state of New Jersey. And the fact is</p> <p>7 we're the lowest body to consider this application.</p> <p>8 Congress is in favor. The Courts are in favor.</p> <p>9 Trenton is in favor. The Township Committee sought out</p> <p>10 this location and awarded a lease to Verizon. Your</p> <p>11 elected officials. The Board of Education that you</p> <p>12 elect also said we don't want any part of this.</p> <p>13 This lowest body has spent more time and</p> <p>14 more effort and thought considerably hard about every</p> <p>15 single one of the issues that you've all talked about.</p> <p>16 And I would argue we've done the best job in terms of</p> <p>17 mitigating the impact of this tower. For all the</p> <p>18 reasons that were said earlier, 86 feet is the lowest</p> <p>19 option that was ever on the table. Seventy-two feet</p> <p>20 from the property line is the furthest it was ever</p> <p>21 proposed. It is the most robust landscaping plan. It</p> <p>22 gives this body -- inserts this body into any future</p> <p>23 extensions that we never had the opportunity to. And</p> <p>24 as a result I think this plan is substantially better</p> <p>25 than what we denied in 2022. And for that reason I'm a</p>	<p style="text-align: right;">Page 186</p> <p>1 yes.</p> <p>2 CHAIRMAN FLANAGAN: Thank you.</p> <p>3 BOARD MEMBER SYMONDS: Most of it has been</p> <p>4 said before, but I certainly -- the most important</p> <p>5 thing for me is that the -- during the regular</p> <p>6 deliberations we were never able to bring the Township</p> <p>7 Committee and the terms of the lease to the table in</p> <p>8 order to prevent the automatic extension of the tower.</p> <p>9 And so even though we spent two years and chewed</p> <p>10 Verizon down from 140 to 120 to eventually 80 feet we</p> <p>11 were not at the end of our deliberations. We were not</p> <p>12 able to guarantee that it would stay at that height,</p> <p>13 but as a result of the lawsuit and bringing the</p> <p>14 Township Committee to the table we got the change in</p> <p>15 the lease that we needed to restrict the automatic</p> <p>16 extension of this tower, and I think that's very</p> <p>17 important and that's what got me on this, you know, to</p> <p>18 an approval at this point.</p> <p>19 CHAIRMAN FLANAGAN: Thank you, Hugh.</p> <p>20 Anyone else? Me and you, buddy. The guys with the</p> <p>21 blue shirts.</p> <p>22 BOARD MEMBER ADDONIZIO: There you go.</p> <p>23 I'll keep it short. I'm in agreement with what the</p> <p>24 other Board members have said, based on what controls</p> <p>25 the tree height, a fear of the unknown with litigation,</p>
<p style="text-align: right;">Page 187</p> <p>1 having Verizon step up the landscape plan. I do think</p> <p>2 lowering the branches will help the situation, hiding</p> <p>3 the bottom of this pole sooner, rather than having to</p> <p>4 go another 10 feet. So for all those reasons and those</p> <p>5 that I've just said I confirm approval.</p> <p>6 CHAIRMAN FLANAGAN: All right. I won't</p> <p>7 repeat everything everyone said. I agree with every --</p> <p>8 I agree with the point. All my points were hit. I'll</p> <p>9 say just for the crowd, there's a lot of discussion</p> <p>10 about pole versus tree. And I'll tell you, you saw how</p> <p>11 I voted last time. I voted yes to a pole. Why?</p> <p>12 Because I prefer a pole. But it's not what everybody</p> <p>13 else felt, and that's fine. We asked, I asked, I know</p> <p>14 others have asked for a pole, but you know, that was no</p> <p>15 longer an option. So with that said I'm going to vote</p> <p>16 yes, too. So let's make a motion. Steve?</p> <p>17 MR. MLENAK: So the motion would be to</p> <p>18 approve the application pursuant to the conditions set</p> <p>19 forth in the Consent Order. There are two additional</p> <p>20 conditions that were raised during the hearing here</p> <p>21 that the Board needs to consider, whether it does want</p> <p>22 to condition the branching to start at 30 feet. And</p> <p>23 further the Applicant has asked for the Board's consent</p> <p>24 to remove one healthy tree. Tree number -- Rich,</p> <p>25 remind me of the tree number?</p>	<p style="text-align: right;">Page 188</p> <p>1 CHAIRMAN FLANAGAN: Yes, the one struck by</p> <p>2 lightning.</p> <p>3 MR. SCHNEIDER: The tulip one.</p> <p>4 MR. MLENAK: Those would be the two</p> <p>5 additional considerations.</p> <p>6 CHAIRMAN FLANAGAN: All right. So one at a</p> <p>7 time. The first thing was, Maselli had a strong</p> <p>8 feeling that having those branches start at 30 feet.</p> <p>9 Does anyone disagree with his view on that? I'm going</p> <p>10 to trust his sense of proportion and scale and all that</p> <p>11 stuff. So I would agree with that. Does anyone</p> <p>12 disagree with having the branches start at 30 feet? So</p> <p>13 that's going to be one. And Mr. Schneider you're</p> <p>14 amenable to -- oh, Paul?</p> <p>15 MR. FOX: Subject to review, the branch</p> <p>16 design.</p> <p>17 CHAIRMAN FLANAGAN: Fair enough. Thank</p> <p>18 you. So subject to the Township Engineer's review that</p> <p>19 we can actually put the branches there without hitting</p> <p>20 the shed or whatever else.</p> <p>21 MR. FOX: And maintain the shape.</p> <p>22 CHAIRMAN FLANAGAN: Okay. Fine. The other</p> <p>23 question is do we take down the Tulip tree? My</p> <p>24 personal view, the thing's got ten years left in it.</p> <p>25 Maybe shorter, maybe longer. Ten years is a long time.</p>

<p style="text-align: right;">Page 189</p> <p>1 Those are big trees. I wouldn't cut those down unless</p> <p>2 you have to.</p> <p>3 BOARD MEMBER SYMONDS: I feel strongly</p> <p>4 about this that by leaving it, even though it may not</p> <p>5 have a hundred year life-span, it will at least give</p> <p>6 the other landscaping a chance to catch up. It will be</p> <p>7 less of an abrupt change. It won't be like clear-cut.</p> <p>8 It will ease the transition.</p> <p>9 CHAIRMAN FLANAGAN: So I propose we leave</p> <p>10 the tulip. Does anyone feel strongly the tulip should</p> <p>11 go? Oh, wait, you're leaving the tulips.</p> <p>12 MR. SCHNEIDER: Right. But we're not going</p> <p>13 to construct the four supplemental trees which we're</p> <p>14 proposed to replace.</p> <p>15 CHAIRMAN FLANAGAN: Fair enough. Does</p> <p>16 everyone understand that?</p> <p>17 BOARD MEMBER SYMONDS: I would like to make</p> <p>18 one suggestion, Mr. Chairman. Well, and it could be</p> <p>19 either the Applicant or the property owner, that will</p> <p>20 be the Township, put little effort into preserving the</p> <p>21 tree. Because Mr. Linson testified that the tree, the</p> <p>22 life of the tree could be extended if it got some care.</p> <p>23 CHAIRMAN FLANAGAN: Will Verizon be willing</p> <p>24 to rather than cutting down the tree and saving \$2,000</p> <p>25 by not cutting it down, put some work into the tree,</p>	<p style="text-align: right;">Page 190</p> <p>1 whatever that means, in consultation with Mr. Linson?</p> <p>2 MR. SCHNEIDER: We'll work cooperatively</p> <p>3 with Mr. Linson.</p> <p>4 CHAIRMAN FLANAGAN: Fair enough.</p> <p>5 BOARD MEMBER SYMONDS: Thank you.</p> <p>6 BOARD MEMBER BOYAN: Just remind me. In</p> <p>7 ten year's time, give or take when that tree goes, it's</p> <p>8 the responsibility of the municipality to provide for</p> <p>9 its safe removal?</p> <p>10 CHAIRMAN FLANAGAN: That's my</p> <p>11 understanding. Its their tree.</p> <p>12 MR. MLENAK: The tree, yes.</p> <p>13 CHAIRMAN FLANAGAN: As are the rest of the</p> <p>14 trees, at that point.</p> <p>15 BOARD MEMBER BOYAN: Agreed, but this is</p> <p>16 the one that's going to go first.</p> <p>17 CHAIRMAN FLANAGAN: Yes.</p> <p>18 MR. FOX: Confirm the actual location of</p> <p>19 the septic disposal trenches and make any fine tuning</p> <p>20 of the landscape plantings, as necessary.</p> <p>21 CHAIRMAN FLANAGAN: So all landscaping will</p> <p>22 be in consultation with the Township Engineer as to</p> <p>23 avoid any subterranean features?</p> <p>24 MR. FOX: Conflicts.</p> <p>25 CHAIRMAN FLANAGAN: Okay. There you go.</p>
<p style="text-align: right;">Page 191</p> <p>1 Anything else? All right. There's our motion.</p> <p>2 BOARD MEMBER NEWLIN: Mike, one more thing.</p> <p>3 This is a -- it would have to be a request. It's not a</p> <p>4 Verizon issue, it's a town issue. What can we put in</p> <p>5 the Resolution that's as strong as a request or a</p> <p>6 demand that the town maintains the property.</p> <p>7 CHAIRMAN FLANAGAN: Oh, thank you. So the</p> <p>8 discussion about who's responsible for maintenance on</p> <p>9 this property, and the answer was the Township, no</p> <p>10 landscaping, right.</p> <p>11 So Alf, you want to put something into the</p> <p>12 Resolution that says something to the fact that the</p> <p>13 Township has to take good care of it?</p> <p>14 BOARD MEMBER NEWLIN: Steve, what we do</p> <p>15 to --</p> <p>16 MR. MLENAK: They're not an Applicant, but</p> <p>17 it is their property. You can put in language that</p> <p>18 it's the Board's expression that as part of the</p> <p>19 approval here which the Township was also hoping for</p> <p>20 based on their settlement here that the Township</p> <p>21 maintain these trees in good aesthetic quality.</p> <p>22 CHAIRMAN FLANAGAN: Good.</p> <p>23 BOARD MEMBER ROSENBAUM: Is it the trees in</p> <p>24 the surrounding areas? In the surrounding areas, so</p> <p>25 they don't have the sewer grates and all that crap.</p>	<p style="text-align: right;">Page 192</p> <p>1 CHAIRMAN FLANAGAN: All right. Is there</p> <p>2 anything else? All right. I move that we pass the</p> <p>3 Resolution as just described by Steve and added to by</p> <p>4 Alf, does that work?</p> <p>5 BOARD MEMBER NEWLIN: Yes.</p> <p>6 CHAIRMAN FLANAGAN: Who wants to be a</p> <p>7 second?</p> <p>8 BOARD MEMBER ROSENBAUM: I'll second.</p> <p>9 CHAIRMAN FLANAGAN: Aric's the second.</p> <p>10 Lori, would you call the roll?</p> <p>11 SECRETARY TAGLAIRINO: Ms. Sovolos?</p> <p>12 BOARD MEMBER SOVOLOS: Yes.</p> <p>13 SECRETARY TAGLAIRINO: Mr. Symonds?</p> <p>14 BOARD MEMBER SYMONDS: Yes.</p> <p>15 SECRETARY TAGLAIRINO: Mr. Rosenbaum?</p> <p>16 BOARD MEMBER ROSENBAUM: Yes.</p> <p>17 SECRETARY TAGLAIRINO: Mr. Newlin?</p> <p>18 BOARD MEMBER NEWLIN: Yes.</p> <p>19 SECRETARY TAGLAIRINO: Mr. Addonizio?</p> <p>20 BOARD MEMBER ADDONIZIO: Yes.</p> <p>21 SECRETARY TAGLAIRINO: Mr. Flanagan?</p> <p>22 CHAIRMAN FLANAGAN: Yes.</p> <p>23 SECRETARY TAGLAIRINO: Mr. Boyan?</p> <p>24 BOARD MEMBER BOYAN: Reluctantly, yes.</p> <p>25 CHAIRMAN FLANAGAN: All right, ladies and</p>

<p style="text-align: right;">Page 193</p> <p>1 gentlemen. Any further business? (No response.) No?</p> <p>2 We're adjourned. Thank you.</p> <p>3 (Whereupon, the hearing on this application</p> <p>4 concludes at 11:40 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</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: right;">Page 194</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, IRIS LA ROSA, a Notary Public and</p> <p>4 Certified Shorthand Reporter of the State of New</p> <p>5 Jersey, do hereby certify that the foregoing is a true</p> <p>6 and accurate transcript of the testimony as taken</p> <p>7 stenographically by and before me at the time, place,</p> <p>8 and on the date hereinbefore set forth.</p> <p>9 I DO FURTHER CERTIFY that I am neither a</p> <p>10 relative nor employee nor attorney nor counsel of any</p> <p>11 of the parties to this action, and that I am neither a</p> <p>12 relative nor employee of such attorney or counsel, and</p> <p>13 That I am not financially interested in the action.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 IRIS LA ROSA, CSR, RPR</p> <p>19 Certificate No. 30XI 00162800</p> <p>20</p> <p>21</p> <p>22 Dated: _____</p> <p>23</p> <p>24</p> <p>25</p>

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