

COPY

VILLAGE OF NELSONVILLE

ZONING BOARD OF APPEALS

FEBRUARY 27, 2018

DISCUSSION OF PROPOSED CELL TOWER

TRANSCRIBED BY: GLORIA VEILLEUX
Schmieder & Meister, Inc.

Proceedings recorded by electronic recording and
transcribed by transcription service.

1 CHAIRMAN RICE: ... this evening as our
2 Village hall is too small to hold a meeting this
3 large.

4 I'm going to change up the agenda. I'm
5 going to introduce the items for the record after we
6 introduce the Board.

7 Thank you to the public for attending this
8 meeting. Introducing the Zoning Board members. My
9 name is William Rice. And, Peggy.

10 MS. CLEMENTS: Peggy Clements.

11 MR. KEELEY: Chris Keeley.

12 MS. MEYER: Judy Meyer.

13 MR. MERANDO: Steve Merando.

14 CHAIRMAN RICE: Thank you. The Village
15 engineer is also in attendance, Ronald Gaynor
16 (phonetic); the Village clerk, Pauline Minners; and
17 our special counsel to the Village, Todd Steckler.
18 He's in the audience this evening.

19 And if the Applicants could identify
20 themselves. Robert.

21 MR. GAUDIOSO: Good evening, Mr. Chairman.
22 Robert Gaudio with the law firm of Snyder & Snyder
23 on behalf of New York SMSA Limited Partnership doing
24 business as Verizon Wireless and Homeland Towers,
25 LLC.

1 CHAIRMAN RICE: Thank you.

2 MR. VICENTE: Manuel Vicente, President of
3 Homeland Towers.

4 MR. LAUB: Daniel Laub here from the firm of
5 Cuddy & Feder here on behalf of AT&T.

6 CHAIRMAN RICE: Thank you.

7 MR. XAVIER: And Vincent Xavier, Regional
8 Manager of Homeland Towers.

9 CHAIRMAN RICE: Thank you.

10 I'm going to read, as we always do, it's
11 important that the public and the Applicant know that
12 we've received the documentation that's been sent to
13 us, so we're going to read that list. It's a little
14 lengthy, but we'll try to go through it quickly.

15 As you recall at our last meeting, which was
16 here, I believe, on January 10th, it was a public
17 hearing. At that meeting, we were handed some
18 documentation.

19 Number one, we received a letter from Snyder
20 & Snyder responding to a late letter from Robert, I
21 mean from Ron Grafe (phonetic), who is our RF
22 consultant. And within the body of that letter was
23 another letter from Purecon Solutions which is in
24 response to Ron Grafe's letter of 12/09/17.

25 Richard Comey, who's from the Center of

1 Municipal Solutions, these are not quite in
2 chronological order, but on January 8, 2018 we had an
3 email from him. He was disputing the Purecon drive
4 test.

5 Again on January 8th, Ron Grafe wrote a
6 letter for the Village in response to Purecon's
7 report of 12/18/17, Richard Comey's report of
8 12/29/17, and Purecon's letter of January 3, 2018.

9 On January 9th, we received an email which
10 contained a legal brief from Blanchard & Wilson. I
11 think you may know the attorney who -- Mark Blanchard
12 who was in attendance at these meetings. He was,
13 again, in opposition to the application
14 (indiscernible) permit specifically in reference to
15 the existing access agreement. We talked about that
16 many times.

17 Also at the Board that evening Mr. Michael
18 Valente was here and he handed a large packet to us
19 and also presented it to the Board. That was a hard
20 copy. I believe it was added to the website. We're
21 not going to go through all of that. Most of these
22 attachments are things from the original application
23 in July of --

24 We also had another email by -- well, by
25 email and by hand from Phillipstown Cell Solution, a

1 compiled package, an opposition report, so-called
2 statement to and opposition to the Homeland Towers
3 application for 15 Rockledge Road, which was also
4 sent to us by email and was posted on the Village
5 website. It contained a number of exhibits which I'm
6 not going to go through. I'm sure everybody has seen
7 it on the website.

8 On February 9, subsequent to the last public
9 hearing, we received two letters from Figure Ground
10 Studio Architecture and Landscape Architecture by
11 email from Jennifer Zorwick (phonetic), and both from
12 -- one was from Eric Muir; the other one was from
13 Ethan Timm. Both were opposed to the cell tower for
14 esthetic reasons.

15 On January 18th, we received from Snyder &
16 Snyder the notice of the new balloon test that we
17 were sending to the newspapers.

18 On February 9th, we received an affidavit of
19 publication in the Putnam County News that the
20 balloon test was published.

21 On January 23rd from Snyder & Snyder via
22 email from Ron Gaynor, Snyder & Snyder talked about
23 the photographs they were going to take of the
24 balloon test.

25 On February 5, the Reverend Timothy Greco

1 (phonetic) by email stated his opposition to the
2 construction of the cell tower adjacent to the Cold
3 Springs Cemetery.

4 On February 9th, Saratoga Associates, we
5 received via email the visual resource assessment of
6 the January 31st balloon test. At the same time,
7 Saratoga Associates via email, they also presented us
8 with a visual resource assessment of the new
9 potential tower wanting to form an (indiscernible)
10 and a flagpole (indiscernible).

11 On February 9, Homeland Towers sent us a
12 letter supplement to the area analysis of feasibility
13 of alternate existing sites with exhibits.

14 We also received a letter dated, I'm not
15 sure when we got it on 2/07/18, a letter from the
16 aqueduct site of the (indiscernible) response.

17 On February 8th, the Center for Municipal
18 Solutions, again Richard Comey, he sent a letter and
19 comment in reference to the public hearing that we
20 talked about the (indiscernible) discussion in our
21 public hearing of 1/10/18.

22 We also received from Phillipstown Cell
23 Solutions a Rockledge call log. Again from
24 Phillipstown Cell Solution on February 9th the
25 (indiscernible) with 178 signatures. I note that

1 those -- that the petition, as good as it might be,
2 had no addresses on it, so we don't know where the
3 people are from. We know who they are. Just an
4 observation. Hopefully, they're from Phillipstown.

5 On February 9th, Snyder & Snyder via email
6 we received a letter with the following attachments,
7 Saratoga Associates visual resource -- oh, we went
8 over that already, okay. We'll bring these up
9 individually.

10 On February 9th, Phillipstown Cell Solutions
11 from (indiscernible) Palowski (phonetic). She had a
12 cover letter for (indiscernible) equipment and
13 equipment examples that we saw via email.

14 Again on February 9th from Phillipstown Cell
15 Solutions, a letter for call log documenting 250
16 calls and texts made by residents. And I think you
17 had mentioned there was no dropped calls in that
18 email.

19 Again on February 9, 2018, Phillipstown Cell
20 Solutions via email, a lot of response to the
21 application, comments in the joint public hearing of
22 the Planning and Zoning Board. That was a January
23 10th meeting.

24 On February 20th, Phillipstown Cell
25 Solutions sent us their INSLPP property value survey

1 in regards to cell towers and antennas.

2 On -- getting back on February 9th, Cuddy &
3 Feder, Daniel is here tonight, a letter from Cingular
4 Wireless talking about New York State First
5 Responders Network.

6 On February 20th, Dave McCarkey (phonetic)
7 sent a letter in response to Vincent Xavier's
8 Homeland Towers indicated he had been -- his quote
9 had been taken out of context.

10 On February 16th from Snyder & Snyder we
11 received a cover letter for the Purecon letter of
12 2/14/18. Phillipstown Cell Solutions on 2/20/18 sent
13 a letter in response to Snyder & Snyder's letter of
14 2/09/18.

15 On February 20th, Phillipstown Cell
16 Solutions sent a letter dated 2/19/18 in response to
17 the 2/07/18 Vincent Xavier's Homeland Towers' letter,
18 so there's been, as you can see, a lot of back and
19 forth.

20 We did -- at the last meeting on January
21 5th, we established a 30-day period for the public to
22 make written comments and then a 10-day period for
23 the comments, and that's what you're hearing about.

24 On February 9th, we received a letter from -
25 - I think this is -- is this from Snyder & Snyder

1 (indiscernible) or is that from --

2 MR. GAUDIOSO: That was --

3 CHAIRMAN RICE: Yeah, a reference letter
4 that we received talking about ice accumulation
5 (indiscernible).

6 On February 20th, Phillipstown Cell
7 Solutions sent us some case law, Kaplan
8 (indiscernible) vs. the Village of Pelham.

9 On February 9th, we received from Snyder &
10 Snyder some case law, Verizon vs. the Town Board of
11 Clarkstown argued on March 8, 2010.

12 On February 9 from Purecon Solutions, Adam
13 Fehan (phonetic) sent us a letter regarding their
14 flagpole design and outdoor distributed antenna
15 system. We talked about the 850 frequency band.

16 And again on February 9th, we received
17 probably the last lack of tribal interest from the
18 (indiscernible). They said they had no interest, no
19 property interest in the land, so that probably
20 brings that whole Indian thing, tribal interest to
21 closure.

22 On February 9th, Pinnacle Telecom Group,
23 Daniel Pinesso (phonetic), he wrote a letter dated
24 January 18th in response to Gareth (indiscernible)
25 had written a letter indicating there may have been

1 some formula that was not correct and he countered
2 that he didn't believe Gareth's formula was correct,
3 so two experts disagreeing on that.

4 On February 9th, also some (indiscernible)
5 appraisals they followed up with a letter in response
6 to the oppositions prepared by Michael Valente. He
7 notes that "Mr. Valente's findings are unsupported
8 opinions and lack revalidation or methodology."

9 On February 20th, Phillipstown Cell
10 Solutions sent us a letter in reference -- from the
11 Putnam County Office of Information and Technology,
12 graphic information, and essentially saying -- this
13 was actually not in reference to our cell tower, but
14 was in reference the one at 50 Vineyard Road. It
15 indicated that Putnam County had no interest in
16 putting an antenna on that. Totally relevant to us,
17 but (indiscernible).

18 The Hudson Garden Studio, I believe
19 (indiscernible) architects, they sent a letter and
20 they indicated they were in opposition to the cell
21 tower in reference to Cold Springs Cemetery. They
22 challenged the opinions of our own expert AKRF, and
23 Saratoga Associates, and CBRE.

24 On February 8th, the Center for Municipal
25 Solutions, again Richard Comey, he sent us some

1 information on distributing antenna systems, a whole
2 brochure.

3 On February 16th, Purecon Solutions, again
4 Adam Fehan, he sent us a letter that addressed the
5 DOS installations, DOS coverage, indicated the
6 Village of Nelsonville gap is significant
7 (indiscernible) increasing the height of the
8 (indiscernible) Corner tower. Talking about
9 alternate locations in Phillipstown, the landfill.

10 And next, February 16th, Snyder & Snyder,
11 CBRE, Laura Mancusa, who is the director of Cultural
12 Resources at CBRE via email sent by our diligent
13 (indiscernible) Ron Gaynor. This letter addressed
14 the letter from SHPO and CBRE, again, they talk about
15 the cemetery's eligible for listing on the National
16 Register of Historic Places and (indiscernible) would
17 not have a significant esthetic impact on either
18 resource.

19 On February 16th, we received an email from
20 our Village engineer, our Village radio frequency
21 engineer, and his letter was in response to the
22 Snyder & Snyder letter of 02/09/18, specifically, the
23 letter from Adam Fehan regarding the DOS system.

24 Now that was interesting. He said he
25 thought we could have a single pole. That is a two-

1 pole (indiscernible) that came up (indiscernible) two
2 poles in lieu of the monopine. His opinion you maybe
3 need one pole, so I thought that was significant. We
4 can talk about that later.

5 We also received an email from Ara Shaab
6 Eldon (phonetic). She's opposed. She sent us some
7 information on the 1966 Hudson Commission Report
8 which set forth some of the guiding principles of the
9 SASS, and she opposes the tower.

10 There's two more, a letter on February 20th
11 from Cuddy & Feder, a letter (indiscernible) the
12 opinion of the Phillipstown Cell Solutions Center for
13 Municipal Solutions that distributed an antenna
14 system which provides reliable coverage in
15 Nelsonville.

16 And finally, on 2/21, Ron Grafe, our Village
17 radio frequency engineer, he wrote a letter in
18 response to PCS's letter submissions of February 9,
19 2018, the CMS letter of February 8, 2018 regarding
20 distributing the antenna systems, and a Purecon
21 letter of February 14, 2018.

22 So we think that's the (indiscernible)
23 official log of everything received. There might be
24 a miscellaneous email I didn't list, but as you can
25 see, a tremendous amount of information came in. The

1 Board has read the vast majority of it and that's
2 where we stand right now, so I thank everybody for
3 sending that, both the Applicant and the public.

4 So why are we here? I think most people
5 know that, but let's just review it. We are the lead
6 agency for SEQRA. That's why you haven't seen the
7 Planning Board. We did a have a lot of joint
8 meetings with the Planning Board, but we've had a
9 separate meeting tonight because we are the lead
10 agency.

11 And this is the application for a cell tower
12 at 15 Rockledge Road. It's a (indiscernible)-acre
13 wood site directly east of the 30-acre Cold Springs
14 Cemetery. The reason Homeland Towers is here, the
15 Village of Nelsonville Zoning Code, Article 7,
16 Commercial Communication Towers, Section 188.68,
17 application for a special permit to place new tower
18 notes "In addition to seeking site plan approval from
19 the Planning Board, an applicant proposing to
20 construct a new commercial cell tower as permitted in
21 the use schedule, the Applicant shall apply to the
22 Zoning Board for a special use permit." And that's
23 why they're here and that's what we're talking about.

24 The State Environmental Quality
25 (indiscernible) Review SEQRA, which I just mentioned,

1 I was going to ask Ron if he could bring us up to
2 speed on that. It seems from the information we have
3 it's in process and in good shape, but I don't want
4 to put words in your mouth.

5 MR. GRAFE: Yeah, as the Board is aware,
6 there's been significant discussion on the
7 environmental issues. Most of it has centered around
8 the issue of esthetics. The Applicant has submitted
9 significant data to the Board. There's been much
10 rebuttal to that information, but a (indiscernible)
11 declaration (indiscernible) is open. It's to be
12 done.

13 The Board originally declared it as an
14 unlisted action, but went through a coordinated
15 review with all proper notifications and I think
16 later identified it as a (indiscernible) action, but
17 it did not change the process in any way.

18 So at this point in time, through the
19 monopine design, there's been significant information
20 presented to the Board (audio skips) -- the SEQRA
21 declaration remains to be accomplished.

22 CHAIRMAN RICE: Thank you, Ron.

23 All right, the Board has some agenda items
24 they wanted to talk to the Applicant about. And one
25 thing that has come up and it's been in the papers

1 recently is this renewed AT&T lease to the
2 Butterflied site. We had, as I recall, and I think
3 it is in a lot of the documentation, is that AT&T
4 (indiscernible) Butterfield lease when the building
5 came down (indiscernible) and they lost the lease. I
6 guess they regained the opportunity to put their
7 antennas in that new cupola. That's what we read in
8 the paper.

9 MR. GAUDIOSO: Well, I don't believe that's
10 correct?

11 CHAIRMAN RICE: No?

12 MR. GAUDIOSO: No.

13 CHAIRMAN RICE: Okay. Correct the record.

14 MR. GAUDIOSO: Correct the record very
15 simply, there's no renewed lease agreement between
16 AT&T and the property owner.

17 MR. KEELEY: I think we're the -- the
18 disconnect might be -- February 14th I think the Cold
19 Spring, I'm going to get the title wrong,
20 (indiscernible) report, something along those
21 lines --

22 CHAIRMAN RICE: Right.

23 MR. KEELEY: -- approved what had been the
24 original application from Unicorn Construction, I'm
25 getting the wrong names here, but approved the

1 original design which included capacity for a cupola
2 that could have antennas in there.

3 CHAIRMAN RICE: Right.

4 MR. KEELEY: There had been discussion over
5 the course of a number of years that that may change.
6 Those antennas may not be there. We know for a fact
7 that they had been -- it had been taken down. AT&T
8 did lose that capacity. That was discussed in the
9 original application. Now Butterfield is back,
10 right? Building 3 does have that capacity. Whether
11 or not there's agreements of any kind between AT&T or
12 how Unicorn plans to use that space in Building 3.
13 The original intent had been for purposes such as
14 cell phone or for antenna. And so that's back on the
15 table to the best of our understanding based on the
16 public record from the meeting from February 14th.

17 CHAIRMAN RICE: Yeah. Yeah.

18 MR. GAUDIOSO: So -- yeah.

19 CHAIRMAN RICE: Well, just based on a
20 newspaper (indiscernible) I read like last week that
21 they decided to keep cupola exactly the same size so
22 they -- so AT&T could put their -- again, I've
23 probably misspoken on (indiscernible).

24 MR. GAUDIOSO: Yeah. Number one, there is
25 no lease. Number two, there's been no discussions.

1 CHAIRMAN RICE: Really?

2 MR. GAUDIOSO: In fact, I can represent to
3 you as an office of the court and put this on the
4 record as an affirmation --

5 CHAIRMAN RICE: Okay.

6 MR. GAUDIOSO: -- I actually received a
7 phone call from Unicorn Contracting Corp.'s secretary
8 back in November and they wanted our contact
9 information and they wouldn't leave their number. I
10 actually figured the number out by back-tracing it,
11 called them back, spoke to the secretary. She said
12 she was calling on behalf of her boss, and I'll
13 probably mispronounce it, Paul Guillaro. I left my
14 name and number and said if you wanted to talk to me
15 on behalf of the Applicants, we'd be happy to talk to
16 him. He never called back.

17 In fact, Phillipstown Town Board Member
18 Flaherty contacted me in December, asked me if we'd
19 be interested in talking to Unicorn Contracting Corp,
20 that he knew Paul. I said, "Absolutely, give him my
21 number." He actually emailed me back, said he had
22 provided my information to the president, Paul, and
23 I'm mispronouncing, Guillaro, and again, two months
24 later we still haven't heard from him.

25 In any event, it's not in the record. The

1 record shows clearly from your own consultant that he
2 represented that property, that they weren't
3 interested. AT&T, for many, you know, many times in
4 the record indicated they were unable to come to an
5 agreement. And if anything has changed at this point
6 it's purely speculative, and based on the
7 affirmation, I can tell you that there's been no
8 discussions despite the fact that we did, you know,
9 reach out to them.

10 CHAIRMAN RICE: Okay.

11 MS. CLEMENTS: So there may not be
12 discussions, but they had actually applied for -- I
13 have to read this cite, get it right. Unicorn, in
14 February, Unicorn did submit an application for
15 revisions to Building 3 this time with the cupola for
16 the cell tower again in place stating that the cupola
17 is needed -- is again needed because the cell
18 equipment will, in fact, be reinstalled on Building 3
19 within the cupola --"

20 MR. GAUDIOSO: Yeah. I mean --

21 CHAIRMAN RICE: That's what I read.

22 MR. MERANDO: That's what I have right here.

23 MR. GAUDIOSO: Yeah. All I can tell you is,
24 number one, that information is outside the public
25 area. That's been closed.

1 Number two, that information is clearly
2 hearsay. It is incorrect, and I just gave you my
3 affirmation. I'd ask Mr. Dan Laub to come up and he
4 can speak on behalf of AT&T as well.

5 MR. LAUB: After seeing the item on the
6 agenda, I did circulate with all my contacts at AT&T,
7 the people who are in charge of real estate as well
8 as their attorneys who are in charge of leasing, and
9 there is no lease in place. There was no -- there
10 have been no recent discussions or negotiations.

11 What I can tell you did occur a few years
12 ago was AT&T prepared a less executed on their side
13 in September of 2015, sent it to Unicorn. There was
14 no response. There was no interest and, eventually,
15 it was sent back to AT&T unexecuted by Unicorn, so
16 the lease was never put into effect, and that's
17 whereby AT&T had to go look for another site.

18 CHAIRMAN RICE: Okay. So it sounds like
19 something is happening over there because they
20 decided to build that cupola.

21 MR. GAUDIOSO: That sounds very speculative,
22 so --

23 CHAIRMAN RICE: It does, yeah.

24 MR. KEELEY: It's not speculative because
25 it's in the public record. There was a vote from a

1 public commission half a mile down the road that said
2 "We're building this for this purpose." It's on the
3 public record. It's not hearsay.

4 MR. GAUDIOSO: Well, they didn't approve it.
5 Oh, it's clearly hearsay.

6 MR. KEELEY: It doesn't mean that you guys
7 are necessarily building there, I grant you that,
8 absolutely. That's a conversation that we should
9 have, but it's a new location that was off the table
10 that was a direct trigger, at least for one of the
11 applicants, for AT&T, directly cited time and time
12 again as we lost Butterfield, therefore, that impacts
13 our ability to provide cell service in this area.

14 So as an officer of the court, that's some
15 splicing of words. That's pressing it a little far
16 to say that it's hearsay when it's public record.

17 MR. GAUDIOSO: No, it's hearsay because the
18 person that's saying is it not here to actually say
19 it and to be cross-examined and questioned on it.

20 MR. KEELEY: We can pull the public --

21 MR. GAUDIOSO: Okay. And that's clear.

22 MR. KEELEY: Okay, so we'll say hearsay at
23 some point, but the fact is it was passed.

24 MR. GAUDIOSO: Yeah. The fact is is this.

25 MS. CLEMENTS: Well, I want to just correct

1 Chris because I know Chris doesn't want to misspeak.

2 MR. KEELEY: Please.

3 MR. GAUDIOSO: It was not passed. Go ahead.

4 MS. CLEMENTS: There was no need to vote
5 because it had been approved (indiscernible).

6 MR. KEELEY: It was the original
7 (indiscernible).

8 MS. CLEMENTS: It was the original
9 (indiscernible).

10 MR. GAUDIOSO: So just the cupola --

11 CHAIRMAN RICE: Yeah.

12 MR. GAUDIOSO: -- so just a few fact items
13 here. Number one, for many years they were not
14 interested. Your own consultant who represented them
15 confirmed that. AT&T has stated that and confirmed
16 it that going back to at least 2015 they were not
17 interested. I just confirmed for you, again under
18 oath as an office of the court, that we did try and
19 contact them --

20 MR. KEELEY: You're not under oath.

21 MR. GAUDIOSO: I'd be happy to go under oath
22 -- but for two or three months, they didn't respond
23 to us.

24 The final thing is that the Village of Cold
25 Spring didn't approve anything. There's been no

1 facilities approved there. There's no wireless
2 communication facility approved at that location.

3 MR. KEELEY: Understandable. I think the
4 material development is that Unicorn, for a period of
5 time, including it sounds like a time when they were
6 not expressing interest and not returning phone
7 calls, I can't speak to that. That's hearsay for my
8 opinion, but --

9 MR. GAUDIOSO: Well, it's not hearsay
10 because I'm here to day --

11 MR. KEELEY: Oh, you're right. You're
12 right. You are here to say it, there you go, so the
13 -- so what has changed in recent weeks and months is
14 that before the cupola was off the table, now it's
15 not just back on the table, but it's actually been
16 through all of the approval process.

17 MR. GAUDIOSO: No, it hasn't.

18 MR. KEELEY: The cupola has.

19 CHAIRMAN RICE: Well, the cupola has. They
20 voted (indiscernible).

21 MR. GAUDIOSO: Not for a wireless site.

22 CHAIRMAN RICE: Oh, no, no, no.

23 MR. KEELEY: The cupola has. The cupola
24 has.

25 MR. GAUDIOSO: Yeah, so the only thing we

1 have here is that they may build a cupola in the
2 future that could possibly support --

3 MR. KEELEY: (Indiscernible)

4 MR. GAUDIOSO: No, you can't say they could
5 because they might and they might not. They may
6 build something in the future. We don't know whether
7 that future is tomorrow or five years from now
8 because things change, so it's purely speculative
9 whether it's going to get built. It may have had an
10 approval to get built as a cupola, but there's no
11 approval by the Village under their code to allow
12 wireless communication facilities (indiscernible).

13 And that all begs the question about whether
14 it would resolve the need for the facility that's
15 being proposed here, and it would not, and that's
16 simply because of topography. It's on the wrong side
17 of the hill. It's not going to cover --

18 MR. KEELEY: So why was it cited as the
19 trigger for AT&T needing this tower?

20 MR. GAUDIOSO: It was -- if you read the
21 opposition quotes.

22 MR. KEELEY: If that was the (indiscernible)
23 topography, this Rockledge didn't exist when
24 Butterfield did.

25 MR. GAUDIOSO: Correct, but never once in

any of the quotes, even the quotes cited by PCS, does it say that Butterfield, that the coverage from this facility was going to duplicate Butterfield. Never once did it say that. If you read those quotes, you can read them inside and out. Never once in one of those quote say that Rockledge is going to replace Butterfield as is and only as is what Butterfield provided. Rockledge is going to cover the Village of Nelsonville, okay.

It's ironic that we're talking about a site everyone's been complaining about providing coverage into Cold Spring when we're talking about moving a site into Cold Spring. The fact is where Butterfield sits and where Rockledge sits and where Route 301 is, okay, there's not going to be coverage for Butterfield over that topography up to 301 to connect with McKeel's Corner.

MR. KEELEY: The Pinnacle document, the (indiscernible) report for AT&T dated June 9, 2017 said Butterfield -- that AT&T was at Butterfield. The hospital ended its agreement and says it will result in the loss of reliable services for AT&T customers.

MR. GAUDIOSO: Correct. Correct.

MR. KEELEY: So then it's very clearly

1 saying that Butterfield is lost and that is
2 resulting --

3 MR. GAUDIOSO: That's on the search, right.

4 MR. KEELEY: -- Butterfield is
5 (indiscernible).

6 MR. GAUDIOSO: That's on the search.

7 MR. KEELEY: And now Butterfield is worth
8 exploring again in a way that it was not a number of
9 weeks ago.

10 MR. GAUDIOSO: But it wouldn't be -- it's
11 not a duplicate.

12 MR. KEELEY: We don't know that. I don't
13 know that. I don't have information in front of me
14 that can say that --

15 MR. GAUDIOSO: There is information in the
16 record that proves that.

17 MR. KEELEY: Butterfield coming back with
18 this cupola that wasn't under consideration a number
19 of months ago, wouldn't it --

20 MR. GAUDIOSO: If you review the
21 (indiscernible) tests analyses and the plots --

22 MR. KEELEY: No, we never looked at those.

23 MR. GAUDIOSO: All I can say is this. All I
24 can say is this. This is the exact purpose of the
25 shock clock. The shock clock is to not allow things

1 to go on forever, but we've already extended the
2 shock clock a considerable amount of time, okay. So
3 we're not going to go on a wild goose chase over this
4 issue. If the issue is you think that the cupola
5 somehow will work and it's somehow not speculative,
6 we'll take a decision tonight on that basis.

7 We're willing to talk to you about the
8 alternative analysis as far as the visuals and what
9 we can do with respect to design, but the fact is is
10 that AT&T spent three years trying to go there. I
11 just told you that we spent three months trying to
12 contact them again. The fact is they may or may not
13 build a cupola in the future.

14 MR. KEELEY: I understand.

15 MR. GAUDIOSO: We could build -- you know,
16 you could also say we could build a tower or
17 something in Cold Spring and come up with a million
18 what-ifs, but the fact is it's not on the record.
19 The record is closed. The timeframe is over. We're
20 happy to go through the items we submitted as far as
21 the designs and go in that direction.

22 CHAIRMAN RICE: Okay. All right, thanks
23 for --

24 MS. CLEMENTS: Well, I was just going to
25 say, I mean this is how I feel, I mean nothing with

1 Butterfield is vast. I mean, you know --

2 MR. GAUDIOSO: Yeah. And I think that's the
3 concern.

4 MS. CLEMENTS: But I mean, now it's built.
5 That's the thing. I mean, now it actually happened,
6 and the fact that you weren't getting a response, to
7 me personally, the fact that you weren't getting
8 responses from them over the course of these three
9 years, I mean, there was a lot of -- there were a lot
10 of questions about that. So --

11 MR. GAUDIOSO: I just told you three months.
12 I just told you three months, in the last three
13 months, and I have an email I can, you know, I have
14 an email here from --

15 MS. CLEMENTS: You've made it quite clear
16 that you don't want that to be --

17 MR. GAUDIOSO: -- Mr. Flaherty as far as
18 that he gave my number back on December 22nd, okay,
19 so -- and I had called him, you know, the prior month
20 as well.

21 CHAIRMAN RICE: I think the (indiscernible)
22 just implied that it seemed like a done deal
23 (indiscernible).

24 MR. GAUDIOSO: It's not.

25 MR. KEELEY: The cupola is a done deal.

1 What is going to be placed in the cupola is not a
2 done deal.

3 CHAIRMAN RICE: Yeah. Yeah. So the cupola
4 they said they could build as big as they originally
5 had applied for.

6 MR. GAUDIOSO: And how tall is that?

7 MR. KEELEY: For a state purpose.

8 MR. GAUDIOSO: How tall is that? Well, no,
9 because they still have to get a permit for wireless
10 facilities.

11 CHAIRMAN RICE: I don't know. You guys
12 (indiscernible) opportunity.

13 MR. GAUDIOSO: If there was an opportunity
14 for us, we'd jump on it.

15 CHAIRMAN RICE: Okay. All right.

16 MR. KEELEY: But they didn't call you back,
17 so it's the end of the (indiscernible).

18 MR. GAUDIOSO: No, I think it's more than
19 that. I think it's three years. I think when you
20 look at the caseload, again, the shock clock is meant
21 to make these things happen in a reasonable period of
22 time.

23 MR. KEELEY: But you discuss back patterns
24 as well. I mean, even in your most recent
25 considerations, you discuss the private land holder

1 that was only recently approached and the --

2 MR. GAUDIOSO: No.

3 MR. KEELEY: -- and then she was provided
4 one week in which to respond.

5 MR. GAUDIOSO: No, that's true.

6 MR. KEELEY: So if we're talking about --

7 MR. GAUDIOSO: That's not true. You didn't
8 read it carefully. Mr. Xavier is here. He had been
9 trying to contact her for well over a month, okay, so
10 it was --

11 MR. KEELEY: Oh, for a month.

12 MR. GAUDIOSO: -- multiple times that he
13 went back, multiple times he stopped by the house
14 personally to try and get in touch with her again.
15 It says "After multiple opportunities --," or I
16 forget the exact words he used, "I finally was able
17 to --," and then she wouldn't give them the time of
18 day, quite frankly.

19 And, again, when you look at the documents,
20 it was to put a tower in her front yard.

21 CHAIRMAN RICE: Okay.

22 MR. GAUDIOSO: Because that was the only
23 place that met the setbacks.

24 CHAIRMAN RICE: All right. Well, do we want
25 to talk about these alternate tower configurations

1 ordinance, questions about them and -- who wants to
2 start?

3 MR. KEELEY: What's your application? Is it
4 for a modifying (indiscernible)? Which one should we
5 be considering?

6 MR. GAUDIOSO: Sure. I think you have to
7 consider them all.

8 MR. KEELEY: No, no, no. Which one as the
9 Applicant are you presenting --

10 MR. GAUDIOSO: I think under SEQRA you have
11 to consider them all.

12 MALE SPEAKER: Excuse me, I don't mean to
13 make it difficult, but you talked about potential
14 alternate siting that my warrant further study.
15 You've talked about Butterfield. I understand there
16 were other issues that might be on the table or might
17 be a question on your part, which you might want to
18 offer at this point.

19 MR. KEELEY: So -- sorry, go ahead.

20 CHAIRMAN RICE: No, go ahead.

21 MR. KEELEY: So I think some of the other
22 things that have surfaced in recent weeks that are
23 worth putting on the table, Vineyard was denied, to
24 my understanding. It's outside our jurisdiction, so
25 it's hearsay, I guess, to me.

1 MR. GAUDIOSO: Yeah. No, I can testify to
2 it personally. It's been denied and it's also in
3 Federal Court. The 72-page complaint was filed
4 against the Town.

5 MR. KEELEY: It's a lot of pages. And so
6 then the -- that was denied. My understanding is, I
7 wasn't there. My understanding is that part of the
8 denial at Vineyard was saying Phillipstown would be
9 open to increased height at McKeel's; is that
10 correct?

11 MR. GAUDIOSO: I think that one Board member
12 said that they would be open to it, and I think if
13 you read the complaint there was an improper
14 statement by the Town supervisor to the Zoning Board
15 that the Town would be interested in that, but that's
16 the extent of it.

17 But let me put a bow on this real quick,
18 okay. Number one, there was also a statement that
19 the landowner was in favor of it, and that was
20 completely false. The landowner actually testified
21 that she would "have a problem with that," okay. And
22 that's in the minutes and that's also in the Federal
23 complaint.

24 Number two, we submitted as part of Mr.
25 Fehan's report the map from McKeel's. Now, there was

1 a statement that McKeel's was 140 feet. That's
2 false. McKeel's is 100 feet. The height limit at
3 that location is 110 feet, so it would require a
4 substantial height variance. It would also require
5 substantial setback variances and a lot of frontage
6 variance, number two.

7 Number three, we submitted the map from Mr.
8 Fehan showing that even if you did raise McKeel's to
9 190 feet, which is complete speculation, which there
10 is no application to do, which there is no ability to
11 do structurally, and the Town consented to that,
12 considering the fact that the landowner said that she
13 would have a problem with that, even at 190 feet,
14 McKeel's would not cover even down into the area of
15 Nelsonville. In fact, it would cover to about Jaycox
16 Road in that area. And that map is part of your
17 records. So McKeel's, even at a 190 feet, wouldn't
18 provide service here into Nelsonville.

19 MR. KEELEY: And we have documents before us
20 that questions some of methodology behind those maps,
21 but that's sitting that aside.

22 MR. GAUDIOSO: No. Actually, you have a
23 document from your own consultant that reviewed that
24 and agreed with that, so your consultant agreed with
25 the fact that McKeel's would not provide coverage.

1 MR. KEELEY: I don't disagree with that. I
2 don't disagree with that. I'm just stating that we
3 also have documents in question.

4 So there is -- so McKeel's, there is the
5 scenario and argument that we had about it, but
6 there's the scenario of that moving from 100-ish feet
7 to something significantly more.

8 There's the scenario of Butterfield now
9 having the physical infrastructure in place with a
10 stated intent to provide capacity for antennas of
11 this sort to be built there. So if you put those on
12 either end of Main Street in that sense, then we can
13 start thinking about having plugged some of those
14 gaps and (indiscernible) antenna system. There's
15 been significant material developments over the last
16 handful of weeks that I think we need to consider.

17 MR. GAUDIOSO: I think that's wild
18 speculation at best, and as I said before, we'll
19 stand on the public record with the hearing closed on
20 all those issues.

21 MS. CLEMENTS: And I think you have to
22 understand that for us, knowing from the community
23 especially that the Butterfield option is out there
24 and exists, we consider that public knowledge. It's
25 something that was planned in the past. It's

1 something that from our perception could really be
2 potentially moving forward, would provide a much
3 better alternative than (indiscernible) you're
4 proposing. I mean, that's -- whether it's in the
5 public record, it's something we all know about now.

6 MR. GAUDIOSO: And you also know about the
7 fact that they still haven't gotten back to us. It
8 still won't provide coverage into Nelsonville over
9 that gap to cover this area.

10 The whole idea of McKeel's is, quite
11 frankly, is wild of a speculation as you can get.
12 There's no application there. It would require a 70-
13 foot height variance. Even with a 70-foot height
14 variance to lot line setback variances and a road
15 frontage variance, and it's in a residential
16 district, and it's closer to residences than the
17 proposed Vineyard Road site, that's the subject of
18 litigation, your own consultant has confirmed the
19 fact that it will not provide coverage at
20 Nelsonville, that it will stop at around Jaycox Road
21 just as (indiscernible).

22 MS. CLEMENTS: I was referring to the
23 Butterflied.

24 MR. GAUDIOSO: Yeah. And, again,
25 Butterfield will not provide the coverage throughout

1 Nelsonville, both for Verizon and for AT&T. And the
2 fact that --

3 MR. KEELEY: But how do you know that if you
4 didn't know that it was existing at the time?

5 MR. GAUDIOSO: Because we've looked at it.
6 We've looked at it, but we haven't submitted --

7 MR. KEELEY: But we have the previous
8 (indiscernible) plans that weren't actually on the
9 table until --

10 MR. GAUDIOSO: Yeah, but we've looked at it
11 from a location standpoint, height standpoint, but
12 there was no need to submit any RF documentation on
13 that because, quite frankly, it was never a real site
14 and it's still not a real site. It's a possible
15 cupola that might get approved because it has a
16 decision from a historical Board that says "you don't
17 need another approval because we've already approved
18 that previously."

19 MR. KEELEY: So are we making facetious
20 arguments about the need now or are we making
21 facetious arguments in the original submission from
22 AT&T that said the loss of Butterfield meant a loss
23 of service?

24 MR. GAUDIOSO: No. I --

25 MR. KEELEY: There must have been an

1 extraordinary AT&T loss (indiscernible) --

2 MR. GAUDIOSO: I think you're missing the
3 point.

4 MR. KEELEY: -- if there was a large gap
5 even when Butterfield existed.

6 MR. GAUDIOSO: Mr. Laub can come up and talk
7 about how AT&T was still looking for another site in
8 the area, okay, so that wasn't -- Butterfield is not
9 the solution that's going to solve Nelsonville.
10 Butterfield is in Cold Spring on the wrong side of
11 the topography, okay. It was a nice little site for
12 AT&T for a while to provide some downtown service,
13 but it's not going to provide the service throughout
14 the area particularly over 301, particularly to cover
15 up to the service that's already existing coming from
16 McKeel's which cuts off by Jaycox. So it's not
17 inconstant.

18 And, again, if you look at PCS's handpicked
19 quotes, never once does it say that Butterfield --
20 that the coverage from Rockledge will duplicate
21 Butterfield's coverage. It never says that, never
22 once, not even close.

23 MR. KEELEY: I don't understand why they
24 would be -- why it doesn't say that.

25 MS. CLEMENTS: I mean, but why would they --

1 there's no reason they would have said that.

2 MR. GAUDIOSO: No, because it wasn't true
3 because the fact is is that Butterfield was covering
4 a little small area, and this is going to cover the
5 full village. And Butterfield was in a different
6 village. It was in Cold Spring. It is in Cold
7 Spring.

8 MR. KEELEY: But as you stated time and time
9 again, cellular reception does not respect
10 (indiscernible) boundaries.

11 MR. GAUDIOSO: Exactly, but it does respect
12 topography, okay. And Butterfield is on the wrong
13 side of the hill.

14 MR. KEELEY: Okay. So it's the hill, not
15 the -- okay.

16 MR. GAUDIOSO: Yeah.

17 MR. KEELEY: I want you to be careful.

18 MR. GAUDIOSO: It's on the wrong side of the
19 hill.

20 CHAIRMAN RICE: All right. Can we talk
21 about the alternates?

22 MR. GAUDIOSO: So I'd like to answer the
23 question.

24 CHAIRMAN RICE: Oh.

25 MR. GAUDIOSO: So the application is for a

1 110-foot tower designed as a monopine which when you
2 ready our stealthing section of the code, the first
3 stealthing option that that includes is branches and
4 bar, okay. It doesn't include flagpoles, but that's
5 beside the point. We've offered, based on comments
6 specifically from this Board, specifically from
7 Chairman Marino at the last meeting, he said "Show us
8 alternative designs." And we came up with what we
9 think are two intriguing alternative designs.

10 Now, let me take one step back because we've
11 tried to work within your code, okay, and there was a
12 whole lengthy response that was cited to my
13 colleagues at AT&T, at Cuddy & Feder, about that
14 Village boards have the ability to modify the
15 criteria of a special permit. That is simply
16 incorrect reading of the case, incorrect reading of
17 the law in New York State.

18 Here's the ruling in New York State,
19 "Special permit criteria that is undergoing review by
20 a planning board or a zoning board is the criteria.
21 You cannot vary that criteria. You could waive that
22 criteria if there was a waiver provision in your
23 code," which there's not, okay.

24 "A Village board," not Village boards, "A
25 Village board or a city council or a town board can,

1 if they are reviewing the special permit, change the
2 criteria." And the reason for that is because they
3 have a legislative body. They can change the code if
4 they wanted to. So what the case law says is that
5 the Village Board, the City Council, the Town Board
6 can change the criteria. A zoning board and
7 planning board cannot. The criteria is the criteria
8 that you have to stick to, and that's black letter
9 New York State zoning law, okay.

10 So with that, your code has a couple
11 provisions that are very important. One is the
12 height limit. We could go for a height variance, so
13 what we offered was a design which, quite frankly, is
14 a very unique design and it was based on the location
15 and it was based on something that Mr. Vicente
16 himself came up with, which was the obelisk design,
17 okay, and it keeps the antennas and everything
18 concealed in the obelisk at 110 feet, okay, to make
19 it look right, it would really have to 125 feet with
20 the point. Now, we can take the point off, but we
21 think that would be disingenuous, and we're willing
22 to go spend at least two months try and get a height
23 variance from this Board if you think that that's a
24 better alternative than the tree design based on that
25 additional height for the peak, and we've rendered

1 that and showed it to you.

2 We also said that we would need SHPO's
3 approval on that, and that's not certain either. So
4 -- but we're willing to spend two months in good
5 faith to try and get the approval from you and from
6 SHPO on the obelisk design.

7 The second design which we showed is the two
8 flagpoles. Now, there's some dispute between your
9 consultant and our consultant about, you know, what
10 the benefits are and the restrictions are of a
11 flagpole, but at the end of the day if either of
12 these carriers go into the flagpole, they need a 10-
13 foot slot, okay. And I don't think Mr. Grafe
14 quibbles with that. And the problem with the 10-foot
15 slot is that Verizon would be from 110 to 100, and
16 AT&T would be from 100 to 90. Your code has a very
17 specific requirement, and it's a shallow requirement.

18 It's a requirement under Section 188-81(a)(1), and
19 it says "An applicant proposing to place a new tower
20 shall cause it to be designed in a manner which will
21 accept co-location of other commercial
22 telecommunication antenna installations in the future
23 in accordance with this article. Commercial
24 communication towers shall be designed structurally,
25 electronically, and in all other -- in all respects

1 to accommodate shared use for at least one other user
2 if the tower is over 60 feet in height and at least
3 two additional users if the tower is over 100 feet in
4 height."

5 So here's the point. We can't comply with
6 that provision with one flagpole at 110 feet because
7 the reality is there's four carriers out there, okay.
8 We can put our blinders on, but you're not the
9 Planning Board, but you're the Zoning Board. Your
10 code has a specific provision to take into account
11 two more carriers, and that makes a lot of sense in
12 that code. So at 110 feet, if you had Verizon from
13 110 to 100 and then AT&T from 90 -- from 100 to 90,
14 the next two slots are from 90 to 80 and then from 80
15 to 70. 80 to 70 is definitely not going to work,
16 okay. 90 to 80 is most likely not going to work,
17 okay. And we can speculate. We can say it's
18 speculation, but that's the reality, and we know that
19 because we're in the business.

20 So what we offered was actually spend more
21 money and build two towers with a condition that
22 we're willing to agree to that we wouldn't extend the
23 heights of those towers by (indiscernible). So that
24 was the compromise we tried to strike.

25 If you thought that 120-foot single pole was

1 a better option, we'd be willing to consider that,
2 again on the same stipulation. We would need the
3 height variance and we would need SHPO's approval,
4 but to build one .110-foot pole will violate your
5 code. We cannot commit that it will support two
6 other locators in all respects because it won't.
7 That's the reality. It just won't.

8 MR. KEELEY: So that would actually be a
9 variance then? That would actually mean to say
10 you're building one and it's only going to -- over
11 100 feet, but it's only going to carry two, whereas,
12 actually it says you need to have three.

13 MR. GAUDIOSO: You need to have four. You
14 need to have two additional. It specifically says
15 additional.

16 MR. KEELEY: On top of the one.

17 MR. GAUDIOSO: On top of the -- no, no, on
18 top of the two because we have two applicants here.
19 So we need to build two.

20 And don't short-sighted. Make no mistake
21 about it. There's four carriers in this area, so we
22 could be trying to outsmart ourselves and you'll have
23 the fourth carrier come in and demand their own pole,
24 okay, and that's what will end up happening if you
25 don't plan for those four carriers as your code

1 suggests you should.

2 So we're willing to do the one pole, but it
3 would have to be 120 feet to be able to support that
4 co-location. The two poles we think is the better
5 option because it doesn't meet the variance. The
6 obelisk, we think, is the next option because it does
7 meet the variance, but it's a very unique site-
8 specific design that, quite frankly, is something
9 that's out of the box. I mean, this is not something
10 you drive down a highway and see an obelisk. I mean,
11 this would be something that would be highly unique.

12 And I'm not saying that in a bad way. I'm saying it
13 in a good way, and that's why we offered it. It's
14 not an inexpensive solution for the Application.

15 So we're offering all these alternatives.
16 We still think based on the SHPO approval, based on
17 the height limit, based on the code, that the tree
18 still makes the most sense even for co-location
19 provisions, but to go back to answer your question,
20 we are offering those other alternatives to try and
21 minimize any potential visual impact.

22 CHAIRMAN RICE: What's the material
23 (indiscernible) obelisk? What would you build that
24 on? What the exterior sheathing?

25 MR. GAUDIOSO: So around the antennas it's

1 basically the same type of sheathing that they use on
2 rooftops when they shield in the antennas. It's a
3 stealth material, meaning it's kind of like a
4 fiberglass. It's about that thick. It can have any
5 type of finish or color that you want on it. Usually
6 it's finished with almost like a stucco finish, so it
7 has a texture so it looks like either brick or it
8 looks like masonry and it can be painted. That would
9 definitely be what's around the antennas, and it's
10 RF. When we say RF transparent, meaning a signal can
11 go through it. The rest of the material would
12 probably be some type of fiberglass again with the
13 same type of finish. It just wouldn't have to be
14 that RF transparent material.

15 CHAIRMAN RICE: So you think it's
16 fiberglass?

17 MR. GAUDIOSO: It's -- Mr. Vincente can
18 probably speak to greater detail about it.

19 MR. VICENTE: So there's different kinds of
20 RF-friendly materials that are transparent materials.

21 The manufacturer would suggest exactly the type.
22 The idea is up until the area that you don't have
23 antennas, it could be any solid material, but once
24 you get to the area where the antennas are, it would
25 be on a friendly material.

1 CHAIRMAN RICE: Right.

2 MR. VICENTE: On the -- visually, both the
3 RF-friendly and the other material would match, so
4 you wouldn't know it to the visible eye. There would
5 be no distinction.

6 CHAIRMAN RICE: Is there a steel frame
7 inside or (indiscernible) with --

8 MR. VICENTE: Correct.

9 CHAIRMAN RICE: -- something, stucco or GFRG
10 or --

11 MR. GAUDIOSO: It would look like stucco.

12 MR. VICENTE: It wouldn't be a stucco, but
13 it would look like stucco.

14 CHAIRMAN RICE: (Indiscernible) stone. I
15 mean, obviously --

16 MR. GAUDIOSO: Yeah, that's what it would
17 look like. It will look like a stucco stone. It
18 could be painted any color.

19 CHAIRMAN RICE: And if you were to build
20 something as a backdrop to the cemetery, it would
21 look -- it should look like a stone?

22 MR. GAUDIOSO: We agree. We agree.

23 MR. KEELEY: Can I go back to a question or
24 it's a comment you made a second ago because it was
25 actually one of the things I didn't quite understand.

1 I'm not aware, please help me.

2 One of the recent letters that you sent in
3 as we were discussing the alternative designs and
4 acceptable conditions, one of them that you suggested
5 was "The tower will not be raised in height without
6 the prior approval of the Village notwithstanding any
7 rights to raise the tower pursuant to (indiscernible)
8 law." And you just said not extending
9 (indiscernible). That's --

10 MR. GAUDIOSO: Correct.

11 MR. KEELEY: You're referring to that same
12 piece; is that right?

13 MR. GAUDIOSO: Section 649.

14 MR. KEELEY: Can you say that in plain
15 language to make sure that I'm understanding
16 correctly because the way I read it is -- it's 110
17 feet in this scenario, and federal law allows you to
18 bump it by anywhere from 20 to 28 feet depending on
19 who we're reading as allowed. And if you're able to
20 extend it -- so are you saying that you would cap it
21 at 110 or you would cap it at 128?

22 MR. GAUDIOSO: Oh, we cap it at -- so it's
23 not 28. Let me clarify. It's 20 feet or 10 percent,
24 whichever is greater, okay. Make that perfectly
25 clear. That's the law, okay. We would cap it at 110

1 is what we're saying.

2 MR. KEELEY: I just wanted to make sure I
3 understood that correctly.

4 MR. GAUDIOSO: Yeah. We think that's a
5 significant -- raised the concern in November of
6 October, and we're willing to make that concession to
7 say that, look, we think the 110 would work
8 particularly with that design, so -- and just to go
9 back, the obelisk we'd cap at the 125. The double
10 flagpoles we'd cap at the 110.

11 MR. KEELEY: I just wanted to be sure I was
12 reading that correctly.

13 MR. GAUDIOSO: Yeah. The tree would be
14 capped at the 110. And that's just one of the many
15 conditions that we agreed to, that we would be, you
16 know, in consent to as far as a condition of
17 approval. And we think that that's significant.

18 MS. CLEMENTS: There's so many documents, I
19 can never find what I want to look at.

20 So the way -- I'm trying to -- I wanted to
21 find that exact piece that Chris is talking about
22 because -- thanks, Chris, yeah.

23 CHAIRMAN RICE: (Indiscernible?)

24 MS. CLEMENTS: Well, no, because I just want
25 to make sure because the way I read it, I actually

1 thought it was possibly a little bit slippery, to be
2 honest with you, that language, that you agreed to
3 cap it, but not accepting the right that was granted
4 to you under some particular federal statute, and
5 that's --

6 MR. GAUDIOSO: No, just the opposite. What
7 we're saying is this. We're saying the federal
8 statute if this tower was approved would, arguably,
9 allow us to go up 20 feet.

10 MS. CLEMENTS: Yes, that's right, yes.

11 MR. GAUDIOSO: And what we're saying is we
12 will consent to the fact that we will not raise it by
13 right under that provision. We will agree to that.

14 MS. CLEMENTS: Okay, because that's not how
15 I read that.

16 MR. GAUDIOSO: Yeah.

17 MR. KEELEY: So to be clear, the application
18 before us is for the monopine.

19 MR. GAUDIOSO: The application before you is
20 for the monopine.

21 MS. CLEMENTS: Yes, but notwithstanding --

22 MR. GAUDIOSO: What we've offered is that --

23 CHAIRMAN RICE: Hold on one second.

24 MS. CLEMENTS: Meaning so for some --

25 obviously, so I read notwithstanding any right,

1 meaning to say we're not giving up this right.

2 MR. GAUDIOSO: No, no, no, notwithstanding
3 the fact that we have the right under federal law.

4 MS. CLEMENTS: Ah, thank you very much.
5 See, that's why I'm not --

6 CHAIRMAN RICE: We (indiscernible) that
7 right.

8 MR. GAUDIOSO: Correct.

9 MS. CLEMENTS: Okay. Thank you for that --
10 that was a big question I had.

11 MR. GAUDIOSO: And look -- and, again, we
12 think that's significant, and we think that that is
13 consistent with what we've been saying about the
14 importance of the 110-foot height limit, the fact
15 that we've designed around that, the fact that we've
16 designed for co-location, the fact that we've tried
17 to follow your code in every respect with respect to
18 the wireless code section.

19 MS. CLEMENTS: So I have another question
20 about the flagpole design. So you've spoken really
21 clearly about the need -- we need 10 feet for
22 (indiscernible) and 10 feet for -- I was actually
23 just a Safety Committee -- when I'm not doing this,
24 I'm on the Board of Education.

25 MR. GAUDIOSO: Sure, okay. Congratulations.

1 MS. CLEMENTS: Yeah. It's been a great
2 year. And I was a Safety Committee meeting yesterday
3 and big surprise, there were a lot of people there,
4 right, because of things that are going on nationally
5 regarding safety.

6 MR. GAUDIOSO: What type of safety?

7 MS. CLEMENTS: And guess who else was there?

8 Our, you know, the chief of the Cold Spring Fire
9 Department who also brought up this issue of when you
10 call 911 from around here, frankly, if you're in
11 Nelsonville, it goes to Dutchess County, and if
12 you're in Cold Spring, it goes to Orange County. So
13 how then does that -- and that's a big issue for the
14 fire department. How then does -- and I think I know
15 the answer, that the antenna would just stick on top
16 of one of those flagpoles.

17 MR. GAUDIOSO: Well, they haven't committed
18 to anything. Two things.

19 MS. CLEMENTS: So I just want to know how --
20 because the County issue, the issue -- if anything is
21 going to happen, if anything is going to happen, it
22 has got to address this issue of our first responders
23 having the kind of coverage that they need.

24 MR. GAUDIOSO: So we'll say this. There's
25 two things. We agree with you 100 percent. Two

1 things. Number one, the issue of it going to a call
2 center is one issue. Let me just explain that for a
3 second.

4 MS. CLEMENTS: Well, I understand it's sort
5 of where you are and where it goes.

6 MR. GAUDIOSO: Yeah. So if you have some
7 scattered coverage from West Point and your phone
8 picks up on it and makes a call --

9 MS. CLEMENTS: Right. That's still going to
10 happen.

11 MR. GAUDIOSO: No, that won't happen when
12 this facility is in because the coverage now will
13 pick up and go to the call center in Putnam. The
14 problem now is that you get some scattered coverage
15 from across the river --

16 MS. CLEMENTS: Right.

17 MR. GAUDIOSO: -- and the system only knows
18 that that's the tower and it goes to that call
19 center.

20 MS. CLEMENTS: Right.

21 MR. GAUDIOSO: That's one issue. The second
22 issue is that we have committed to make the tower
23 available at no rent for the Town or the County's
24 emergency service antennas, okay. Put that in the
25 resolution if you approve it, okay. That's our

1 commitment.

2 Now, what the design, what they need, we're
3 happy to do whatever we have to do from a
4 construction standpoint to accommodate them. And, in
5 fact, Homeland Towers has worked with Putnam County.

6 We're building two sites for them right now that
7 they're going to be located on. We've made an offer
8 to allow them on other sites and we've made an offer
9 to allow them on this site. So whatever their design
10 is, if you see fit that you want to look at what
11 their design is, we have no objections. That's
12 between you and the County, but whatever they want to
13 do, we will make it structurally and financially
14 available to them at no charge.

15 MS. CLEMENTS: And that was the gist of my
16 question.

17 MR. GAUDIOSO: Yeah.

18 MS. CLEMENTS: To what extent -- right. So
19 we have lots and lots and lots of information about
20 the monopine, right?

21 MR. GAUDIOSO: Yeah.

22 MS. CLEMENTS: But what we don't, it's about
23 these alternative designs.

24 MR. GAUDIOSO: So let me -- yeah.

25 MS. CLEMENTS: So it sounds like you can --

1 the quick answer is yes, they could put something on
2 there if that were to happen.

3 MR. GAUDIOSO: They could put something on
4 there, yeah. And if they give us the specs before we
5 build it, we'll build it into the design right up
6 front so you see that.

7 MR. KEELEY: Would it be appropriate for us
8 to -- we talked a little -- I mean, if there's two
9 primary things that we think about as a zoning board,
10 right? We need to look at the need and we need to
11 look at the esthetics. We talked a little bit about
12 the need. Should we shift to the esthetics a little
13 bit?

14 CHAIRMAN RICE: Yeah.

15 MR. GAUDIOSO: Yeah.

16 MR. MERANDO: You know, you got a pine tree
17 in the middle of a bunch of oaks and for some reason
18 they don't look good, you know, they just don't look
19 good. It's like having a tree that have down in
20 Florida on Main Street there.

21 MR. GAUDIOSO: A palm tree.

22 MR. MERANDO: A palm tree, I'm sorry. I
23 couldn't think of it. It's like having a palm tree
24 out in the middle of Main Street here. It just
25 doesn't look good. It really doesn't look good.

1 MR. GAUDIOSO: You know, we did -- I agree
2 with you as far as context. We think context is the
3 most important thing.

4 MR. MERANDO: That bothers me a lot.

5 MR. GAUDIOSO: Did you look, though -- the
6 only thing I'll -- and look, this is your -- you look
7 at the other pictures and the other (indiscernible)
8 in the cemetery, whether there's large pine trees
9 that when you're in those areas, then the context is
10 right. So it depends on where you are. Obviously,
11 if you're in a spot, you're only looking at the oak
12 trees. It might be (indiscernible).

13 MR. MERANDO: I'm in a spot and I was
14 standing at my father's grave and I was looking up
15 there at it, okay --

16 MR. GAUDIOSO: I understand.

17 MR. MERANDO: -- there's no pine trees
18 there.

19 MR. GAUDIOSO: Sure. The other side of the
20 cemetery, we tried to show that there a lot, but we
21 understand what you're saying. That's why we came up
22 with the alternatives, and that's why we, you know,
23 because it does start to get somewhat subjective as
24 far as not whether there's an esthetic impact, but
25 whether what you prefer. And what you prefer are the

1 old -- that's why we tried to give you the different
2 alternatives.

3 MR. KEELEY: And along those lines, I mean,
4 it's not just that location, right, where the
5 esthetics will pop up, whatever the design may be,
6 whether it's those esthetics concerns. If you're
7 looking at it from a certain portion of the river, if
8 you're looking at it from, you know, the yellow
9 trail, if you're looking at it from within the
10 cemetery, if you're looking at it across the street
11 at some of those homes, I mean, I haven't seen in any
12 of the pictures what the depictions would look like
13 from somebody's front yard. You know, if there's
14 elements of the code that speak to the residential
15 impact, then I haven't actually seen much about that,
16 from the view shed analyses and things, it does seem
17 as though there's a number of homes that are in those
18 areas.

19 MR. GAUDIOSO: I think we did submit a lot
20 of photographs, though, and I know there was -- the
21 public had the opportunity to submit photographs
22 (indiscernible) on their property.

23 I think the bigger views or the one that has
24 been focused on the most, which is the one part of
25 the cemetery as opposed to the other parts of the

1 cemetery, I think we showed very clearly from the
2 yellow trail that it's a very distant view.

3 MS. CLEMENTS: That is certainly -- well --

4 MR. GAUDIOSO: It's a distant view. I mean,
5 it's --

6 MS. CLEMENTS: I mean, that's one of the
7 points I want to make. I mean, I think Saratoga has
8 led -- the way Saratoga frames that, I just have to
9 say I completely disagree with, you know. Even with
10 the leaves off trees, the unobstructed views in the
11 direction of the project were "extremely limited,"
12 like I mean, that place where they took that picture,
13 that is the -- we're in the northeast. That's the
14 one place we can go.

15 MR. GAUDIOSO: Well, that's they took the
16 picture from there, though.

17 MS. CLEMENTS: I know, and I appreciate
18 that.

19 MR. GAUDIOSO: They took the picture -- we
20 had them hike that trail up and down it --

21 MS. CLEMENTS: And I appreciate that.

22 MR. GAUDIOSO: -- and they picked the spot
23 where it was the most visible to show you the
24 photographs.

25 MS. CLEMENTS: And I know exactly -- yeah.

1 I mean, but that's -- the notion that it's extremely
2 limited, like I mean, that's -- I am stating my
3 substantial disagreement with that assessment, you
4 know. That's all.

5 MR. GAUDIOSO: Okay. And I think what we
6 did is we showed the tree in that context, and it is
7 a distant view. It's below the tree line. It's
8 below the ridge line, so to speak, you know. And I
9 don't know what looks better there, you know.

10 MS. CLEMENTS: Right.

11 MR. GAUDIOSO: But that's why we --

12 MS. CLEMENTS: It's not below the tree line.
13 It's below the ridge line.

14 MR. GAUDIOSO: I'm sorry. I should say it's
15 below the ridge line, like well below the ridge line.

16 And the same thing from the river. The
17 river views we showed, the frontage across the river,
18 we showed profiles where it was going to be -- and
19 photographs how it was going to be blocked. I think
20 the reality is is that the visibility is mainly very
21 close, which is not unusual.

22 MR. KEELEY: I guess the challenge, and I
23 mean you started by reading at length, actually, one
24 portion of the code. If we're thinking about it, one
25 of the requirements that we have is to minimize such

1 impacts to a level of insignificance, right?

2 MR. GAUDIOSO: Sure.

3 MR. KEELEY: And whatever design, but the
4 monopole is before us, to me that's a challenge,
5 right? Minimizing it to the level of insignificance.

6 MR. GAUDIOSO: Well, I think --

7 MR. KEELEY: Particularly because it's in
8 the context of an adverse impact on scenic or
9 historic resources, and we're looking at, you know --
10 and this started a while ago. The house was on the
11 historic registry.

12 MR. GAUDIOSO: Yes.

13 MR. KEELEY: Now, thanks to some work done
14 by actually some people in this room, now we have the
15 cemetery (indiscernible) eligible for listing on the
16 historic registry. That to me has a significant
17 adverse effect and --

18 MR. GAUDIOSO: Which is the opposite of what
19 your consultant found. Your consultant found --

20 MR. KEELEY: -- (indiscernible). Any one of
21 these designs does not strike me as minimizing the
22 impacts to a level of insignificance. That's a
23 (indiscernible) and I don't think that we're there.

24 MR. GAUDIOSO: Then you're going to have to
25 (indiscernible) the application as you sit fit, but

1 the reality is is that the record shows that SHPO
2 found no adverse effect. Your own --

3 MR. KEELEY: Even though it was listed on
4 the registry.

5 MR. GAUDIOSO: And didn't reopen it. Your
6 own consultant looked at it.

7 MR. KEELEY: (Indiscernible)

8 MR. GAUDIOSO: Your own consultant looked at
9 it. Your own consultant looked at it. You hired an
10 expert consultant that looked at it and came to the
11 conclusion, objectively, that it's not a significant
12 adverse esthetic impact.

13 MR. KEELEY: But SHPO is still open
14 (indiscernible).

15 MR. GAUDIOSO: I don't think SHPO is open.
16 No, SHPO is not open. SHPO would have to go to the
17 FCC to overturn what they've already said.

18 CHAIRMAN RICE: All right. Any other
19 questions on the alternate designs?

20 (No audible response)

21 Do we want to further (indiscernible)?

22 MR. MEDRANO: I'd like to see it further
23 explored, yes.

24 CHAIRMAN RICE: But to your point, you
25 suggested that we reopen the public hearing to give

1 you an opportunity -- I mean, these (indiscernible)
 2 we don't really have -- I know we only saw a couple
 3 pictures of them, but they're significantly different
 4 than the type of tower. I guess that's why you're
 5 offering them, but we have to really understand what
 6 they're going to look at.

7 MR. GAUDIOSO: So we committed to the fact
 8 of giving it 60 days to ask for the variance and ask
 9 for SHPO approval on an alternative design that you
 10 believe is appropriate. But we're not agreeing to
 11 open up the hearing on every other potential issue
 12 that there could possibly be. If the issue is the
 13 height related to, you know, the alternative design,
 14 we're happy to extend the shock clock for up to 60
 15 days to try and get those approvals.

16 CHAIRMAN RICE: There's four of them and get
 17 the variances (indiscernible) would be a very narrow
 18 discussion.

19 MR. GAUDIOSO: Yeah. The discussion would
 20 be only for the variance related to that facility,
 21 you know, for the height of that facility, and the
 22 record -- you know, and that would be a new public
 23 hearing for the variance. Everything else has been
 24 closed. And we're willing to take that time, and
 25 we're trying, you know, we're trying to do the right

1 thing. We don't know if SHPO will sign off on it.
 2 If SHPO doesn't sign off on it, it's a no-go. If
 3 SHPO knows that you're interested in the obelisk, I
 4 would suggest that you, you know, that you make that
 5 known to SHPO. If you're not interested in the
 6 obelisk and this is a waste of, you know, two months,
 7 then I think you're wasting, you know, both of our
 8 times, you know. But if you think the obelisk is a
 9 real option, then we're willing to go down that path.

10 CHAIRMAN RICE: But what if SHPO says "Build
 11 it out of limestone," what do you guys do?

12 MR. GAUDIOSO: Well, I think that would be
 13 unreasonable because I don't see the need for it
 14 esthetically because the difference between limestone
 15 and what we're going to make it look like, there's no
 16 difference, so I don't want to start speculating on
 17 SHPO might say this, SHPO might say this.

18 CHAIRMAN RICE: Okay. SHPO might say "We'd
 19 love this if you build it out of limestone" and you
 20 say, "No, we're not." I mean, that's just thinking
 21 out loud.

22 MR. GAUDIOSO: Yeah, then we'll withdraw the
 23 variance request --

24 CHAIRMAN RICE: Oaky.

25 MR. GAUDIOSO: -- and we'll take our chances

1 with the tree.

2 CHAIRMAN RICE: Yeah. The same thing, I
3 mean, the Board just wants to explore
4 (indiscernible). It makes no guarantees that,
5 obviously, they're going to (indiscernible).

6 MR. GAUDIOSO: No, we understand. We have
7 to ask for a variance. We have to ask for a height
8 variance. We get it.

9 MS. CLEMENTS: But --

10 CHAIRMAN RICE: I mean, we could still deny
11 the (indiscernible) based on all the other criteria.

12 MR. GAUDIOSO: Based on the record that you
13 have --

14 CHAIRMAN RICE: Right.

15 MR. GAUDIOSO: -- you can act on that --

16 CHAIRMAN RICE: Right.

17 MR. GAUDIOSO: -- based on the code and
18 federal law, absolutely.

19 CHAIRMAN RICE: Right. Right. I know the
20 Board did ask you to provide the alternates.

21 MR. GAUDIOSO: And we didn't -- look, I'm
22 going to be frank with you. I mean, we've taken a
23 lot of heat here and we understand that. We didn't
24 come back with, you know, tin-can alternates. We
25 came back with some very thought-out alternative

1 designs given the code, given the height, given the
2 need, given the future need, given -- like I said,
3 find an obelisk, quite frankly. I mean, it was not
4 -- this was very well thought out to give you
5 alternatives that were reasonable, not strawman
6 alternatives, not to say, oh, yeah, look at this
7 alternative. It looks terrible. We're better off
8 with the tree. We didn't do that.

9 MS. CLEMENTS: Well, I mean, I don't know,
10 this is where I'm maybe making a mistake, but it
11 won't be the first time. I mean, I'll be honest, I
12 am questionable -- the two flagpole design is the
13 design that I think has a chance, but I think the
14 problem is still really with the design in terms of
15 their esthetic impact and, quite honestly, especially
16 -- I appreciate the creativity and thinking outside
17 the box. Why not try that. But I just -- I
18 personally don't see it as an alternative. It's a
19 different kind of artifice. It's a different kind --
20 well, I can recognize and thinking that we're behind
21 it, that it's a shape that has certain historic
22 features. It reminds us of, you know, different
23 obelisk monuments around the country. I think it's
24 -- personally, I find it (indiscernible). And so, I
25 mean, I just want to put that out there.

1 MR. GAUDIOSO: No, I think we need that. I
2 think each of you have to give your opinion on that
3 because --

4 MS. CLEMENTS: I mean -- and to be honest, I
5 mean, you know, I -- so my -- so it's a narrow piece
6 of the esthetic perspective from the fact of talking
7 about that yellow trail, but in terms of how
8 important Bull Hill is and what happens on Bull Hill,
9 I don't think it's narrow, and so I think it's
10 important to continue to -- so the only image I've
11 seen of the two -- the flagpole design is more from
12 like --

13 MR. GAUDIOSO: Sure.

14 MS. CLEMENTS: -- the cemetery.

15 We have thousands and thousands and
16 thousands of people, I know you've heard this before,
17 but I'm going to say it again, come to this area to
18 hike those trails. It is such a unique landscape.
19 It is -- and I'll reiterate what I said a second ago,
20 you know. I don't see it as like only one trail
21 location, right? It is the -- yes, it is only one
22 trail location. It is the only trail location from
23 where you can really -- like that's a big one, right?

24 MR. GAUDIOSO: That's why we represented it,
25 yeah.

1 MS. CLEMENTS: Yeah -- no, and I understand
2 that, but it's the language, I think, that Saratoga
3 Associates took when they talked about that, minimize
4 the importance of that, so we're talking about
5 thousands and thousands of people that hike those
6 trails, that look over that view. I mean, it is a
7 very -- I'm not as articulate as one from the Hudson
8 Highlands Land Trust, but you know, I -- everything
9 she says I agree with. And so I think there are
10 reasons to question whether even -- while I
11 appreciate and I'm certainly fine to do a flagpole
12 design much less offensive, much less -- not much,
13 but less, find it less objectionable. I think
14 there's --

15 MR. GAUDIOSO: And we show it as a blue.
16 You know, we showed it as a blue, and what we didn't
17 show it as are other alternative colors like a dark
18 brown.

19 MS. CLEMENTS: I think there's, you know, I
20 think it's important to acknowledge that when it
21 comes to the esthetic impact, and Chris really raises
22 a point that what the Village law says is that, you
23 know, render it insignificant. And I think given how
24 much we value these views and this place, that that's
25 going to be a really high (indiscernible).

1 MR. KEELEY: And maybe before you respond to
2 that, if it's all right with the Chair, maybe we can
3 talk amongst ourselves, not closed session or
4 anything --

5 MS. CLEMENTS: Right. Oh, that's right.

6 MR. KEELEY: -- but maybe we can give you a
7 break for a couple of minutes --

8 MR. GAUDIOSO: Sure.

9 MR. KEELEY: -- and deliberate while --

10 MR. GAUDIOSO: And I think -- and look, just
11 to lay it out, I think you have to decide whether
12 there's a majority that wants us to explore the
13 different options that we've presented as
14 alternatives.

15 CHAIRMAN RICE: Sure.

16 MS. CLEMENTS: Right. And that's true. I
17 was thinking to the attorney -- no, but I was
18 thinking to the attorney, and it's funny because we
19 talk about this with the Board of Ed all the time,
20 like you do end up speaking to the public, but really
21 what you're really intending to do is have an
22 internal conversation.

23 MR. GAUDIOSO: And we also just -- Pauline
24 really helped me on this. We said we would also
25 consider one pole at 120.

1 CHAIRMAN RICE: Okay. That's
2 (indiscernible). So do we need (indiscernible).

3 MR. KEELEY: So I mean, in my opinion, where
4 -- like if I'm thinking about the two standards that
5 we need to be most (indiscernible), right, esthetics
6 and the need. The need, I think we've heard
7 arguments from both sides on that, right? We've seen
8 documentation in both sides from that. We've seen
9 (indiscernible), drive tests. We've seen propagation
10 maps. We've seen a variety of methods that have
11 shown that. I think in all of the different
12 documents that we've looked at, there are some that
13 are already (indiscernible). Some that are doing
14 another. I think that that one isn't a clear-cut to
15 me as when I think about the esthetics, when I'm
16 looking at the esthetics and thinking about those
17 standards that we were talking about a few minutes
18 ago of essentially rendering it insignificant. I
19 think that a monopine, I think even the other two
20 that are proposed here, I don't see how even with
21 alternative angles and work we would get to a place
22 where they would be effectively rendered
23 insignificant in that way. I think that the
24 location, as visible as it is from certain places,
25 but in particular the visibility as from the cemetery

1 that is now set to be listed on the historic
2 registry, I think that that is a hugely significant
3 (indiscernible) that we need to consider here.

4 I mean, when I'm thinking about -- I went
5 back and was re-reading through the core piece of the
6 code, not like the special permit process, but he was
7 saying is that what we are here to do is to promote
8 the orderly birth development of preservation of the
9 Village of Nelsonville, but due considerations for
10 economic well-being, adequate housing opportunity,
11 and then a character and appearance of the Village,
12 conservation of the value of buildings and property,
13 and conservation of historic landmarks, sites, and
14 buildings and places.

15 When I'm looking at this one, does this
16 promote the character and appearance of the Village?

17 I don't think so. Does this conserve the value of
18 buildings and property? I think we've seen that on
19 both sides. I think we've seen some appraiser saying
20 one thing. I think we've seen real estate agents and
21 residents saying another thing. Does it conserve
22 historic landmarks, sites, buildings, and places? I
23 think that we heard some pretty compelling arguments
24 particularly from the cemetery, particularly -- not
25 just from the gatehouse, but anywhere in the

1 cemetery. It doesn't.

2 So I mean, that's where I'm at. If we're
3 moving towards a motion, I don't know, but that's my
4 thinking right now.

5 MS. MEYER: I agree with Peggy, though, that
6 all the people that come here, this is a unique part
7 of the country. How many hundreds of people come on
8 weekends?

9 CHAIRMAN RICE: Sure.

10 MS. CLEMENTS: Thousands.

11 MS. MEYER: That's right, thousands. So
12 what's that going to do? (Indiscernible). We'll be
13 long in the (indiscernible) by then. I think that
14 has to be a consideration. If people could come here
15 (indiscernible). That's a historic value of this
16 community. (Indiscernible)

17 MR. MERANDO: Yeah. I agree with everybody
18 (indiscernible). You know, the esthetics, that just
19 says -- that's the one thing that's really -- it's
20 not there, not with the monopine, maybe with the
21 flagpole, one flagpole or two flagpoles or the
22 obelisk.

23 CHAIRMAN RICE: Sure.

24 MR. MERANDO: Yeah.

25 CHAIRMAN RICE: So would you like to --

1 would the Board like to look at those as
2 alternatives?

3 MR. MERANDO: Yeah.

4 MS. MEYER: Yeah.

5 MR. MERANDO: I would.

6 CHAIRMAN RICE: I mean, we could look at it
7 and (indiscernible) look at it.

8 MS. CLEMENTS: Well, there's no way -- I
9 mean, if ~~it~~ right? So if the deciding -- ~~if~~ the
10 factor that, you know, that we've really settled on
11 for a good reason, depends what's in the code, is not
12 having a significant adverse impact on the scenic or
13 historic resources, then I think one, you know, one
14 simulation certainly doesn't give us the information
15 that we need to make that decision.

16 MR. MERANDO: Right.

17 CHAIRMAN RICE: Right. And we could -- if
18 we -- it would be a public hearing (indiscernible)
19 the community could opine on it also, these two
20 alternates. I mean, it's kind of three alternates
21 now with the single 120 --

22 MS. CLEMENTS: But that's the one -- the one
23 thing that was said a second ago was that -- and a
24 public hearing would be only about this variance, I
25 don't think so, I mean, a different design, it -- a

1 different design is also related to --

2 CHAIRMAN RICE: Are you talking about the
3 esthetics?

4 MS. CLEMENTS: -- its impact on the
5 esthetics.

6 CHAIRMAN RICE: (Indiscernible) That's the
7 whole issue.

8 MR. GAUDIOSO: It would be a variance for
9 the alternative design, so the alternative design --
10 what we're saying is that we're not willing to extend
11 the shock clock for purposes of re-litigating this
12 whole thing. I mean, I don't think that's in
13 anyone's best interest.

14 If you say that you're willing to consider
15 one or more of the alternative designs and you tell
16 us that, what we would say is that we would make the
17 application for the variance for a public hearing
18 next month on that alternative design based on that
19 height variance that would be needed. I think that's
20 what you said.

21 CHAIRMAN RICE: You would make a
22 presentation bringing in, obviously, better
23 simulations.

24 MR. GAUDIOSO: Yeah. I think what we want
25 to talk about tonight is the locations that would be

1 important to you and design options and color options
2 that would be important to you that we can --

3 MR. KEELEY: (Indiscernible)

4 MR. GAUDIOSO: Yeah, locations for
5 photographs. I think we have -- as we said, you
6 know, we're not going to take 500 photographs from
7 the yellow trail, but what we try to do is take the
8 most important one.

9 MR. KEELEY: No, I understand, right. So
10 you're suggestion maybe we look at Butterfield.

11 MR. GAUDIOSO: Locations for photographs.

12 MR. KEELEY: I mean, I guess the question
13 that I still have is if we come back (indiscernible)
14 60 days, is there a scenario where a 110- or 120 -
15 foot Washington Monument is going to be acceptable or
16 the flagpoles are going to be acceptable? Like I'm
17 not sure, like if those -- and we haven't fully
18 (indiscernible), right? But if we do that, then we
19 do that. As it states now, it's still something that
20 is significantly larger than all the surrounding
21 scenarios (indiscernible).

22 MALE SPEAKER: I was just hoping that Mr.
23 Gaudioso could clear something. So the issue that
24 you're saying, the issue of the special use permit
25 would not be open in 60 days, only the issue of the

1 variance for the additional height?

2 MR. GAUDIOSO: So the public hearing on the
3 materials that have been submitted is closed, okay.
4 And what we would be willing to do is have a public
5 hearing and it would -- the special permit hasn't
6 been decided. We're not asking for the special
7 permit to be decided tonight.

8 MALE SPEAKER: That's what I wanted to be --
9 because you said the only issue is going to be the
10 variance.

11 MR. GAUDIOSO: No, no, no.

12 MALE SPEAKER: Well, that would seem to me
13 that the special use permit would be granted then.

14 MR. GAUDIOSO: No, no. So we would agree to
15 extend the federal shock clock and the New York State
16 shock clock, so to speak, the 62 days from the close
17 of the public hearing for the decision --

18 MALE SPEAKER: Right.

19 MR. GAUDIOSO: -- until, you know, I'm
20 saying approximately 60 days from now to have a
21 public hearing, to make a request to SHPO, see if
22 they would agree with one or more of the alternative
23 designs if you believe one of them or the alternative
24 designs are worth pursuing.

25 If the majority of the Board says "The

1 obelisk (indiscernible) under any circumstance, we
2 don't need to look at that anymore," then let's not
3 waste our time on that. If you say it's worth
4 looking at the two flagpoles or the 120-foot
5 flagpole, then let's extend the shock clock to 60
6 days, have a public hearing next month, and go from
7 there.

8 CHAIRMAN RICE: That's a good point. Do you
9 guys want to look at all three or do you want to look
10 at (indiscernible).

11 MR. KEELEY: Is there a scenario where the
12 flagpole or the obelisk could pass muster for you?

13 MS. MEYER: Maybe. Depends on the
14 (indiscernible).

15 CHAIRMAN RICE: Yeah, so we need the
16 information.

17 MR. MERANDO: We need the information, yeah.

18 CHAIRMAN RICE: But do we want to limit it?
19 We don't want to waste money and time if there's --

20 MS. CLEMENTS: I'm just one opinion.

21 CHAIRMAN RICE: I'm sorry?

22 MS. CLEMENTS: I'm just one opinion. I made
23 my opinion clear.

24 CHAIRMAN RICE: You're not in
25 (indiscernible) obelisk, yeah, all right. Do you

1 want to look at the flagpole?

2 MS. CLEMENTS: Pardon?

3 CHAIRMAN RICE: Do you want to look at the
4 flagpole? Do you want to look at all three? I mean,
5 you don't (indiscernible) look at any of them, but
6 how about do you want to look at all three scenarios
7 (indiscernible) materials?

8 MS. MEYER: Yes. If you're going to do it,
9 do it. Do it.

10 MR. MERANDO: Let's do it the best we can,
11 you know.

12 CHAIRMAN RICE: Right. All right. So it
13 sounds like the Board would like to look at those
14 three alternatives.

15 And now, I don't -- the color, we got
16 different opinions about color and the sky and
17 especially from (indiscernible).

18 MR. GAUDIOSO: I'd say this. I'd say this.
19 I think what we ought to do tonight is we'd extend
20 the shock clock 60 days.

21 CHAIRMAN RICE: Right.

22 MR. GAUDIOSO: I think we ought to agree to
23 schedule a public hearing on the height variance for
24 the obelisk with a 120-foot flagpole for next month.
25 I think that you ought to spend a week with your

1 consultant, AKRF, and ask them to provide us guidance
2 on additional vision (indiscernible) opinion and then
3 we'll prepare the materials for the public hearing.

4 MS. CLEMENTS: Before we do anything,
5 actually I have a couple of questions for our
6 attorney related to some things that have happened
7 earlier. I actually would like to make a motion to
8 go into executive session to discuss -- to have a
9 conversation with our attorney.

10 MR. MERANDO: Yeah.

11 MS. CLEMENTS: It can be limited, but
12 actually, I have a real question about some -- what?

13 MALE SPEAKER: Well, I have a question as
14 well. It depends on what you were going to say.

15 MS. CLEMENTS: Oh. So anyway, I would like
16 to make a motion to go into executive session.

17 CHAIRMAN RICE: Now?

18 MS. CLEMENTS: Yes, now.

19 MR. KEELEY: Should (indiscernible) make his
20 comment first or should we do it first?

21 MS. CLEMENTS: Yeah. Do you want to make
22 your comment first?

23 MALE SPEAKER: Well, again, I'm not opining
24 on (indiscernible), but I'm just a little concerned
25 about the idea of applying for a variance for an

1 application that doesn't exist. And I'm not sure
2 that that -- I don't know how you're going to get off
3 doing that.

4 MR. GAUDIOSO: Well, we're going to put --
5 if there's a fee, we're going to put in the fee, and
6 we're going to state we're requesting --

7 MALE SPEAKER: For a variance from what,
8 though, because you don't have --

9 MR. GAUDIOSO: For the height. For the
10 height. The height is 110 feet --

11 MALE SPEAKER: I understand.

12 MR. GAUDIOSO: -- and we'll say any
13 alternative to the existing application, we'll ask
14 for a variance for the height of the 120-foot
15 flagpole and a 125-foot obelisk if necessary.

16 MALE SPEAKER: Yeah, I'm not sure that they
17 can give you an if-necessary variance, though.

18 MR. GAUDIOSO: If they decide to deny the
19 special permit, the variance is moot.

20 CHAIRMAN RICE: But right now there's a
21 variance for the --

22 MR. GAUDIOSO: There's a 736 variance.

23 MALE SPEAKER: Right. Right.

24 MR. GAUDIOSO: But we can make the
25 application for the variance to the extent it's

1 necessary, but it's not necessary based on the
2 alternative design because either they pick something
3 that's 110 feet, we'll withdraw it or it becomes
4 moot.

5 MALE SPEAKER: Well, as a general rule, with
6 a variance, there's an application that's submitted.

7 The application is rejected because it needs a
8 variance. There's no stop -- unless you're going to
9 submit a new building plan with the Building
10 Department, that has to be rejected which would then
11 require a variance to be approved because the only
12 reason it would be rejected is because the height is
13 too high.

14 MR. GAUDIOSO: Technically -- I don't mean
15 to correct you, but under New York State Village law,
16 if there's a special permit, there's no need for the
17 denial from the building inspector. Under New York
18 State Village law, you're allowed to go directly to
19 the Zoning Board for any necessary variances. I'm
20 very confident in that.

21 So procedurally, I don't think it's a
22 problem because we could always go to the building
23 inspector and ask for a denial. I'm saying under New
24 York State Village law, we have the ability to apply
25 for a variance directly from the Zoning Board when

1 there's a special permit application in connection
2 with it.

3 CHAIRMAN RICE: I believe I read that
4 myself.

5 MR. KEELEY: Something you want to add?

6 MS. CLEMENTS: Actually, I do have -- before
7 we make any decisions about going forward, I have a
8 specific question that I want to post to the
9 attorney, so yes, I am making a motion to go into
10 executive session for the purposes -- I don't know, I
11 could say for the purposes of having a confidential
12 conversation with our attorney.

13 CHAIRMAN RICE: You want to do it outside or
14 (indiscernible)?

15 MS. CLEMENTS: I don't know. First, I need
16 a second.

17 MR. KEELEY: Second.

18 MS. CLEMENTS: Then we'll decide where we're
19 going to go. I think we can do downstairs
20 (indiscernible). I think that's fine?

21 (MULTIPLE SPEAKERS)

22 MS. MINNERS: Who seconded?

23 MALE SPEAKER: Am I invited in?

24 MS. CLEMENTS: Yes.

25 (OFF RECORD)

1 (NEW AUDIO)

2 MS. CLEMENTS: I neglected to do this while
3 we were still downstairs, but I would like to make a
4 motion to go out of executive session.

5 MR. KEELEY: Second.

6 MS. CLEMENTS: All those in favor?

7 (All say "aye")

8 MS. CLEMENTS: (indiscernible)

9 CHAIRMAN RICE: Okay. So I think we decided
10 to move forward looking at the options, and I mean to
11 Todd's point (indiscernible). You're asking for a
12 variance (indiscernible) or you need to -- under New
13 York State law you can just write it up, whatever the
14 case may be, but we'd like to look at all three. Is
15 that the consensus?

16 MS. CLEMENTS: I'm not going to vote -- I'm
17 not going to (indiscernible).

18 CHAIRMAN RICE: You're not going to
19 (indiscernible) on it? Okay. So we'd like to look
20 at all three and --

21 MR. GAUDIOSO: So that would be the two
22 flagpoles, the 120-foot flagpole, and the obelisk?

23 CHAIRMAN RICE: Right. And we'd like to, to
24 your point, we'll contact AKRF and work with Ron to
25 give you direction on photographs, et cetera, color.

1 MR. GAUDIOSO: We need that rather quickly,
2 the only thing I would say, for the next week so we
3 have time to prepare everything.

4 CHAIRMAN RICE: Right. And then we'll have
5 to think about a day to meet again, which will be a
6 public hearing and the public will be invited to
7 speak and talk about the issue which we always
8 welcome.

9 MR. GAUDIOSO: And the issue being the
10 alternative designs.

11 CHAIRMAN RICE: Yeah.

12 MR. GAUDIOSO: We'll limit it to that,
13 correct?

14 CHAIRMAN RICE: The alternative designs and
15 the esthetics about them, right? I mean --

16 MR. GAUDIOSO: Correct.

17 CHAIRMAN RICE: Correct. We're not going to
18 talk about the radio frequency impact on the
19 neighborhood, et cetera, and we're going to talk
20 about the esthetics as it seems to be, to Chris's
21 point, the most crucial (indiscernible) most crucial
22 item that we have to take per the code,
23 (indiscernible).

24 On that note --

25 MS. MINNERS: Are we going to pick a date?

1 CHAIRMAN RICE: Let's look at -- it's
2 probably going to be -- you want to pick an
3 approximate date and then have everyone confirm?
4 Some dates may end up being -- we're talking 30 days?

5 MR. KEELEY: Quick question. This might be
6 for -- actually, it may be for Ron. If we're
7 reopening the public hearing that had been done joint
8 with the Planning Board, do we need to bring them
9 onto the bus with us?

10 RON: They can proceed separately. They
11 don't need to be with you necessarily.

12 MR. KEELEY: Okay. Okay.

13 MR. GAUDIOSO: Is Tuesday always the date
14 that you look at?

15 MS. CLEMENTS: Tuesday --

16 CHAIRMAN RICE: Oh, Tuesdays --

17 MS. CLEMENTS: Tuesdays are Board night,
18 unless it's --

19 CHAIRMAN RICE: Yes, so we can't --

20 MS. CLEMENTS: So Tuesdays are not good for
21 me.

22 CHAIRMAN RICE: Tuesdays are not good for
23 me.

24 MR. GAUDIOSO: Is a Monday better? Would
25 Monday, the 19th --

1 MR. KEELEY: You're talking May 19th?

2 MR. GAUDIOSO: March.

3 MR. KEELEY: March.

4 (LAUGHTER)

5 MR. GAUDIOSO: It's been a long night. You
6 weren't going to get me on that one.

7 MS. CLEMENTS: No, here's the thing I
8 actually want to make sure of. I want to make sure
9 of that there's also an opportunity that when you
10 submit the visual analysis that you submit that
11 Pauline has a chance to post it on the website and
12 that folks have a chance to look at it before we come
13 to the meeting. I mean --

14 MR. GAUDIOSO: So you want to say the 26th?

15 MALE SPEAKER: Of?

16 MR. GAUDIOSO: March

17 MALE SPEAKER: I thought we were going 60
18 days out.

19 MR. GAUDIOSO: No.

20 CHAIRMAN RICE: Well, we have a meeting --

21 MR. GAUDIOSO: I'm saying we'll extend the
22 shock clock for 60 days because what we said is that
23 this is all contingent on us within 60 days being
24 able to get SHPO's approval on the alternatives. So
25 what we will do is we will follow up on that once we

1 have these documents, so --

2 CHAIRMAN RICE: Would you say on that 30
3 days to now, you're looking for a variance or are we
4 just going to talk about this?

5 MR. GAUDIOSO: I'm looking for a public
6 hearing in March.

7 CHAIRMAN RICE: Oh, okay, yeah. We're going
8 to have a public hearing. We'll talk about, Peggy's
9 point. Your submission we're going to post so
10 everybody can see it.

11 MS. CLEMENTS: When do you think that you
12 would be able to get it to us? I mean, it's
13 critically important that the public has an
14 opportunity --

15 MR. GAUDIOSO: Yeah. No, I understand.
16 That's why I suggested the 26th, and we'll try to get
17 it to you by the 19th.

18 CHAIRMAN RICE: Okay.

19 MS. CLEMENTS: I don't think a week is long
20 enough. I don't think a week is long enough for the
21 public to have to response to --

22 MALE SPEAKER: It's right around spring
23 break. Sorry for the interruption.

24 MR. GAUDIOSO: It depends.

25 MALE SPEAKER: A lot of people

1 (indiscernible).

2 MS. CLEMENTS: Oh, that's actually also
3 true. The 26th is school vacation. Nobody's in
4 town. The 2nd is Easter Monday.

5 MR. GAUDIOSO: So today is the 27th, so if
6 you're able to get us guidance by Friday, we could
7 probably get it done by the 14th. I just have to
8 check with my guys.

9 MS. CLEMENTS: The meeting has to be the
10 week of April 2nd. That's the one thing I'll say
11 because it can happen, but I don't think it can
12 happen --

13 MR. GAUDIOSO: April 2nd is the day after
14 Easter.

15 MS. CLEMENTS: Okay. So then sometime after
16 the 4th or the 5th would be fine.

17 FEMALE SPEAKER: Doesn't the public get to
18 comment on the SHPO application or the SHPO? Isn't
19 there a mandatory time for -- when SHPO may be
20 deciding something that we get to comment? I'm sorry
21 if I'm speaking out of turn, Mr. Chairman.

22 CHAIRMAN RICE: Yeah. There could be. Why
23 don't you email us. We'll find out.

24 FEMALE SPEAKER: Okay, thank you.

25 CHAIRMAN RICE: I don't know the answer to

1 that.

2 MR. KEELEY: So we were saying April 4th, is
3 that what --

4 MS. CLEMENTS: April 4th is acceptable to
5 me. April 5th is fine.

6 CHAIRMAN RICE: Is that a Wednesday?

7 MS. CLEMENTS: It's a Wednesday or a
8 Thursday.

9 CHAIRMAN RICE: Does that work for everybody
10 or -- we can put it out there tentatively. Everybody
11 double-check their work calendars.

12 MR. MERANDO: April 4th.

13 CHAIRMAN RICE: Vacation calendars.

14 MR. KEELEY: And what's the end of the 60
15 days-ish? So we'd be looking --

16 MR. GAUDIOSO: Let's just say April 27th.

17 MR. KEELEY: Right-ish.

18 MR. GAUDIOSO: No. I'd say April 27th and
19 if we need to adjust it we -- I think you've seen
20 we've been very flexible.

21 CHAIRMAN RICE: We have a meeting on that
22 April 27th.

23 MR. KEELEY: Three weeks, yeah, so it would
24 be three weeks between the public hearing and the end
25 of the shock clock.

1 MR. GAUDIOSO: And, look, we may come back
2 on the 4th and we may say none of it works and you
3 make a decision to deny the application.

4 CHAIRMAN RICE: Okay.

5 MR. GAUDIOSO: Or SHPO may come back and say
6 none of it works and then you make a decision on, you
7 know, the pending application, so --

8 CHAIRMAN RICE: Okay. That sounds good.

9 MR. GAUDIOSO: We're trying to leave options
10 open is all we're trying to do.

11 CHAIRMAN RICE: Yeah. That sounds good.

12 MS. MINNERS: All right, so the public
13 hearing, what date did you say? I'm sorry.

14 MR. KEELEY: We're targeting April 4th, and
15 then the shock clock would end April 27th, but we
16 just need to make those (indiscernible).

17 MR. GAUDIOSO: Yeah.

18 CHAIRMAN RICE: And we need to get back to
19 the Applicant working with Ron and Graham at AKRF.

20 MR. GAUDIOSO: Yeah. And do that by Friday
21 with -- you know, where the locations we have
22 photographs from.

23 MALE SPEAKER: Right. I would propose to
24 attempt to meet with AKRF this week so that we can
25 get at least an understanding that can be distributed

1 internally. Once it's accepted by the Board members,
2 we can distribute it to the Applicant. Just so I can
3 confirm, we're looking at the concept of the
4 flagpole, the obelisk. Is there any other
5 alternative?

6 MR. GAUDIOSO: The flagpole at 120, the two
7 flagpoles at 110, the obelisk at 125. I think the
8 key thing from AKRF is what additional renderings,
9 where from, color, any other --

10 MALE SPEAKER: I understand that. Is there
11 any discussion -- I thought I had heard in the past
12 the idea of a silo. Is that to be considered or not?
13 I just don't recall. Is the silo one of the
14 alternatives you wished to have studied? Okay.

15 CHAIRMAN RICE: I think we talked about it
16 once with Graham --

17 MS. CLEMENTS: I don't know. Is it?

18 MALE SPEAKER: Okay.

19 CHAIRMAN RICE: But I don't know if that's
20 something that --

21 MALE SPEAKER: That would be the widest,
22 biggest option. I think we're going in the wrong
23 direction if we go there.

24 CHAIRMAN RICE: All right. So let's do the
25 ones we've talked about unless anybody -- do you want

1 to speak to the Board? Is everyone comfortable with
2 those three options?

3 MR. MERANDO: Yeah.

4 CHAIRMAN RICE: Two (indiscernible) and --

5 MR. MERANDO: Yeah.

6 MR. GAUDIOSO: And we have to re-notice the
7 public hearing, so we'll work with Pauline on that.

8 CHAIRMAN RICE: Right.

9 MR. GAUDIOSO: You guys take care of, I
10 think, the newspaper and (indiscernible) some
11 mailings, so we'll make sure we take care of that as
12 well.

13 CHAIRMAN RICE: Okay. Then perhaps we
14 should (indiscernible) adjourn this meeting.
15 Anything else from the Applicant?

16 MR. GAUDIOSO: Not this evening.

17 CHAIRMAN RICE: Or Ron?

18 MR. MERANDO: I'll make a motion we adjourn.

19 MS. MEYER: I'll second it.

20 MR. GAUDIOSO: Thank you very much for your
21 time this evening.

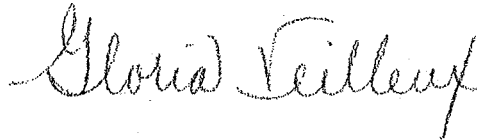
22 CHAIRMAN RICE: Thank you.

23 MS. MINNERS: Who seconded?

24 (Whereupon, the proceedings concluded.)

C E R T I F I C A T E

I, Gloria Veilleux, certify that the foregoing transcript of proceedings of the Village of Nelsonville Zoning Board of Appeals held on February 27, 2018, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Gloria Veilleux

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