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VILLAGE OF NELSONVILLE
COMBINED PUBLIC HEARING
PLANNING BOARD AND ZONING BOARD OF APPEALS

NOVEMBER 15, 2017

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: There are agendas available
2 to everyone in the audience if you don't have one.
3 There are no microphones, so we're all going to try
4 to speak loud. There's a big group here tonight. In
5 the highly unlikely of a fire or smoke emergency,
6 please be aware there's an exit in the back, the way
7 you came in. There's also an exit to the left. This
8 is a place of public assembly, so everybody be aware
9 of that.

10 We're going to open up the meeting of the --
11 a joint meeting of the Zoning Board of Appeals and
12 the Planning Board.. Everybody -- we have a quorum.
13 We will introduce the Board members in a few minutes.

14 I'm going to open the meeting only because
15 the Zoning Board is the lead agency for this, but we
16 also have the Chair of the Planning Board, Steve
17 Marino, to my left.

18 I'd like to welcome all the attendees, and
19 I'd also like to thank the Town of Phillipstown for
20 letting us use their meeting hall as our Village of
21 Nelsonville meeting hall is rather small.

22 A lot of you are new to the meeting. We've
23 had several meetings. This process started out back
24 in August, and we've seen an increased amount of
25 attendance and interest in this, so I am going to

1 summarize where we've been and where we're going, but
 2 like I said, I hope you all have the agenda. And
 3 there'll be plenty -- like Steve said, there will be
 4 plenty of time for the public to make comments as a
 5 public hearing. But first, we're going to take care
 6 of the Board's business. We're going to let the
 7 Applicant make their presentation, and we're going to
 8 listen to our Village consultants. They have some
 9 reports and comments. And then we'll get to the
 10 public question and comment.

11 Just for your information, we'd like the
 12 public to keep their comments focused, three to five
 13 minutes at most. When someone is speaking or giving
 14 testimony, I'm not saying that under the legal term,
 15 but it's used quite often, when people are speaking
 16 no one in the audience may interrupt them unless the
 17 Board may ask them to pause to qualify one of their
 18 statements.

19 So I have a lengthy list of documents that
 20 the Board has received since our last meeting, and
 21 I'm going to read it quickly, but it's important that
 22 the public knows what we received, when we received
 23 it, and what the subject matter was, so that's what
 24 we're going to do right now. And I'm going to
 25 introduce the new documents of correspondence that

1 have been provided to the Board since the last
2 meeting.

3 We have a letter from the Applicant's
4 attorney, Snyder & Snyder. We got it actually
5 November 1st at the beginning of our last meeting.
6 We didn't have time to full absorb it, so I'm going
7 to list it again.

8 There's a number of attachments. On October
9 31st from Homeland Towers. There was a supplemental
10 area analysis from Vincent Xavier, who is the
11 Applicant. And we had asked, and as they are bound
12 to do by the zoning code, to look at alternate sites
13 and alternate locations. This October 31st letter
14 looked at (indiscernible) and tenants on four
15 churches in the Phillipstown area. And it says that
16 these -- it wasn't feasible to actually do that for
17 technical reasons and historic preservation reasons.

18 We have an October 30th letter from CBRE,
19 who is a historical consultant to the Applicant. Her
20 assessment was collating telecommunications equipment
21 within the four steeples. It's not feasible due to
22 historic preservation reasons.

23 We have a letter on October 27th from
24 PierCon Solutions who analyzed the alternate sites
25 that the Board required them to look at. One is the

1 SEQRA site. It's the 120-foot tower. It was
2 recognized as a feasible alternate to what we're here
3 to talk about tonight, which is the 15 Rockledge Road
4 cell tower application.

5 50 Fishkill Road was also analyzed. Even as
6 a 200-foot tower it was deemed not feasible.

7 In that packet, it also contains photographs
8 of 130-foot monopine in Somers, New York that anybody
9 in the public can go see. There's also a photograph
10 of a 120-foot monopole or monopine in North Salem.
11 That was -- and I believe most of this information is
12 on the Nelsonville website.

13 On November 13th we have a letter from Cuddy
14 & Feder. They're attorneys for AT&T. They provided
15 an inventory of AT&T's existing tower sites within a
16 10-mile radius as they are required to do by the
17 zoning code.

18 On October 21st, we received a report from
19 Ron (indiscernible), RF consultant. He had looked at
20 the AT&T submission of June 9th of 2017 in reference
21 to the radio frequency justification report prepared
22 by Daniel Pinesso on behalf of AT&T. His analysis
23 was that AT&T does offer gas and service, but asked
24 for some limited additional information to be
25 acquired from the Applicant.

1 On November 7th, a report again from Ronald
2 (indiscernible), RF Consultant, reviewed the October
3 27th PierCon Solution analysis of alternate sites
4 prepared by Adam (indiscernible), another RF
5 engineer.

6 Looking at, again, the SEQRA site, Ron said
7 the SEQRA site, the coverage is compatible and,
8 again, used the little synopsis of this. All this is
9 on the website, but his little summary is that
10 coverage is compatible to the Rockledge site. He did
11 ask for some additional exhibits.

12 50 Fishkill Road, the town highway garage,
13 200-foot tower, Ron said it does not appear to
14 provide coverage.

15 On November 14th, CBRE sent us letters from
16 Laura Mancuso. She's the Director of Cultural
17 Resources at CBRE. In her letter she wanted to
18 differentiate areas of potential effects, shortened
19 to APE, noting there was a difference between direct
20 effect and digital effects in her historic analysis.
21 She analyzed the project under the National Historic
22 Preservation Act, Section 106, which is required by
23 the Federal Communications Agency.

24 Just a couple more. On November 15th,
25 today, we received a letter regarding the right-of-

1 way. Those attorneys suggest that this issue is not
2 relevant to the Zoning Board's consideration in
3 reviewing the special permit application from
4 Homeland Towers. And again today, we did receive a
5 large email attachment, was sent to the Village
6 regarding the history of the Cold Spring Cemetery,
7 including email correspondence to William Prettinger
8 of (indiscernible) from Frances O'Neal who is heading
9 up the Save-the-Cemetery Committee. She may speak to
10 that later.

11 Also included in that correspondence was
12 four photos of a balloon test and one photo from an
13 unidentified backyard (indiscernible). And that, at
14 some point, will be on the website.

15 Now, we do have one more item that we
16 received, which is a whole series of emails from
17 local residents that we received I believe yesterday.
18 Also a letter from -- again, the SEQRA site is really
19 peripheral to this hearing tonight, but the
20 (indiscernible) superintendent wrote a letter to the
21 Village mayor and trustees indicating, as you all
22 know, she's not in favor of the SEQRA site.

23 We also have a letter from the Cold Spring
24 -- the Village of Cold Spring, let's get this right,
25 Historical District Review Board. They're not in

1 favor of the tower either at Rockledge or on Secra
2 (phonetic). And a series of emails from local
3 residents in the Phillipstown area, Nelsonville, Cold
4 Spring, that are opposed to both sites. And at some
5 point we'll get this to Robert.

6 MALE SPEAKER: We've received it. Thank
7 you, Mr. Chair.

8 CHAIRMAN RICE: Oh, you have received it.
9 Perfect. Okay, so there you have it.

10 Next on the agenda, I want the Board, the
11 both boards to introduce themselves, take a little
12 bit of a roll call. I believe we have a quorum. And
13 why don't we start from left and we'll move to right.

14 MR. HELLBOCK: Paul Hellbock, Planning
15 Board.

16 MR. MEEKINS: Dennis Meekins, Planning
17 Board.

18 MS. CLEMENTS: Peggy Clements, Zoning Board
19 of Appeals.

20 MS. BRANAGAN: Susan Branagan, Planning
21 Board.

22 MR. MARINO: Steve Marino, Planning Board.

23 MR. RICE: I'm William Rice with the Zoning
24 Board of Appeals.

25 MS. MEYER: Judy Meyer, Zoning Board of

1 Appeals.

2 MR. KEELEY: Chris Keeley, Zoning Board of
3 Appeals.

4 MR. MERANDO: Steve Merando, Zoning Board of
5 Appeals.

6 CHAIRMAN RICE: I'd like the Applicants to
7 identify themselves as you wish in whatever order.

8 MR. GAUDIOSO: Thank you, Mr. Chairman,
9 Members of the Board, Robert Gaudio with the law
10 firm of Snyder & Snyder on behalf of Homeland Towers
11 and New York SMSA Limited Partnership doing business
12 as Verizon Wireless. I'll ask each one of our
13 principals and consultants to introduce themselves,
14 starting with Mr. Vicente.

15 CHAIRMAN RICE: Thank you.

16 MR. VICENTE: I'm Manny Vicente. I am the
17 owner and CEO of Homeland Towers.

18 CHAIRMAN RICE: Thank you.

19 MR. ALLEN: I'm Matt Allen with Saratoga
20 Associates. I'm responsible for the assessment of
21 digital impacts on behalf of Homeland Towers.

22 CHAIRMAN RICE: Oh, good, thank you.

23 MR. FEEHAN: Adam Feehan of PierCon
24 Solutions, RF Engineer, on behalf of Verizon
25 Wireless.

1 MR. XAVIER: And I'm Vincent Xavier, the
2 Regional Manager for Homeland Towers.

3 CHAIRMAN RICE: Thank you.

4 MR. PANESSO: Daniel Panesso, RF Engineer
5 for AT&T.

6 MR. MORANDO: Anthony Morando, I'm an
7 attorney with the law firm of Cuddy & Feder, and I'm
8 here for AT&T.

9 CHAIRMAN RICE: Thank you.

10 MALE SPEAKER: I'm Steve Spina (phonetic)
11 with JMC, (indiscernible) Engineer.

12 CHAIRMAN RICE: Thank you. Thanks for
13 coming.

14 I'd also like to introduce the Village
15 attorney, Bob Sardi (phonetic), our Village engineer,
16 Ron Gaynor (phonetic). Ron (indiscernible), our RF
17 consultant, could not be here tonight. He's in
18 Atlanta.

19 Okay, so why are we here? And I'm just
20 going to go through briefly because there's a lot of
21 new members of the audience, and the Zoning Board has
22 responsibilities, as does the Planning Board, but
23 they're different. The only reason the Zoning Board
24 is taking the lead is because they've been assigned
25 to take the lead on the SEQRA application. That's

1 why we're, right up to now, leading the meeting.

2 Now, what is --

3 MALE SPEAKER: Can you just clarify, SEQRA
4 versus Secra? Just to make sure.

5 CHAIRMAN RICE: Yeah, I caught myself saying
6 it. SEQRA State Environmental Quality Review Act.
7 It's an environmental act. It protects the many,
8 many, many sites from destruction by development.
9 The SEQRA is right over here.

10 Okay, the Rockledge site, it's a 9.6-acre
11 wooded site directly east of the 30-acre Cold Spring
12 Cemetery. And furthermore, the Village of
13 Nelsonville Zoning Code, Article VII, Commercial
14 Communication Towers, Section 188.68, allows
15 commercial cell towers to be built in Nelsonville in
16 four particular districts subject to a special
17 permit, and that's why we're here tonight, to look at
18 that.

19 They're also looking at a variance, and that
20 variance is -- it's really not -- it's New York State
21 Village law. We're also going to address that.

22 Now, what does the Applicant have to do to
23 get this passed? They have to submit radio plots
24 depicting anticipated radio frequency levels and
25 coverage (indiscernible). I'll name a few of them.

1 The number of the proposed (indiscernible) is on the
 2 cell tower, the height of the proposed tower, which
 3 has to be limited to 110 feet in Nelsonville. A long
 4 form PAF, which again, is another environmental
 5 impact statement, which they have done. A report by
 6 a qualified engineer regarding the electromagnetic
 7 radiation for the proposed site, we have received
 8 that. And again, from the Nelsonville code, the Boar
 9 may require the use of a camouflage communication
 10 tower, and that's what we're talking about this
 11 evening.

12 Now, from a Planning Board view -- do you
 13 want to take that?

14 MALE SPEAKER: Sure.

15 CHAIRMAN RICE: Do you want to take that
 16 from there?

17 MR. MORINO: As part of this process, the
 18 Applicant requires a special permit under zoning to
 19 bring a cell tower in the Village, and as part of
 20 that process the Applicant is also required to get a
 21 site plan approval from the Planning Board, so it's
 22 two separate processes. We're running them both
 23 concurrently.

24 The Zoning Board will be looking at issues
 25 of appropriateness and conformance with zoning,

1 compliance with zoning. As William mentioned, there
2 are certain things that are required in order to put
3 a cell tower in one of the four zones where it's
4 allowed. There is a list in the code what those
5 things are. Once it's determined that the cell tower
6 is appropriate under zoning as proposed, then the
7 Planning Board will make decisions based on issues
8 like landscaping, fencing, access to the property,
9 fire protection, noise, lighting, other kinds of
10 community character issues that come up.

11 We do not look at, again, we don't look at
12 the appropriateness of the use. That will have
13 already been decided by the Zoning Board. We won't
14 make a decision until after the Zoning Board has made
15 their decision.

16 I think -- there's several aspects of the
17 code. 188-71 is specific to cell towers. There are
18 other parts of the code, 188-30 through 36 that
19 discuss the kinds of questions that we should be
20 raising in terms of site plan appropriateness for
21 projects in the Village, and that's -- so that's kind
22 of what we're looking at, storm water, other things
23 like that, the kinds of things that we're looking at
24 as part of this process.

25 CHAIRMAN RICE: Okay, thanks. It would be

1 surprising to know that cell towers are allowed in
2 the Village secondary residential district,
3 (indiscernible) residential district, the mountain
4 residential district, and the multi-family
5 residential district. The Applicant's property is in
6 the mountain residential district.

7 MS. CLEMENTS: William, Mr. Valella
8 (phonetic) just hand-delivered this.

9 CHAIRMAN RICE: Well, we could enter it into
10 the record.

11 MS. CLEMENTS: I don't know if there's
12 anything that came with it at this point, but it just
13 got handed to me a few minutes ago.

14 CHAIRMAN RICE: Mr. Valella is a neighbor.
15 We'll distribute this letter. This letter is from
16 Blanchard & Wilson, Attorneys, and we'll read it
17 after the meeting, or enter it into the record
18 anyway.

19 All right, I think now we can have the
20 Applicant make their presentation or summarize where
21 we are.

22 MR. GAUDIOSO: Thank you again, Mr. Chairman
23 and Members of the Board.

24 I'd like to touch on a -- because this is
25 the first public hearing, I'd like to touch on a few

1 of the details that maybe you didn't already do a
2 good job of presenting the fact that we are in the
3 permitted zone by special permit, the mountain
4 residential zone, that is a 9.63-acre property. We
5 do have the site plan mounted if anyone is interested
6 in that.

7 There are a number of different other
8 requirements of your code, particular things like
9 height that you mentioned. The height limit is 110
10 feet, and we are proposing a facility that meets that
11 height.

12 There's also a requirement that the side
13 yard setback be 125 percent of the height or 137.5
14 feet, and we do meet those setback requirements.

15 There's actually a special setback
16 requirement of 300 feet for a habitable structure,
17 and we do meet that setback requirement, including
18 the one acre of parcel size requirement that,
19 obviously, with the 9.6 acres we meet that
20 requirement.

21 What we've shown is a proposal to come off
22 Moffitt Road and then cross through two different,
23 what we call right-of-way easements on two different
24 parcels. And we've surveyed that and shown that on
25 the plan. And as part of our initial application,

1 and I'll touch on this a little bit more later, we
 2 submitted a letter from our title company showing
 3 that they would ensure title, including access to the
 4 parcel, including the deed for the parcel, and also
 5 the deeds that contain the right-of-way easements to
 6 allow access to the property. And that's important
 7 because we're asking for interpretation that we do
 8 not need a variance from New York State Village law,
 9 but if we do, that we do have it across actually
 10 filed with the County actual easements and deed
 11 descriptions for that right-of-way on those two
 12 parcels.

13 We've submitted a number of documents
 14 throughout the process that I'd like to touch on
 15 briefly. I know that radio frequency exposure is
 16 always a big issue, and a lot of the comments in the
 17 application were related to that. That is an issue
 18 that the federal government has preempted from local
 19 review provided we meet the federal requirement. And
 20 what we did is we had a third-party engineer prepare
 21 a report that showed with the two applicants, AT&T
 22 and Verizon, and hypothetically with Sprint and T-
 23 Mobile who are not on this application, but we know
 24 they do operate in the area. And with an emergency
 25 service antenna, that all combined worse-case

1 conservative calculation, the facility would be at
2 2.76 percent of the allowable 100 percent limitation,
3 so about, you know, so 20 times below the applicable
4 one -- I'm sorry, 2.76 percentage points.

5 We also looked at the facility from an FAA
6 standpoint to make sure that we didn't have any
7 hazards to air navigation, and we showed with an
8 expert report and confirmation from the FAA that
9 there would be no hazards air navigation. The
10 facility would not require any FAA lighting and no
11 FAA marking, and we think that's important.

12 We did a structural certification. Again,
13 we did a worse-case scenario. We looked at -- we
14 only have two carriers, but we looked at a
15 possibility of five and that we would build the tower
16 to support that location to avoid the proliferation
17 of additional towers in the future.

18 We did two different radio frequency
19 engineering studies, one for AT&T and one for Verizon
20 Wireless, and what we showed was the existing
21 coverage of each of the carriers. And I think your
22 own consultant, Mr. Grafe (phonetic), had looked at
23 that and confirmed that both of them had significant
24 gaps in the area. And the point of the AT&T report
25 was they had a site at Butterfield Hospital that was

1 decommissioned when the work was done over there, and
2 Verizon Wireless has never had a site in this area.

3 And these maps also showed all the different
4 frequency ranges, for example, 700 megahertz
5 propagates better, meaning that it covers a greater
6 distance, but we also showed what it would be like if
7 you were using a phone in a car or in a building
8 because that has different characteristics. And we
9 prepared numerous maps and, again, you had your own
10 consultant review that as well.

11 We looked at a number of alternatives and
12 right in the beginning we did a map showing the spots
13 in the Village where we couldn't go under your code
14 because not only are they permitted in certain zones,
15 but in the VR, VB, and C zones, it's strictly
16 prohibited, so we looked at those areas that we
17 couldn't go in. We talked about the fact the
18 cemetery wouldn't lease to us. We talked about the
19 fact that we looked at the DPW property and,
20 originally, we didn't get a response and then we did
21 get somewhat of a response, so we looked at that from
22 a technical standpoint.

23 We looked at the fact that the code also
24 requires a 50-foot vegetative buffer around the
25 facility. And that's hard to find a piece of

1 property to be able to support that, and we are able
2 to do it with the way we laid it out, and that will
3 also tie into a little bit about the access road that
4 we'll talk about in a moment.

5 We did do the full EAF. We've revised it
6 once. We did the visual EAF addendum. We did
7 originally a visual resource assessment for Mr. Allen
8 who's here tonight, and that was without a balloon
9 test. Actually nowadays, you can do it through
10 computer modeling and it's actually somewhat -- it's
11 very accurate, if not more accurate, than the balloon
12 because the computer knows the height and the
13 location. The balloon sometimes moves around, and we
14 did visual renderings showing various locations. We
15 also did a view shed map showing where the facility
16 would theoretically be visible from with or without
17 vegetation and structures, and we did visual
18 rendering showing the cell structure that's required
19 to be reviewed by your code, which we did propose,
20 which in this case was the monopine structure.

21 Obviously, the site plan we've been working
22 on and updating. There were some changes made
23 particularly on some Planning Board comments as far
24 as showing the tree removal on the actual site plan.
25 We've increased and detailed the storm water

1 management. We've proposed an alternative access
 2 drive based on a site visit, and we appreciate
 3 members taking the time to go out there and do the
 4 site visit. And that's something really that's
 5 probably in the purview of the Planning Board, but
 6 because of that 50-foot vegetative buffer, we would
 7 have to go into that area with an access drive that's
 8 an alternative a little bit closer to the one
 9 property line, although it's on a little bit of an
 10 easier spot to be able to construct, and we're happy
 11 to discuss those engineering details in further
 12 detail as the process moves along, particularly, you
 13 know, with respect to the Planning Board's preference
 14 on that, and then mitigate any tree removal with
 15 appropriate landscaping. We have no objection to
 16 that.

17 Detailing on some of the items, Mr.
 18 Chairman, that you mentioned, the Vincent Xavier
 19 supplemental report went into detail on those four
 20 churches. Also confirmed that both AT&T and Verizon
 21 are on all the existing towers in the area, so it's
 22 not that we're overlooking a tall structure. It also
 23 confirmed there are no other appropriate tall
 24 structures in the area to use.

25 We did do that additional Piercom report

1 based on your engineer's comments looking at 50
2 Fishkill Road, which even at 210 feet, which would
3 require FAA lighting, it doesn't provide the coverage
4 down into this area, whereas 2 Secra Street actually
5 does. And one of the original comments by Mr. Grafe
6 was that the proposed site of 15 Rockledge left some
7 areas down by the river uncovered, and actually, 2
8 Secra Street gets better into that area, so actually,
9 2 Secra Street has some advantages in that regard.

10 We did provide those photographs of the site
11 in Somers and the site in North Salem, and the reason
12 it's important it's both AT&T and Verizon and it was
13 a Homeland tower application, so it was the exact
14 same applicants as you have, and the manufacturer was
15 the same as the one we proposed here. There was
16 questions -- I know we have some specific expertise
17 on the Board as far as architecture and landscape
18 planning and things of that nature, so we actually
19 had the manufacturer show not only the structure of
20 the tower, but show exactly the length of the
21 proposed branches, how we staggered them, more to the
22 design of the North Salem project that we submitted
23 photographs to. It gives it a little bit more
24 natural and different type of branch length, a
25 different location type of look.

1 We agreed in my letter back at the last
2 meeting, we had put in the letter based on your
3 engineer's comments and based on also the Town
4 building inspector and the fire department's comments
5 about the right-of-way, and we are willing to upgrade
6 the right-of-way, upgrade that access drive. We have
7 no objection to doing that, and I'll talk about that
8 in the title letter as well. There was a concern
9 that the existing access to the home isn't up to
10 spec, and we're happy to bring it up to spec.

11 We will also agree to, you know, further
12 revise the plans based on the technical comments of
13 Mr. Gaynor, things like storm water management and
14 site lines and various things. And a lot of that
15 engineering really is based on what the Planning
16 Board, and the Zoning Board as well, decides on the
17 access drive, which access drive is better, and then
18 we can come up with a final design, but we've
19 provided preliminary designs for the alternative,
20 which we show that we would work. We can certainly
21 engineer it. It's not a problem.

22 We also agreed, as required by the code, in
23 my letter to keep the tower in good order of repair
24 and have it removed within four months as required by
25 your code if it ever becomes obsolete.

1 Today, we did submit a letter from my office
 2 in response to a prior letter from a neighbor
 3 challenging the applicability of the right-of-way
 4 and, particularly, bringing utilities into it. Just
 5 to summarize what we had to say about that, the use
 6 of the property, as I mentioned before, it is a
 7 special permit use, and that's a use permitted as of
 8 right provided we meet the criteria, and that's New
 9 York State law, but that really has nothing to do
 10 with access. And what we showed is that when you
 11 have a right-of-way, unless it specifically limits
 12 the use of the right-of-way, so if the right-of-way
 13 said ingress and egress only and nothing else, then
 14 it would be limited. You wouldn't be able to bring
 15 utilities, but unless it has that specific
 16 limitation, it's understood that, obviously, you're
 17 allowed to bring utilities in. That's the purpose of
 18 the subdivision.

19 And the subdivision goes back, if you look
 20 at the deeds, the deed to the one property is from
 21 1968. The deed to the other property is, I believe,
 22 1971, so the idea is that when those parcels were
 23 cordoned off, it was expressly understood that we
 24 didn't want to leave or the owner at the time didn't
 25 want to leave our parcel with no access, no ability

1 to bring utilities in. It was shown on -- in our
2 title letter we actually included the original
3 subdivision maps that are filed with the County that
4 shows how the septic would be set up, so it was set
5 up as a buildable lot, obviously.

6 So we believe that not only is the right-of-
7 way, you know, usable for us, we're allowed to
8 upgrade it, we're allowed to bring utilities in, and
9 most importantly, what we concluded with was a case
10 from 2009 from the Town of Greenburgh that the issue
11 of a dispute over a right-of-way or something like
12 that between two parties, particularly in the road
13 instance, because that's what the Greenburgh case was
14 about, that's not for your board to sort out. That's
15 a matter of private litigation between parties, so
16 that's possibly fortunately for you, not an issue
17 that you have to decide who has the particular right
18 to a right-of-way.

19 We've done a couple other things since the
20 last meeting. Most importantly, the Board has asked
21 for an actual balloon test so folks can go out there.
22 And what we did is we took photographs from that
23 balloon test, and we did it with really the proper
24 methodology, the proper, you know, lens, you know,
25 equivalent to a 50-millimeter with a digital camera.

1 We took it. We produced photographs, you know, to
2 show what the balloon would look like from various
3 locations. We were specifically asked to take other
4 locations. We did that.

5 We also did, because we've said that 2 Secra
6 Street is a viable alternative from an engineering
7 standpoint, we haven't confirmed that we can obtain a
8 lease and we haven't confirmed certain other due
9 diligence on it, but what we wanted to do as well is
10 show you from an esthetic standpoint what it would
11 look like. So we took the liberty of doing some
12 visual renderings of 2 Secra Street, so what I have
13 with me tonight is some -- and I don't expect you to
14 digest it tonight, obviously, but we put that into a
15 report and we'd like to submit that to the record so
16 you have those photographs, you have the 2 Secra
17 Street visual renderings to look at for next time.
18 And Mr. Xavier will hand out copies to everybody for
19 that.

20 FEMALE SPEAKER: They're on the website,
21 too.

22 MR. GAUDIOSO: And we had submitted them by
23 email and so these are some additional photographs
24 that I think are very helpful.

25 The 2 Secra Street renderings are in the

1 back, and we took one from right out here and we took
2 one from the corner, and it blends in very well when
3 you look at the renderings.

4 One of the things about --

5 (PEOPLE SPEAKING IN THE BACKGROUND)

6 MR. MARINO: All right. Everyone will get a
7 chance to speak. Believe me, you'll all get a chance
8 to speak.

9 MR. GAUDIOSO: One of the things about the
10 balloon test -- thank you, Mr. Chairman, I appreciate
11 it.

12 One of the things about the balloon test is
13 that the facility is at 110 feet, but the balloon is
14 actually at 120 feet, so when you see the
15 photographs, the balloon is actually 10 feet higher
16 than what the top of the facility would be. And that
17 was at the request of your engineer to make sure that
18 we, you know, showed a worse-case scenario, that if
19 it was just at the tree line it would pop up and
20 you'd be able to see where it was. So the balloon is
21 actually 10 feet higher than what it would be in
22 reality.

23 The Secra Street was done without the
24 balloon. It was done on the basis of that same
25 computer modeling that we mentioned before, and

1 that's accurately based on what's proposed at that
2 location if it were to go forward there.

3 We also received comments from Mr. Grafe
4 saying that he just wanted to see a simpler coverage
5 map showing exactly what 2 Secra Street and 50
6 Fishkill Road would look like on their own without
7 the surrounding coverage, so what we did is we
8 actually had Mr. Feehan, who's here tonight, prepare
9 those maps. I did send them to Mr. Gaynor and Mr.
10 Grafe by email because I knew he was out of town, but
11 we brought extra copies.

12 And, again, I don't expect you to digest
13 that tonight, but when you look at it you can see
14 that 2 Secra Street does get down into the Village
15 area. It does provide that service. 50 Fishkill
16 Road does not.

17 MR. MARINO: Which village?

18 MR. GAUDIOSO: Both, actually, and that was
19 -- and the only reason I say that, you know, radio
20 frequency doesn't respect lines of municipalities,
21 right? But there was a comment from Mr. Grafe that
22 the 15 Rockledge did leave a space down by the river,
23 so ironically, 2 Secra Street does cover that area.

24 With that, Mr. Chairman, I actually would be
25 happy to answer any questions and would reserve maybe

1 some time at the end based on the public comment to
2 respond accordingly.

3 CHAIRMAN RICE: Absolutely.

4 MR. GAUDIOSO: Thank you.

5 MR. MARINO: If I could ask a question now,
6 Mr. Gaudioso.

7 MR. GAUDIOSO: Yes.

8 MR. MARINO: One of the questions that's
9 certainly come up during these whole discussions is
10 this idea of there being a gap.

11 MR. GAUDIOSO: Sure.

12 MR. MARINO: And we heard from the public on
13 a number of occasions that they don't experience a
14 gap, so they don't really understand where the gap is
15 and why a tower in any of these locations we're
16 talking about are necessary. So I was wondering if
17 you could somehow talk about the idea of there being
18 a gap, how that gap is identified, what the SCC says
19 about requirements to fill gaps or allowances to fill
20 gaps. This way, everybody has an idea of why you're
21 making the case that the tower is necessary at all.

22 MR. GAUDIOSO: Sure.

23 MR. MARINO: Regardless of which location
24 we're talking about.

25 MR. GAUDIOSO: I think that's a great

1 question. And the only part of it I'll take
2 exception with is that actually at some of the
3 meetings, some folks, and I think even some Board
4 members, had indicated that they do have problems
5 having service. And our engineers have experienced
6 that, and that's how these things come about, but --

7 Where the basis of the gap comes from is
8 federal law in 1996 said that a municipality
9 preserves its local zoning authority, but it's
10 limited in certain ways. It cannot unreasonably
11 discriminate, meaning that if you allow one carrier
12 to do one thing and another carrier wants to do a
13 very similar thing, you have to let them do that.
14 You can't unreasonably discriminate. That's really
15 not at play here.

16 It also says that you have to act within a
17 reasonable period of time and, ultimately, the FCC
18 came out with an order that said that's presumptively
19 150 days. We're not talking about that either at
20 this point.

21 The FCC also said, I'm sorry, Congress also
22 said that you cannot make your decisions on the basis
23 of the environmental effects of radio frequency
24 emissions provided we meet the FCC guidelines, which
25 as I mentioned before, we well within those

1 guidelines.

2 And finally what the FCC said is that if you
3 do deny an application, it has to be based on
4 substantial evidence contained in the written record.
5 And what that means is that if you had a really good
6 reason to deny the application and you did deny the
7 application, it would have to be based on evidence in
8 the record.

9 And then the final thing that Congress said
10 was that even if you do have a good reason to deny an
11 application, you cannot ultimately prohibit service.
12 That's all Congress said.

13 The courts took that statement, "You may not
14 prohibit service," and they started to define it, and
15 what they said is that if a wireless carrier has a
16 significant gap in service and the proposal was the
17 least-intrusive means of closing that gap, then even
18 if you had a good reason to deny it, it shall be
19 approved. And that's what the court said.

20 And how do they define "significant gap"?
21 Well, every court defines it slightly different, and
22 no one has this is a significant gap. What they have
23 said is that the methodology to go about looking at
24 it is what we've done, which is based on good
25 engineering data, propagation maps, RF expert

1 reports, having your own consultant review it, that's
2 the methodology to do it.

3 What do you look at? What is significant?
4 The courts haven't said "This is significant," but
5 what they said is that, you know, if you have a wide
6 downtown village, a transportation corridor, a major
7 road, more than a few houses on the end of a cul-de-
8 sac, that's basically a significant gap.

9 And then they talk about what's the least-
10 intrusive means. Well, does it comply with the code?
11 Do you need a height variance? Do you need a setback
12 variance? Do you comply with the criteria of the
13 code as far as being least-intrusive or is there a
14 better spot that complies better with the code? And
15 they look at those type of factors. So there's not
16 a, per se, definition, but there's a lot of case law
17 particular in this area about what is and what isn't
18 a significant gap and how you go about evaluating
19 these things. And that's really your job, that's
20 your job to evaluate, you know, whether you have
21 substantial evidence to approve the application or
22 deny it.

23 The issue of prohibition, though, and a
24 significant gap and a least-intrusive means, that's
25 really for the courts. That's only if it gets to

1 court, then the court would decide these issues.
2 There's not a requirement of the applicant to prove a
3 significant gap as part of this process. It's not a
4 requirement of the applicant to prove that it's the
5 least-intrusive means.

6 So you ask, "Well, do we do that?" We'll,
7 we're doing it because if you did find a good reason
8 to deny the application, we would have our record to
9 go to court, but more importantly, because of what
10 you just said, Mr. Chairman, is that people are going
11 to say, "Well, why are you doing it? Why should we
12 approve this?" So by the very nature of that
13 inquiry, by the very nature of your code, we're
14 showing why we need to do this, and we've shown with
15 those coverage maps from two different carriers, the
16 expert reports and two different engineers, and then
17 confirmation of that from the third-party engineer
18 that you hired that there is a gap and there is a
19 need, and then how do we feel the need, what sites
20 are possible just from an engineering standpoint, and
21 we've shown, obviously, that our proposed site is
22 possible. That's why we brought it.

23 We've also agreed that one of the
24 alternatives that was raised from an engineering
25 standpoint will fill the gap. We've shown that a

1 couple other options and alternatives do not work.
 2 We've looked at the requirements of your own code to
 3 look at other tall structures to show that they're
 4 either not feasible or, for some reason, they will
 5 not fill the gap. We've looked at other sites, like
 6 50 Fishkill Road and other properties in the area,
 7 the original Xavier alternative site analysis, looked
 8 at, under your zoning code, the one-acre or less
 9 sites that don't meet the code, the setback
 10 requirements, the three different zones that are not
 11 permitted, and we've looked at all these different
 12 locations. And that's how we've come up with
 13 basically the two locations that are part of the
 14 discussion now.

15 So to answer your question, I know it was a
 16 long answer, in short, though, it's engineering.
 17 It's based on design criteria. It's the RF maps.
 18 It's all the data that goes into it with the expert
 19 testimony. And, most importantly, you know, your
 20 consultant is doing a third-party review of that.

21 Thank you.

22 MR. MARINO: Thank you.

23 MR. MEEKINS: Can I follow up on that,
 24 Steve?

25 MR. MARINO: Sure.

1 MR. MEEKINS: Is there another metric of
2 what's an acceptable gap, though? I mean,
3 significant gap at four houses on (indiscernible)
4 side sounds like almost any gap is going to be a
5 significant gap, quite frankly.

6 MR. GAUDIOSO: Just the opposite. What the
7 court said is the court said that it's a fact-by-fact
8 determination, right? So the court said what's not a
9 significant gap is if you had like a dead spot
10 consisting of a few houses at the end of a cul-de-
11 sac. That would not be significant in the court's
12 point, okay.

13 The courts have also said, though, that if
14 you have a main road, like 301 or Route 9 or Route
15 9D, that's a factor that's very important, if you
16 have a transportation corridor. If you have a
17 downtown area where you have a lot of users, that's
18 very important. If you have businesses, that's very
19 important. These are different factors that go into
20 it.

21 I think when you look at what we've
22 submitted to the record and I think what your
23 consultant has agreed with is that the -- not only
24 the breadth of the gap is significant, meaning the
25 size of it, but also what's inside of that gap. So

1 if we were proposing a big tower to cover the side of
2 a mountain that no one lived on and there were no
3 roads, the size of that gap might not matter. So
4 it's basically the size of the gap, but it's also
5 what's in there, how many users are in there. And
6 this is a very important area.

7 AT&T, again, for example, they lost
8 Butterfield Hospital. They lost the site where they
9 were already providing coverage and had customers.
10 Verizon has never had a gap.

11 The other important thing is that what does
12 apply -- the prohibition standard doesn't apply until
13 we get to court, but what does apply is really the
14 New York State public's utility standard, and that's
15 from case law. What case law is that wireless
16 carriers, and this is from the highest court in New
17 York State, that wireless carriers are deemed public
18 utilities. So when you're going for a variance, they
19 have a lesser standard. The typical factors of a
20 variance of unnecessary hardship do not apply.
21 Rather, what the court would look at and what a board
22 is supposed to look at is really whether there is a
23 need for reliable service and the impact on the
24 community from that proposal and the alternatives,
25 economic or otherwise, that would be available.

1 And those cases related to wireless carriers
2 go way back to Con Edison. When Con Edison needed to
3 build power plants they said, "Well, look, every
4 (indiscernible) power." They would just say no power
5 plants and then we won't have electricity, and those
6 cases back in 1993 were extended to wireless
7 carriers. So, again, there's a lower standard for
8 carriers like AT&T and Verizon Wireless in this
9 context, but that's under the state law criteria and
10 not really what we were taking about before on the
11 significant fact issue.

12 MR. MEEKINS: So if I drive the whole
13 breadth of Nelsonville and most of Cold Spring,
14 (indiscernible) almost the whole extension of
15 Nelsonville down 90, and the only gap I have is about
16 an eight-mile stretch and it's very predictable on --
17 I'll say it's between Exit 15 and the half-mile
18 marker, and it's those eight miles I can't do
19 business by phone on my way to work and on my way
20 home, so if that's not a significant --

21 MR. GAUDIOSO: No, that's definitely
22 significant.

23 MR. MEEKINS: That's definitely significant.

24 MR. GAUDIOSO: Yeah. That would be a no-
25 brainer.

1 MR. MEEKINS: But there's no need, so it
2 seems to be an acceptable gap that --

3 MR. GAUDIOSO: No. I think the carriers
4 would definitely argue that an eight-mile gap on the
5 Palisades Interstate Parkway would be a need. Now,
6 it's a matter of whether you can find a willing
7 landowner to put a site there and where you would put
8 it, and that's one of the problems in that area, but
9 trust me when I say they're working on it.

10 MS. BRANAGAN: I have a question. You had
11 said the FCC (indiscernible), is that statute or
12 substantial evidence?

13 MR. GAUDIOSO: Yes, that's in the statute.
14 That's the Telecommunications Act of 1996, Section
15 332(c), yes. That requires substantial evidence
16 contained in the written record.

17 MS. BRANAGAN: (Indiscernible?)

18 MR. GAUDIOSO: Substantial evidence? It's
19 more than a scintilla, and if you can tell me what a
20 scintilla I'll be surprised. I've never figured that
21 one out, but --

22 No, substantial evidence is substantial
23 evidence, and it, you know, someone standing up and
24 saying something is not substantial evidence, that's
25 for sure, and the courts have said that. Now, does

1 it have to be an expert witness? No, but it has to
2 be something that is more than just someone saying
3 it, and that's very important when it comes to those
4 types of cases.

5 MS. BRANAGAN: Any cases (indiscernible) on
6 that?

7 MR. GAUDIOSO: Ironically, yes, because the
8 -- when the federal government put the substantial
9 evidence test in, it was essentially the same test
10 that New York State was already using in zoning.
11 Ironically, other places in the country didn't have
12 that type of standard, so the Fourth Circuit -- we're
13 in the Second Circuit of Federal Court, the Fourth
14 Circuit down in Maryland, someone's standing up and a
15 bunch of people standing up saying something could be
16 deemed substantial evidence if it was in front of a
17 town board. New York State says just the opposite.
18 Stride and community opposition in and of itself is
19 not substantial evidence.

20 CHAIRMAN RICE: Any other Board comments?

21 MR. MEEKINS: I have another question.

22 CHAIRMAN RICE: Yes.

23 MR. MEEKINS: You brought up Butterfield as
24 a gap that AT&T experienced when that was taken down.
25 There's AT&T reps here. How high was the equipment

1 that was on Butterfield?

2 I moved here in '05. I don't remember a
3 tower there, so --

4 MR. GAUDIOSO: No, it was a rooftop. It was
5 on the rooftop.

6 MR. MEEKINS: On the rooftop, so when we
7 were looking for alternative sites, why did we only
8 look at tall buildings if a rooftop worked before?

9 MR. GAUDIOSO: Well, it didn't cover into
10 Nelsonville. It didn't cover into that area. It was
11 covering more of the Cold Spring area, and it was
12 really the only thing that was in the area. When
13 Homeland Towers proposed this for Verizon, that's why
14 AT&T is the second carrier on this. That's when AT&T
15 said, "Well, we'd certainly like to (indiscernible)
16 on it."

17 MR. MEEKINS: Well, would a couple of
18 rooftops work instead of only looking at historic
19 churches?

20 MR. GAUDIOSO: Yeah. So that's the point is
21 that there are no tall rooftops in this area that are
22 permitted zones. That was the other problem. So you
23 would need -- there are no rooftops, particularly
24 commercial rooftops or a hospital-type rooftop,
25 particularly going in the area on 301 towards Jaycox,

1 let's say, which is part of the big gap area.

2 MR. MEEKINS: While you're on that, then, so
3 I was at the meeting the other night where it sounds
4 to me that Phillipstown's consultant is looking at
5 McKeel's Corner again to see if that could be higher
6 and provide an alternative to the Vineyard site.

7 MR. GAUDIOSO: Yeah.

8 MR. MEEKINS: So if that were happening,
9 would McKeel's Corner give different service into
10 Nelsonville?

11 MR. GAUDIOSO: Yeah, great question. No, we
12 actually had our consultant look at that. In the
13 report that we submitted earlier in the month, we
14 actually showed as part of this record that even
15 McKeel's at 210 feet would not cover into the
16 Nelsonville area. And we actually had that in this
17 record because the Putnam County Planning Department
18 had asked that question.

19 MR. MEEKINS: To go that high, 210?

20 MR. GAUDIOSO: No. They said 180. We went
21 up to 210 and showed it didn't work.

22 MS. BRANAGAN: It seems like you were
23 looking for tall buildings, but there's -- we have
24 like a lot of high spots and low spots, so what about
25 a building just in the high spot, not necessarily a

1 tall building?

2 MR. GAUDIOSO: So a lot of people think
3 that, you know, it's the elevation, and in this area
4 it's not really the elevation. In this area it's
5 really about two main things. It's getting above the
6 tree line because the tree line here is thick, okay,
7 and the tree line will attenuate the signal. And if
8 you are in the tree line or below the tree line,
9 you're going to attenuate the signal and get a very
10 small area of coverage. Even with that 110-foot
11 tower, if you look at it, the area where we're
12 covering is pretty limited to the villages. It
13 doesn't get past Jaycox. It doesn't get -- it
14 doesn't even -- from 2 Secra it doesn't even get very
15 far up to the east.

16 The second thing that's important, and this
17 is really one of the most important things, is that
18 you have all these mountains. And the reason some
19 sites work and some sites don't, because some sites
20 based on the angle that they're at, they're behind a
21 hill or they're behind a mountain. And that's one of
22 the big things with McKeel's. That's why in
23 Phillipstown the McKeel site is problematic, whereas
24 the Vineyard Road site gets right up and down the
25 Route 9 corridor and also further on Route 301 to the

1 west. So that's the key. It's not being blocked.
2 And if you heard in that case also there was talk
3 about Lane Gate at the town landfill, and the problem
4 with Lane Gate that two of the Town's consultants
5 confirmed is that it's up against and blocked by
6 (indiscernible). So that's -- those are the two
7 issues.

8 So just to be on a high spot, nothing here
9 is more than two, two and a half, maybe three
10 stories. Butterfield was in a wide open area. It
11 wasn't covered by trees. It wasn't sent in a very
12 dense area, and it was a hospital location and they
13 had antennas way up on top of the roof.

14 CHAIRMAN RICE: Anymore Board comments?

15 MR. KEELEY: The location at -- when you
16 reviewed it at the Highway Department --

17 MR. GAUDIOSO: Yes.

18 MR. KEELEY: -- 50 Fishkill, was that with
19 or without McKeel?

20 MR. GAUDIOSO: It didn't make a difference
21 because neither -- McKeel's didn't get 301 at all
22 into Nelsonville. 50 Fishkill didn't get down into
23 here.

24 MR. KEELEY: Okay. So the gap would still
25 be in the village even --

1 MR. GAUDIOSO: The gap would still be in the
2 village.

3 MR. KEELEY: Even at the Highway Department?

4 MR. GAUDIOSO: Even at the Highway
5 Department, yeah. And the other problem is we're
6 looking at these as hypothetical heights, okay. Two
7 hundred and ten feet is not getting approved
8 anywhere. It's going to require a light, an FAA
9 light. It's going to require FAA marking. McKeel's
10 was not built for 210 feet. It was built at 100
11 feet. Structurally, it could not be extended. You
12 would need a new tower. It doesn't meet the height
13 limit. The height limit in that zone is 110 feet
14 similar to here, so to say 210 or 190 or 180, quite
15 frankly, is a bit of a red herring because those were
16 just not compliant with the code, but we looked at it
17 as good faith to say even if you went to that height,
18 from a technical standpoint, it's not going to work.

19 MR. KEELEY: And then going back to the
20 significant gap discussion, that applies to cell
21 phone coverage?

22 MR. GAUDIOSO: It applies to wireless
23 service. It applies to wireless service, correct.

24 MR. KEELEY: What is included in wireless
25 service?

1 MR. GAUDIOSO: So personal wireless services
2 which includes PCS. It includes AWS, all the
3 different licenses that they operate at, so now you
4 have both phone calls. You have data service. You
5 have basically phone calls over data. It's, you
6 know, 3G, 4G. It's all combined in the networks.
7 All these different technologies, all these different
8 frequencies, these networks are using all of them to
9 be able to support the capacity.

10 MR. KEELEY: So a significant gap in 3G
11 would be recognized as a gap that needs filling?

12 MR. GAUDIOSO: I believe so, absolutely.

13 MR. KEELEY: A significant gap at 4G also?

14 MR. GAUDIOSO: Yes, I believe so. I've
15 never seen a case that said it wasn't. Let's put it
16 that way.

17 MR. MEEKINS: There was a comment the other
18 night, and I know crossing over jurisdictions seems
19 like it's not our purview to do, but it's hard for me
20 to believe that the whole network is not connected,
21 so the fact that we can't have a discussion about
22 like what your plans are (indiscernible) monopolies
23 coming -- because when I saw the map today
24 (indiscernible), Phillipstown has way more monopolies
25 than anybody else in a 10-mile radius that you

1 supplied, and you're proposing two more.

2 MR. GAUDIOSO: The AT&T --

3 MR. MEEKINS: The AT&T maps. So you had
4 five monopoles and some other --

5 MR. GAUDIOSO: You know, I heard a comment
6 once that, you know, Philipstown had more towers than
7 anyone, and that's just simply not true.

8 MR. MEEKINS: Everybody in the ten-mile
9 radius that can provide it, I think we counted them
10 out, so --

11 MR. GAUDIOSO: We only did them in the ten-
12 mile radius, but the point being is that on a grander
13 scale, on a regional scale, that's just simply not
14 true. The town of Somers has just as many, if not
15 more, just as a comparison as over the board.

16 MR. MEEKINS: Why does Putnam Valley have
17 none, no monopoles, not a single monopole except one
18 maybe in (indiscernible)?

19 MR. GAUDIOSO: Well, actually, Coleman
20 Towers built one there. I know Verizon has a big one
21 on top of the hill overlooking the Taconic off the
22 top of my head. I believe there's one over by Put
23 (sic) Lake that's been there for a while. So, I
24 mean, I can just think of them off the top of my
25 head, but really the point is is that the places that

1 they've been built in the past is very obvious. It's
2 when you have, going back to the significant gap
3 argument, going back to where you have users. Where
4 do you have users? You have them on main roads. You
5 have them on highways.

6 So Phillipstown has Route 9 and Route 9D
7 cutting right through them, also has 301 cutting east
8 and west. I mean, those are main roads and that's
9 where the majority of the towers are located, so if
10 you want to go to Phillipstown, you can start at the
11 top, you know, coming down Route 9 on the Shubert
12 property, then you come down to McKeel's, you get
13 down towards Graymoor, the proposal at Vineyard Road
14 is in the middle, but you also, you know, are trying
15 to connect that 301 corridor, so there's the old AT&T
16 long lines tower up in Fahnestock Park. You know,
17 you think about where they are, that's where they
18 are. And down this area has always been very
19 difficult to cover this area, both geography,
20 topography, and zoning.

21 MR. MEEKINS: Are you able to say whether
22 the carriers believe they need more than two to get
23 to seven monopolies within the (indiscernible)?

24 MR. GAUDIOSO: I don't really have an answer
25 for Phillipstown's application here in Nelsonville.

1 I think if you look at the maps for Nelsonville, I
2 think you could see there's very good coverage based
3 on what's being shown to cover the village. It's not
4 a large village. I can feel comfortable to say that,
5 you know, there's not seven towers on the drawing
6 board right now for Nelsonville, but you know, beyond
7 that, obviously, you know, I couldn't tell you
8 what's, you know, predicted elsewhere.

9 CHAIRMAN RICE: Any other Board comments?

10 MR. KEELEY: One more. In the original
11 meeting we had in August at this point, in the
12 original meeting in August, we talked about the
13 submission from AT&T's RF(indiscernible) that was
14 provided or dated June, and it had six licenses that
15 had expired actually in July. And we discussed in
16 August that the Village code requires up-to-date
17 licenses. We're going back to the drawing board.
18 AT&T had those six that were expired.

19 Last week, or two weeks ago, I guess, we got
20 an update from Piercom, which I understand to be
21 Verizon's RF expert.

22 MR. GAUDIOSO: Correct.

23 MR. KEELEY: And they submitted for six.
24 They submitted six licenses. Were those new six for
25 a cell-co partnership submitted under Verizon's name

1 replacing the six expired for AT&T or what are the
2 active --

3 MR. GAUDIOSO: No. AT&T submitted updated
4 insurance certificates. I don't know, it should be
5 in your package. They submitted it -- Mr. Laud
6 (phonetic) had submitted it. I saw the cover letter
7 that he had submitted the updated AT&T licenses back
8 in, I want to say end of August, early September.

9 MR. KEELEY: Okay.

10 MR. GAUDIOSO: Yeah, so they should be in
11 our package, and those were AT&T separate licenses.

12 MR. KEELEY: Is Mr. Laud here?

13 MR. GAUDIOSO: His colleague is here, Mr.
14 Mirando (phonetic)?

15 MR. KEELEY: When was that (indiscernible)?

16 MR. MIRANDO: I'm not sure of the exact
17 date, but --

18 MR. KEELEY: Can you try to dig that up? I
19 just want to make sure that we're looking at the
20 complete package.

21 MR. MIRANDO: Yeah. Well, they're in the
22 record and we'll make sure you have them, but the
23 AT&T licenses, if they were provided with expired
24 dates, then those licenses would either be in the
25 record, which I'm pretty sure they are --

1 MR. KEELEY: Yeah, they are.

2 MR. MIRANDO: -- or we'll provide them to
3 you. And Mr. Grafe even noted in his most recent
4 memo, I believe, his words, I believe, were a non-
5 issue, so -- but we will confirm that for you. Thank
6 you.

7 MR. GAUDIOSO: Yeah, they were definitely
8 submitted, but --

9 MR. KEELEY: Oaky, thank you.

10 CHAIRMAN RICE: Any other Board comments?

11 MR. MEEKINS: I just had a question on your
12 letter regarding easements.

13 MR. GAUDIOSO: Sure.

14 MR. MEEKINS: Just to clarify. I thought I
15 saw a phrase in there that said there's no limits.
16 When there's no stated limits, do you conclude those
17 limits to what you can do?

18 MR. GAUDIOSO: There's no limits with
19 respect to what we're talking about, which is access,
20 upgrading the access drive to bring access to the
21 property and bringing utilities?

22 MR. MEEKINS: What's the limit when there's
23 no (indiscernible)?

24 MR. GAUDIOSO: Well, it goes back to -- the
25 court will look at what was, you know, what was

1 reasonably contemplated in the mind of the grantor at
2 the time, which in this case was, you know, 1968,
3 1971 access to the property which would, you know, in
4 and of itself require utilities. And we actually
5 cited to a case that was literally right on point on
6 that one, and that case was from the Third
7 Department, I believe, which is the Appellate
8 Department above the Trial Court.

9 MR. MEEKINS: I'll leave it to our lawyer
10 who's on the Planning Board to talk about the legal
11 side of it, but when saw the phrase "The right-of-way
12 easement included in the title letter establishes
13 that there are no limits."

14 MR. GAUDIOSO: Yeah, so there are no limits
15 with respect to what I just described.

16 MR. MEEKINS: Just that?

17 MR. GAUDIOSO: Yeah. I mean, obviously, we
18 couldn't build a shopping mall on an easement, I
19 mean, I'm not trying to be facetious, but just to
20 give you an idea, I think a court would probably say
21 that was overburdening the easement, but to bring
22 utilities to a land lot parcel that was, you know,
23 that there was a specific right-of-way easement
24 granted with no limits contained in it --

25 MR. MEEKINS: Unlimited with a paving?

1 MR. GAUDIOSO: Well, to the width of the
2 easement, obviously, particularly if that was the
3 town code, the Village code. In this case we didn't
4 offer to do it, but if the Village wants us to do it
5 and that was the request, we're certainly happy to do
6 it.

7 MR. MEEKINS: To meet safety vehicle
8 requirement for access, those kinds of things?

9 MR. GAUDIOSO: That was -- look, obviously,
10 there's a home that's habitable that has cooking
11 facilities as compared to, you know, an un-manned
12 facility, nevertheless, if the request is to bring it
13 up to that type of specification, we'll bring it up
14 to that type of specification.

15 The facility is unmanned. It's monitored
16 24/7 remotely. It's a very low impact use as far as
17 cars coming and going. After construction it's used
18 maybe once every four to six weeks for them to come
19 out and take a look at it unless there's an upgrade
20 or something like that, so it's not nearly the type
21 of intensive use that even a single-family home can
22 (indiscernible).

23 MS. BRANAGAN: Question about that. I guess
24 the letter says suggests, implies that -- obviously,
25 I'm not questioning the obvious, but cell towers make

1 it into the category of utilities?

2 MR. GAUDIOSO: Absolutely.

3 FEMALE SPEAKER: Can you speak a little
4 louder?

5 MS. BRANAGAN: Yeah, I have a soft voice,
6 sorry. I just asked him whether cell towers make it
7 into the category of utilities because the letter
8 referred to it as, you know, as long as it's a
9 utility they can dig underground or --

10 MR. GAUDIOSO: So the utilities that I was
11 actually referring to are the electric and telephone
12 lines going to the public utility facility on the
13 parcel.

14 MS. BRANAGAN: Right.

15 MR. GAUDIOSO: So we're not proposing to put
16 a facility on the right-of-way, but to run customary
17 electric and telephone lines to that facility, which
18 is essentially what it is. It's basically an
19 electric line, 800 amps, for a full build-out
20 service, and we're proposing also underground, which
21 the case specifically talks about that the
22 underground utilities are permitted. And the reason
23 I mention underground is because, obviously, no one
24 is going to, you know, be impacted by underground
25 utilities once they're under the ground.

1 MS. BRANAGAN: So cell towers are considered
2 to be a utility for the purposes of the right-of-way
3 or --

4 MR. GAUDIOSO: I don't have an opinion on
5 that because that's not what my letter was focusing
6 on. My letter was focusing on traditional utilities
7 such as telephone and electric to serve the parcel
8 that we're proposed to go on.

9 MS. BRANAGAN: Possible then that cell
10 towers would be outside the category of utilities?

11 MR. GAUDIOSO: I'll be honest with you, I've
12 never researched the issue, but I can tell you the
13 Court of Appeals, the highest court in New York
14 State, said that for zoning purposes wireless
15 facilities like this are considered public utilities.

16 MS. BRANAGAN: Okay. The other question I
17 had in regards to that is what came first, the right-
18 of-way or the Nelsonville Village code?

19 MR. GAUDIOSO: I don't know, and it's
20 irrelevant would be my answer.

21 MS. BRANAGAN: Why?

22 MR. GAUDIOSO: Because based on the case law
23 that we specifically cited, restrictions and uses of
24 easements and things of that are one issue, and
25 zoning is a completely separate issue. And the

1 courts have specifically said that. I think we
2 actually cited to a Court of Appeals case in my
3 letter that made that exact statement. I think that
4 was the Friends of Shawangunk case that went to the
5 Court of Appeals, and it's apples to oranges. They
6 don't overlap. That was kind of the point is that
7 your purview is for what's under your zoning code.

8 MS. BRANAGAN: Right.

9 MR. MEEKINS: I just have a follow-up to
10 Chris's question about -- he asked you about what
11 kind of service. I thought the other night there was
12 -- I don't know if you're the one that's going to
13 respond to comments that were made at the other
14 hearing where someone claimed the interpretation of
15 federal law is only on phone service and not data
16 transmission.

17 MR. GAUDIOSO: Yeah. I don't agree with
18 that, number one. And number two, as I mentioned
19 before, that is completely irrelevant at the
20 administrative review level.

21 MR. MEEKINS: That would go to court? That
22 would have to be talked in court?

23 MR. GAUDIOSO: That would be what's
24 considered -- if we were denied in that case and we
25 brought a prohibition-of-service claim, that would be

1 considered a de novo review by the judge, meaning the
2 judge would collect his own evidence. It would have
3 nothing to do with what's in the administrative
4 record.

5 MR. MEEKINS: So if we made a claim that we
6 didn't believe or had evidence that there was no gap
7 in phone service and that was the reason for a
8 denial --

9 MR. GAUDIOSO: That would be a real bad
10 reason because it's not a criteria in your code, and
11 it's not a criteria that we have to meet. And the
12 case law in this district, particularly the White
13 Plains decision, the T-Mobile versus White Plains was
14 crystal-clear on that point. That's not a relevant
15 issue. That's confusing the issues, basically. And,
16 in fact --

17 Again, I don't want to talk about
18 Phillipstown too much, but --

19 MR. MEEKINS: I see this is pretty confusing
20 already.

21 MR. GAUDIOSO: -- in that case, I actually
22 submitted a case that was very recent. I believe it
23 was out of the Third Department or the Northern
24 District. I think it was a Northern District case, I
25 could be wrong, but the application was approved.

1 The residents sued on that issue, and the court threw
2 it out.

3 MR. MEEKINS: So that issue, maybe coupled
4 with an esthetic reason of overlooking a historic
5 cemetery and --

6 MR. GAUDIOSO: They're two different issues,
7 and the --

8 MR. MEEKINS: They don't start to compound
9 each other at all or --

10 MR. GAUDIOSO: They don't, and that's -- if
11 you think about it, the federal government said "We
12 do not want a prohibition of service. This is a very
13 important service throughout the United States in all
14 the legislative history." What they said is "Even if
15 there is a good reason to deny it, you've got to find
16 a way not to prohibit it." And the way you find that
17 is either approve the site or find an alternative.

18 CHAIRMAN RICE: Okay. Any other questions
19 from the Board? The audience may wonder why the
20 Zoning Board is asking a lot of questions. This is
21 probably our fifth meeting. That list of letters
22 that I read to you in the beginning, you know,
23 testified to the fact of all the questions we've
24 asked in prior meetings and we've received those
25 responses over the past two or three months.

1 So if the Board has no more questions, I'd
2 like this, before the public has an opportunity to
3 speak, if I could ask --

4 One of the most important things the Zoning
5 Board does is look at the completeness of the
6 application and everything that's in the zoning code.
7 And I'm going to have Ron or Bill, the engineer who's
8 been looking at that, not for a lengthy assessment of
9 that, but how are we doing on that? I mean, we're
10 all aware of it. We think we're almost there, but
11 what do you think is -- having done this for so many
12 years?

13 MALE SPEAKER: The Board's got a technical
14 memorandum from my office from the end of October.
15 We tried to review the entirety of the Village
16 ordinance as it pertains to cell towers and the
17 process for the review of the --

18 MALE SPEAKER: (Indiscernible) we'd like to
19 hear you.

20 MALE SPEAKER: Okay. And what we've done is
21 look at it from both the Zoning Board approval
22 process as well as the Planning Board requirements.
23 My memorandum tries to break down those approval
24 processes into the two different actions to be taken
25 by the individual boards. Over time, the Applicant

1 has been submitting additional data to satisfy the
2 requirements under that code.

3 The most recent information that's been
4 provided, which just came in today, relates to the
5 balloon testing which was required by the Board of
6 the Application. That esthetic impact, the visual
7 impact is what's further been presented tonight that
8 needs further review from your Board.

9 As the Chair has indicated, the Zoning Board
10 of Appeals has assumed the lead agency status
11 pursuant to SEQRA. That process went through a
12 coordinated review because the Planning Board is
13 another involved agency in the same application, so
14 the Zoning Board is responsible to conduct the
15 environmental review and the project.

16 The necessary environmental documents have
17 been filed. The requirement for the alternative
18 siting studies has been provided over time, has been
19 reviewed by the RF engineer. The documents that have
20 just come in, you obviously are obligated to review,
21 to understand those impacts.

22 So SEQRA is a significant issue that remains
23 to be done and still warrants further review based on
24 the information that's still coming in through today.

25 With respect to referrals that were

1 mandatory, those referrals have been done I think on
2 the order of two months ago. County planning was
3 involved in this process because of its location, so
4 a necessary referral was done. Fire department input
5 was sought and obtained.

6 In terms of technical issues, there's
7 technical issues that relate to both of the
8 individual board actions that are necessary. My
9 memorandum summarizes the technical issues that have
10 to be addressed that you need to review as part of
11 the overall process once you believe that you're
12 prepared to move forward with the application. And,
13 obviously, this public hearing was a significant part
14 of that to ascertain public input and take that in
15 your deliberations.

16 So as I said, there's technical information
17 that we seek from the Applicant that can be
18 accommodated as the application moves forward. And
19 if the Board has any specific questions of me, I can
20 respond.

21 CHAIRMAN RICE: Thank you. We do have that
22 report, the report that you put together. I just
23 wanted to check in with you and see what your opinion
24 was.

25 MALE SPEAKER: Right. And, obviously, you

1 touched on it before, but you've got several reports
2 from your independent RF engineer relating to both
3 the original RF study on the site that's under
4 discussion tonight as well as the alternative sites
5 which are also in play.

6 CHAIRMAN RICE: Yes, we have those and we've
7 been reading them. And I think our RF consultant has
8 made those reports fairly easy to understand.
9 They're highly technical, but there's certain
10 conclusions --

11 MALE SPEAKER: Okay.

12 CHAIRMAN RICE: I'm sorry he's not here
13 tonight to explain in a little more detail.

14 MS. CLEMENTS: Can we ask a question
15 (indiscernible)?

16 CHAIRMAN RICE: Yeah.

17 MS. CLEMENTS: So one of the things I feel
18 like I -- so one of the issues that's come up from
19 public comments has been an issue about the scenic
20 and historic value of the Village, of the cemetery,
21 things like that. I know that we have a letter from
22 CBRE sort of making an assessment of the impact of
23 the radio tower on -- and relative to the cemetery in
24 particular. There's so many -- I don't have it right
25 in front of me, but has there been anything else --

1 no offense, but like have we -- is there a way for us
2 to get an alternate opinion, an alternate assessment
3 about the potential impact in particular right into
4 the written record about the scenic and historic
5 impact of the towers to the Village, and in
6 particular to this cemetery. Yeah, because what we
7 have right now is a letter from CBRE which, no
8 offense, is a letter you got and I'm wondering is
9 there some other letter or some other source
10 (indiscernible)?

11 MR. GAUDIOSO: You do have more than that,
12 though, and let me just explain.

13 MS. CLEMENTS: Yeah.

14 MR. GAUDIOSO: So the cost is considered a
15 federal undertaking because it's licensed by the FCC.
16 The Applicant has to comply with the FCC regulations
17 because the FCC has to comply with NEPA, the National
18 Environmental Policy Act. NEPA is the grandfather of
19 SEQRA, which is what you're working through. NEPA
20 was passed by the federal government, the states,
21 enacted their own state environmental quality review
22 acts. That process has been set forth called the 106
23 process --

24 MS. CLEMENTS: Right.

25 MR. GAUDIOSO: -- and it requires a very

1 detailed type of process. And we to hire a certain
2 person with certain qualifications to find whether
3 there were direct impacts on historical,
4 archaeological resources. And as part of that, there
5 was the thought that this area may be
6 archaeologically sensitive, so we actually performed
7 a Phase 1 archaeological test where we dug test pits.
8 We had certain qualified individuals do a report, no
9 direct impact. We're not directly on a historic
10 structure.

11 MS. CLEMENTS: Right.

12 MR. GAUDIOSO: Then we also looked at visual
13 impacts within what's known as the APE, the area of
14 potential effects. And, again, that's set forth by
15 rule about where we look, and we identified, our
16 consultants, I should say, our experts, identified 15
17 different resources, and they studied each and every
18 one of them.

19 All of that went not a package that had to
20 be submitted to SHPO, and that package was submitted
21 to the record. That's this package here. That's the
22 Form 620. We submitted this tonight. A lot of it is
23 what you already have, which is parts of the CBRE
24 report. It's also the visual, the original visual
25 resource analysis. It's our expert's report. That

1 went to SHPO. SHPO concurred with those findings.
2 SHPO is the arbiter from the State --

3 MS. CLEMENTS: The State Historic
4 Preservation Office.

5 MR. GAUDIOSO: -- on the State Historic
6 Preservation Office. So the --

7 MR. MARINO: Do we have that corroboration
8 from SHPO?

9 MR. GAUDIOSO: Yes. The concurrence has
10 been in the record --

11 MR. MARINO: On SHPO letter head, et cetera?

12 MR. GAUDIOSO: They sent it by email through
13 the process.

14 MS. CLEMENTS: Because I remember you-all
15 saying it was going to go somewhere, but that's the
16 -- that was my question. I don't remember seeing
17 that letter.

18 ADMINISTRATIVE LAW JUDGE: Yeah, it did go
19 to SHPO, and SHPO -- it's literally a one-page email
20 that goes through the electronic system they spit
21 back to us and it says that they concur.

22 CHAIRMAN RICE: Yeah, the Board asked for
23 this additional information.

24 MS. CLEMENTS: I remember that we had asked
25 for it, but I didn't remember seeing it.

1 CHAIRMAN RICE: Yeah, we do have that email
2 form SHPO that said --

3 MS. CLEMENTS: Okay, thanks.

4 CHAIRMAN RICE: -- that they concurred with
5 the report that --

6 MR. GAUDIOSO: No adverse effect fact-
7 finding, correct.

8 MALE SPEAKER: And to the extent that you
9 did seek to have the Applicant provide the entire
10 submittal, went to SHPO --

11 CHAIRMAN RICE: We were interested, yes.

12 MALE SPEAKER: -- and that's what,
13 apparently, has been delivered tonight.

14 MR. GAUDIOSO: Correct.

15 MALE SPEAKER: So that's now here for your
16 records.

17 MS. CLEMENTS: That answered my question.

18 MR. MEEKINS: And CBRE is independent, you
19 said?

20 MR. GAUDIOSO: We hired them. They have to
21 have -- the historians have to have certain
22 qualifications.

23 MR. MEEKINS: How much work do they do for
24 Homeland Towers or --

25 MR. GAUDIOSO: They do a percentage of

1 Homeland Towers.

2 MR. MEEKINS: Have they ever found the site
3 not suitable?

4 MR. GAUDIOSO: I don't know off the top of
5 my head, but SHPO has.

6 MR. MEEKINS: SHPO has.

7 MR. GAUDIOSO: But SHPO has.

8 MS. CLEMENTS: But that's the issue that
9 SHPO approved --

10 MR. MEEKINS: So it's just a mistake that
11 Mr. Xavier's email contact is White Plains Coastal
12 Resource on the 620?

13 MR. KEELEY: An additional potential error
14 along there is the 12 Native American tribes from
15 Oklahoma were recognized --

16 MR. GAUDIOSO: Actually, that's not a
17 mistake. Even though they're not here, they have --
18 sometimes they require through the process to be
19 notified.

20 MR. KEELEY: But they (indiscernible) tribe
21 of (indiscernible) Indians?

22 MR. GAUDIOSO: Yeah. I've seen ones even
23 stranger than that.

24 MR. MEEKINS: But that email contact is a
25 mistake?

1 MR. GAUDIOSO: If I could just see it.

2 MR. MEEKINS: That's the same as Ms.
3 (indiscernible), I think, so it must be a mistake.

4 MR. GAUDIOSO: Yeah. She's the care of
5 for, everything goes to her.

6 MR. MEEKINS: His contact information is in
7 that section.

8 MR. GAUDIOSO: Yeah, but it does go care of
9 her because she's the one that processes the entire
10 (indiscernible). That's the way they do it.

11 CHAIRMAN RICE: Any other questions for Rob?

12 MR. KEELEY: Just one more clarification on
13 that. Intrigue me, but there were so many Native
14 American tribes from Oklahoma and elsewhere that
15 seemed interested. The (indiscernible), the Indian
16 community, said that on June 23rd that they had
17 interest --

18 MR. GAUDIOSO: Yeah.

19 MR. KEELEY: -- because this may have had
20 religious or cultural significance to historic
21 properties which may affect the undertaking within
22 the APE's for (indiscernible) and direct effects.
23 What is their interest and what was the follow-up
24 with that?

25 MR. GAUDIOSO: I don't know that one off the

1 top of my head. I can certainly ask. I know it was
2 eventually closed out. I suspect in the rest of the
3 filing, which I didn't email the whole thing because
4 it was this thick, but I suspect in the rest of the
5 filing there's probably -- the loop has been closed
6 on that because we have to close the loop.

7 I don't want to be negative, but a lot of
8 these tribes you have to file application fees with
9 them to review this, and some of these application
10 fees are significant, and a lot of tribes claim that
11 they have an area that it doesn't necessarily have to
12 be the reservation.

13 MR. KEELEY: I'll just take it as there's a
14 loop that needs to be closed. We'll take a look.

15 MR. GAUDIOSO: Yeah, yeah. I'm fairly
16 confident it's closed because -- the 620 was closed.

17 CHAIRMAN RICE: Any other comments for Rob
18 from the Board?

19 (No audible response)

20 Next, I'd like to ask Robert Risardi
21 (phonetic) if he has any comments. We specifically
22 wanted you to, given the discussion of the right-of-
23 way, if you had any thoughts on that. And also on
24 Section 7736 of the Village code, if you had any
25 thoughts on that.

Should this Board approve or grant the application, the next step is to look at a variance, and the variance has to do with access to the site again, so they're separate issues, but they're somewhat connected, but I'm going to defer to you Robert, to explain that.

MR. RISARDI: Yeah, I've looked at that. I've read the Applicant's letter (indiscernible). I've read the case.

(AUDIENCE ASKING HIM TO SPEAK UP)

MR. RISARDI: I'll try, but I have -- I just want you to know I have bronchitis, so I'll do my best.

Generally speaking, title issues and zoning issues are not the same, all right. The Zoning Board should not get involved in bringing title issues into its deliberation except, for example, your law says that the Applicant has to demonstrate that he's the owner of the property, and it also says you have to show you have access, all right. So what the Applicant has shown is he has ownership. There's a deed that's been presented, and he shows the right-of-way, which I have traced out based on the map, and there is a right-of-way that goes from the Applicant's property to Moffitt Road. It's 25 feet

1 at its narrowest point, all right.

2 Now, the lot was also, from my review, looks
3 like it was created in 1970. The Village enacted
4 zoning in 1972, so it well may be a legal lot having
5 been preexisting, non-conforming, even though it
6 doesn't necessarily have the road frontage that the
7 present code would require.

8 That having been said, the law also says
9 that you cannot issue a building permit unless there
10 is suitable access to a property, and that's 7736 of
11 the State code. It's also contained in our local
12 zoning code. It's also one of the requirements in
13 the cell tower law that there be adequate access to
14 the property.

15 So I would answer the question this way,
16 it's your job to determine that what's there, what's
17 shown on the map, which does appear to have a basis
18 in a deed, whether that's adequate access, whether it
19 needs to be improved and so forth. Whether or not --

20 And I can tell you, too, that the language
21 in the deed is -- it's a right-of-way. It does not
22 say anything other than that it's a right-of-way.

23 I've read the cases cited by the Applicant.

24 I've also done my own research. I think it's
25 essentially correct that in the absence of limiting

1 language where it's a land lot parcel, and that's the
2 key, if it's not a land lot parcel it's different,
3 but if it's a land lot parcel and an easement has
4 been given to access that parcel, there's an easement
5 more or less by implication or necessity that the
6 installation of utilities is also permitted within
7 that easement area even though it's just a right-of-
8 way.

9 It's a debatable point. There are some
10 older cases that go the other way, all right, but the
11 bottom line to that is there's at least what we call
12 in the law business a prima facie basis for saying
13 that they have legal access to this property. And I
14 think it would be up to the neighboring property
15 owners to -- if their position is that that easement
16 does not permit installation of utilities to bring a
17 challenge. They can bring a declaratory judgment
18 action. They can bring an application for an
19 injunction to prohibit this use from going forward,
20 but the case law is -- I agree with the case law that
21 where there's at least a prima facie basis to show
22 that there's access we can't challenge the legal
23 basis of that access.

24 What you can look at is what actually
25 they're claiming exists from the document that they

1 presented and that is a 25-foot easement at its
2 narrowest point shared by multiple properties.

3 CHAIRMAN RICE: Okay, curious, if there was
4 a house being built on that site, would, again, the
5 house would get no electricity under this thought, I
6 mean, the issue here if somebody wanted to build a
7 house, they wouldn't be able to put electricity --

8 MR. RISARDI: They would have -- what I'm
9 saying is --

10 CHAIRMAN RICE: No, I know you're not saying
11 that, but I'm just throwing that, just thinking
12 that --

13 MR. RISARDI: There would be an issue, there
14 would be a legal issue that the neighbors could bring
15 to question whether or not the -- Mr. Logan has the
16 right to bring utilities into that property, okay.

17 The language in the deed is not entirely
18 clear. It says it's a right-of-way across the
19 property, all right. You could -- there are cases
20 that say that that doesn't include the right to
21 install utilities, but Mr. Gaudioso is correct, there
22 is some Third Department case law that says that
23 where it's a land lot parcel, and I think this would
24 be considered a land lot parcel, because I don't
25 believe it has access to a public road anywhere else,

1 that there's an implication that there's an easement
2 to access that property. It includes the right to
3 install utilities within that same area.

4 So the question, I guess, so the answer to
5 your question, if somebody was building a home there,
6 I would suggest that they could make that claim that
7 they have that right, but it's a debatable claim is
8 what I'm saying. The neighbors could challenge it,
9 and the case may go one way or it may go another, but
10 they have a sufficient basis, in my opinion, to
11 support an application before this Board. And it's
12 not the position of this Board to be prosecuting
13 property rights for neighboring property owners.
14 That law is pretty clear. We're here to make zoning
15 decisions, not litigate property rights issues.

16 MR. MARINO: So as long as we're satisfied
17 that legal access has been -- is on the maps, it's up
18 to us, then, to determine if that access is suitable,
19 is improvable to the point where we can get
20 sufficient access, fire safety, that kind of thing
21 into or out of the property. That's really what we
22 need to be looking at.

23 MR. RISARDI: That's right. And it's up to
24 the neighbors to challenge whether or not that
25 easement can be interpreted to include putting in

1 utility lines.

2 So there's one other question there, and I
3 don't know off the top of my head the answer to it,
4 but the utility lines are shown going directly under
5 the traffic way of that access road. I don't know
6 whether that's to code or not, all right, but that
7 would be a question that should be addressed at some
8 point in the site plan review whether that's a --
9 whether putting electric lines under a traveled way
10 is code-compliant.

11 CHAIRMAN RICE: Okay. That should be easy
12 to figure out.

13 MR. MEEKINS: Can I ask a question to that,
14 William?

15 CHAIRMAN RICE: Yeah, please do.

16 MR. MEEKINS: I understand that we can't
17 rule on that property matter, but could we rule that
18 that property matter needs to be resolved before we
19 could --

20 MR. RISARDI: No. The case law suggests
21 otherwise.

22 MR. MEEKINS: Even if we know there's a
23 known dispute, is the Village at all liable if the
24 easement owner were to win and --

25 MR. RISARDI: No. You know, what the

1 adjoining property owner should do is go to court for
2 declaratory judgment action and ask for an
3 injunction. If an injunction is issued by a court,
4 then I would suggest yes, that would be sufficient
5 for us to not render a decision, but short of that,
6 no. It's my opinion that we would not be in a
7 position to do that. But again, it's an issue.

8 CHAIRMAN RICE: You're saying it's an issue
9 for the neighbor, not for the Board, other than
10 looking at the suitability of entering an egress
11 (indiscernible) and the Planning Board
12 (indiscernible), and like you say, for public safety.

13 MR. RISARDI: Right. I mean, just to give
14 you another example. If Mr. Logan came in here
15 asking for a cell tower application to build a cell
16 tower on the roof of this building, all right, I
17 think the Board would be within its rights to say,
18 you know, "You're not the owner of this building.
19 How can you make an application to put a cell tower
20 on it?" And that's why I'm saying you have to at
21 least make a prima facie case. You have to at least
22 make a showing that you have these rights. And it's
23 my opinion having read carefully the deed and traced
24 it on their site plan application for the easement
25 area -- the easement area goes all the way from this

1 property out to Moffitt Road and it's various
2 dimensions along the way. The narrowest dimension is
3 25 feet near Moffitt Road, but there's a meets and
4 bounds, and there's an easement all the way from it.
5 The easement does not say it's limited to ingress and
6 egress, all right. I agree with that point as well.
7 It does not say that it's an easement for utilities,
8 okay, so there's some ambiguity there.

9 CHAIRMAN RICE: Right.

10 MR. RISARDI: And so a court would have to
11 decide whether or not that easement -- and we're in a
12 different department. The Third Department is up in
13 Albany. We're in the Second Department here. It's
14 an Appellate Division case law. I can't find any
15 other cases on the (indiscernible), but it's a
16 debatable point in the courts whether or not that
17 includes the right to install utilities up in that
18 same easement area. But I agree with Counsel that
19 there is case law which a land lot parcel, there's an
20 implication that it includes not only ingress and
21 egress, but also utilities to service a building on
22 the property.

23 CHAIRMAN RICE: All right, thank you. I
24 think that's a great answer, so I mean, from our
25 perspective perhaps we're not going to consider that

1 as part of our deliberations moving forward, and the
2 property owner can, if they want to do an injunction,
3 et cetera, et cetera, it'll be their responsibility.

4 MR. RISARDI: Right.

5 CHAIRMAN RICE: Okay. Yes, Chris, go ahead.

6 MR. KEELEY: We're requesting, or the
7 request before us is a special permit under our local
8 Village zoning code as well as potential variance
9 under the State Village law.

10 MR. RISARDI: Right.

11 MR. KEELEY: Is it your read that those are
12 the only two questions that we should be considering
13 before us in terms of Village code? Was the
14 Applicant complete in that way in terms of all
15 potential variances and requests before us?

16 MR. RISARDI: The special permit that's
17 being applied for that's being applied for, there's
18 numerous criteria that you have to consider. As far
19 as zoning non-conformities, the only one that I've
20 seen, and I don't know if Ron agrees with me or not,
21 but I -- and I don't know if the building inspector
22 has identified any other non-conformities between
23 this particular lot and the (indiscernible) use on
24 the lot and the requirements of the zoning law, per
25 se, for lot area, dimensions, setbacks, things of

1 that nature.

2 There's an issue about access, whether the
3 access is sufficient. There's an issue whether or
4 not -- under the Village code, you know, the private
5 road does not appear to meet the definition of a
6 street. A lot has to have frontage on a street, and
7 this road does not appear to meet that definition.
8 It has to either be a public street, a village,
9 county, ~~state~~ highway, or a street on an ~~approved~~
10 subdivision map. However, again, it looks to me like
11 this lot is preexisting non-conforming in that it was
12 created in 1970, which would have been before our
13 zoning went into effect, so it does have certain
14 status in that regard, but it still does not have
15 actual frontage on a street.

16 That being the case, you now have to
17 consider fire safety and other public safety and
18 access issues with regard to the way this road comes
19 in, how long it is. You know, certain communities
20 have cul-de-sac limits, how long a cul-de-sac can be,
21 1,000 feet, 1,500 feet, so you have to look at how
22 this road comes in and whether or not this road
23 provides suitable access. You know, that's an issue
24 for you, and that's -- it's an equivalent of the town
25 (indiscernible) variance. It's 7736, Subdivision 2,

1 of the Village code.

2 I gave you a copy of 7736, Subdivision 2.
3 That sets forth the criteria for determining the
4 suitability of the access to the site.

5 CHAIRMAN RICE: So we might defer that to
6 you, Steve.

7 MR. MARINO: Thanks.

8 CHAIRMAN RICE: I think that sounds like a
9 Planning Board question.

10 All right, so here we are. Any other
11 questions --

12 MR. RISARDI: Well, no, it's a Zoning Board
13 question. The Zoning Board makes that determination,
14 but you certainly can draw on the Planning Board for
15 expertise, if you will.

16 CHAIRMAN RICE: Okay. I know we want to
17 move this meeting along. Any other questions for the
18 Village attorney from the Board?

19 (No audible response)

20 Then we'd like to open up the public hearing
21 to members of the community, and we'd like -- we will
22 start with the sign-in sheet that everybody -- even
23 if you didn't sign it you'll be able to speak. We'd
24 like to keep your questions to, like we said, three
25 to five minutes in a respectful tone. And we can

1 start --

2 I would just say, too, as we start this, if
3 your comments tend to the longer side, it's already
4 starting to get late. I know everyone is warm.
5 Anything you have in writing can still be submitted
6 to the Board and will still be part of the record.
7 Try not to be too repetitious. I know a lot of
8 people have the same concerns. If the first ten
9 people ahead of you are saying the same thing you
10 were going to say, you know, maybe that point has
11 been made, but obviously, everyone has a chance to
12 speak. Like I say, if it's going to be longer,
13 written comments would be appreciated. We are going
14 to be looking at everything.

15 MR. RISARDI: Mr. Chairman, I just want to
16 make one point. There have been a number of
17 submissions this evening from the Applicant and I
18 assume --

19 MALE SPEAKER: Could people try and talk a
20 little louder?

21 MR. RISARDI: Yeah. There have been a
22 number of submissions by the Applicant, and I assume
23 there may be more written submissions as you've
24 suggested, so my recommendation to the Board is that
25 you keep this hearing open for a period of time going

1 forward so that the applicant or the public can have
2 an opportunity to read these submissions and they'll
3 submit their own additional comments to it, all
4 right, in fairness.

5 CHAIRMAN RICE: Sure. Just on that point,
6 though, Bob, with the question of the shot clock,
7 November 15th --

8 MR. RISARDI: I know.

9 CHAIRMAN RICE: -- and so we are going to
10 start to run into it if we keep the hearing open too
11 long and continue to accept new information.

12 MR. RISARDI: I understand, and you're going
13 to have to judge what that period is going to be.
14 Maybe it'll be (indiscernible), maybe ten minutes, I
15 don't know, but then you're going to have to also set
16 another meeting for making decisions before the
17 deadline.

18 MR. MARINO: Just so everyone in the room
19 knows, we are not making any decisions tonight.
20 There will be no votes tonight, no decisions being
21 made tonight. We're here to hear what you have to
22 say.

23 And if I could ask, your questions and
24 comments should be directed to the Board. This isn't
25 a question-and-answer period for the Applicant. The