Pledge of Allegiance

Approval of Minutes:
- December 11, 2017
- January 8, 2018
- January 22, 2018

Public Hearing:
- **Essex Green, Inc.**
  TM# 49.6-2-14
  **Appeal #910**
  Douglas Lane
  49.6-1-12 (Village of Nelsonville)
  (The applicant seeks to obtain an area variance for front and rear yard setbacks due to the failure to comply with the Dimensional Table of Chapter 175 of the Town Code. The property is in the RC Zoning District.)

- **David & Ann Provan**
  TM#27.19-1-28
  **Appeal #912**
  200 Jaycox Rd., Cold Spring
  (The applicant is seeking a variance for a sideyard setback for a proposed addition)

Old Business:
- **WHUD Tower Replacement**
  TM#83.18-1-23
  **Appeal #911**
  22 Sky Lane
  (The applicant seeks Amended special permit approval to replace an existing telecommunications tower to be able to support colocation)

New Business:
- **Neave Group/Todd Berlander**
  TM# 89.7-1-11
  **Appeal #913**
  22 Hudson River Lane, Garrison
  (The applicant seeks to obtain 2 area variances for side yard setbacks for the proposed installation of a pool and deck)
The Zoning Board of Appeals for the Town of Philipstown held their regular monthly meeting on Monday, November 13, 2017, at the Philipstown Recreation Center, 107 Glenclyffe, Garrison, New York.

**PRESENT:**

**ZONING**
- Robert Dee - Chairman
- Vincent Cestone - Member
- Paula Clair - Member
- Granite Frisenda - Member
- Ron Gainer - Engineer
- Adam Rodd - Attorney

**ABSENT:**
- Leonard Lim - Member

**PRESENT:**

**CONSERVATION**
- Mark Galezo - Chairman
- M.J. Martin - Member
- Robert Repetto - Member
- Eric Lind - Member
- Andrew Galler - Member
- Max Garfinkle - NRO

**ABSENT:**
- Lew Kingsley - Member
- Jan Baker - Member

**PLEASE NOTE** that these minutes were abstracted in summary from being present at the meeting and the television video. If anyone should seek further clarification, please review the video.

Chairman Robert Dee opened the meeting at 7:37 P.M. with the Pledge of Allegiance.

**MINUTES**

Chairman Robert Dee: Approval of last month’s minutes. November, meeting of November 13th. Does anybody have any corrections or adjustments? Okay, I make a motion they be approved.

Paula Clair: I’ll second.

Chairman Robert Dee: Second. All in favor?

Paula Clair: Aye.

Granite Frisenda: Aye.
Vincent Cestone: Aye.

Chairman Robert Dee: Aye. Okay. Take’s care of that. I received a couple of letters from last, since last month. One is from Diana Hird, H-I-R-D. “Mr. Dee, I am a resident of the North Highlands section of Philipstown. I am writing because I understand the ZBA will be reviewing an application for a cell tower construction on Vineyard Road in Philipstown. My understanding is that the tower will be 180 foot in height, equivalent to a 19 story building. I think everyone can agree that such a structure does not comport with the surrounding landscape, in particular the State Park land and nature trails in the vicinity. Further, I am not convinced that the tower is needed. As a resident of North Highlands, I have never experienced a dropped call or an unsent text on my cell phone from my home. Thank you for your time and effort in reviewing my comments. The second letter received is from Rockwald Road Association but Mr., the gentleman from Rockwald, from the association is gonna do a little presentation tonight so I’m not going to read the whole letter. I got a letter from Houlihan Lawrence from Branch Manager Sylvia Wallin, W-A-L-L-I-N. She speaks basically to why people buy houses in a community, for the histories and the hills and valleys and so on and so forth and says basically that, to ask about the devaluation of property values is to ask about whether an eyesore is real or imagined. To ask for the mathematical methodology of looking backwards historically at impact of sales — after a major nuisance factor is introduced — is pointless. It basically says that most people buy up here for the beauty and the view. All right. First thing I’m gonna address this from Mr. Gaudioso, address your letter. We’ll go according to the numbers, the new information that you’ve submitted. All right, that’s the letter from you. And you’ve submitted some new information. First one is the application form. I see that you changed the application form, amended it to read a 140 foot monopole tower that may be painted brown.

Robert Gaudioso: Correct.

Chairman Robert Dee: You mean you’re going to paint it brown? Is that what you’re saying there?

Robert Gaudioso: In the alternative to the 180 foot tower we would propose a 140 foot tower and we’re offering also a brown color as shown in the visual renderings.

Chairman Robert Dee: Okay. number two you have Supplement Alternative Site Analysis submitted herein is to supplement alternative site analysis from Vincent Xavier dated November 27th, 2017 that includes confirmation that any extension to the tower at McKee’s Corners would require a setback and height variances and will be closer to the residents than the proposed site at 50 Vineyard Road. The board is well aware that you’re going to need an extension to the tower. We spoke, we’ve been speaking about this probably six months now, you know, that you would need a variance of height and probably a setback, and the board is certainly open to, open to that if that would mean that you wouldn’t have to put a tower at Vineyard Road. The other thing is that it’d be closer to the residents. That tower was installed in 1998, so I think most of the homes up there were built or bought after that and they were purchased or built with the people buying them knowing that the tower is there, where this other tower, I think the people in this area built or bought those homes never expecting to see a tower, so there’s a difference here.

Robert Gaudioso: I don’t think that’s the case but I think...

Chairman Robert Dee: Who don’t you think that’s the case?
Robert Gaudioso: I think the point of the alt, well, number one, the resolution of approval which was passed by a bare majority, and actually Mr. Cestone voted against it, that included a specific provision that limited the height of the tower to 100 feet. The height limit in that zone is 110 feet. What we've shown in our radio-frequency engineering, even up to 210 feet it still wouldn't resolve the gap in coverage for Verizon Wireless. Secondly, it would need both a height variance, at least one side yard setback variance, also a variance from not having road frontage, that's my understanding. Whereas the proposed facility, even at 180 feet, certainly at 140 feet, meets the height limit, meets all the setback requirements and does have road frontage.

Paula Clair: I’d like to just mention a couple of things. In terms of your refutation of the fact that there were no houses at McKeel’s Corner when the tower was built, the owner of the property testified last meeting and that was the case, that it was all empty lots at the time.

Robert Gaudioso: No, no that’s not the case.

Paula Clair: No?

Robert Gaudioso: Mrs. Myers is here now.

Paula Clair: Okay then I misunderstood. Okay and the other thing I want to mention is that, in terms of the McKeel's Corner being closer than the Vineyard Road site, the Badey & Watson survey which was done, you know in person, showed a distance of 350 feet when you measure by their legend from 60 Round Hill Road and something like 200 feet from some of the Rockwald houses.

Robert Gaudioso: That’s just not, that’s not correct. That is simply not correct.

Paula Clair: Well that's what the Badey & Watson survey says.

Robert Gaudioso: That is absolutely not correct.

Paula Clair: And you're referring to the Google map which is, you know, there's a dispute whether that is correct or the survey is correct. I think the survey is correct.

Robert Gaudioso: Well the, let me make this perfectly clear. The survey does not show there’s a house within two to three hundred feet from, and if you, can we pull the survey out right now and we could take a look at it but I could tell you, if you can show me on the survey where a house is within 200-300 feet on the Badey & Watson survey.

Chairman Robert Dee: Pull it out.

Robert Gaudioso: Okay.

Chairman Robert Dee: Let’s do that. Mr. Eldridge how close is your house to your property line to that tower, do you know?

Paul Eldridge: It’s, from the center of the tower to our property line is just about 200 feet.
Chairman Robert Dee: 200 feet.

Granite Frisenda: That’s the property line though, that’s not house.

Robert Gaudioso: Yeah. That’s the property line, that’s not the house.

Chairman Robert Dee: No. Excuse me. To the property line? Or to the house?

Paul Eldridge: To the property line.

Chairman Robert Dee: To your property line, okay. Well I think, before we go through all this, I think what she’s saying is the property line.

Robert Gaudioso: Well, then, the property line...

Chairman Robert Dee: Is that, am I correct? She's picking to the property line.

Paula Clair: Yeah.

Robert Gaudioso: That’s good. So, number one, we meet the property line setback.

Chairman Robert Dee: Right.

Robert Gaudioso: We meet the residential zone setback. In fact McKeel’s Corners does not and in fact McKeel’s Corners, we show, is approximately less than 150 feet...

Chairman Robert Dee: Yeah well let’s...you went back to that, you went back to the original. You referred to that July 6, 1998 and in the resolution one of the conditions was, under C “applicants shall construct a tower footprint in such a way as to avoid the need of future construction should the height of the tower ever be increased due to the colocation of any cellular carrier.”

Robert Gaudioso: And it conflicts with another specific requirement that it shall not be raised in height, that it shall be limited to 100 feet.

Chairman Robert Dee: Right, which you would need a variance for.

Robert Gaudioso: More importantly though, the code provision is 110 feet in height.

Chairman Robert Dee: Which you need a variance for, which this board is open to. Okay let me put it this way. Is there any other thing to prevent you from doing that, you know, if we gave you the height variance and what other variance you might need, is there anything else that would prevent you from doing that?

Robert Gaudioso: Sure. Number one, it doesn't work from a radio frequency standpoint. Number two...
Chairman Robert Dee: Okay.

Robert Gaudioso: Number two, if I may finish, number two, it's speculative to say that you're going to grant all those variances because there's not an application for those variances. Number three, the time frame of gaining those variances. Number four, obtaining permission from the property owner is purely speculative at this point, to be able to build a 200 plus foot tower at that location.

Chairman Robert Dee: Not 200 foot, okay. We have a RF engineer who's gonna say 190 would do it, so.

Robert Gaudioso: He's gonna say that?

Chairman Robert Dee: Yes he is.

Robert Gaudioso: Okay. So that's...

Chairman Robert Dee: I'm just informing you that.

Robert Gaudioso: I would love to know when those discussions happen because that's not, that's not what his report said in the record. So if there were ex parte discussions since then, that's fine but the matter or the fact is our expert testimony shows that even at 210 feet there's still a significant gap in service.

Chairman Robert Dee: You have experts and we have experts. That's the way it works. You understand that. Okay next. What do we have here. Number three, your supplement RF engineer. Submitted here is a supplement report and I guess you named a lot of legal cases in here. I guess what is the point, basically.

Robert Gaudioso: So the Supplemental RF report confirms three things. Number one, that the facility does provide personal wireless services, although we don't believe that that's necessarily relevant other than to the extent that the Telecommunications Act does apply to this application. That the hand-held call test is anecdotal and unreliable, and that's what I think the case law also supports, but nevertheless that the call test, at least the readings show that it is consistent with what the PierCon report showed and I believe that that is also supported by your RF engineer, that the hand-held call test methodology is unreliable. And finally, a short response to the Menkes report, dated November 28th, where Mr. Menkes says that, speculatively, that if the proposed tower in Nelsonville was not approved that there would be a gap on route 301 and he also goes on to say that it's uncertain in his opinion which gap is more important to Verizon and what the supplemental RF engineering report from PierCon showed was that the gap that was still left, even at 190 or 210 feet, on route 9 would still be a significant gap, would have far more impact on number of users up in that area including the fact that that area has a commercial location with approximately 36 buildings and numerous users in comparison to the small area on route 301, which only has five residential buildings and in fact that area is actually covered as Verizon showed in its maps with in-vehicle service. So again the area of in building coverage, which is what the basis of this application is partially based on, would not be satisfied in the area of route 9 to the north from a substantially larger non-compliant tower on a speculative piece of property at McKeel's.
Chairman Robert Dee: Okay. Number four. Oh, got a question?

Paula Clair: Yea I have a question.

Chairman Robert Dee: Sure. If anyone has a question down there just break in here okay because...

Paula Clair: Does Verizon own the cell tower at McKeel's Corner?

Robert Gaudioso: No we do not.

Paula Clair: Okay. Who owns it?

Robert Gaudioso: I believe it's a company Crown Castle.

Paula Clair: Alright.

Adam Rodd: Would they give permission to allow your client to pursue variances?

Robert Gaudioso: Well I think, I think number one it's not a matter of giving permission because a new tower would be required. That tower was not constructed to be doubled in height essentially. So it would require a new tower. And then the question is, would the new tower be adjacent to their property, inside their property, on Mrs. Myers property somewhere? I think that's pure speculation at this point.

Adam Rodd: Well in terms of their position on, to adopt your terminology, a new tower, would they object to that or they, would they be in line with an application to pursue variances at that location for a new tower?

Robert Gaudioso: I could not speak for them on that speculative basis.

Adam Rodd: Would you be able to provide that information to the board as to their position?

Robert Gaudioso: I am not sure if I could or I couldn't. It would, I don't know how they would respond to that question. I don't know whether they would respond or not respond and I'm not really sure where exactly you're talking about. Are you talking about a new tower inside their compound that they have secured rights for from Mrs. Myers or are you talking about on Mrs. Myers property as a competing tower? There's a lot of variables with respect to what you're requesting.

Adam Rodd: At the same location where McKeel's Corner is located, where the existing tower...

Robert Gaudioso: So the existing tower would have to come down.

Adam Rodd: Yeah I mean under that, I just wanted to understand your position because one of the things that you mentioned, in addition to it wouldn't give you the frequency or the coverage that you needed, which is a separate issue, you raised another issue about, well, I'm not sure that the owner of the property would go along with constructing a tower or increasing the height of a tower or seeking variances for a tower at that location, so that's...
Robert Gaudioso: I think what I said is that it's speculative and the record doesn't have any information in it with respect to whether a new tower could be placed there by way of the landlord's permission.

Adam Rodd: I'm just saying to the extent that the board needs that information. In other words, one of the requirements obviously and standards of this application are alternative sites, would you have access to construct/improve/change alternative sites. I think that's just a item of information that would be useful to the board.

Robert Gaudioso: I think what the code actually says is that, the standard for the alternative site is whether it's undesirable for a number of reasons and I use the word undesirable because that's actually the term and the criteria that the Code provides and that includes both technical or community impact issues, whether it's undesirable, and I think the record we've shown is that from a technical standpoint it doesn't work but clearly it meets the undesirable standard as set forth in your code. And we've also submitted additional information showing the different impacts from a 190 or 210 foot tower at that property, including the fact that it would require all those variances, is non-compliant, would be visible in fact from 30% more land area than the proposed site at 140 feet and we've documented all that in our last submission. So I don't think that, I don't think the code requirement is that we have to prove it doesn't work, I think the code requirement is we have to show that it's undesirable and I think we've met that standard.

Adam Rodd: I think maybe where we're speaking past each other. I understand that there are other issues that perhaps the from an engineering standpoint there has to be an agreement to disagree. I think what I was focusing on, you mentioned that it's speculative as to whether the owner of the property where the current tower at McKeel's is located would or would not support a change/modification/reconstruction, however you want to term it. I'm simply stating that that information would be important to the board and I think it's relevant to the criteria that's built in to the code to have that information. So we're just asking that...

Robert Gaudioso: I mean the landowners here tonight and she can certainly speak about whether she would want a 190 foot or 210 foot or some other height tower on the property. I mean I certainly have no objection to her providing that information to the board and I haven't spoken to her in advance about that but...

Adam Rodd: So, as I understand it, your client is, has a lease relationship at the tower at McKeel's.

Robert Gaudioso: Correct.

Adam Rodd: But the owner is here.

Robert Gaudioso: The owner of the property is here.

Adam Rodd: Okay. Who you're leasing it from. Who, at the McKeel's location.

Robert Gaudioso: Who owns the underlying parcel at McKeel's. Mrs. Myers is, I believe, in the back of the room.
Adam Rodd: Okay.

Chairman Robert Dee: One thing. You said that the tower would have to come down. I thought, by prior testimony, I thought we said that the tower, if you put up the Vineyard Road Tower, that tower would have to come down because.

Robert Gaudioso: No, I said Verizon would decommission its facility on that tower.

Chairman Robert Dee: All right. So (inaudible) has to be come down.

Robert Gaudioso: I didn't say that. I did not say that.

Vincent Cestone: That means that they would come off but the other ones might stay on.

Chairman Robert Dee: Oh just the one company is going to come off.

Robert Gaudioso: Verizon would go on the new proposed tower, I can't speak for anyone else.

Vincent Cestone: So that means that both towers would still be there.

Chairman Robert Dee: Oh so and then the other towers wouldn't have a problem with the signal being because this one's so close? That was, my understanding was the signal was the problem.

Robert Gaudioso: The signal for Verizon is the problem. I can't speak for the other carriers. Verizon would decommission from McKeel's though, as a condition of this approval.

Chairman Robert Dee: Okay. All right next one is property value.

Andy Galler: Can I ask a few questions?

Chairman Robert Dee: Sure, go ahead.

Andy Galler: They're unrelated but, you know, I think they should be brought up. In terms of, you know as I understand the law, personal cellular service, a Town cannot deny having adequate coverage of personal cellular service but you're talking about in building coverage. Does that, is that covered under that?

Robert Gaudioso: Yes.

Andy Galler: And that's really a question for, I think, our attorney and our cellular expert. And my second question, as I said they're unrelated but I'm sort of curious too, on all the paperwork we talked about homeland Tower's LLC and New York SMSA limited partnership doing business as Verizon Wireless, what is that entity? I mean what is that entity I mean are we dealing with Verizon or is it Homeland Towers?

Robert Gaudioso: You have both applicants as co-applicants.
Andy Galler: No no but who is the actual company that we're dealing with?

Robert Gaudioso: You're dealing with both companies, both companies are applicants on the application.

Andy Galler: So you're telling me this is a form of a partnership.

Robert Gaudioso: No I'm not telling you that. I'm telling you that both applicants are co-applicants. Homeland Towers is proposing the tower and Verizon Wireless is proposing the wireless facility on the tower. The tower itself is a personal wireless service facility as is the portion of the antennas, the equipment, the cables, that's operated by Verizon Wireless.

Andy Galler: Okay and is the normal term ‘doing business as’?

Robert Gaudioso: For whom?

Andy Galler: The way this is proposed doing, I just find the wording very strange.

Robert Gaudioso: New York SMSA limited partnership is the entity and they do business as Verizon Wireless. That's correct.

Paula Clair: Is Homeland Towers subsidiary of Verizon Wireless?

Robert Gaudioso: No they're unrelated, they're wholly unrelated. They have no relationship, no corporate relationship. As far as in building coverage the courts have clearly said that in building coverage is a gap in service and in addition we've also shown that there is also, other than in building gaps in service particularly at the 2100 megahertz band.

Chairman Robert Dee: Does Homeland Towers hold the lease to McKeel’s?

Robert Gaudioso: Correct.

Chairman Robert Dee: Okay.

Robert Gaudioso: No not to McKeel’s, I'm sorry to Vineyard Road.

Chairman Robert Dee: Who holds the lease to McKeel’s? So Homeland Towers does not hold the lease.

Robert Gaudioso: Homeland Towers has nothing to do with McKeel’s.

Chairman Robert Dee: Homeland Towers has nothing to do with it.

Robert Gaudioso: Correct.

Chairman Robert Dee: Okay. Four, property values. You submitted a revised submission based on comments raised by the Zoning Board including an additional tower in Philipstown. McKeel’s Corners.
I've relied upon a Lane appraisals report. The only thing I read here these property value appraisal report. The only thing I don't see is, it doesn't explain, to me anyway as a layperson reading it, it's sales, you know it tells you what the house is sold for but doesn't tell you if, whether they actually lost value or not. Do you understand what I'm saying?

Robert Gaudioso: Yeah, I don't agree with that but...

Chairman Robert Dee: Then explain it to me, how it shows that.

Robert Gaudioso: So what it shows, it shows what houses sell for that are within proximity of visibility of a tower and not within proximity or visibility of a tower and it compares them on similar attributes and shows that the sale price is not affected by the visibility or non-visibility of the tower.

Paula Clair: What similar attributes does it show, other than...

Robert Gaudioso: It looks at square footage, it looks at number of bedrooms. He includes in the report a number of different items to try and compare houses. Obviously very rarely do you have any two houses that are identical but what he does is he looks at and compares the houses in different metrics, which is part of the appraisal methodology.

Paula Clair: I don't see anything about number of bedrooms here and...

Robert Gaudioso: Generally it's square footage in most of the items.

Paula Clair: Yes, a square footage but it doesn't even give an idea of how much property the house has. So a house with a large amount of property is gonna sell for higher than a house with a lesser amount of property, so that's not a very complete picture of the value of the house.

Robert Gaudioso: Yeah, you know this is the same methodology as I mentioned was actually cited in the approval resolution approving the McKeel's site, so, it's a methodology that's been used in many different applications and it's an accepted methodology.

Paula Clair: It still isn't complete.

Robert Gaudioso: I understand your point. The expert did you know, did rely on that methodology.

Paula Clair: And also in addition to that, the properties that you added to this report on Steuben Road and Sprout Brook Road, you said that those are, that had, they had a view of the tower. They don't have a view of the tower or even if they do it's so far away. If maybe some of them might be able to see it but I don't think any of them could see it, frankly, because I live in that neighborhood, and it's so far away as to be unimportant in valuation. You didn't...

Robert Gaudioso: And how far away do you think it is?

Vincent Cestone: A thousand yards, or more.

Robert Gaudioso: A thousand yards.
Chairman Robert Dee: I would say the houses on, that you mention on Albany Post Road are probably a good mile and a half.

Vincent Cestone: And the property she's talking about I physically went and stood on the lawn, turned 360 degrees with no leaves, I didn't see any tower. So...

Robert Gaudioso: And which property was that?

Vincent Cestone: That comp, and if all the other comps are like that, it brings the whole report into question.

Robert Gaudioso: I'm sorry which property was that?

Vincent Cestone: The one on Sprout Brook Road. And I know where the cell towers are. There's one up at HUD, there's the stone house, there's the one in Cortland, and then there's the one up on the water tower at Graymoor. I couldn't see any of them, and I know where they are.

Chairman Robert Dee: Alright. Any other questions? Alright the next one is Visual Resource Assessment you submitted from Saratoga Associates, a response to the comments from the public analyzed the McKeel's Corner site compared to the proposed 50 Vineyard Road by site by way of view shed mapping. Want to explain a little more about that?

Robert Gaudioso: So what Saratoga did is it looked at the area based on the view shed map of what would be visible by acres comparing the 140 tower at Vineyard Road and the proposed extension at McKeel's and it showed that Vineyard Road would actually be 30% less land area than extending the McKeel's site. It also included a number of visual renderings showing the visibility of the McKeel's site as it would be extended and it actually showed that from Round Hill Road the McKeel's site would actually be much more visible whereas at 140 feet the proposed Vineyard Road site would be below the tree line.

Chairman Robert Dee: Okay. Our next one is a County planning referral.

Andy Galler: Can I interrupt please?

Chairman Robert Dee: Oh sure. I'm sorry go ahead, any time, no, please.

Andy Galler: I'm sorry. In terms of the visual impact, I mean, our code talks about that, we can ask, and I think we did at the last meeting, visual impact from public lands and public trails, which really isn't done. All you're doing is showing the monstrosity that was built in the 70s as a microwave tower, which unfortunately does exist but I don't think it behooves us to add anything more that's going to necessarily ruin that view-shed and so, this to me is incomplete.

Robert Gaudioso: I think the point of that was that there's already, there's already that impact if you believe that's an impact from as you call it the monstrosity that's in the park and already there. If there was a specific location and when we did the multiple balloon tests we specifically asked the board for specific locations to analyze and just to say to analyze from you know trails without being very specific
I think is an impossible task for the applicant to perform an analysis. Now if there's a particular place that you thought was of specific concern throughout the process, I'm sure we would have certainly looked at that and as I mentioned before, we've had at least two different balloon tests in this project. But the fact of the matter is, is that the Fahnestock Tower is there, it is an existing condition and if there is visibility from any park in that area it would obviously, you know in most cases include that Fahnestock Tower which is not even close to what's being proposed in this particular application, particularly at the 140 foot height.

**Andy Galler:** But it's apples and oranges, you know, and if you were doing due diligence you would look at, basically, Fahnestock lands and have picked a couple hypothetical's and then given us something to look at. That was not done.

**Robert Gaudioso:** Well, I think just to say hypothetical’s (Crosstalk – Inaudible)

**Andy Galler:** It was the path of sort of least resistance that we have this big tower that's in the next Township, that's there. But adding other towers doesn't necessarily, you know, help.

**Vincent Cestone:** (Inaudible)

**Andy Galler:** Right, exactly. This is exactly the cliché.

**Robert Gaudioso:** Well it does, it does set the existing condition though it's, particularly in those particular areas.

**Chairman Robert Dee:** Any more questions on that? County Planning referral. Submitted here there's an email from town engineer dated October 20th confirming that the County Planning Department comments appear to have been prepared without the review of the RF report previously submitted. I'll read that email. The email is from Ron gainer to me and to our secretary Tara and CC’d to you Mr. Gaudioso. Just an FYI based upon a recent letter received from the PC Planning Department, I guess the letter to me is the 239 right? Yeah okay. On the above matter it appeared that they did not review the RF report submitted by the applicant which was originally transmitted to the county in the earlier referral package sent. As a result I personally spoke with Barbara Barosa, city planner. She's the County Planner, Putnam County, this morning and have dropped off another copy of the report for her information and comment. Hopefully this should address the concerns raised in our prior 239 response letter that we received by the ZBA. I guess my first question is why are you submitting this?

**Robert Gaudioso:** Well number one the Putnam County Planning Department letter recommended a modification and it recommended two items to be submitted, both of which had previously submitted. And at the last meeting the comment was, was that Putnam County was against the project or something along those lines and I had specifically mentioned that it appeared that the County Planning Department did not have the full application or at least did not review it prior to issuing its recommendation and the comment was you weren't aware of that, of that situation and I specifically mentioned that there was an email from Mr. Gainer pointing out that situation and that I would submit it, so I submitted the email showing that it has been in front of the Planning Commission and now they do at least have copies of the reports which they had recommended in the modification referral to be submitted when in fact they had previously been submitted.
Chairman Robert Dee: Right but I still have, the only thing I have from the county is not, no approval.

Robert Gaudioso: Well no what you have is you have a recommended modification. And

Chairman Robert Dee: Yeah, there's no approval.

Robert Gaudioso: ...and it says...it doesn't have to be an approval. And what it says, it says that...

Chairman Robert Dee: The county does not to approve it is what you’re saying.

Robert Gaudioso: Correct.

Chairman Robert Dee: Okay.

Robert Gaudioso: And it says that it recommends that certain information be in the record, which is in the record and has been in the record and as Mr. Gainer’s email says, he notes it's in the record and he's submitted it again to her just to make sure she had a copy.

Chairman Robert Dee: Well it also recommends about Nelsonville tower and so on, so forth.

Robert Gaudioso: Which again was in, which was part of the record.

Chairman Robert Dee: Part of the record, the applicants are verified that no other area carriers or tall structures, including fire towers, exist for colocation to fill any gaps in coverage. There's (inaudible) applicant co-locate and/or modify existing tower at McKeel's corners to avoid the construction of one or both of the proposed new towers, thereby avoiding the potential significant visual, historic, and environmental impacts to the new sites. So the board may wish to encourage further vetting of alternate sites to the proposed location. Okay. Let’s see, where are we? Landscape plan.

Robert Gaudioso: Yes.

Chairman Robert Dee: Okay. Want to explain that to us please?

Robert Gaudioso: Yes, it was requested last month by Mr. Cestone for landscaping so we included a landscaping plan; a mix of spruces, both white spruces and blue spruces, viburnums and rhododendrons, particularly along the edge that abuts the residential district.

Chairman Robert Dee: Okay how high are these trees? How high?

Robert Gaudioso: So the proposed 5 white spruces and the proposed 4 blue spruces are 8-10 feet of planting. The viburnum and the rhododendrons are five to six feet of planting.

Chairman Robert Dee: Any questions on that?

Vincent Cestone: What about the actual tower itself? You have plantings, but what about the tower itself? How do you propose to camouflage that?
Robert Gaudioso: Well, what we've shown is the brown monopole and being below the tree line, being below the ridge in the photographs, we've proposed a brown color to help it blend in. The code allows for you is, if you wanted to recommend as part of the approval some other type of finish or some type other type of finish, that would certainly be something we could, we could consider.

Vincent Cestone: And did you say that you would camouflage it as a tree?

Robert Gaudioso: We didn't offer that but if the board required that as a condition of approval it would, it would be something we would certainly consider.

Chairman Robert Dee: I've seen those towers, they don't look like trees to me.

Vincent Cestone: But it's better than a big brown pole.

Chairman Robert Dee: Alright thank you Mr. Gaudioso.

Robert Gaudioso: Mr. chairman with with your indulgence I would like to show the board and the public some of the renderings. We have a short PowerPoint; we made copies for the board in case you can't see it. What it basically does is it pulls out some of the photographs from the materials you already have but I know it's voluminous and we wanted to try and distill it, so with your permission I just would like to have Mr. Vincent Xavier run through the PowerPoint and what I'll do is I'll hand out a copy of each of the slides.

Chairman Robert Dee: Sure.

Vincent Xavier: Thank You. Chairman, members of the board, my name's Vincent Xavier. I'm the regional manager of Homeland Towers. As Rob indicated, what we tried to do is take some of the most, viewpoints from the closest homes and put them on the PowerPoint so that people could actually have a chance to see them. Matt if you can?

Manny Vicente: It's Manny Vicente. I'm president of Homeland Towers. I just want to tell you why we're presenting this because, we worked hard to reduce the height of the tower from 180 feet to 140 feet and I think it's important for us to...there is a difference, there is a big difference in doing that and we wanted to show that, specifically from the closest homes.

Vincent Xavier: And as I said at the beginning, none of the photos you're gonna see here are new; everything has been in previous submissions from Saratoga Associates and in the PowerPoint you'll see the actual source of the photo at the bottom of each one. It may be hard for the public to see on the overhead projector here but this is a shot from the intersection of 301 and route 9 looking to the east. The image on the left is from our original photo sim. submission which depicted a 180 foot monopole. Now I'm not sure if you can see the mouse there but you'll be able to see that at 180 feet...I don't know if one more will do it but. I can see it from here. I have pretty bad eyes but the image on the left, like I said, is a 180 foot monopole and as you can see, from this intersection, you can see the tower peaking above the ridge line. The image on the right is from the same location and you can neither see the balloon, which was floated at 160 feet and then there's an arrow showing where the tower, top of the tower would be at 140 feet. As you can see from this image or from this location, the tower will appear
below the ridge line and this is why we proposed a brown monopole because we think it would blend in well. Next shot. This is an image from the day of the 160 foot balloon float from 60 Roundhill Road from the elevated back deck in his yard. This is from 60 Roundhill Road, the Gorevic property.

Chairman Robert Dee: What height?

Vincent Xavier: The balloon was floated at 160.

Chairman Robert Dee: I thought it was 180, the first one.

Vincent Xavier: No no, that was the very original submission. I showed you the first set in order to document the difference between the 180 and the work we've done over the past six months to try to get as low as humanly possible.

Chairman Robert Dee: Okay.

Vincent Xavier: The second balloon float was floated at 160; we originally proposed 150 but at the advice of your consultant we flew it 10 feet higher than even we were proposing at the time because at that time we were trying to propose a 150 foot tower. Subsequently we worked to get it down as low as possible and you'll see the first arrow on the top shows where the 160 foot balloon was visible and then you'll see the second arrow below that shows where the top of the tower would be it is a 140 foot tower and as you can see from his backyard it would be well screened with the trees.

Chairman Robert Dee: Okay this is from 60 Roundhill. Correct?

Vincent Xavier: That's 60 Roundhill. From your backyard, yes.

Roger Gorevic: You come there now and I'll show you, you'll see that bloody tower so far down you won't...

Chairman Robert Dee: Okay. Alright, let's...

Vincent Xavier: The next...

Roger Gorevic: Don't like my attitude too bad.

Vincent Xavier: The next shot, because there was, there was discussion of the McKeel's Corner site we asked Saratoga to provide simulations. This is, again, a shot from 60 Roundhill showing on the right the language and the yellow arrow indicates where the tower would be at 140 feet and on the left it shows the top of what potentially would be a 210 foot tower at McKeel's. As you can see, even though it's not feasible at that height, if it were to be increased at 210, you would actually see that tower now from 60 Roundhill with a flashing light at the top.

Chairman Robert Dee: Talking about McKeel's is one thing, our RF engineer is talking about...

Vincent Xavier: Well that hasn't been on the record yet...
Chairman Robert Dee: (Inaudible) Well it’s gonna be on the record so I’m just trying to give you a heads up.

Vincent Xavier: Well we show 210 because we analyzed it up to 210 to show that even up to 210 it doesn't work from an RF perspective and that’s why we stopped it there.

Chairman Robert Dee: Okay.

Vincent Xavier: Next one Matt. This next one, I’m sorry. The next one, this is from the report from Saratoga dated November 13th, this is from 100 Rockwald Road. Viewpoint 18, as you can see, the top arrow is pointing to, I'll wait for the phone. We want them to work. Yeah so, so as you can see the arrow at this point at the top is where the 160 foot balloon was floated and the arrow below shows where the top of the tower would be at 140 feet. So again from 100 Rockwald, it’s well screened through the trees.

Chairman Robert Dee: I'm gonna give the, of course you understand, I’m gonna to give the neighbors who live there a chance to speak too on this.

Vincent Xavier: By all means. I think everybody chance to speak.

Chairman Robert Dee: Sure.

Vincent Xavier: But that was an actual photo from the backyard of 100 Rockwald.

Chairman Robert Dee: Okay.

Vincent Xavier: The next one, this is from the backyard, on the, from the back deck of 43 Rockwald and as you can see again that the arrow at the top shows where the 160 foot balloon was. The second arrow and subsequent simulation shows the potential view from this backyard at 140 foot tower, simulating a brown monopole, as you can see again, pretty well screened by the trees.

Chairman Robert Dee: I see the red balloon on top.

Vincent Xavier: Yes.

Chairman Robert Dee: Is there actually the tower underneath it?

Vincent Xavier: There is a tower underneath it. The second arrow…

Chairman Robert Dee: How was it…

Vincent Xavier: How is it simulated?

Chairman Robert Dee: Yeah how is it blocked?

Vincent Xavier: Like I said it’s screened. I said it was screened by trees.
Chairman Robert Dee: Oh.

Vincent Xavier: Well there's a difference between a screen and having a direct view.

Chairman Robert Dee: Actually seeing it.

Vincent Xavier: ...in a direct view. I know you're being...

Chairman Robert Dee: Well no, I can't see it that's why I'm questioning you.

Vincent Xavier: Yes, the towers are not invisible. We're doing our best to minimize it and to decrease the height to minimize.

Chairman Robert Dee: Okay, right, that's all I ask for.

Vincent Xavier: That's it. I'm not, we simulated it there to show that you could actually see it and yes, you can see it, but it is screened by several trees.

Chairman Robert Dee: Thank you.

Vincent Xavier: Thank you.

Chairman Robert Dee: Next one.

Vincent Xavier: Next shot please, and this last one. This last one, this is from 24 White rocks Road. Again, you can, you could just barely see the balloon through the trees there and again, the top arrow is showing where the balloon was at 160; the second arrow is showing where the top of the tower would be at 140.

Manny Vicente: If you wouldn't mind Chairman, I just wanted, I hear some of the comments I've been to a few of the beatings and I just want to make sure people understand, we take these visual analysis and study seriously. Saratoga is one of the best in the business and it is not photoshop. This is done properly with the right methodology. We floated the balloon at 180, we then floated it at 160. We have now proposed a 140-foot tower and what we're trying to do is we're trying to mitigate the views and I think we've done a fairly good job of doing that and I think we by lowering the tower to the minimum that's necessary, I think we've improved a lot of the views that people have from them homes. But, one of the things I want to make sure people understand this isn't a Photoshop program you, that we do it in the office. This is done by Saratoga, a preeminent visual analysis of a company in New York State, and for that matter the country. So it isn't photoshopped and it isn't just placing something on, on a map, and we take that seriously. It's a great expense and work that we, we do this and we've done it a few times now to try and give the board all the information they need to make a decision.

(Inaudible)

Manny Vicente: Oh no, I just hear the comments...

Chairman Robert Dee: Oh, okay, sure.
Vincent Cestone: All from a considerable distance, distance away. What would have been useful for me is to see what the neighbors in Vineyard who basically have this tower in their neighbor's backyard is look, are looking at.

Robert Gaudioso: Which location...we have a location right from Vineyard Road in both visual analysis, in the original visual analysis, in the updated visual analysis; it's literally right there on Vineyard Road.

Vincent Cestone: Ill have to go into my notes and look but I can tell you that.

Robert Gaudioso: It's, it's there. It's in the, it's in the visual report plus we've also taken photos.

Vincent Cestone: And they're all from a considerable distance.

Robert Gaudioso: No they're not there's one there, that's not correct. There's one directly on...

Vincent Cestone: And I disagree.

Robert Gaudioso: ...Vineyard Road.

Vincent Cestone: There’s a lot of distance here and it's not really showing what the neighbors have to look at.

Robert Gaudioso: Well I don’t think that's correct. We specifically took photographs from the neighbors yards at the request of the neighbors and that's what those photographs were, specifically from those, from those properties.

Vincent Cestone: You took pictures of neighbors yards but you didn't take it from the neighbors who border the board of the property.

Robert Gaudioso: Yes we did. In fact we did. That's, that's Roundhill Road and Rockwald and, and White Rocks; those are exactly the photographs that we just showed, those are the exact locations.

Chairman Robert Dee: Yes? Not yet, no. It's in order. Next I'm gonna call Mr. Campanelli.

Andrew Campanelli: Good evening. I have no table here, okay. My name is Andrew Campanelli, I am an attorney. I represent seven or eight families from the area who are opposed to the application. I handle quite a few of these and I'd like to go through some of the issues raised by the applicant in the latter submissions. My first request to all board members, if at any time you have any questions about anything about this application or the Telecommunications Act please ask me. First I'd like to address an issue that was raised by the attorney as to the question of whether or not the alleged gap in service, which I'll get to in a minute, might somehow be remedied by amending or, or changing the existing facility at the other location, which is owned by Crown Castle. Yes, that facility can be changed. The real problem is not that there is any difficulty in changing it but the difficulty is that Crown Castle owns that facility and the applicant here is Homeland Towers, each of which, neither of which provide personal wireless services. They are what we call site developers; these are companies that don't
provide any personal wireless services. What they do is, they build facilities and lease space on their
demands to companies that do provide personal wireless services and Verizon is a customer of both of
their. And ironically Mr. Gaudioso represents both companies and I know this because I'm personally
representing...

Robert Gaudioso: Mr. Chairman, I, this has nothing to do with me...

CROSSTALK – Inaudible

Chairman Robert Dee: When you were talking, he didn't interrupt...

Robert Gaudioso: It's my right to object.

Chairman Robert Dee: And it's my right to ask you please sit down. Please sit down.

Andrew Campanelli: I'm not attacking this gentleman personally. I happen to know he's a fine
attorney.

Chairman Robert Dee: I'm not going to take interruptions from you or him or anybody else, it's as
simple as that. There are things you can handle later on down the road in court. Go ahead.

Andrew Campanelli: The problem is, Homeland Towers is looking to build this facility not to provide
personal wireless services but to make money. Crown Castle is in the business of making money. The
problem
facing here, and asking Mr. Gaudioso to inquire of his other client, is that he would have a conflict of
interest because if Crown Castle were to accept a deal with Verizon to increase the height of the tower,
which they likely can do under the terms of their written lease, that means Homeland Towers tower is
no longer necessary, it's not even necessary now, but it would be no longer necessary, so the client he's
representing tonight would suffer if he were to go and make the request that you asked of him. And
that's why that's never going to happen. So that's number one. Now I heard some excellent questions
from the board regarding the Lane Appraisal and I respectfully submit to the board that the Lane
Appraisal can be dismissed really easily by the board because it's what I call nonsense. My favorite line
in this appraisal, and Lane Appraisal of course has done many of these in connection with these
applications and surprise, surprise, they never ever find that a cell tower reduces property value, it
doesn't matter if it's four feet away, it never reduces anything. In fact, on the second page it says quote
"there is no diminution in the value of homes with a view of a wireless telecommunications facility.” I
respectfully submit to the members of the board, at least some of whom I assume are homeowners, you
can use common sense. Would you rather buy a home that had a cell tower looming over it or one that
didn't. Stands for itself. Now, this report provides you no insight, and the reason is, as was quite well
picked out by your board member, you have no way of knowing the facts and circumstances under
which these homes were sold. You don't know what their value is. They might have sold for much more
if the cell tower wasn't there, whatever the price it was. They may have had 10 bedrooms and a jacuzzi,
you have no way of knowing this. You also have no visual images, so they can't show you that they are
similarly situated to the homes here. The homes here are going to see this facility if it's built. As you sit
here today, they've provided you nothing that shows you there would be similar views here, so this
report isn't worth the paper it's written on. By contrast, you have written letters from professional real
estate brokers. And in those professional real estate brokers letters they identify themselves as licensed
professionals, and they're not merely licensed professionals who are familiar with real estate markets in general, they are acutely acquainted with this specific real estate market; they know this town. They know why people buy homes here, among other reasons, for the pristine view and the night skyline. And they say that in their professional opinion, it will reduce the value of the nearby homes which is precisely the type of adverse impact that you enacted the special use permit provision in your code to prevent in the first place. It's the whole purpose you have this code and this type of evidence is to be weighed equally with any appraisal as accord with the federal courts Omni Point case. Actually, it's in my brief, its the OmniPoint case. And federal, the federal judge in the Second Circuit Court of Appeals ruled that letters of this type from professional real estate brokers are valid evidence which can and should be considered by the board.

CROSSTALK – Inaudible

Chairman Robert Dee: Take your time. We’re not going anywhere.

Adam Rodd: When you refer to your submission, your brief, is it the memorandum in opposition?

Andrew Campanelli: It is. It is. At the time we prepared and submitted that to the board we did not have these supplemental submissions from the applicant, which is why I'm constrained to address these new submissions this evening. Now with regard to the Saratoga Associates submission on the previous submission, I'm somewhat confused because I, I thought on the original submission they did not include any images taken from the properties of the actual homes who would be most adversely affected and that renders that completely null. When an applicant submits an aesthetic impact analysis, the sole purpose for which it's being submitted to you is supposed to be to give the board an accurate assessment of the actual adverse aesthetic impact that this thing is going to inflict on the nearby homes. Not surprisingly, most applicants choose to omit from the analysis, images taken from the homes which will suffer the most dramatic adverse aesthetic impacts and I believe in the initial submission, wasn't in there. But now they claim, well we've got four new ones in here it's near homes. I submit to the board, you can listen to your homeowners, especially Mr. Jordan, and determine whether or not the images which have now been submitted, the new images, have been strategically chosen to be taken from locations which minimize the actual adverse impact on the home. Mr. Jordan, so my understanding is it's gonna loom over him every time he sits on his back porch or looks out his back, it's gonna be looming over him and his family and that's specifically the type of adverse aesthetic impact which is perfectly logical and legal grounds to deny the application. Oh boy, the RF reports. I like to refer to them as fiction. You know I've been doing this for many, many years and typically when a wireless company has a significant gap in service, it is something that is extremely easy and extremely cheap to prove. For example, if you have a significant gap in service one way of proving that you have a gap in service, an easy one, is if it's Verizon, and before I go any further, for the record Verizon’s own website says it has absolutely no gaps in the area in the precise area where this applicant says it has a gap, and you have seen zero evidence, zero direct evidence from Verizon saying it has a gap in any type of service whatsoever. Nonetheless, they did a drive test, and a drive test is great, it's cheap and it's easy. You take a telephone, you put on a recording device and you drive through an area and the device records the signal strength every few milliseconds and so what happens is after a one hour drive you've got a huge amount of information, you have all the actual signal strengths and that usually is a valid record to show you what the actual signal strength is and they're not claiming that that signal strength is insufficient to maintain calls or that there's a significant gap in coverage. What they're doing is what I call the bait and switch. I've actually lectured before the New York State Conference of Mayors on this.
What they do is, they say no we have sufficient strength outside but our gap is in in building coverage. What does that mean? Well we take the actual signal strength and we multiply it by an arbitrary figure to figure out the reduction in signal strength we'll lose when the signal passes through the materials of which buildings are made. And I submit to you in every single case I've ever come across when they make this representation the truth happens to be the opposite. If they had an actual gap in in building coverage, all they have to do is go inside the building and hold up the phone and it'll show you the actual signal strength. In every single case I've ever handled where they did not do that, there was no gap in service. In fact, and again I apologize I didn't see their supplemental information until yesterday. This is a transcript from a case I handled in 2001 and it was T-Mobile before the Town of Hempstead. They did the exact same presentation you have before you now. And what they did is they did a single strength test and they drove through and then they said the problem is we have a gap in in building coverage and then homeowner after homeowner got up and said we've been in every single building and when we got in every single building we were able to make, initiate, maintain and conclude calls with no loss in service but the best part is, after the engineer got up, their RF engineer got up and testified on the record, and this is a matter of public record. I'm gonna make you a copy and get it to you, the RF engineer was asked by the way did you go visit any of the sites? Yeah. Did you go inside any buildings? Yeah. Did you make any calls? Oh, yeah my wife called me. So after he testified that there was absolutely no service inside the building, he himself testified that he received a call.

Chairman Robert Dee: Will you make that available to our attorney?

Andrew Campanelli: I am. Now not surprisingly Mr. Gaudioso and I have had that argument more than once and Mr. Gaudioso likes to refer this evidence as anecdotal evidence. And I am eager at an opportunity to argue this case in federal court. I almost did it in Rhode Island on Thursday, I was in federal court, didn't get that chance though. What he says is, oh it's not reliable, it's anecdotal. I submit to you that's the it's not raining outside argument and I want to create a record here and I'll explain why later but, the it's not raining argument is like this. Suppose it was raining outside and everybody came in and we're all wet and we're out there raining and you came in and somebody got up and said it's raining outside. The applicant's gonna get up there and say, oh no we've done computer modeling and in our computer modeling we see that it only rains 26 days a year here and it's already rained 26 days so our computer modeling proves beyond a shadow of a doubt it's not raining outside and if somebody says it is, it's anecdotal. The existence or absence of a significant gap in personal wireless service is not voodoo, it's very simple. If you are a customer receiving personal wireless services and you are able to initiate, maintain, and conclude a telephone call, an email, a text, there is no gap in personal wireless services. Not only would they have to show there's a gap but they'd have to show there's a significant gap. It is insufficient to simply say, well we're doing computer modeling and it's going to show there's a gap. It doesn't work that way. There is absolutely no reason why they haven't produced one shred of evidence from Verizon, to show that contrary to what Verizon has represented to the world on the internet that it has no gap in coverage, this applicant has provided zero evidence of a gap, none. And there's no, and they've offered you no reason to tell you why they haven't. Nor have they done any testing in a single building anywhere in the area they're claiming they have this gap, none. So they have no evidence before you, nor have they provided you any reason why they really can't use alternative sites. Typically, the reason they don't want to choose alternative sites is money and nothing else. Now why is it important to discuss alternate sites and gap? It is very important for this reason. In representing the homeowners, I'm going to ask you to deny this application but in doing so I need to be careful. I want to make sure you deny it for a legally permissible reason and you do it the right way. It has to be on a written record. In the record you have to give the reasons for your denial and you also
must cite the evidence you relied upon in arriving at your decision because if you don't do that, even if you do it for the right reason and you make a bad record, I assure you the applicant would have no problem marching into federal court and getting a federal judge to order you to give the permit even if it fails to comply with your code and this application clearly does. So it's important that you understand you have to deny it for a valid reason, you have to give a written decision, cite the reasons in your decision and refer to the evidence that was placed before you during the hearing. If you do all of those things, and you deny the application, it reduces the likelihood that someone might file a lawsuit against the town. And by the way, there's so many times I hear the threats of the lawsuit; threats of lawsuits by applicants under the federal Telecommunications Act of 1996 are hollow and the reason is, even if you make a mistake and they sue you, they don't get damages and they don't get attorneys fees. So when they try to intimidate you and they bring in a stenographer who writes stuff down, it's meaningless. It costs virtually nothing to fight one of these things, just so everybody knows. Does anybody have any questions about anything so far?

**Chairman Robert Dee:** There's a lot of evidence there, you know, that you presented so I'm sure my attorney, our attorney's gonna want time to look at this and so on and so forth, I mean, and as far as alternate sites, like we've given alternate sites as McKee's Corners to raising that, yeah. I guess the issue there is, I guess, Homeland Towers does not hold the lease there, right?

**Robert Gaudioso:** That's not the issue, the issue is that it doesn't work from an RF standpoint.

**Chairman Robert Dee:** Oh, no, okay right I got it. Okay. I didn't mean to direct my question to you, I'm sorry. Homeland Towers doesn't have any part of that.

**Andrew Campanelli:** No Crown Castle apparently is the lessor there who, again, is one of Mr. Gaudioso's clients.

**Vincent Cestone:** After the last meeting, I took it upon myself, my wife and I, on four separate days when the leaves were on the trees and now when the leaves are off the trees, we initiated a call on route 9 and drove all the ways to the Putnam Valley Tower and, and were able to maintain that call and on the way back we were able to stream a YouTube video the whole way, four times, and it's not like it was an aberration, I was using an iPhone 6 on the Verizon network. Is that proof?

**Andrew Campanelli:** My argument would be that that is direct evidence that there is no gap in coverage, however, federal courts have often sided with wireless companies saying, well that's you know that's one call but there's hundreds of thousands of calls. It is important that you have your RF engineer look at the actual evidence that has been submitted by the applicant, okay. This applicant would love nothing better than for you to either fail to make a determination that there's no gap in coverage or fail to make a determination that there were better, less intrusive alternative sites and here's why. Many of the cases I handle, again I was arguing a case in in Rhode Island, the federal court in Rhode Island on Thursday because the court, it was a case where a zoning board made the right decision but didn't articulate the reasons for their decision and they may lose the case, okay. If you don't decide whether or not there's a gap in coverage and you don't decide whether or not there are potential less intrusive sites available and you rule against this applicant, there's a very good chance this applicant will go to federal court and claim that you violated the Telecommunications Act and here's how. One of the constraints that the Telecommunications Act imposes upon local governments, it says, even if this application would violate your code, you must grant the application if, denying the
application would be tantamount to prohibiting personal wireless services. For an applicant to establish that denying this application would be tantamount to prohibiting personal wireless services they have to prove two things. They have to show one, they suffer from a significant gap in personal wireless services and number two, that the proposed installation is the least intrusive means of remedying that gap. If you make neither of those fact findings, the federal courts gonna make it for you. They're just going to assume. Applicants gonna go in and say, we produced evidence. RF engineers, here's our reports, there was no evidence to rebut that there was a gap in coverage, nor is there evidence to rebut the evidence we put in that the other site wouldn't work and if you get an RF engineer to look at it I guarantee you he's gonna be able to chew this up and spit it because it's just, it's nonsense, okay. There is no direct evidence of a gap and if you don't establish a gap, if you don't even know where the gap is, how large it is, how would you determine whether or not a potential installation is the least intrusive means of remedying that gap? There's no way of knowing it. And, the thing is, they've given you no reason why they're not giving you evidence from Verizon. And the reason probably is, because like Verizon says on its own website, there is no gap. If there was a gap Verizon might be the applicant here.

Adam Rodd: I know we haven't had the opportunity, you've submitted voluminous documents and I haven't had a chance to look at it. Do those documents contain any competent RF evidence speaking to the issue of whether there is or is not an established gap in coverage?

Andrew Campanelli: The problem is, it's like proving a negative, okay. Typically if you have a gap in service, and you test, you will get a finite geographic area that has a gap and then you can figure out how to remedy that gap. But when there is no gap, when the gap is something that is a specter created by a computer program into which you can add any variables you want, to come up with any number you want, it's impossible to say what is a good alternative location, it's impossible.

Paula Clair: If, as Vinnie did, going, driving the whole distance where they say that there's a gap, we found no gap and we also had Paul Eldridge and Joel Cooper who did the same thing and found also that there was a, no gap. So you're saying that that's not good enough evidence?

Andrew Campanelli: What they do is, they have to concede that there is no gap in coverage as far as the tests show. Now they say well, that's outdoor coverage or in-car coverage. That means you can send and receive a phone call if you're outside or in your car; oh but it's different in the building. See our gap is in in building coverage and even though there's plenty of signal strength to make a call from inside your car, when that signal passes through the materials of which a building is made, now there's no coverage.

Paula Clair: How do you evaluate that?

Andrew Campanelli: You could have an engineer go inside a building and measure the rate and measure the level and get hard evidence of what the actual signal strength is, and they could have done it. Why wouldn't they? If you've got all this money invested in this, you can imagine how much money Homeland Towers is spending on this application, if there was a legitimate gap in in building coverage, why wouldn't they simply walk inside a building and test the signal strength; it costs nothing. Why do you think they didn't?
Paula Clair: Right, so in order, in order to make it, to make a decision you're saying that we should have an engineer go into the buildings.

Andrew Campanelli: Certainly, you're certainly free to do so. The other thing is...

Paula Clair: If we deny it, we're not, we haven't proven our case...

Andrew Campanelli: You should make a determination as to whether or not there's a significant gap in coverage. The federal law, the Telecommunications Act does not define what is a significant gap in coverage and courts are loath to do it but they have and they said look, a gap in coverage is when you can't initiate, maintain, or conclude a phone call and even if there's one spot, a 10 foot spot, that's not a significant gap. It has to be a gap that's truly significant, significant in geographic area and the number of calls. Several circuit courts have said you know a good way to show that is, give us the drop call data. Verizon, with a few keystrokes, could say look, in the month of November we had 230,000 dropped calls. It's not here, why not? It's not. The other thing they don't take into account is they claim, without any evidence from Verizon, you don't have an affidavit, you don't have a statement, you have no records from Verizon. Verizon could have other towers serving this area, they don't know. They have no way of knowing what Verizon has. Verizon could have DAS systems, who knows. Crown Castle has a lot of DAS systems but they're assuming that the towers that they punched into their figures are the only possible towers that can serve the area. There's no evidence of that. There could be a 500-foot tower 3 miles away that I don't know about and they don't know about it either so their calculation is meaningless.

Paula Clair: Also, you know, we have nine cell towers in Philipstown. We’re a town of 9,000 people, that’s 1,000 people per cell tower. Isn't that kind of excessive?

Andrew Campanelli: Yeah, look, the reality is, most areas such as this have sufficient cell coverage, so why would they be here? Homeland Towers is in the business of making money. Obviously, they think that if they build this tower somebody's gonna come lease on it. Well why would they? The answer’s simple, the future capacity needs. There's a race that's on right now, okay. These companies that are in the building, the business of building cell towers, they are building as many towers as they can based upon the understanding that as our need for access, data, goes up, they're gonna need more capacity; they're gonna need more antennas. And if you’re Verizon and you find out 150 foot tower's going up, you'll want to be there first. You want to be on the top rung, okay, because each carrier needs what's called 10 feet of vertical real estate. So if you've got a 150 foot tower, each carrier has to be ten feet apart, so would you want to be at 110 feet or 140 feet? You want to be first. So even though Verizon may not need it now, and they don't according to their own website, they would go on that tower for future capacity needs. It also doesn't hurt their commercial when you say, hey can you hear me now? They love all those little red dots, it's even good for stock prices because they're assets. So even though they don't need it now, there's no reason for them not to put it up for future capacity needs. That is absolutely insufficient, as a matter of law, to say that's a significant gap in service because if Verizon really needed it, Verizon would be your applicant and you would have Verizon giving you direct evidence that there is a gap, not some gap made up with some computer program.

Chairman Robert Dee: Let me speak to necessity. I'm trying to figure out if this is actually necessary for the area.
Andrew Campanelli: Necessary, it's only necessary if it is necessary to remedy a significant gap in personal wireless services, that's it. But by the way, necessary for one carrier is different than other carriers, okay. Make no mistake, cell towers are a necessary evil. They're no less, no less necessary than sewage treatment plants. What you want to be against is the irresponsible placement of wireless facilities or unnecessarily redundancy. Cell towers are unlike traditional utility structures because traditional utility structures, you have one infrastructure. You have one set of poles for your power lines, one set of pipes for your water and your sewer collection, okay. Cell towers are different because under the telecommunications act every carrier has the right for its own coverage. What that means is, if Verizon comes in and covers the area and builds towers and has the whole area covered, you can't stop AT&T from coming in and saying we want coverage too and putting up more towers. You can ask them to co-locate, and to a certain extent you can require that, but just because one company has saturated coverage, doesn't affect the others; that's the way the law works. But there's a far cry between saying you know, everybody gets their own, their own spots, and once they're saturated, we can just say we have a gap based upon in building coverage despite the fact that we haven't provided any direct evidence whatsoever.

Mark Galezo: Would we be required to show that an alternative site is actually...

Andrew Campanelli: There is no requirement that you do so. However, if you don't, and you don't rule on their argument, that this is a significant gap but it's necessary, they'll march into court and say look, denying this application was tantamount to prohibiting personal wireless services because we offered unrebutted evidence that this was the only location that could remedy the gap and that we had a significant gap. So you need to put it on the evidence on the other side, make a decision based upon the evidence, and cite the evidence you relied upon in your decision. If you do, you move, you move very close towards making a bullet-proof decision within which carriers, applicants, don't sue because they know they can't win.

MJ Martin: Who is the arbiter in the significant gap coverage?

Andrew Campanelli: Excellent question. Here's the way it works. The federal statute doesn't define a significant gap in coverage and for years the courts wouldn't define it. They said it's a fact by fact case analysis, okay. And the biggest problem for years was that local boards didn't make that determination and so, generally speaking when you go to federal court, because that's if they claim you violate Telecommunications Act that's where they go, they go to federal court. Federal judges hate zoning cases, they loathe them. They don't want to be boards of Zoning Appeals, that, they view it beneath them, it probably is justifiably. So they don't want to hear it and so when boards make factual determinations, and it looks like there's a factual basis for it, they are loath to reverse or substitute their judgment for those decisions. That's why if you get evidence from RF engineer and it's enough to support a reasonable line to make the decision that you do, it is unlikely that, not only that you'd lose in a lawsuit but it makes it unlikely you'd be sued in the first place.

Bob Repetto: We had asked at one point, if there was another spot off of Vineyard, on this property owner that is leasing this property to Homeland Towers, if there was another spot that was maybe away from the residents on the opposite side there but that was not ever brought forward but would that be something that your clients would be still interested in? If maybe moving the tower on the other side or, you know, away from...
Chairman Robert Dee: Let me speak to that. I asked that question a few months ago, on that, and we have a letter from the owner of the property, who's leasing it, Mr. Fadden. I'll read his letter. This letter is dated, let's see, August 22nd. This letter, at the request of Vincent Xavier of Homeland Towers, is to advise you I am not willing to lease any other location on my Vineyard Road property for the purpose of erecting a cell tower. I've carefully considered other locations on my property and I've concluded that the location that is currently specified is the only one that is acceptable. Now of course as we've discussed there are more acceptable locations to the board which would be closer down to route 9 which is more of a commercial area but the...

(Inaudible)

Chairman Robert Dee: But what he's saying, what he's basically saying is that, that's the only thing, you know. Of course he also owns a home on top, you know, that he doesn't want it up there but I could you know I would like to see it placed down by the commercial area, which would be more accessible but he, he's stopping us from doing it, I guess or from even them considering it.

Bob Repetto: Right.

Andrew Campanelli: The important mindset, you have to understand what drives location, and it's not coverage. It's just not, okay. What drives location, preferred location is money. And the way it works is this. To find the most preferable locations, understanding that hundreds of thousands of these go, these things go up. What are you looking for? Well first of all you need access, okay. You have to have an access road for someone to get to the town when it's built so they can do maintenance. You also need power and you need connectivity, so you need utility poles that you can reach. Also, you want cheap rent. So if you've got one person who's silly enough to rent it, their spot for $500 a month and another guy wants $3,000, it's only $2,500 a month but if you have a hundred thousand towers that's quite a few bucks. And I can tell you, in town after town, not just across the state of New York but across the entire United States, when they have the ability to site a tower out in the wilderness, out in the woods outside of town or they have a chance to lease one behind a gas station, right in the center of town, they always go to the gas station. Why? If you go in the woods, you gotta cut down trees, you gotta clear a way, you've got to put in a gravel access road, you got to put up poles, you got to run wires; all that costs money. And so what they do is they pick the cheapest location possible and then when boards come up and say, look what about these alternative sites, they say, oh that's no good. Well, why not? My favorite line of all, we reviewed that it doesn't meet our coverage objectives. But what does that mean? It doesn't mean it won't give you coverage, it doesn't meet their coverage objectives. That coverage objectives are, get the tower up as cheap as we possibly can. That's what it's all about. That's the truth. So if you look at other locations in town and you think there's suitable alternative locations, then you might want to consider them. Take a long hard look and you'll, if you look at this location, you'll know why they're picking it.

Chairman Robert Dee: Aesthetics, the aesthetics of these towers, they spoke about, make it look like a tree. It doesn't look like a tree to me but yeah I mean you know is there any other aesthetics that could...

Andrew Campanelli: Well, I give them credit, they've come a long way from the ugly, ugly mono Pines, which are like the ugliest fake Christmas trees you've ever seen in your life and I don't know of any 40-foot Christmas trees I've seen around but the thing about aesthetics is, as first and foremost, as
you may or may not be aware, we've submitted quite a few letters from homeowners where they detail
the adverse aesthetic impact each of their homes will sustain as a result of this facility if it’s built. It is
critical to understand, a federal court, in fact the US Court of Appeals for the Second Circuit, has ruled
not only that these letters are admissible but they are competent evidence which must be considered by
the board and the reason the federal judge gave, they said it is the homeowners themselves who are in
the absolute best position to understand the nature of the adverse aesthetic impact that they're going to
suffer as a result of this facility. Now I saw those images up on that screen there and I have to tell you
the Jordan’s residence is going to be slammed. I mean their, their property values gonna go through
the toilet and for them to say, oh this actually shows it's wonderful, no, no. They, it's more likely than
not, they found the place on the property, if they in fact went to his home, they will have probably
found the one place on his property where you can block as much as you possibly can from it. And I
invite the board, go there yourself, take a look, draw your own conclusions because according to mr.
Jordan, he says, you know7 God help me, if I sit on my back porch and I try to entertain on my deck and
entertain family and friends at a barbecue, this thing is literally going to be looming over us. That is
precisely the type of evidence that a federal court says you should and must consider that. I mean
aesthetics is a big deal, let’s face it, we spend billions of dollars at Home Depot, why? Aesthetics.

Paula Clair: I know 60 Roundhill road is above the proposed location for the cell tower and so, in
addition to the actual cell tower, they're going to see the 4,300 foot compound that they are using, you
know, so it's not just the cell tower, it's this industrial compound that they, it's just...

Andrew Campanelli: Submission after submission. A balloon test, really? A balloon test, okay. Where
do you want to start with a balloon test? 140-foot balloon test, great. They put it on a little tiny string.
Now, has ever seen, has anybody ever seen a balloon on a string go perfectly up a line? You think it's
140-foot high when they look at it? Now, by the way, that little string is a lot different than a cell tower
with a five-foot base. Okay. It is a far more intruding structure, okay, you have all these antennas
sticking out. You got a five-foot base; that's not a string and a balloon. It's not. It's not even close,
doesn't even come close to showing you what it's actually gonna look like.

Chairman Robert Dee: Any other questions from any of the board members?

Vincent Cestone: Can I ask a question?

Chairman Robert Dee: Sure. You can ask whatever you want.

Vincent Cestone: How many people here are in the Vineland area and/or directly in the area around
Vineland? Raise your hands please. And how many of you have cell phones? And how many of you
can make a phone call from within your house? Is there anyone that can’t make a phone call from
within their house? Looks like everybody can make a phone call from within their house.

Andrew Campanelli: I think you should get an RF engineer to do testing and when you test, you
should test different days, different times of day because Mr. Gaudioso is already ready to go into
federal court and say, they only you relied on anecdotal evidence. Use an expert. Use an expert. Now
as far as compliance with the code, not even close. Not even close. Your code requirement requires a
setback equal to the height of the tower. What does that mean? If it’s a 140-foot tower, the setback has
to be 140 feet from all sides. They have what you call the postage stamp problem and they play this
game constantly. I'm not talking about this applicant, I'm talking about applicants in general, okay. The
facility they leased, the space, the compound. I think it's what, 68 feet at its widest point? 68 feet, okay. If you put a five foot base tower in the center, that leaves 63 feet. The maximum setback they can have from the size of the parcel they lease then, is 23 feet. It's 1/6 of your minimum setback requirement. What they do is, they say well, the setback is the distance from the base of the tower to the landlord's property line. That's not the proper measurement and the reason is, this applicant has no power to exclude anyone from any area outside of the property they lease, or their compound, so it cannot be calculated based upon the setback between the base of the tower and the landlord's property line. Why is that relevant? Well why do you have setbacks? When it comes to cell towers, there are three dangers associated with cell towers and I'm not talking about RF radiation, I'm not even gonna go there, okay. First one is ice fall. Let's say you have a 150 foot tower. You have ice up here in the winter, forms up on the on the top, okay. When it starts to thaw, the ice lets loose and comes down. From 150 foot tower, a chunk of ice, by the time it reaches six foot in height off the ground, is traveling 167 miles an hour. If anybody is under it, they're dead, and you guys have a lot of wind, so somebody could be 20 feet, 50 feet outside that compound, that ice comes down, done. Structural failures. These things fail all the time. Fires, any doubt, go into Google, do a search for “cell tower burns to the ground” watch them going up in flames. These things are built like smart cars. They're not built to be as safe as possible; they’re built to be as cheap as possible, and failures occur all the time. Debris fall. Men go up on there and work on things, they work on these towers and I can show you a picture from a house in Wisconsin. Guy’s working, drops a hammer, goes through the roof of the house, right through. How do you protect the public? You make sure the fall zone is enough so that any of these things happen, nobody is in the fall zone area. And how do you do that is that they make the area they, from which they can preclude others as large as the setback requirement and you are protecting the public and anybody else, kids walking through there, anybody. They have not met the setback requirement. Even more importantly, they haven't told you why. There's nothing stopping them from leasing a 300 by 300 foot parcel. Yes?

Bob Repetto: That setback would be fenced, so the fence would, the compound would get bigger.

Andrew Campanelli: At a minimum they have to, they have to have a right to exclude others from that area. They don't have that right. They have no power to control any area of that property outside of that fenced-in compound because that's all they leased. That means anybody can walk there and anybody can be hit by a piece of ice, falling tower, whatever.

Bob Repetto: I’m just saying, by the description that you just gave, you were saying that we, they should have the fenced area, that whole shadowed area of the 140 foot right?

Andrew Campanelli: Do something to make sure nobody's in that dangerous zone, okay. Now what about the height? Well (Inaudible) to 140. Really? Are you sure it's gonna be 140? See, in 2012 then President Barack Obama did something really, really cute. He signed his law something called the Middle-class Tax Relief and Job Creation Act of 2012 which sounds really good right? Tax relief, job creation, I like that. There's a little provision in it for cell towers, and what that provision says is, once the cell tower is built, its owner can increase the height of that tower without any approval from the local zoning boards as long as the increase in the height of the tower doesn't substantially increase the overall height of the facility. What does that mean? It doesn't really define it, so the FCC comes along and basically says, yeah a 140-foot tower, they can go up another 25-30 feet. So if you approve 140 foot tower and you look at those balloon tests for a 140-foot tower, after it’s built, there is absolutely nothing to stop them from going back up to 165; you can't stop them at that point. How do you know if
they're gonna do it? There's two ways you can try. The first thing is look at the base of the tower. When they went to build 180 foot tower, there's an engineering design and it's got a certain width. Look and see if they narrowed the width. I'm willing to bet you they haven't. The other thing you can do is ask them if they'll agree, covenant. If for whatever reason despite this marvelous presentation from me you're gonna grant this, okay, suppose you grant it, there's nothing to stop you from asking them if they would stipulate to a covenant to run with the land that the tower could never be built to higher than 140, and if they say no, you can decide why they're saying no.

Chairman Robert Dee: Thank you. Anybody have any other questions? Sure.

Eric Lind: I just have a question about the letter that you wrote, or you read Mr. Dee, from the property owner. And my name is Eric Lind and I'm on the town Conservation Board and the potential for adjusting the tower location on the Vineyard Road property, there are, as we all know, wetlands which are regulated by the town at the proposed location. In general practice, the conservation board, when we're presented with an application, requests alternative locations that don't impact town regulated areas. The parcel, the vineyard Road parcel is how many acres?

Chairman Robert Dee: 64.

Eric Lind: 64. So given the letter...

Chairman Robert Dee: Starting from route 9 and going up the hill like would be east. Yeah, would be going up the hill.

Eric Lind: Given letter that you, you read from the property owner and our general practices for considering a wetlands application and asking for alternative locations that don't impact wetlands, what is the conservation board's authority to do that at this point, considering the wishes of the landowner and the limitations of, you know, up siding and all of that?

Chairman Robert Dee: I think what he's saying basically, there's 2 permits they need; not permits but it's 2 approvals; they need a wetlands permit because in this particular area that Mr. Fadden had chose, I guess he picked out, it is a wetlands. There's a couple ponds there they have to go through. There's no other wetlands, it's two ponds, I believe.

Robert Gaudioso: No, no we're not going through the ponds in fact we're not even impacting the wetlands.

Chairman Robert Dee: All right.

Robert Gaudioso: We're going through a regulated buffer area, we're not going through the ponds.

Eric Lind: I understand that.

Robert Gaudioso: They are retention ponds, we're going through an area of the wetland buffer to bring in the access (inaudible).

Eric Lind: Understood.
Chairman Robert Dee: Okay but what I'm trying to say is that, are there other pieces of the 64 acres that doesn't have any retention ponds? The answer is yes.

Eric Lind: Okay, yeah I mean there's, I understand, I've been to the site, they are retention ponds but the town... whether or not, you know, it's not a pristine, perfect wetland but the wetland and the 100-foot buffer is regulated by the town. That's just, in the Town Code.

Chairman Robert Dee: That's something for the conservation board to decide.

Eric Lind: Sorry but I guess my question is, to the larger group is, as a general practice, if there is an alternative site to the proposal that doesn't impact wetlands, irregardless of their, you know, current condition, what is our, what is our authority to request an alternative site at the Vineyard Road property that doesn't impact the regulated areas, in this case wetlands and buffers from, from the town.

Chairman Robert Dee: I think that would be a question our attorney, or your, I think you have, do you have your own attorney? It's a different board, I don't know.

Eric Lind: No.

Chairman Robert Dee: I guess if maybe you could find that answer out I guess, or...

Adam Rodd: Well I mean the applicant has to demonstrate that a request was made and was denied for an alternate site. They have to demonstrate efforts were made for alternate sites. Now they might not have control over the approval but they still have to make that demonstration.

Chairman Robert Dee: I think that demonstration was on this letter. I think they, at the request of Vincent Xavier, so I think they did ask. That's what I gather by this letter, they did ask him and he said no, it only has to be there. That doesn't mean that...

Adam Rodd: I think the short answer is the board can't order an owner of property to say make this available to the applicant.

Chairman Robert Dee: Right, right.

Adam Rodd: The applicant can make that request and the information has to be provided to the board but obviously we don't have the power to order an owner to do something in particular.

Paula Clair: You know, the town setback, isn't that a...

Andrew Campanelli: Well that's certainly a lawful basis to deny the application, especially since there's no reason why they can't meet the setbacks. They've offered you evidence of that. However, you have to be cautious, again. If you deny the application, you have to make sure you address this alleged gap and allege allegation of no alternative sites and, of equal importance, because of the issue that council just raised, when they claim that they've made efforts to consider alternative sites, make sure they've made genuine efforts because it's so easy to say, we made an effort. Oh we sent a registered letter to Joe Smith then we offered to lease the site but he told us he didn't want to, they don't tell you
they offer him ten dollars a month, okay, or they sent the registered letter to an address for him in Florida that he hasn’t lived that in ten years. I’ve seen this happen.

**Paula Clair:** If, okay, from, maybe, I just want to make sure I understood what you said. If they, you say, I think you said that the amount of land that they leased doesn’t allow them enough room to have an adequate setback that makes our requirement right?

**Andrew Campanelli:** That’s, that’s correct.

**Paula Clair:** So so they'd have to have a larger plot of land to...

**Andrew Campanelli:** They have to be able to, to guarantee the setback that is required under your code, which would be the height of the tower on all sides, they would have to have the ability to exclude others from that area, otherwise the setback is meaningless. What’s the point of a setback if it doesn’t mean anything, it doesn’t do anything. So they can't do it because they have no such power. They have no power to control anything except what’s inside of that fenced-in compound.

**Paula Clair:** Right so if the landlord is not willing to give them additional land then they…

**Andrew Campanelli:** I would imagine that the terms of their lease, and I have seen probably hundreds of them, the lease is typically a one-sided lease where it gives them all kinds of power and the landlord can't back out of it, if they need reasonable extensions or reasonableness or reason, that they can usually get it, usually.

**Paula Clair:** But they haven’t asked for enough land to meet the town setbacks.

**Andrew Campanelli:** No, no. Absolutely not.

**Paula Clair:** So, okay. I mean I would think that would be something that wouldn't be acceptable.

**Andrew Campanelli:** It’s certainly a perfectly valid, legal grounds upon which to deny the application but for argument's sake, suppose you render a decision and say we deny the application because it doesn't meet setbacks. They'll march into federal court a day later because you didn't address their allegation of a significant gap in service, and allegation of no alternative sites. So you must address that. They would prefer you don't because then they win by default.

**MJ Martin:** Excuse me. I’m wondering, I might’ve missed it in the stacks of paper that we received, but did we get a copy of the lease between Homeland Towers and Mr. Fadden? Is there a reason why you wouldn't?

**Robert Gaudioso:** It’s not relevant. It’s not required under the code. And just to be clear, we meet the setback requirements. The code requires the tower be set back from the property line and from various roads and various residential districts. It's not just the height of the tower, it's more complicated than that. There is nothing in...

**Chairman Robert Dee:** No you have to, Mr. Gaudioso I'm sorry could you just…
Robert Gaudioso: There's nothing in the code that says that the setback is from the compound area. We meet the setbacks, the code is clear. If the board feels we don't meet the setbacks and wishes to deny the application on that basis, you know, then that would be the board's purview to do this evening. We would ask you to take care of that. As far as the lease agreement, no the lease agreements not relevant to this application. We did provide a letter of authorization from the property owner which is part of the record and that's all that's required. Thank you.

MJ Martin: Even though that would identify the, you know, the dimensions of what you're leasing.

Robert Gaudioso: Well, the dimensions are on the plan (Inaudible)

MJ Martin: That's the extent of what you're leasing? That compound? Or is there additional space outside the compound?

Robert Gaudioso: The compound includes our access and our utilities in the lease.

MJ Martin: Okay.

Andrew Campanelli: I respectfully disagree with Mr. Gaudioso. I think the lease is necessary and the reason it's necessary is to show standing because if they didn't have a lease, then Mr. Gaudioso's client would have no greater right to be on this property than I would. You need a valid lease and so I would submit to you that the board should require a valid lease to assure this is an exercise in futility.

MJ Martin: I agree. I think we need a lease.

Paula Clair: I have a question about the shot clock. The shot clock is supposedly up on January 5th and there seems to be a lot of unresolved stuff so...

Andrew Campanelli: Okay. The shot clock she's talking to, talking with regards back to a specific section of the code that requires zoning authorities to make decisions within a reasonable time and since of course the law didn't say what a reasonable time was along came the FCC to the aid of the wireless industry and said we're gonna set the standards. And the standards are a local board must make a decision on a collocation within 90 days and on a new location within 150 days from completion of the application. Now it can be tolled in a number of ways. If the application is rejected as incomplete, that tolls the shot clock until the applicant submits a complete application. If it's then deemed incomplete again, I think you can reject it but I think you only have ten days to do so, if not shot clock runs and the only way you can get it to be extended is by stipulation of the applicant. Many boards I've heard say, listen we don't have enough information and if you want us to make a decision with insufficient information, we can do so, or you can give us more time, extend the shot clock and give us the information we need. If the board thinks they need further proof from this applicant that there are no feasible alternative locations, or even better yet, give us direct evidence that there's actually a gap other than this computer modeling nonsense. You can do that.

Paula Clair: And we can, if we don't have evidence, adequate evidence, that there's a gap. I mean they've provided stuff from PierCon which is a computer modeling on a gap but they haven't provided any actual in-person.
Andrew Campanelli: No direct evidence. None. It's all speculative. And they're, at this juncture their position would be, it's unrebutted, we've submitted professional expert evidence and all they got was anecdotal evidence from members of the audience. So if you were to get an RF engineer to go in and test the actual signal strength, you would now have (inaudible) to rebut their claims, direct, professional evidence but you're right the shot clock, I believe, runs January 5th and if you don't make a decision you lose by default.

Paula Clair: Right, right. So we can't we can't delay our decision until after January 5th.

Andrew Campanelli: Nope, but if you got an engineer I would have him test inside the buildings, on different days, different times of day, different conditions, rain outside, whatever, and that will give you direct evidence of whether or not this gap that the claim exists actually exists and I would be shocked if any engineer said it did.

Chairman Robert Dee: Okay, thank you. Any other questions? Alright, thank you sir.

Andrew Campanelli: Thank you. Next I'm going to call our RF engineer Mr. Menkes.

Hank Menkes: Wow, I don't know how I'm gonna follow that. Quite a performance.

Chairman Robert Dee: I have your report here and I read it and got a couple of questions.

Hank Menkes: Sure.

Chairman Robert Dee: Basically I asked you to look at McKeel's Corners and what, where the gap is. You say that the (inaudible) McKeel's Corners leaves a gap along Route 9 north of 301. Is that a large gap? What are we talking about?

Hank Menkes: All right. Can I go into a little more detail? Do I have time to do that? All right. I want to be very careful what I say tonight because we got a number of attorneys who are apparently also engineers and I don't want to affront them by saying something that we can't sit down together and mutually solve a set of equations to prove either right or wrong. So I'm gonna be very precise and if I have to read some of my answers please allow me to do that because I don't want anybody to misinterpret what I'm going to say and this is not to say that I favor one side or the other. Okay. What you asked me to do originally was to look at the viability of a number of alternative sites. It was the Lane Gate Road property, which I discussed last month and I'm not going to repeat that again tonight in the interest of time to allow other people to speak. In addition, at last month's meeting you asked me to look at the McKeel's Corners site and the reason for that was that at last month's meeting I indicated that there was a lot of information with regard to the performance of the McKeel's Corners site that was missing and I didn't want to offer an opinion without getting some additional information with regard to that location. Subsequent to that meeting, the applicant provided an additional RF report, I think it was dated the next day November 13th. They also issued yet another report November 30th I think in response to a report I provided as a result of the information from the November 13th report. So I'd like to go through some of that information because as much as Mr. Gaudioso made a great effort, I fear that he misquoted me and I want to correct the record. Okay, the McKeel's Corners site that we were looking at was for a situation where the antenna height would be elevated to 190 feet. That's 90 feet above the existing antenna sites right now, not 210 feet. I didn't even consider 210 feet because I didn't
want to get into any of the issues associated with the FAA. Now at last month's meetings the applicant indicated that they would reduce the antenna height and tower height at the Vineyard Road site to 140 feet. Now there are no plots that show predictions of coverage at 140 feet; the closest thing are plots at 150 feet. So what I looked at were the plots provided by the applicant at 150 feet relative to the performance at McKeel's Corner. One of the other reasons that I looked at that was that there was just no way to pick any other height. Now the difference of ten feet is not going to be significant, if anything it would require the performance of the McKeel's Corners site to be even better in order to offset that additional ten feet that was used in the plots. I primarily focused on the coverage at 700 megahertz, and we can get into a whole discussion about where voice traffic is carried and what LTE does and what it doesn't and about 2G and 3G but I don't think we have enough time tonight to get into all of that. Let's just say for the moment, because the plots that were provided were at 700 megahertz and 2100 megahertz, I focused on the 700 megahertz plots. The reason is twofold. One is that propagation at 2,100 megahertz, I don't care where you are, is sketchy. It may be in a flat, open field you can get 2100 megahertz to propagate effectively and provides some coverage in some capacity but in the challenging area, here in Philipstown, that's not going to happen and I think if you look at the plots at 2100 provided by the applicant, they seem to accept that as well. So let's just focus at 700 megahertz. One of the other reasons is, they didn't provide any additional plots at 2100 megahertz for the reduced tower height on Vineyard Road so there was nothing really to compare with at 2100. So again, let's go back to 700 megahertz. If you raise the antennas at McKeel's Corners and you look at what's referred to as the in building coverage at 700 megahertz, you're left with approximately a quarter mile area of reduced coverage along Route 9 north of route 301, but it does provide more coverage on route 301 west of route 9 then the Vineyard Road site would provide at 150 feet. The sort of impact of the gap on Route 9 is just difficult to determine because it requires far too much speculation about assumptions that can't be verified and we're talking very small numbers so, consequently, I'm just not in a position to claim the significance of the gap or the reduced coverage on Route 9 versus any reduced coverage on route 301. I just don't want to speculate in that respect. So if you look at the conclusion with regard to McKeel's Corners, and I'm gonna read this so that nobody misquotes me, raising the antenna heights at McKeel's Corners to 190 feet and adjusting the antenna orientations, which was done in the subsequent PierCon report, would provide reliable in building coverage at 700 megahertz along route 301 west of Route 9, however, an area of less than reliable coverage would remain along Route 9 north of route 301. Conversely, proposed tower at 50 Vineyard Road would provide reliable in building service at 700 megahertz along Route 9 but leave an even a larger portion of route 301 without reliable service, okay.

(Inaudible)

Hank Menkes: Yes, there would be, there would be. I don't like to use the term gap because...

Chairman Robert Dee: Well, lack of service.

Hank Menkes: No, it's not lack of service. It is service with reduced reliability.

Chairman Robert Dee: Reduced reliability. That's a good one.

Hank Menkes: Right. As was said, there is no definition of what a significant gap is.

Paula Clair: Did you say that on route 9 the area where there was a gap it was a quarter of a mile?
**Hank Menkes:** What I said was the area on route 9 that would be left with less than reliable service is approximately a quarter of a mile in length, about thirteen hundred and fifty feet to the best that I can measure with a ruler on the eight and a half by eleven plots.

**Paula Clair:** And that’s, if we, that’s for the McKeel’s Corners.

**Hank Menkes:** Yes, yes.

**Paula Clair:** Okay.

**Hank Menkes:** Now if the Nelsonville Tower or a tower in that area is constructed the McKeel's Corners site with a 190 foot antenna height is, wait a minute, excuse me. If the Nelsonville Tower is not constructed then the McKeel's Corners site with a 190 foot antenna is the better choice based on offered coverage okay.

**Chairman Robert Dee:** So basically what you're saying if McKeel's Corners could be raised to 190 feet we wouldn't need to tower at Vineyard Road.

**Hank Menkes:** Yes.

**Chairman Robert Dee:** Okay.

**Hank Menkes:** The coverage would be better. I'm not saying you wouldn’t…

_Crosstalk – Inaudible_

**Chairman Robert Dee:** The coverage would be better than Vineyard Road.

**Hank Menkes:** Yes. However, however…

**Chairman Robert Dee:** Please.

**Robert Gaudioso:** Well you’re putting words into his mouth so…

**Chairman Robert Dee:** I’m not putting words in his mouth.

**Robert Gaudioso:** You just did.

**Chairman Robert Dee:** I told you not to interrupt. I told you not to interrupt okay?

**Hank Menkes:** However, let me continue. However if a Nelsonville…

**Chairman Robert De:** Your time.

**Hank Menkes:** If a Nelsonville cell site is erected, the proposed tower on Vineyard Road would be a better choice, okay? So it's…
Chairman Robert Dee: But we have no, unfortunately we don't have any…

Hank Menkes: I understand that.

Chairman Robert Dee: …anything to do with that, Nelsonville. That's Nelsonville. But I appreciate your conclusions. Any questions?

Adam Rodd: If you could also speak to the issue of the threshold issue of your analysis of whether the applicant has demonstrated, with what there is now, a gap or a significant gap in service for coverage. If you can please speak to that.

Hank Menkes: Okay I apologize because this is going to get a little detailed and I do have a couple of degrees in engineering so I think I have a reasonable understanding after 33 years in the business of how this works. I do not have a degree in the law so I'm not going to comment on the law. All right. There is no FCC requirement for the performance of any common carrier cellular network. There are no numerical values that the FCC tells a service provider that they have to meet. In addition there are no international standards bodies, whether it's the ITU or Etsy or 3GPP or ANSI or any of them that specify any numerical values for wireless network performance. So what, what are those numbers? Well what's happened is that, after years and years of service and due to competitive pressures, the wireless industry has established reliability metrics for their service; it's based on measuring millions and millions of phone calls to establish statistically significant numbers. It's based on the air interface technology that they're using, whether it's 2G or 3G or 4G or even 5G, it doesn't matter. In general and I don't say this specifically for Verizon because I do not have recent experience with Verizon but I have experience from some years ago, most of the service providers target about a 98% reliability for their wireless network. That means that of the millions of calls that are placed 2% of those calls will be unsuccessful, ok. So you can understand, making eight or ten phone calls, or driving on a road and saying that you can hold up a call, is not statistically significant. Alright. That doesn't prove anything. You need to have a value that you can rely on, a mean and a standard distribution, all right. So if you ask me, is there a gap on Route nine and what's the definition of that gap, if I can use that term. What it means is, if you made millions of phone calls in that area, the reliability of the network would be less than 98%. In other words, it would be greater than 2 percent unsuccessful calls, ok. What the service providers and what RF engineering and electrical engineering and communication theory clearly says that the reliability of the network performance is a function of the signal strength. You can correlate Network performance with received signal strength; in this case because it's LTE it's called reference signal received power. When it was 2G and 3G, it was just RSSI but the service providers have been able to determine, in order to operate their network at an acceptable quality level, and let's assume it's less than 2% failure rate, they need a certain receive signal strength. Verizon is claiming that they need -105 DBM for reliable in vehicle performance. That means that of the millions of calls that would be made from traffic in automobiles and trucks and so forth, less than 2% of them would fail. They've also said that for in building performance to meet the quality objective, and I don't care if it's Sprint or AT&T or Verizon, they all do the same thing, they need -95 DBM in this area. Now these numbers are not cast in concrete because I know from other Verizon cases they have used other numbers in different locations. These numbers in Philipstown, to Verizon's detriment, are low numbers meaning they set the bar such that they would make, make it harder for themselves to have reliable service. For example, if they specified a -100 and a -90 instead of -105 and -95 they could be even more confident that they
have a more reliable network but they didn't. They used what I consider reasonable numbers here, all right.

Chairman Robert Dee: I've heard a lot about in house calls and people in the areas. How do you, how do you test that?

Hank Menkes: All right let's talk about cell phones and how they perform for a moment. These numbers, the - 105 and the - 95, are not distinct from each other and the reason for that is that, when you take a cell phone and you go into a vehicle, that vehicle provides some additional path loss. Typically the industry uses 6 DB as the number. Now it could be more, it could be less. If you go into a panel van with no windows the number will be higher, if you drive in a convertible with the top down, obviously the number will be lower but let's use the 6 DB number and the - 105 number that Verizon is suggesting. What that says is that - 105 number is an on street measurement; it means that if I have a calibrated receiver then I could stand in the middle of route 301 and route 9 and measure - 105 DBM. If I got into a vehicle with a 6 DB additional path loss, that - 105 DBM signal would drop to - 111. What Verizon is saying is that at - 111 the gamut of cell phones out there with their differences in performance would allow them to achieve their network reliability objective of 2% or 1.8% or whatever their target is. Okay, now I take the same cell phone and I go into a building. Now Verizon has set a target of - 95, - 95 is an on street measurement. So if I stand in front of my front door, if I happen to live on route 9 and I measure - 95 and I go into the building, I'm gonna experience some additional path loss. Typically the industry uses 15 to 20 DB of path loss depending on whether it's a stick building or a concrete or steel building. So if you take 15 DB as the low-end and I have - 95 DB on the street and I add 15 DB to that I come out with - 110. Now it's not coincidence that -110 and - 111, that we had when we went in the vehicle, are so close to each other. The reason is because the cellphone doesn't change its sensitivity, it needs the same signal. So that's why there are two different numbers. Now, is every building 15 DB of path loss? No. I absolutely agree with that. Is every building 20 DB of path loss, no. In fact, if you go into a steel and concrete building in New York City and you go into the core of that building, you will probably experience significant path loss in which case you have zero service, not just impeded service, but zero service. So if you ask me to go into a building and make a measurement, that doesn't prove anything because I would have to go into every building in the area that's being considered and I would have to make thousands and thousands of measurements and here's the reason. Let's say I make ten phone calls and one of them fails, I'm already at a 10% failure rate. If two of them fail, I got a 20% failure rate. I could never use those statistics to be, to prove viability of the network. I'd have to make at least a hundred calls and if one fails I'd have a 1% failure rate; if two failed I'd have a 2% failure rate but I don't have a lot of resolution with just a hundred calls. I'd have to make a thousand calls, that way at least I get a tenth of a percent resolution. Alright, so going around and driving and making measurements with a cell phone is not statistically significant. The second item is these cell phones are not all identical. Just like any mass-produced product there's variation from unit to unit and I think it's laudable that the homeowners have taken the effort to go and make the measurements but they really have to understand that the measurements are not significant enough to prove their case. Every cell phone that gets manufactured has a tolerance associated especially with its reference signal received power accuracy. The original or early versions of the 3GPP, which stands for third-generation partnership program which was the international standards body chartered with putting together the 4G standard, originally said that the accuracy of a reference signal received power measurement from a cell phone only had to be +/- 6 DB. So if I take a cell phone from Apple, an iPhone, and I go and make a measurement I could be in error by 6 DB too high or 6 DB too low. Now somebody finally woke up and said, whoa wait a minute that's way
too big a number, we have to tighten that number up. And I went and I checked yesterday to see what the current spec says. For every network element in a wireless network, whether it's user equipment or base station equipment or gateways that are further up the line, there is what's called a compliance test requirement. This is information that the standards bodies put together and says if you want to build this equipment, your equipment has to be compliant with this specification. For the 4G technology LTE, version 13 of the standard, which was the most recent one I could find I'm sure there is yet a more recent one than that, simply says TBD for the accuracy of the reference signal receive power measurement from a cell phone. And because they realized that 6 DB was too big but they didn't know really what they should make it yet, now whether there's a number there now I don't know but I'm reasonably certain it is not zero, which says that every cell phone that you take out and you measure, you have got to calibrate first. That's why typically, when this is done professionally, it's done with professional equipment and the equipment is very expensive and it's calibrated and guaranteed to an accuracy of +/- 1 DB. There are a number of companies that make the equipment JDS Uniphase, which is now VIAVI. There's a number of companies that make this equipment and the way the equipment works, if you're going to make actual measurements, is it makes lots of measurements and it comes up with a statistical mean for what that value is. Not one measurement, not two measurements, but it comes up with a statistically significant number. That's the problem with going out and making a measurement with a cellphone. Now I don't disagree that, if you go make actual drivetest measurements, if they are statistically significant with a calibrated receiver, that they are always better than predicted plots; I don't disagree with that. The problem is that that's not what we have in this case, okay, and the truth is that I read your memorandum you passed out tonight from your, your expert and he doesn't say that your numbers are representative. He says the methodology of making field test measurements is a viable one and I don't disagree with that but they've got to be calibrated and statistically significant, okay. So, at this point you know, I can't comment on the data that's been presented with regard to whether or not there is a significant gap because I don't know what significant means in this case. I can only comment whether or not, according to the material that I've seen, is there something that is less than Verizon's requirement, that's all.

Chairman Robert Dee: Thank you very much.

Vincent Cestone: Can I just ask you one thing? You said something interesting before. You said that if Nelsonville tower was built it would be a better choice, is that based on coverage or is that based on nodes in the network?

Hank Menkes: Okay what I said was that if the Nelsonville tower is built or a tower in the Nelsonville area which would presumably be built to cover coverage issues along route 301 that's further west, then the remaining areas of degraded coverage from the Vineyard Road site would be picked up by that Nelsonville tower and since the Vineyard Road site does cover route 9 north of 301 you would have route 9 covered and you would have route 301 west covered by the Nelsonville tower.

Chairman Robert Dee: (Inaudible) ...is not constructed, the MeKeel's corner of site with 100 foot tower is the better choice.

Hank Menkes: Yes and I want to make it very clear because Mr. Gaudioso made a significant misstatement. His own RF engineer, in I think it was the November 30th issue of the PierCon report, on page six, agrees with me and says so in that, I think it's the second paragraph on page six of the
November 30th report, in terms of providing additional coverage, that the Nelsonville site, it would be better, exclusive, excuse me the McKeel's corner site would be better exclusive of the Nelsonville site.

Chairman Robert Dee: Okay. Thank you very much.

Hank Menkes: Clearly in the report. Page 6, second paragraph.

Chairman Robert Dee: Okay. Thank you. Mr. Gaudioso can I ask you a question? Thank you.

Robert Gaudioso: Yeah but can I also just follow up, one question for Mr. Menkes. Mr. Menkes, but that is just if there's no site in Nelsonville, is what his reference was.

Hank Menkes: Yes, I don't disagree with that.

Robert Gaudioso: Okay I just want to make that clear.

Chairman Robert Dee: As you see we're starting get a lot of information in here tonight and like that, that we haven't got before. I know we're talking about shot clocks. Now where do you stand with the shot clock date? Shot clock date is what January 5th?

Robert Gaudioso: Correct.

Chairman Robert Dee: Okay are you open to us continuing the public hearing to the next January 8th or are you, or would you require us to have it answered by that time.

Robert Gaudioso: Well I'd like to hear how the rest of the meeting goes and provide our comments back on some of the comments that were already made.

Chairman Robert Dee: Okay, thank you. Fair enough. Now. Yes sure.

Andrew Campanelli: I never argue with engineers, my brother's an engineer and he's much smarter than I am. But I do want to address one issue because the engineer talked about the fact that engineering matters, engineering statistics, things of that nature, and what the carriers strive for. 98% that's great but that's not the law, that's not what the law requires and what I'd like you to do, just for a moment, is just read to you what a federal judge ruled is a covered, is a gap. And significantly the name of the case is New York SMA limited partnership, I think that's the applicant here, it is! New York SMA limited partnership versus the Town of Oyster Bay and it says, the federal court in the Eastern District of New York said quote "a coverage gap exists when a remote user of those services is unable to either connect with a land-based national telephone network or to maintain a connection capable of supporting a reasonable uninterrupted communication. When a coverage gap exists customers cannot receive and cannot send signals and when customers pass through a coverage gap their calls are disconnected. A coverage gap, or exists, or a need for proposed site is found to be substantial by the courts where the coverage needed by the carrier is not limited to a small number of houses in a rural area or merely the interior of buildings in a sparsely populated area" end quote. That's the (inaudible) of a federal judge in a case that was brought by this applicant. The Federal Telecommunications Act of 1996 does not guarantee 98% coverage. It does not guarantee seamless coverage. The only time they can say that turning us down would be a prohibition is if they prove there is a significant gap in
coverage, not even a gap. If there was an absolute gap of a block that would not be a significant gap and courts are looking to look at evidence and one of the things of evidence they look at is the number of dropped calls. If Verizon came here and said look, on Route 6 for the month of November we had 243,000 dropped calls, I would say that's evidence of a significant gap; you don't have it here. So while the engineer is very intelligent and accurately stated lots of technical information and even what Verizon would like, what Verizon would like is dramatically different than what the law requires.

**Chairman Robert Dee:** I guess who'd like to speak next, for the audience. Yes. Come on up just identify yourself.

**Priscilla Eldridge:** Priscilla Eldridge, Rockwald Road. I took second in my age group on that 5K, yup. Giving us a gap, with the gap for a second, I would like to follow up on the landscaping and my question would be, the landscaping is within the fencing or outside the fencing?

**Robert Gaudioso:** Outside the fencing.

**Priscilla Eldridge:** Okay. We have herds of deer; you will not have rhododendrons after the first year. Your spruces will be, if they're anything under four feet, they will be eaten. All of the, anything that survives will be denuded at the bottom and you'll have tufts on top, which of course then will not provide... we have, everything on our area and probably many of the other areas are all wired in otherwise you can't, you can't have it. So unless you put your stuff inside the gate or come up with something that the deer won't eat, and according to the Cooperative Extension a hungry deer will eat anything, you're going to lose all of your landscaping.

**Chairman Robert Dee:** Thank you.

**Allen Jordan:** (Inaudible) There's nothing but vines up there. As soon as you open that up to sunlight, those vines, they'll devour everything.

**Chairman Robert Dee:** What's there a voice in the crowd or what do I got here? Who is it?

**Mark Galezo:** It's Allen Jordan.

**Chairman Robert Dee:** Oh well I can't even see him.

**Allen Jordan:** I'm sorry.

**Chairman Robert Dee:** Okay. I'm sorry I can't even see you so raise your hand. You didn't raise your hand so you're not gonna talk. Go ahead.

**Manny Vicente:** Related to the landscaping comment, obviously we would want to deer screen that effectively and we'd accept the condition that whatever landscaping we've proposed being placed long term. So, obviously deer do eat everything, especially in the winter. They don't read the books, they don't know what they're not supposed to eat. So we would agree to that kind of protection.

**Chairman Robert Dee:** Yes sir.
Ron Soodalter: My name is Ron Soodalter. I just have a question. Would a certified or a notarized letter from the residents within proximity of the tower, whom the tower is purported to help, saying that they have no problem, be sufficient for the board to deny the application?

Chairman Robert Dee: Well it would help, you know. I can't speak to sufficient but any evidence provided would be, it would be. Yes, yes go ahead.

Andrew Campanelli: It's funny, there's, a there's a gap here. The engineer said, you know if you want to show more than just a call here or there, what we typically do is we do call logs. We'll have residents, if you get forty residents each making thirty calls, it's hundreds of calls. So if that letter from the residents said, listen we've sent and received 500 calls per year for the past three years and we've had no, we were able to initiate, maintain, and conclude all of these communications with no loss in service, you're talking about thousands of calls with no losses. And even if you do have losses, don't forget sometimes the losses are coming from the other end. You can have somebody on the other end of the cell phone that has bad coverage. But, theoretically, if the entire neighborhood, if every person in building submits an affidavit saying that over the period of the past three years, we've handled roughly 1000 calls each, which comes up to three hundred thousand calls, with no loss in service, I think that's more than just anecdotal evidence.

(Inaudible)

Andrew Campanelli: They'd have to, they'd have to say it's Verizon. If it's AT&T it's irrelevant. This applicant is claiming it's a gap in in building coverage for Verizon. So would have to say, I've had Verizon Wireless coverage for three years and in three years I've made at least a thousand phone calls, never had a loss of service in a thousand phone calls. And if 20 people did that, it's twenty thousand phone calls.

MJ Martin: But when were talking about statistically significant, Verizon themselves are saying that they have no coverage gaps in this area, so who has...but that's, that's the data they have on the website when you go to the website.

Robert Gaudioso: That's absolutely not true. That's no no no. So the data on the website, we'll respond to that comment. We only received that this evening even though it was indicated that the information should be 10 days in advance. We've, and just to be clear. We'll explain why that isn't what it's being purported to be, okay, so we'll respond to that fully in writing. Yes, we'll respond but make no mistake about it, we have submitted multiple engineering reports from Verizon's consultant; we've submitted drive test data from Verizon's consultant. Your first, or I should say the Zoning Board or whomever's consultant was, Mr. Graiff, stood and testified at the first meeting that there was a significant gap in service...

Chairman Robert Dee: He said that the road, 9 there was seamless.

Robert Gaudioso: No. He specifically said there was a significant gap in service and...that's fine whatever he wants to base it on. That consult testified...

Chairman Robert Dee: Well he's not here.
Robert Gaudioso: Well I understand, because you took him out of the process, but the fact is that testimonies on the record, that testimonies on the record, and he did testify to that. So that's, that is all on the record.

Chairman Robert Dee: Yes.

Cali Gorevic: Cali Gorevic, Cold Spring, 60 Roundhill Road. I'm sorry I have laryngitis. I just want, I have to address this.

Chairman Robert Dee: I'm sorry could you speak up a little?

Cali Gorevic: I can't. I am very familiar with the landscapes that were shown in the PowerPoint earlier and I am keenly aware that the places that they chose to show didn't really reveal the problem because they would choose places where that 40-foot difference would make a big difference where there are other places that you, the 140 feet was clearly visible, including from my house, which they did not. They would count this 12 square foot area in the back of my house as opposed to the whole rest of the house, first floor and second floor, where there are different vantage points, where the balloon was more apparent. And I'd also like to say that I thought it was very unfair that we were not permitted to go on to Mr. Fadden's land in order to see where the string holding the balloons was measured. We have no reason to believe that it was actually the length that we were told it was.

Chairman Robert Dee: Anybody else? Yes ma'am.

Ellen Varela-Burstein: My concern is, I'm Ellen Varela-Burstein and I addressed the board last month and my concern is slightly different than others. Last month, you know, I represented the local Putnam County Putnam Highlands Audubon Society, a chapter of the National Audubon Society, and at that time we asked that they begin baseline monitoring of both air, water, and wildlife, particularly as there is a wetlands involved, and I was wondering what the status of that request to get baseline modeling was.

Chairman Robert Dee: I guess you'd have to speak to the conservation board on that, that would be their baileywick.

Ellen Varela-Burstein: It isn't something that you would ask the applicant o begin monitoring because they'd have to provide that

Chairman Robert Dee: Is it wildlife, stuff like that? Is that your? I’m at a loss here.

Eric Lind: Well, it's hard to talk in specifics for this project but again, our general approach, and feel free to weigh in here, would be, you know, sorry. I'll just put it this way, everything has an impact. The, our approach is to first see if there's another solution. The only thing we regulate, in this particular application, are, are the wetlands and the 100-foot buffer. The sort of easy way around significant impacts to the habitat and wildlife is to try to find an alternative location that doesn't intrude on the regulated areas. So that, that would be our first initial, general approach. We wouldn't necessarily ask for air quality monitoring or any extensive like, wildlife monitoring or plant monitoring, which that's just a very detailed, time-consuming effort that could take literally years. Perhaps for considerably larger development projects, yes, but in this particular case, cell tower or not, we're looking at, you
know, this disturbed land. We would try to find an alternative location to minimize the disturbance. One other detail I wanted to bring up too is the landscaping plan that we've talked about, would be something that we would be interested in reviewing and approving as well because we have keen interests on soil disturbance, that was mentioned in the back, invasive species and actually species selection as well.

Chairman Robert Dee: Thanks for volunteering. Now you're in charge of the landscaping plan. Thank you for volunteering. Yes, yes.

Manny Vicente: And I just want to mention, once again about the visuals, when we did the 160 foot balloon test, your town engineer was there. He was there when we selected the spot, flew the balloon; he requested that we fly it actually at 160 instead of 150. It's my understanding that the photos that we show today were from people's homes, with them present, from their decks, in particular in two occasions. We didn't cherry-pick photos to make things look better, that I get sensitive over because we don't do that and I just want to make sure people understand, there were people there, some people in this room. We did the best job we could; it was monitored by your town engineer, he was there the whole time. So when people make these statements I just want to make sure, if you don't like the application that's fine; if you don't agree with this, that's fine. But when we produce materials and submit them, we do that, we take that very seriously. We don't fudge anything.

Chairman Robert Dee: The gentleman in the back. That's the voice I heard before, I couldn't see. That's okay.

Allen Jordan: Allen Jordan, 24 White Rocks Lane, Cold Spring. I was pretty certain I knew what I was going to say when I was coming up here the whole night and I've watched my property up on that screen and every day for, well six months, however long this has been going on for. I wake up every day and pretty much the same thing, I try and visualize where this is gonna be and I try and do the best I can to put it out of my mind. I try and talk to my family and try and help them put it out of their minds and it's hard, it's been really trying in our house. I'm not wealthy. I moved to Cold Spring fifteen years ago with my family. Thank you. Thanks. You know, I wake up at four o'clock in the morning. I get on a 5:08 train for the past 15 years, and I'm not asking for anybody's sympathy saying this. I just want you to know, you know, a little about what I'm all about because we all get caught up talking in numbers here and I just want to make sure, you know my face and a little bit about my family. And you know, when we moved to Cold Spring and built our house 15 years ago it was, you know, it was very important to us. It was a dream and we bought that piece of property because we always found ourselves up here on the weekends, canoeing and Fahnestock, mountain biking, hiking. I mean, we loved this place; we loved this place before we moved here, before we built our house here. And when we got the opportunity to build this house, it was really special for us, really special. My parents never owned a home, so for me to have an actual house that I owned, it was really special to me and still is. So, my point being, when I look at this, I love the outdoors, obviously. I live here. Wow that's, that's right there and I'm, I saw the balloon when they did the balloon test and I understand that that is at a reduced height but I'm here to tell you, you don't see what I see, obviously. You don't understand where that's going to be; you don't understand when I'm on my patio and I'm out there with my family, friends, like, that's gonna be like a black cloud, right there and I can't imagine looking at that. Like, so I know those woods like the back of my hands. I mean my kids and I, when they were younger I, we played in that stream back there. We caught frogs, we caught crayfish. I know what goes on back there. It's wetlands for a good reason. There's slope in there and the only thing I can think when I look at that
is, man I’ve seen, and you know (inaudible) had to leave, he’s my neighbor who’s right there. He’s 500 feet away from me. We’ve seen what water does moving down those hills and what it does to trees and how it erodes the base of trees; trees come down every single windstorm we have there. And I look at that picture and I think to myself, one of those trees come down and it’s going to be even worse. That may or may not be adequate, I don’t see how it can be, but I worry about that. I worry about when they put a road in, how is that gonna impact that little stream that runs behind my house. I’ve seen that stream turn into a raging river. I don’t know how they’re gonna build this road. I’m not an engineer. I don’t, I just don’t know. It just sounds like there’s so much uncertainty with this, it scares the hell out of me. I just, just wanted y’all to know who I am and this, I can’t imagine if, like I said, I’m not wealthy. If I go to sell my house or have to sell my house, I don’t know, what do I, my daughter’s petrified for crying out loud. She’s 12 years old, you know, she’s scared, she’s convinced she’s gonna have to move because of this. She’s a bright little girl; she’s on the internet just like all other kids are and she sees the videos of other people and what they’ve had to do and what they’ve gone through when cell towers are erected and they’re this far from their house, you know. This is gonna be devastating to my property values. You heard Mr. Campanelli, you know, I, again, I’m not wealthy. I’m like most of you. I built this house. I’m still paying for my house in hopes that I have equity in it when it comes time for me to sell it. I’m not looking forward to the day I have to sell it. I don’t want to move from here. I love this place but it’s gonna be devastating to our family and I can’t imagine, for a lot of other people in this room, it’s not gonna leave a mark as well, if not be devastating. So, I appreciate everybody’s time and I know it’s been a long night and it’s been a long six months but I just wanted you to know who I am and just a little bit about my family.

Bob Repetto: I have a question.

Allen Jordan: Sure.

Bob Repetto: So, what we said on the conservation board is that we would often look for another spot on the, on the parcel, right, and in this case that’s Mr. Fadden’s property, which he’s only outlined one parcel for you guys to lease. But if there was a spot, since you know the land so well, is there another spot on Mr. Fadden’s land that would be maybe less visible to all the residents on this, that are, you know, seem to be mostly in this one area?

Allen Jordan: Well before we mentioned being further south, right, which would be moving, if I’m correct, right, going towards route 9. So that would be the other side of the property. Now I’ve been to Roger’s house and Cali’s house and that, you know I’ve never, I don’t take liberties with other people’s land, so to speak, but we’re back there in our stream and that’s as far as we go. So I don’t have intimate knowledge of everything on his property but I would think that there’s, there’s got to be, on that other side, there’s got to be something that’s suitable; there just has to be. You look at it and you just, you know there is.

Bob Repetto: Because I think that’s something that the conservation board would be interested in, getting away from the wetlands and pulling the, you know, pulling the proposed location somewhere else on that property. Meet the same you know, requirements and all those.

Allen Jordan: When we built our house, and you can look on Google Earth and you can look at my footprint and my neighbor’s footprint, Dino, we took out a minimal amount of trees. We didn’t go in there and clear-cut and when they told me to respect the wetlands 100 feet buffer, 120 feet, excuse me,
I respected it. I don't touch anything in there, nothing and haven't for 15 years. My kids, hey Dad can we you know put a jungle gym back in there? I can't guys, you know, but we'll put a rope swing up somewhere, you know, in one of the trees, we'll make do. You know, we'll go play in the stream. I mean I think most people here, I mean if you lived in Cold Spring as a kid, you played in the woods, right, and you respected the woods and you loved the woods. That's what I taught my kids. So yeah, I think there is, there's gotta be something. There's got to be something that doesn't harm people. That, don't alter people's lives so drastically.

**Mark Galezo:** Excuse me. Would it be feasible to model, with the models that we currently have, without doing a lot of additional work, to see whether this general area might actually have better coverage? I'd sort of direct this to question to our engineer.

**Hank Menkes:** PierCon would have to do that because they are the only ones that have access to Verizon (inaudible).

**Chairman Robert Dee:** But the problem we have, the big problem we have, even if they wanted to look for another location, the owner of the land refuses that.

**Bob Repetto:** I thought our requirement would be to propose that another alternative. And so this is a reasonable alternative and it's on his property, that's his business decision whether he wants to lease it to these, these people or not. It's our request that's all.

**Robert Gaudioso:** Okay I think the problem is, I still haven't heard the spot.

**Bob Repetto:** I don't know the spot. I'd leave that to you guys to figure it out.

**Robert Gaudioso:** Well I think what the problem is is that we're talking about a spot that's very speculative that may or may not meet the setbacks that, quite frankly, if it's the spot I'm thinking of, it's closer to another resident and is more in line with that view shed, so. What I would say is, if you think there's a better spot, let us know what it is and we'll certainly take a look at it. Although I do agree with the chairman, Mr. Fadden has already said he's unwilling to lease it, but, we're not unwilling to go back to it.

**Chairman Robert Dee:** Right.

**Robert Gaudioso:** But you haven't told us the spot. We can't just be, if there's another spot on the property.

**Chairman Robert Dee:** You could always look at Mr. Fadden's house on top of the hill, for a spot up there. Higher on the hill.

**Allen Jordan:** Yeah I mean you know that's probably, you know and I would think that everybody, my neighbors would certainly, I think anybody, I think anybody who would stand here in my shoes right now would have a hard time getting their head around how it is that one man, one company, and how it is, how do they have the right to affect my life in such a negative manner? I mean this is, we're not talking about a couple dollars, we're talking about kids that are gonna have to be relocated, potentially. We're talking about a house value that's, God, it's gonna be worth nothing, you know?
Chairman Robert Dee: The board is taking this, everything very seriously. I’ve been working on this for 6 months, believe me.

Allen Jordan: I know you are and I’m gonna step away from the microphone because I know it’s been a long night for everybody.

Chairman Robert Dee: No no. Please, we want you to, there’s no time limit here. I don’t set time limits, okay.

Allen Jordan: I do appreciate it.

Chairman Robert Dee: And I want everybody to get their, you know, opinion out but I could say the board does listen to all your concerns.

Allen Jordan: Thank you. And again, thanks, thanks very much everybody. I appreciate it, thanks.

Chairman Robert Dee: yes, Mr. Gorevic.

Roger Gorevic: Roger Gorevic, 60 Roundhill Road. I had a long speech written and I’m not going to do it because I think Andrew covered an awful lot for everybody to digest tonight. First I want to compliment the boards, you guys have just been tremendous. The attorney, everybody involved in this Our officials, Richard Shea, Nancy, Mike, John Van Tassel. Everybody's been involved, everybody cares about this community. When I look at those pictures that were put up there, and you may say that they weren’t selectively picked, that’s up to you. You know I used to be the president of the Appraisers Association of America and one of the schools that, in the art world, that's so well revered is the Hudson River and Hudson Valley school. We have Frederick Church paintings; we have Eastman Johnson paintings. They depict the beauty of what we have up here that's so special and so dear to all of us. As the former president of the Appraisers Association of America I tell you right now, that if I put a cell tower on those paintings, they're worthless. That's what you're doing to our community if you succeed. So what, what does it mean as far as all of us are concerned who live here? We have to protect this area. We have Hudson Highlands Trust to be involved. We have Open Space. We have Scenic Hudson; they've spent millions to preserve what's gone up here, what's gone on here and that everybody decided to move here for. They came to this community because it was beautiful; it was special. The people here are special. We don't take it lightly. We are a community and the fact of the matter is, we will go forward as a community, whether this occurs or it doesn't. But a lot of us are gonna have a really bad feeling if it does. In the name of progress, this is not progress. This is going backwards. Allen is 100% correct in what he had to say. He worked hard, so did I. My wife and I worked hard to get our home, it's very special as far as we're concerned. We didn't move up here 17 years ago to think about the idea of having a cell tower stuck in front of us. That's ridiculous; it's, it's beyond absurd. And the worst of all this, for all of us that have gone through this, it's an emotional toll. We didn't need this; we didn't ask for it. I have no problem with my cell phone. I can go through and I can show you the last 500 calls that are made, not one has ever been dropped. All in my house, never one is dropped. This is nonsense. They're telling you straight out there's no gap in service here. We've discussed it. They haven't proved anything, they haven't put it in front of you. They don't care. This is about money and all they care about is making money; they're in the business of making money. I don't blame them from that point of view but go somewhere and put it somewhere where it doesn't affect
people's lives. You have a great responsibility and I again congratulate all of you for giving your time and effort. This has gone beyond. And the emotional toll that I'm sure it takes on all of you, is not insignificant because you have to hear people gripe, people get upset about things, naturally, because their homes are being attacked. And if you attack my home, I protect my home. It's what I taught my kids, it's what my father taught me. If you're attacked, you'll protect yourself. If you get emotional, that's okay, at least you're being real. I wish you great deliberations. I'm confident in your outcome and I think Andrew's given you all the answers and the ammunition that you need so.

**Adam Rodd:** Just for the record, are you a Verizon customer?

**Roger Gorevic:** Yes. I'm a Verizon customer.

**Chairman Robert Dee:** Hold on one second. What do you have to change the tape? Alright. We'll wait for her.

**Roger Gorevic:** The last thing I wanted to say is, since this is all about big business and about money, and this is ultimately millions of dollars involved I'm gonna put it on the table. If you guys deny and they sue you, I'm gonna go door-to-door; we're gonna start a campaign, and we're gonna get Verizon customers to call it a day and move to a different carrier. The only way to fight people who pick on you is to fight back and hurt them back. We will take this locally and we will take it nationally and we will make this a cause that causes not just a thousand clients here but hundreds of thousands of people in this country and if you underestimate you me, you made a mistake.

**Chairman Robert Dee:** We have a gentleman who wants to give us a presentation. It's ten o'clock at night, okay, so I'm got to cut your presentation short, okay. So what I want you to do is just give me the important points to it, okay, because you know. I'm not trying to, but what I want to discuss afterwards with Mr. Gaudioso about continuing, continuing this, so.

**Paul Eldridge:** Well thank you once again, Paul Eldridge from 100 Rockwald Road. The first thing that I would implore is that if the tower is built, it certainly will be there for the rest of my lifetime and probably most of the lifetimes of the folks that are here. To take a little more time to get this Right, I think is really important. I would implore Mr. Vicente, Mr. Gaudioso to seriously consider tolling the shot clock so that the additional information that we all need, to do a proper analysis of this and come up with a proper decision, that that opportunity is given to us. I've got one supporter.

**Chairman Robert Dee:** It wasn’t even your wife.

**Paul Eldridge:** Actually it was my sister.

**Chairman Robert Dee:** Sister. Your wife didn’t even clap for you.

**Paul Eldridge:** That's alright, that's not unusual. As Allen Jordan said, my wife and I have also been here and the land is very special to us too. We bought this property 36 years ago, 37 years ago. We've had a house there for 35 years, we've always looked to the south and to the west and we will now see a cell tower sitting in front of us. Even if it's reduced to 140 feet we're still going to see it. The balloon tests that have been done, including the second one, was done on November 1st, I believe was the date, there still were a lot of leaves on the trees and those pictures that were shown by Mr. Xavier showed
that there were a lot of leaves still on the trees. Once those leaves are off, if you were to do it now it's going to be a different picture. The other is, I saw a number of pictures that were produced. My wife went around with the folks that were making the pictures and in a couple of cases pointed out, no look this way, take a shot here, and it's interesting because I saw some of the shots that were taken and the most revealing ones were not in the presentation that I saw tonight, with all due respect. There were other pictures that were more revealing of the tower.

Bob Repetto: Any homeowners take other pictures?

Paul Eldridge: There's lot's of them. From our house every room except one we will see that tower every day that we are in that house. From our deck, which faces directly to the tower, we will see it. It's again a shock to me that a person that has 91 acres, 64 on this piece and the 27 he has up on top, picks the spot that's 200 feet from our property line. The other is that, that particular piece of property, as I've mentioned to the conservation board, I was trying to find some records on it. The town had no records and I didn't think there were any at the county but just recently, after persistence, I found out that the county does have some records about those pipes being put in and their reason, and there was an analysis of that done by the engineers and they're still pulling out those records and I hope to have some more information on that very, very soon. But I also implore that the shot clock be extended so we could actually see what that was. I wanted to ask Mr. Menkes, if I could, you indicated that if the, if I'm correct, that if the Nelsonville tower is not built the McKeel's Corner would be more effective, if you will, in covering 301 but that there is a gap, quarter mile gap or as you said 1350 feet approximately, north of 301. Is that directly north of 301 attached to where 301 is or is it somewhere further up? Okay thank you. He's saying it's further up on route 9. Would you be able identify that on, I have a map here actually.

Hank Menkes: I am not in the habit of making the applicants case but, there it is right there.

Paul Eldridge: How far north of 301 is it?

Hank Menkes: Here's the scale, it looks like, about a mile.

Paul Eldridge: Do you know the name of that road by any chance?

(Inaudible)

Paul Eldridge: The reason I ask that is because, what we actually did was, we produced a map that would show the property owners in the areas that were identified by PierCon as where the so called gap is and in looking at this...yeah, sorry. She can actually hide behind it. If you take a look at this, the red is, are all the residential homes in the area. You can notice, down here there's quite a few and that's the trailer park, I would call, just south of 301, and the yellow is Route 9. And the point of this is that, within this total gap area as I understand it there's, what's the number of homes? It's 135 homes was it? There were 430, supposedly 430 individuals, approximately 135 homes. So we're building an additional Tower in addition to McKeel's to basically cover 135 homes apparently. Now that, that's also assuming that all of them have Verizon and I think Mr. Menkes had mentioned that north of 301, at some point in his deliberations, and this was at the last meeting not this meeting, was that something like 37% were Verizon customers.
Hank Menkes: Let me give the statistics to the best of my memory. The cellular penetration rate in the United States is about 88%, I think that was measured the end of or the middle of this year. That means that 88% of the population has a cell phone. Verizon’s market share is 37%; so 37% of the 88% are Verizon’s customers. Now that 37% was the end of the third quarter of this year. I also looked at the, the numbers and, and I have to admit, there's been a lot of numbers thrown around with regard to the population and the number of buildings and so forth. And 430 people, it isn't clear where that number comes from and what area it covers. If you, excuse me. If you take that number and you multiply it by the cellular penetration level, you come up with 330 people approximately. If you then multiply that by the Verizon market share, you come out with about 123 people. Now that 123 people are divided between the two areas that are identified as being less than reliable service. So it, first of all if you believe that the 88% penetration rate is evenly distributed across the United States, you have to first make that assumption. I don't know the answer to that. Then you have to assume that Verizon’s penetration, our market share, is also evenly distributed across the United States, which it probably isn't. So we've already made three assumptions: the population, the distribution of the cellular penetration, and Verizon’s market share assumption in this area. So you come out with 123 people divided between two areas that are identified to have less than reliable service. So that's about 60 people in each area that do not have reliable service, just to make it clear. Now if I can add, and I apologize for, for taking your time, there was also some reference to counting the number of buildings and I have to admit that I went through it many times and I couldn't figure out what, what the logic was between doing that because I haven't seen too many buildings making phone calls recently, okay. And if I read it correctly it appeared to me that there were more buildings on the 301, route 301 than there were on Route 9 where people lived because a lot of the buildings identified on Route 9 were enterprise businesses which are closed in the evening, on Sundays, and on holidays, and you know, I'm not suggesting that there's any priority before an emergency police or fire call from either Route 9 or route 301 but just take into consideration, we are talking about very small numbers here.

Robert Gaudioso: Mr. Chair I just have to respond to that because it’s really important.. Those were not the numbers. The numbers actually in the PierCon report was that in the gap area that would be left with the McKeel’s site, there would be 36 buildings, and that's a commercial gap area, as opposed to five residential buildings in the gap area along route 301 from the proposed site at 50 Vineyard assuming that no site would ever be built in the Village of Nelsonville, which I believe is a false assumption. But more importantly, just to say the number of residents, far underestimates the number of persons because obviously whether it's a residential building or a commercial building the number of people that would be visiting that location far exceeds number of people that may that may, pursuant to the census, be there and not be there, and obviously the census data is always a little bit out of, out of tune. This is mobile technology, these are people that are using their phones, their laptops, their mobile devices, and to make an assumption that there's 100 or 120 or 60 people in a particular gap area, I think is without a basis. Thank you.

Paul Eldridge: But if I may, on that point, there's a small number of people that are in the area and the majority of people that would be passing through the...

Chairman Robert Dee: We're not gonna argue back and forth here all night long, alright. Let me explain to you. Let me, give me a chance here. Now somebody come up tonight, come up with a great idea about all the residents in the area if they can produce affidavits, so many, over three years and so and so forth, you know, that would be, that would help us. We need tangible things. I mean we have one consultant say one thing, one consultant who could say another thing, okay, you know, I mean
who's right who's wrong. I don't think anybody on this board has the knowledge or the expertise to
decide that, okay. But if I get 50 people telling me they lived there and they make calls, haven't had a
drop call or ten drop calls in three years or something like that, that's something I could look at.

Paul Eldridge: I can tell you that we've had Verizon and cell phones for many years, it's always been
Verizon, and we've never, to my knowledge ever had a dropped phone call from inside our house or
anywhere in Philips town.

Chairman Robert Dee: What I would suggest, since you're the Association, to get as many people as
you can in the area to present us with that. Okay go ahead.

Paul Eldridge: We'll go back on the record. I think the other is that the folks that are passing through
or accessing route 9 or 301, whatever, obviously would be in vehicle coverage and they've already
admitted that that, there is no problem with in vehicle coverage. From our perspective there's no gap in
service. We have used our cell phone, as I said, for years. Our neighbors have, many of my friends and
neighbors have Verizon I think the majority of people have Verizon and there's never been an issue my
brother-in-law, he, we get together twice a week. He's always using his phone to even access stuff on
the on the web and the Internet so, and he's never had a problem. I would indicate that at the last
meeting, and because I raised it up in my conversation, my comments relative to Verizon's website, that
their website says clearly they have 100% coverage in this area. If you take a look at the coverage map,
there are no gaps, it's solid as can be. Our field test obviously confirmed that as well. I did one
continuous phone call throughout the whole gap area and never had an issue with it, nor have I ever had
any issue in the Town of Philipstown. As a matter of fact, I Drive 301 every day and there is one spot
that's way over by Carmel, and I could tell you exactly where it is, and it cuts out for ten seconds right
there, there's no other place on 301 where that happens or on route 9 or 301 going into Cold Spring or
any of the places that they indicate there is. There's another thing, there's a thing called RootMetrics
that is on the website and it shows, also, that there's no gaps in service. This is a company that tests
mobile network performance from a consumers point of view and they provide objective, accurate, and
unbiased assessments of performance in a helpful and easy-to-understand terms and I have a second
map that we produced on the basis of the information that's on their website. I'll put this together so you
can see who RootMetrics is and, thank you, yeah, absolutely. So this is the area where there's
supposedly gaps. What the RootMetrics does, in addition to showing that there's no gaps, and by the
way, green is good, the orange is fair, both of these two colors are not on there, that would be poor and
bad. So all of it, and the vast majority of it, I would say 90% or 95% of it, is, is good. Now this is based
on RootMetrics, which is an independent company that characterized what consumer mobile
experience is and the way they do this is, they test, with the same smart phones that we as consumers
use, they test the same mobile activities that consumers use their smartphones for on a daily basis, they
test that same times that consumers use their smartphones phones, and they test in the same places
where they're used. If, this actually also they reflect the decibel measurements. And in the green it
basically is negative 96 to better than that, which would be then a lower number and the, I'll say the
orange color there or tan color which is there, they say runs from 97 to I think it's 105. All of that area,
as you can see the vast majority of that area, is very good service. This is an independent company,
this...they're called RootMetrics and it's RootMetrics.com, if you go on the website you can see this
stuff yourself.

Paula Clair: (Inaudible)
Paul Eldridge: It was, I have the exact number here if I can pull it, I’m going off memory. It was, I believe good was - 96 to a lower number which is a greater strength, they, I think they said to - 50 and then for fair it was 97 to I think it was 105, negative 105. These numbers kind of flipped from what the...

Adam Rodd: Are these materials part of materials that have been, is this being presented now, has this been provided to the board?

Paul Eldridge: This is being provided now right now by presentation, yes. You know this we got off the website actually today. There is, I also want to be sure that is entered into the record, in the minutes, the memorandum in opposition that I handed to you this evening, just so that you have that as well. There's a couple of other things that we'd like to mention and that is that I don't know, did you hear back from the Putnam County Planning Department relative to their review of the information that they?

Chairman Robert Dee: No the only letter I have is the...

Paul Eldridge: Okay is there a requirement to have them respond in some way? Prior to your own...

Chairman Robert Dee: I’ll have to ask the attorney.

Adam Rodd: They just have to respond within a certain period of time of the submission of the application.

Chairman Robert Dee: I guess what he’s asking, do have to they, they said modification but they haven't got back to it. I mean could, I guess this be voted on without the approval.

Adam Rodd: All we need is their response within 30 days. We can vote on it, we can decide it as long as we have their response, whether it's we like it or we dislike it.

Paula Clair: But we haven't gotten their response so can we vote on it without their response?

Adam Rodd: Well they have 30 days. They did respond.

Paula Clair: We can vote on it before they respond then?

Adam Rodd: I think they did respond.

Paula Clair: Well they just responded that may need, yeah they need modification.

Chairman Robert Dee: What you’re saying is they didn't approve. Wasn’t an approval or denial.

Adam Rodd: Well, it was neither or. And there's been testimony from in the record that the materials that they indicated that they didn't have they in fact have and we haven't heard anything since that time. So I assume they have it.

Chairman Robert Dee: Right, okay.
Paul Eldridge: So in ending I would say, I didn't realize, I thought if McKeel's Corner, if that if the 50 Vineyard was built, I was under the understanding that the McKeel's corner tower was coming down. Obviously it's just Verizon's equipment coming off of it, so that, that tower will remain. So, we will have the 50 Vineyard, we'll have the one up by Minardi's which is on Tower Road on route 9, we'll have McKeel's corner and potentially we'll have another one in Nelsonville and we also have the Sky Lane. I think that's going to make it 11 cell towers in Philipstown if all of them are approved?

Chairman Robert Dee: Okay thank you.

Paul Eldridge: So I would just ask that the, you know, the shot clock be tolled so that... thank you.

Chairman Robert Dee: We're gonna discuss that now. Everybody, everybody's been heard tonight I think. Mr. Gaudioso. Yes? I'm sorry. I've got somebody in the doorway here. This is the last person tonight, go ahead.

Mr. Harris: Thank you. My name is (inaudible) Harris I live in at 61 Moffat Road in Cold Spring. I'm here to support and to communicate my concern about this. My property and my house that my brother and I built abuts the Rockledge Road. I think we can talk numbers all night long. I think we need to bring this back to the basics of why we live here and ask ourselves, is having more service that we already have necessary and the impact of devaluing our properties or imposing our views or our general feel in our homes worth it to prosperity or to advance ourselves. You know I mentioned in a previous meeting that I loved the fact that that Philipstown and Cold Spring has dirt roads. I don't expect to go up Indian Brook Road and have a paved smooth ride. I like the fact that it's a dirt road still or Old Albany Post Road, it's what gives a character of this area. I grew up in Brooklyn. I don't need a cell tower over my, you know, over my roof. I have perfect service. I need cell service in New York City at City Hall because it drops there. I'm a sales rep, I know where service exists and where it doesn't and I've been a contractor. I worked on the Gorevic's house. I know their view and it looks down, would look down on the cell tower and the tower would be about 60 vertical feet above my home. It's a real concern and I think, I plead to all of you to look at this from the standpoint of, it's in your, it's on your property or it's behind your house and just evaluate because it's easy to look at, oh it's, it's not there, it's not my backyard. This affects all of us. We, you know part of why we live here is because we don't have, you know, the largest parking lot is at Foodtown right? Or one of, and we like the quaint country feel of where we're at and if we keep building, you build that parking lot or you build that cell tower it's not going away in our lifetime. And you made a joke about in your lifetime, it's not, that's fine but I'm frustrated that we're joking because in a week...

Chairman Robert Dee: After three hours you start to...

Mr. Harris: I'm just telling you, no I get it. You know I've been up since 5:00 too but in a week it's gonna be Christmas and the holidays and a week after that it's the first and then a week after that we're at the tipping point, right. So I just, I ask that we all look at this and take it from the standpoint of it's on your property or it's looming over your head and we make active proactive decisions. I think there's a radio tower on 301 that stands well above everything in the area. It's not that we don't want to have the services and the effective emergency, you know, response that we need I've been a EMT in town, you know, I understand the value of that and communication but there are other options and we need to find
them before we allow someone to come in and bully their way into forcing us into a decision that we
don't want and I, most of the community, does not want. Thank you for your time.

**Chairman Robert Dee:** Thank you. Mr. Gaudioso.

**Robert Gaudioso:** We'd like to take just two seconds on some of the RF information. Again the code, the code does not require a significant gap. That would be, as I've mentioned before, that would be a discussion de novo or anew in front of a federal court judge. What the code says is that an alternative site is undesirable, including for technical reasons that's, the term it uses that's the criteria. The only requirement for proving need under the code is information establishing the present need for the proposed tower shall be submitted. It doesn't say, again, anything about a significant gap. Whether people, you know, provide letters saying that they've made phone calls or haven't made phone calls again, I think, I think the reliability of that data would be speculative, at best, particularly given the fact that there is an existing tower online, partially covering this area and that's very important to understand, that there is some coverage in the area because McKeel's is actually operational. And what we've shown in, in the voluminous number of propagation maps is that there is an in vehicle coverage gap at twenty one megahertz, whether that's significant or not, you know, leave it to your consultants to either opine or not opine. We've shown the in building coverage gap even at 700 megahertz, which is the, which is the frequency that covers the farthest and would have the least size gap. You've heard from your own consultant that our design criteria is, and if I'm misquoting I'm sure he'll correct me, is a reasonable design criteria and yet we've still shown less than desirable coverage based on our design criteria, we believe that's a significant gap, in any event. So the code only requires that we show present need for the tower. Letters to the extent that folks have coverage and made phone calls, given the fact that McKeel's is operational, we believe, would be, would be speculative. We'd ask the board to, schedule this for a decision at the January meeting. If, if your January meeting is January 8th and it was scheduled for a decision on that night, we would agree to extend the shot clock from January 5th to January 8th for the purposes of a decision.

**Chairman Robert Dee:** The only question I have with that is, if I close the public hearing tonight, I, we can't accept any more information. I know there's some of the residents have spoke about affidavits, letters about phone calls. I know you say it's not important, it doesn't count, stuff like that but I would like to give them a chance to provide that so how could we do that, with the public hearing.

**Vincent Cestone:** It starts a 62 day clock so that he has to have a resolution to...

**Adam Rodd:** My suggestion would be, obviously in this discussion my understanding is that you also wanted to submit some materials. There was testimony about Verizon having advertised or on their website and you wanted to submit materials on that, so I think the appropriate thing would be to, hopefully have some, you know, limited information, hopefully not a three-hour but I mean it's up to the board. Well I mean yeah that's up, yeah what, what I'm simply suggesting is I heard from some members of the public as well as the applicant that they wanted the opportunity to submit some materials in reply to things that were said and to address things that, that were said so, assuming that's okay with the board for the January meeting, my recommendation is obviously not to close the meeting because there would be some limited information on the 8th and then after consideration of that, absent of any other agreement, we would decide that on the 8th, decide the application on the 8th.

**Chairman Robert Dee:** Would that be acceptable to you?
Robert Gaudioso: I would like to ask for a copy, by tomorrow, of the documents that were submitted tonight so we can respond and I would ask that the responses by everyone be due, which is normally your, your custom, 10 days in advance of the next meeting.

Chairman Robert Dee: Okay, basically saying any information, got any additional information anybody wants to hand in, which would be photos, I know someone spoke about photos of towers or anything that they think is relevant, affidavits of phone calls, it's got to be in by 10 days of the next meeting, which would be January 8th. Okay I'm gonna give everybody a chance to submit what they can. It's not gonna be a lengthy meeting like tonight. This is, this is it, you know. One second let me finish and I know we'll go over that, what information is and also by you, with the website thing, then we'll go over that at that meeting and then we'll close the hearing, then we will make a decision that night. Thank you. Is that suitable to you?

Paula Clair: Do we need the, the shot clock extension in writing from you?

Robert Gaudioso: No, we could mutually agree to extend it this evening to January 8th.

Paula Clair: Because it's a matter of public record.

Robert Gaudioso: Correct.

Paula Clair: Correct. Alright.

Chairman Robert Dee: Thank you.

Robert Gaudioso: Thank you very much for your time this evening.

Paul Eldridge: Yes, I just have one concern. I believe that Mr. Campanelli, said it would be worthwhile to have the RF engineer do...

Chairman Robert Dee: Yes, could you come up.

Paul Eldridge: I think it was Mr. Campanelli had indicated that it might be worthwhile to have an RF engineer do in building testing that, I don't know how quickly that could be done or if that's something...

Chairman Robert Dee: From listening to the RF engineer before I think it would be, you know very, extremely difficult, you know. I'll ask him and, Mr. Menkes?

Mr. Menkes: (Inaudible)

Chairman Robert Dee: Okay so, I understand what he said, you know, he doesn't have the equipment. It's too late to for us to get another RF engineer at this point in time to do that. I think that the affidavits though, from the people that actually live there, I know, even though Mr. Gaudioso says it doesn't matter, would be important to the board.
Bob Repetto: What about requesting Verizon to provide us the drop logs to show they...

Chairman Robert Dee: They won't do that. I asked them that on the first meeting.

Robert Gaudioso: The drop call data is...

Bob Repetto: Privacy issues or something...

Robert Gaudioso: No the drop call data is, number one is again anecdotal. Whether someone drops a call or doesn't drop a call could be a function of, they know there's a gap and they may not initiate a call or they might terminate the call in advance of the, in advance of the drop, knowing that they're going to drop it in a particular location. So the drop call data, we believe, is anecdotal and we rest on our record of what we've already submitted.

Chairman Robert Dee: (Inaudible)

Robert Gaudioso: No we're not going to provide because we believe, well we believe it's unreliable.

Chairman Robert Dee: Okay you refuse to provide it. Fine, thank you.

Andy Galler: Can I ask Mr. Menkes a question? Is there any surrogate data that can be used rather than the testing you're talking about? Is there any surrogate data? I mean, for instance you know on the Conservation Board we can't often ask applicants to make a full delineation of the wildlife in a wetland so we'll use surrogate markers, such as soil types, you know and it's done, you know in conservation biology all the time, to try to make something a little bit quicker that gives you a good scientific estimate.

Hank Menkes: I understand the question and I don't know where Mr. Gaudioso is hiding but let me also address this comment to him. The 4G LTE technology asks the mobile unit to send a tremendous amount of information back to the core of the network. So in addition to, you know, just handling the bearer information the, whether it be voice or data, your handset is sending hundreds of measurements and statistics back to the network in addition to just our reference signal receive power and then there's reference signal quality indicators, there's information on adjacent cell site signals; it also sends GPS information. So every one of those measurements that that phone makes can be associated with its location. So Verizon has software, and they had this for 3G, they had it for 2G and there are vendors that make software that do what's called deep packet inspection. They latch on to the interfaces in the network and they figure out what packets going back to the core of the network contain measurement information and which packets contain GPS data and they can plot that. Verizon has software that they used in the past, I believe and I could be mistaken, it was called call marker data or call traffic or something like that. It's a internally produced software but there are commercial vendors that have the same and what they do then is they make measurements, again statistically significant because they can measure millions of calls and associate the call performance with the location of the mobile, and Verizon has shown this data in previous submissions to boards where it has been asked for. I know because I was at those meetings.

Robert Gaudioso: Just in response to that, we do have a situation. We have an existing site up and running and also, you know, so there is, is going to be confusion over where exactly these calls are. You
could say GPS tracking, plus or minus, we're limiting things to very fine areas as far as the in building gap at 700 megahertz, the in-vehicle gap at 2100. So I know it all sounds great and, and it sounds like it would provide reams and reams of additional information but we believe, given what the code requires, which is very minimal, which is radial maps, which we've provided. In addition to that, we've provided the drive testing data which is the actual data. We've gone above and beyond what the code actually requires and we've met the standard of what the courts have said is the proper methodology to provide this type of information to show a significant gap.

Chairman Robert Dee: Let me ask you a question. The January 8th, in the event of a snow storm or something like that, you know, I'm not gonna be here. Can you, are you willing to...

Robert Gaudioso: Of course, there's a natural disaster what I would suggest is your council call me either that day or the day before and we'll work something out.

Chairman Robert Dee: I don't want you to show up in a storm. Okay thank you. And also we have another, just so you know, it's gonna be very, it's not gonna be a long meeting, okay. We'll go over the new information and that's it because we'll probably have three or four other applications. I know you have one, you have a, Mr. Gaudioso, you have another application coming before us right? The radio tower or something like that? Right, okay. And there's a couple others, so we'll go over the information that's supplied, your information and then we'll close the meeting then the board will make a decision and I imagine the Conservation Board is in the same, are you in agreement with that? That it would be here January 8th and then, like you say, after...sure.

MJ Martin: I have a question about sequence in terms of our decision on the wetlands permit and your decision on the variance, what comes first? How do we make these decisions?

Adam Rodd: It doesn't have to be in a, in sequence, I mean theoretically you could have decided this tonight if you wanted to but I get, yeah, so the plan would be to decide both on the 8th.

Chairman Robert Dee: Okay you can go first.

Mark Galezo: I think the consensus of the conservation board is, we would like to suggest another site but it's, from your response, we're shooting at a moving target because you tell us well give us an exact site so I'd like to throw it out to all the neighbors if you have a suggestion, that's something that would be less visible, give us something to shoot at. I'd like to see some sort of indication from the modeling if there is anything whatsoever. Yes, one second, please let me finish or I will forget what I was gonna say. So we have something to shoot at and if you can give us any help, we don't, we're not telling you we don't want to tower ever, anywhere. We all understand, if there needs to be a tower but be reasonable, give us something to shoot at.

Robert Gaudioso: The landlord has said he will not offer any else, place on the property. I think what you're saying is reasonable but I also think it's unrealistic in that I don't think you're going to get a consensus because I truly believe that someplace else on the property is going to be more impactful to other folks. And let me give you an example. If you look at the visual renderings, and actually look at them carefully, you'll see the tower from Mr. Gorevic's back deck, which is where that photograph is taken from, is off to the right hand side and below the tree line. If you go out into the Vineyard area, you're going to be wide open into the, into an open area that's going to be more in his view line out to
the mountains and everyone can disagree and they can, and they could say otherwise, but if you look carefully at those renderings, look at the view shed map, you'll see exactly what I'm talking about.

**Mark Galezo:** I appreciate what you’re saying.

**Robert Gaudioso:** If you don't, let me finish because I think it's important. If you go closer to Route 9, you will hear from the same residents that were upset about 59 Lanes Gate Road. They were at prior meetings, they came out, they did not want it at the landfill because it was closer to their residences. So I, so it's not that we're being difficult but I truly believe if you say, put it someplace else, it's not going to be the magic pill. But if there’s a consensus and I’m wrong and you have your council call us between now and then and say everyone agrees this is a better spot and put an X on the, on the map we'll certainly look at it in good faith, I can tell you that.

**Mark Galezo:** Good enough. Sir I’m sorry.

**Andy Galler:** You know, I’ve been on, first the wetlands committee, which became the conservation board, for over 20 years. We have never, in my knowledge, granted a wetland permit to cross, whether it's a wetland or a buffer, unless there has been no other way, there's been no other place on the property. So you’re really asking us a lot and I just want you to be aware of that.

**Robert Gaudioso:** I just don’t think that’s the standard under your code, that’s all.

**Andy Galler:** Well, I’m, just want you to be aware of what's been done for precedent.

**Joel Cooper:** Joel Cooper from Rockwald Road. I'm gonna be...a minute. The code says that there should be research about alternative sites, particularly high buildings or high structures or tall structures and high structures. The highest structure in this area is Mr. Fadden’s home. You could have a nice cell tower array put, disguised as chimneys on top of this home or other places but I mean even to be serious, he's at 980 feet, this is at 680. I am sure there are places in that property that you could create a bunker or some other kind of disguise, camouflaged by trees, and I've seen pictures of this, magnolia trees ten feet tall, you wouldn't even know that there's a cell tower there. There is plenty of space to put, now he said he's not gonna do that. Now my last comment is, if you need any fact to show that a cell tower is harmful to property, to property values, look at where he wants this tower, as far from his house, excuse me, as possible. Thank you.

**Chairman Robert Dee:** The problem they've run into that, even if they're willing to look at any other site on the property, Mr. Fadden says that they can only put it close to you. Alright make a motion to adjourn.

**Vincent Cestone:** I’ll make the motion.

**Chairman Robert Dee:** All in favor?

**Paula Clair:** Aye.

**Granite Frisenda:** Aye.
Vincent Cestone: Aye.

Chairman Robert Dee: Aye. Okay, so 7:30 on the 8th it'll be here. That'll be here. Yeah it's going to have to be.

(The meeting adjourned at 10:46 pm by a unanimous decision.)

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

DATE APPROVED: ______________________

Respectfully submitted,

Tara K. Percacciolo
Secretary
The Zoning Board of Appeals for the Town of Philipstown held their regular monthly meeting on Monday, January 8, 2018, at the Philipstown Recreation Center, 107 Glenclyffe, Garrison, New York.

**PLEASE NOTE that these minutes were abstracted in summary from being present at the meeting and the television video. If anyone should seek further clarification, please review the video.**

Chairman Robert Dee opened the meeting at 7:40 P. M. with the Pledge of Allegiance.

Chairman Robert Dee: All right first order of business is the minutes. There was some technical issue with the minutes, I think we just got them tonight, so we're not going to ask for approval tonight, give you a chance to review them because the minutes are from the last month's three hour meeting so we'll go over it, we'll approve them next month. First on the agenda is the continuation of public hearing for Homeland Towers. Mr. Gaudioso.

**Homeland Towers, 50 Vineyard Road**

Robert Gaudioso: Good evening. Thank you Mr. Chairman and members of the boards. Robert Gaudioso with the law firm of Snyder and Snyder on behalf of Homeland Towers and New York SMSA limited partnership doing business as Verizon Wireless. Mr. Chairman we did submit a few items since the last meeting. We submitted two supplemental RF engineering reports. Just to summarize those
reports, we did an additional drive test because there was some question about the drive test and the request for additional data. If you recall we had originally submitted data drive test data back in, in the summertime, we did a second drive test. There was also a request, even though it's not required by the code, for certain technical details such as access failure rates and drop call failure rates and we submitted documentation on that showing that it's well above the, the standards.

Chairman Robert Dee: Where is that. I'm sorry.

Robert Gaudioso: That was in the supplemental report regarding the Campanelli and Associates memorandum, comments at the December 11th public hearing, and an independent drive test from PierCon, dated December 20th 2017.

Chairman Robert Dee: Okay can you explain to drop calls to me? I’m lost, what page is that on?

Robert Gaudioso: Sure, if give me a moment.

Chairman Robert Dee: Sure.

Robert Gaudioso: So the data set forth in the exhibit, located at Exhibit D, and the discussion is in the report on page six under item number five under key performance indicators.

Chairman Robert Dee: I see exhibit D at the McKeel’s Corners. Is that what we’re looking at?

Robert Gaudioso: Correct.

Chairman Robert Dee: Okay. And what does this show me?

Robert Gaudioso: This shows the access failure rates, meaning that when a mobile device tries to access the system and there's a failure to access it, it shows that rate and it also shows the rate of drop calls. And what we looked at was McKeel’s Corners because, again, the purpose of the proposed site is to eliminate the gaps that are left by McKeel’s Corners and replace McKeel’s Corners so in locations where McKeel’s doesn't cover, this site will actually cover, as we've shown by the drive test data and the various propagation maps through the months. And there was a question at the last meeting, there was a request for this type of data and your consultant had specifically indicated that we should submit it in connection with his report, which I believe was dated December 21st and we had submitted that in the report dated December 20th.

Chairman Robert Dee: Okay. To be honest with you, looking at this, does anybody understand it?

Robert Gaudioso: So…

Chairman Robert Dee: Wait a minute, let me finish. I would say drop calls, I was talking about, you know, me, I understand what you're saying here. This is a, you know pretty, to an RF engineer. Drop call percentage. Okay if you're looking at the drop call percentage. I guess my simple question is, what is the percentage of drop calls?

Robert Gaudioso: So…
Chairman Robert Dee: Any line.

Robert Gaudioso: Yeah, so it bounces and it depends on the particular, it depends on the particular sector and the data goes up to over 10%. And as you recall last month, your own consultant had indicated the standard of being 2% and Verizon agrees with that. And in this case, the drop call data exceeds, routinely, 10%.

Chairman Robert Dee: Where does it say that?

Robert Gaudioso: That says it in the report. On page...

Chairman Robert Dee: Oh in your report.


Chairman Robert Dee: But I can't tell that by looking at this but it tells you in your report. Okay.

Vincent Cestone: Question. We have no frame of reference. How does this compare to other places?

Robert Gaudioso: Well that's the point is that the standard is 2% and this is well over 10%.

Vincent Cestone: That’s your standard. That doesn't mean that's the way it really is, around the, with most cell access. Just because Verizon has a standard of 2% that doesn't mean it is 2% for everywhere. Do you know what I mean?

Robert Gaudioso: No I'm not really following. The standard of the design is to be less than 2% and the way the system is currently configured, its exceeding that and exceeding it by a vast, wide margin, over 10%, showing that there's an excessive number of drop calls on the site that we're trying to replace because, again, the purpose of this particular application is to replace the site that's not covering particular areas in Philipstown. And when you look at the topo maps when, when you look at the drive test data and you look at the different propagation maps, the reason is very apparent. Where the McKeel's Corners site sits, number one, is an elevation that's lower or around the same height as the surrounding mountains. And in fact, if you look at the area we're trying to cover on Route 9, there's a, there's a 500+ foot elevation to the east, northeast and then Route 9 drops down and that's the exact spot that we can't cover with the McKeel’s Corners site, even with the increased height that we've shown, particularly from the height of 100 to 110 feet that's there now. And then the same thing goes to the south, to the south and southwest on that corner over route 301 and route 9, whereas the location of the proposed site, even at the lower height of 140 feet, is situated in such a location that it's not being blocked by that topography and it's able to cover those areas. But again the data, which is not required by your code, was requested; we submitted it; we believe that it shows further proof that there is a gap in service.

Paula Clair: Um I have a question. You've got all kinds of different colors on this chart. What do the different colors represent?
Robert Gaudioso: Sure. The different colors relate to the different sectors. So the McKeel’s Corners site, like most cell sites, has three different sectors. And then what we also did is, we showed two different frequency ranges, because as you’ll recall, Verizon operates at different frequency ranges. So if you look at the chart that’s on the bottom, for instance that first color with the line through it in the square box, that’s the McKeel’s Corners alpha sector, which is at the hundred degree azimuth, at 700 megahertz. And then the blue is McKeel’s Corner alpha at the 2100 megahertz.

Chairman Robert Dee: Okay let me ask you a question. Reading the report from Mr. Menkes, I guess him and your, your consultant, Mr. Feehan, both agree that if McKeel’s Corners was at a height of 190 feet without Nelsonville tower, I mean Nelsonville turning down a tower, that McKeel’s Corners is a better site than Vineyard Road.

Robert Gaudioso: No that’s not correct.

Chairman Robert Dee: It is correct; it’s in a statement.

Robert Gaudioso: Okay so that’s not correct. No that’s not correct and let me explain why.

Chairman Robert Dee: It's a correct statement.

Robert Gaudioso: Mr. Chairman, I...

INAUDIBLE

Robert Gaudioso: I don't want to have a bickering back...

Chairman Robert Dee: I don't, I'm not bickering...

Robert Gaudioso: I'm gonna tell you right now, it's not a correct statement for a very simple reason. If I could explain....

Chairman Robert Dee: I want to look, I'm gonna read you the statement.

Robert Gaudioso: Go right ahead and read it.

Chairman Robert Dee: Take your time.

Robert Gaudioso: But please read the whole statement.

Chairman Robert Dee: I’ll read the whole statement, sure. It’s dated December 21st from Menkes Associates. “As requested, this letter provides a professional opinion relative to the justification for a proposed cell site and 140-foot tower at 50 Vineyard Road, Philipstown, New York; and, if determined to be necessary, whether alternative sites may satisfy the coverage requirements for reliable in-building service in the areas identified by the applicants along Route 9 and route 301. To facilitate making these decisions, the predicted coverage plots from the various PierCon Solution RF reports were employed. The use of calibrated predictive, computer-generated coverage plots is well established in the wireless industry so there is no reason to doubt the use of the supplied coverage plots for predicting the RF
signal levels for this application. However RF coverage plots are not the only criteria in determining the real-world impact of a wireless network’s performance. Although there is a correlation between RF signal strength and network performance, it is also true that if the RF signal strength is less than the service provider’s targeted performance objective, it does not mean that calls or data sessions cannot be established or sustained. This was demonstrated by the evidence provided by the residents. Rather, it only means that the statistical success rate of those calls and data sessions is reduced. A more definitive measure of impaired coverage is the actual call performance records in the area of consideration. The user equipment generates this information, the network elements record this data, and all service providers utilize these records to determine performance of their network. The board requested the core performance data, but the applicants refused the request claiming that it was proprietary even though such information has been presented for other Verizon applications when it was to their benefit. The signal strength plots for existing Verizon network in Philipstown show reference signal received power at 700 mhz as less than 95 dBm along a northerly section of route 9 and an area of route 301 west of route 9. However at 105 dpm, dBm, I’m sorry, the in vehicle target value, these same areas offer reliable service. This indicates that the RSRP values in the areas of the in vehicle service for the claimed compromised areas. However the applicants, on this application, assess less reliable in building service. So I guess what he’s trying to say is that the in building service is the problem, not the vehicle.

Robert Gaudioso: Not necessarily. At 700 megahertz, the in building is the problem. At 2100 it's also in vehicle.

Chairman Robert Dee: So you’re saying there’s a problem in both.

Robert Gaudioso: Correct.

Chairman Robert Dee: Okay. The applicant has indicated their September 6, 2017 PierCon RF report that the affected population in the area be considered in determining the impact of the purported less reliable coverage. Their RF report states that, according to the 2010 census report, there are 430 residents in the targeted area exclusive of the business along route 9. The exact area is not explicit, but it will be assured that it includes both the areas around route 9 north of 301 and route 301 west of route 9. This is a relatively small population number to start, and it must be further adjusted to represent actual Verizon subscribers. According to the Pew Research Center, as of November of 2016, 77% of all Americans owned a smart phone and an additional 18% owned a basic cell phone. Only smart phones can access LTE technology, the technology of focus for this application. Of the 77% who own a smart phone, 35.7% are Verizon subscribers. As a result, of the 430 people in the area of concern, and applying these nationwide averages to the limited area Philipstown, approximately 119 people could potentially be Verizon subscribers. According to their employees and customers...consequently an additional 25% will be added resulting in approximately 150 total potential Verizon in building subscribers divided between Route 9 and 301 areas. By any measure, erecting a new cell tower, a site and tower to serve an additional potential 150 subscribers is questionable and speaks to the numerical insignificance of the in building coverage gaps. Now, you disagree with that?

Robert Gaudioso: Yes.

Chairman Robert: Okay. Apart from the questionable need for the new cell tower, the Menkes Associates report of November 28th concluded that raising the antenna elevation to 190 feet and adjusting antenna operations at the McKeel’s Corners site would improve the in building coverage at
170 mhp along route 301 west of route 9; however a gap would remain along route 9 north of route 301. Conversely, the proposed tower at 50 Vineyard Road provides reliable in building service at 700 MHP along route 9, but leaves a larger portion of 301 without reliable service. The applicants raised the potential of erecting an additional tower in the Nelsonville area to address the remaining reduced in building coverage along route 301. However, the Philipstown Board has indicated that they do not have jurisdiction over the fate of the proposed Nelsonville tower and as such must consider issues associated with the application at hand. Consequently, the existing McKeel’s Corners site with a 190 foot Tower is the better choice based on offered coverage. The applicants RF engineer, Mr. A. Feehan, agrees with this conclusion as recorded in his November 30th, 2017 RF reports which states, based solely on the area of coverage provided by the two options, Mr. Menkes is correct in concluding that the existing site option is the better choice without Nelsonville. Now, you agree with that or not?

Robert Gaudioso: No, I disagree.

Chairman Robert Dee: You disagree with your own consultant?

Robert Gaudioso: No, as I said before, you didn't read the whole statement.

Chairman Robert Dee: I did read the whole statement.

Robert Gaudioso: You read your consultants whole statement.

Chairman Robert Dee: Correct.

Robert Gaudioso: And if you take a look at, if you take a look what you consultant left out was the very next sentence in Mr. Feehan’s report dated November 30th which says, however, given that the level of coverage provided is for reliable in building coverage, it would require more, it would be more precise to count the number of buildings in the affected areas, rather than compare the total area of coverage. And again, in your own sentences, specifically starts out based solely, based on solely the area of coverage and if you read all of the reports in full, including the Mr. Feehan report that we submitted on December 27th, it shows the area on Route 9 that will not be covered from McKeel’s Corner is 3200 linear feet along Route 9; that includes approximately 36 different buildings. The traffic count on route 9 alone is above 15,000 people. In comparison, the small little area, while it might be large in area, its small in distance. It’s about 900 and some-odd feet and it only contains approximately five houses in that spot and it will eventually be covered by something to the west on 301. So for all of those reasons, in both the original report that was being referenced there and the two supplemental reports we submitted in December, we show exactly why the McKeel’s Corners site does not provide the necessary coverage the way 140 feet at 50 Vineyard Road would provide.

Chairman Robert Dee: Right and our RF engineer disagrees with you.

Robert Gaudioso: Well I don't think he disagrees because he didn't, he didn't respond to the two latest reports and also he cherry-picked the sentence without providing, without providing a full, without providing the full quote.

Chairman Robert Dee: I'm not going down a road of truth but...
Robert Gaudioso: There was a whole second sentence that he left out.

Chairman Robert Dee: You're doing okay with that end. Okay, so continue on.

Robert Gaudioso: In addition, I want to make some other points on, in response to

Chairman Robert Dee: You're only gonna have so much time report, okay, not gonna take up the whole night. Go ahead.

Robert Gaudioso: Mr. chairman if...

Chairman Robert Dee: You're not going to take up the whole night.

Robert Gaudioso: If we're unable to make our submission, we'll stand on the record as it stands.

Chairman Robert Dee: No I'll allow you the time you need.

Robert Gaudioso: Okay. Thank you. So in the report that you just read he talked about failing to provide the data, we did provide that data. He focuses only on the population in the gap area and not the population both at 2100 and 700. He also fails to include the nearly 20,000 travelers along major routes, including route 9 and route 301, and he doesn't include the gaps at 2100. We submitted a full response both in terms of the December 20th and the December 27th PierCon reports. We also submitted a report regarding property values in response to the Campanelli memo. Number one our MAI appraiser noted that there were reports cited that were, that were not submitted and were not from this area, they're actually from New Jersey and quite old. There was a statement about, FHA does not permit loans within a fall zone of a tower but in this case the closest property line is 185 feet away. The broker opinions that were submitted were not based on any data or statistics and also Lane Appraisals went back out and prepared additional sales data on the north side of Sprout Brook Road to clarify the issue about whether there was a view or not a view and to make it perfectly clear and the results remain the same. We included a visual resource assessment from Saratoga Associates dated December 21st. That went through the whole process. As you know we had two different balloon tests; Mr. Gainer was at those balloon tests. If you recall, the second balloon test, we picked locations in conjunction with the board, with Mr. Gainer, and with the residents at each location. Those locations were not cherry-picked, they were not best-case-scenario, in fact they were worst case scenario and that was documented by Mr. Allen in his December 21st report. Regarding potential ice fall, we submitted a letter from JMC Engineers dated December 19th and that went through all the different reasons why there's not an adverse effect from ice fall here. There was a Dennis Rogers Court included in the Campanelli memo dated March 28th. That was an old report from another location that included a photograph from a tower that was a lattice tower, which is not proposed here, in Cordova, Alaska, which obviously this is not the same circumstances and we submitted the Tectonic Engineering report, originally prepared specifically in response to that. There was some recent questions regarding Verizon and whether it has a lease with Homeland Towers and whether it will remove its facility from McKeels once it's operational at 50 Vincyard and the question of who Cellco-partnership was. There was also a question about the lease agreements. We've represented the code doesn't require it. Nevertheless, we'll submit those lease agreements redacted with respect to the financial terms. And clarification...
Chairman Robert Dee: We won't accept, we're not accepting anything. We said December 29th was the end of accepting, that's in the record and we will not accept any... Some residents wanted to give some, not giving it to them.

Robert Gaudioso: This is the public hearing,

Chairman Robert Dee: We said December 29th, that was the end. Am I correct? Ask my attorney.

Robert Gaudioso: So you're not accepting our materials even though this is an open public hearing? I'm gonna ask my attorney.

Adam Rodd: Well we, the board asked for, I think this is something the board has to decide. The board asked and set a deadline for the submission of materials at the last meeting. To the extent you're now submitting, you know, new materials that the board hasn't seen and it's up to the board.

Robert Gaudioso: Well this is, this is a response to questions that were raised on materials that we personally received after that deadline. So we received materials from residents questioning the standing of the applicant to make the application and questioning whether there were actually agreements in place and what I have and what I'm representing for the record is, number one, Homeland Towers has an agreement in place with the property owner and, number two, Homeland Towers has in place an agreement with Verizon Wireless, it's a signed agreement. We have copies to submit to the record. I'll also represent that Verizon is making the representation that upon the operation of its facility at 50 Vineyard Road, Verizon Wireless intends to remove its facilities at the McKeel's Corners site and that Cellco-partnership is the general partner of New York SMSA limited partnership. And I'd be happy to submit that in writing; if you tell me I'm not permitted to submit it in writing, those are the representations on the record this evening.

Adam Rodd: Well I, the board is at liberty to accept materials if it so chooses. With the above said, just eyeballing the materials, obviously they're voluminous materials. I can't imagine that...

Robert Gaudioso: Those are 12 copies, 2 lease agreements on a two-page letter.

Adam Rodd: It's still material that will need to be looked at and I would think in fairness, the board should be given some period of time in which to consider that before it renders a decision on this because you're providing it now.

Robert Gaudioso: We'll stand on our representations that I just made, as an officer of the court. Finally, I'd like just to hit on a few other points. There was a memo submitted, I believe by Mr. Eldridge, which claims I made a misleading statement to the board. He's incorrect. Any decision, and I've said this before, any decision by the board has to be based on substantial evidence contained in the written record. Whether the decision has the effect of prohibiting service is not limited to the administrative record, and I've put that in writing and I'll stand by that statement as well. I have with me Mr. Vicente, he'd like to make a few statements. He's president of Homeland Towers. Thank you.

Chairman Robert Dee: Wait, are you finished? Have you had enough time to present your case?

Robert Gaudioso: Yes.
Chairman Robert Dee: Okay. One more question before you leave. Sit down, please. We’ve offered you alternative sites, on this property, have you talked to the landowners about possibly making another, any other possible position on that property available?

Robert Gaudioso: We have discussed with the landlord and he refuses to lease us any other spot on the property.

Chairman Robert Dee: Okay, thank you. And you’re not gonna use, and you’re not gonna use, we offered you the landfill in the town, you’re not, you know, that’s no good for you either?

Robert Gaudioso: Well we've, we've documented, and two different consultants retained by the town agreed that the landfill, and in fact the fire district agrees, the landfill does not provide the necessary coverage.

Chairman Robert Dee: Okay and as far as McKeel’s Corners, that’s no good for you either.

Robert Gaudioso: According to the radio frequency engineering, even at 210 feet, it does not remedy the gap.

Chairman Robert Dee: Ours says 190 feet is fine. So they disagree.

Robert Gaudioso: Well he doesn’t say 190 feet is fine. He concedes the fact…

Chairman Robert Dee: He does say it.

Robert Gaudioso: No he does not say that.

Chairman Robert Dee: Yes he does.

Robert Gaudioso: He does not say that. Have you spoken to him? Off the record?

Chairman Robert Dee: Yes.

Robert Gaudioso: You’ve spoken to him off the record?

Chairman Robert Dee: No I have it on here, in writing.

Robert Gaudioso: Okay. Then you can rely on his written document.

Chairman Robert Dee: But you’ve had enough time?

Robert Gaudioso: I’ll reserve my comments to respond to anyone from…

Chairman Robert Dee: No, no, you finish your time now.

CROSSTALK - INAUDIBLE
Chairman Robert Dee: I want you to have all the time that you need.

Robert Gaudioso: I'm reserving my time, can, Mr. Chairman, can we go off for a second. Can I speak to your council for a moment? Can we go off the record for a moment?

Chairman Robert Dee: Why? Why go off the record? Why do you want to go off the record?

Robert Gaudioso: Okay.

Chairman Robert Dee: You're asking to reserve time.

Robert Gaudioso: I'm, I'm reserving the opportunity to respond to comments from the public. That's perfectly reasonable.

Chairman Robert Dee: Oh that's fine. I have no problem with that.

Robert Gaudioso: Thank you.

Chairman Robert Dee: Okay. Go ahead.

Manny Vicente: Chairman, members of the board, members of the public. I wanted to make a few statements, I'll take as little time as I possibly can. I've been sitting through these meetings, sitting and listening to a lot of things and a lot of perceptions that may not be correct, so I just want to clarify a few items if I could. First, there's been a perception that stated, by some people from the public, that you know, we came to this site quickly, as if there was a race to get a site. Nothing could be further from the truth. We started working on this project over eight years ago, so, we didn't come here overnight or quickly. We've given it a lot of thought. As a matter of fact, our first outreach to the town, to the town supervisor, was in February, thank you, was in February of 2010, almost eight years ago exactly. So the notion that we came to this site quickly or we were trolling for a site, I don't think so. We've been very patient and I will say that when we reached out to the town, we got no advice, no help, no recommendations. I'll also say that it's clear that not only Verizon has a need here but that AT&T and T-mobile have a need, evidenced by their application that they filed in 2006 on the site on Old Route 9. In response to that application, the town asked them, can you evaluate the dump, the town dump, and at some point the town refused to make that site available. I don't know what happened with that application but it is evidence that there's a need here; we didn't invent the need. And, as a person who has to pay all the bills, as a businessman, to think that we would go through this effort, take all this time, as difficult as you know everyone in this room knows it is, if we didn't need to, is absolutely outrageous. Think about it, who does that? Eight years...

Chairman Robert Dee: You’re in business for profit right?

Manny Vicente: Eight years. Eight years. Eight years.

Chairman Robert Dee: Let me just explain something.

Manny Vicente: Eight years.
Chairman Robert Dee: Are you in business for profit?

Manny Vicente: I'm a businessman. Every businessman is in business for profit. So, not only is there a history of a commercial wireless need here but there's also evidence of public safety need. The Philipstown North Highlands Fire Department stated that they could use our site and would like to colocate on that site. They also mentioned that they had their consultants evaluate our site in comparison to their existing site at the town dump and that our site would perform much better. As a matter of fact, Chairman and this board acknowledged that fact in requesting, quite frankly demanding, that we allow them on the tower and help them out. We've had conversations. We would be happy to allow them on the tower, we'd be happy to help them any way we possibly can. So that's further evidence that there's not just a commercial need here, there's a public safety need right here in this town.

Chairman Robert Dee: Let me ask you a question.

Manny Vicente: Sure.

Chairman Robert Dee: Earlier on we were told that Westchester County, I'm sorry, the Putnam County Emergency Services was going to use this tower. Is that correct?

Manny Vicente: We have been working with Putnam County to significantly improve their radio communication system. In that effort we made this site available to the county. We made it available as we should, as any site we build in this county, we made it available to the county. That is, what the county's decision on that is their decision, but we made it available to them. I hope that answers your question.

Chairman Robert Dee: They're not using it.

Manny Vicente: To this date we have not heard from them whether they have an intent of using it or not.

Chairman Robert Dee: That answers my question. Thank you.

Manny Vicente: Lastly, and this is really important, the town had a third party conduct a full analysis and report on how to improve public safety in Philipstown back in 2011. This was a third party report, it's over a hundred pages, conducted by the town of Philipstown. And they made several recommendations in that report and I'd like to read to you one of their recommendations, and this is on page 76 from that report dated April 25, 2011. Radio communications. During swap meetings and in general conversations in the community we heard many negative comments about the county emergency radio system. At the emergency communication center we learned the county currently has consultants reviewing the radio system in an effort to make it more reliable and to reduce the dead spots of coverage that the terrain in Philipstown creates. We also are aware that there is a resistance in the community to building new radio towers that would improve radio communications in Philipstown. Let me read that again. We also are aware that there is a resistance in the community to build new radio towers that would improve radio communications in Philipstown.

Chairman Robert Dee: What do you mean by that?
Manny Vicente: Let me continue. We currently...

Chairman Robert Dee: Wait wait wait. I’m asking you a question. What do you mean by that?

Manny Vicente: What I mean by that. Let me tell you what I mean by that. As an applicant we reached out to the town eight years ago. We asked for help, we got none. We then go to your code and we look at your code. We take your code seriously and your code tells us to come to the exact property that we applied on; it actually invites us there, to the point where we need no variances to go on this property. Okay? So, that’s what I’m getting at. We did everything that we were supposed to but the, what I’ve heard in this public, in these public hearings, in these meetings, is completely supportive of this statement from the 2011 report that there is a fundamental resistance to this development of this infrastructure in this community. Let me just finish.

Chairman Robert Dee: Let me ask you a question. If you owned a home and you were sitting on your back porch and somebody was putting 140 foot tower in front, in your view, would you feel you would have resistance to that?

Manny Vicente: I actually did develop a tower in my neighborhood. I see it from my backyard. There's over 200 homes in my community and all of them still speak with me.

Chairman Robert Dee: Yeah but you didn’t answer my question. I asked my question is, if he had a house and you had on a 140-foot tower and they were gonna put in front of him just kind of obstruct your view, let's say I had a beautiful view of the Hudson Valley. Don’t you think you'd be a little concerned?

Manny Vicente: That all depends. I've done it. I built the tower in my community so I've demonstrated that I'm not a...

Audience Member: Answer the question.

Manny Vicente: I just....I think I just did. I built a tower in my community. Does that...and I see from my backyard, better than you're gonna see it from your house.

Chairman Robert Dee: All right. Okay. Please let's give the man a chance to speak.

Manny Vicente: Thank you. So let me, let me move on from that report because I think I made the point that I wanted to make. I want to also state that the town knew, we reached out eight years ago, knew that we would eventually find a site that would rectify the problem. They actually, because I have an email that we're going to share with you right now from Supervisor Shea to the media that basically states that, if they don't move forward with the site option, that one will be coming to the neighborhood anyway, essentially. Is that....I can quote it? Here's the email from Mr. Shea to Kimberly Hyatt. “Well, we all said it. If we didn't do it at the landfill then someone else would and we would see no benefit in the form of revenue. The people spoke and we listened but in the end the result will be the same.” So I'll leave with this. I don't want to be contentious. Obviously I've been here, I wanted to say a few things, this is the last thing I'm gonna say. I've been doing this for 25 years, and I know what the difference is when, when people advocate their own personal interests versus what's best for a
community. Now, in this current application, the closest neighbors have every right, every right, and I would expect them to fight this application, to make their case, to advance their own personal interests. But the fact of the matter is that a community like this needs more infrastructure. It needs to address these problems, in particular for public safety. Okay. So there is a difference between advancing your own personal interests and making your personal interests that of the community; they're not one in the same. There's a big difference there and I ask everyone to consider that because when we evaluated the alternatives, we demonstrated that putting a site at the town dump, not only does it not work well, but we were putting it closer to more residences. A taller tower at McKeel’s, same thing; we've documented that that would put it closer to more residences. So, I once again remind you, as a board responsible for advancing the interests of a community, not individuals, that there is a difference. There is a difference. I also want to say something to the members of the public who...

Chairman Robert Dee: No no no don't address the public.

Manny Vicente: No, I'll address the board, sorry, my mistake.

Chairman Robert Dee: We don’t want to get into a shouting match here.

Manny Vicente: My mistake. There have been comments made through this public process making us look like bad people, me in particular. And I've had people ask me, well how could you do this for a living? And I'll tell you something, I'm extremely proud of what I do. I tell my children how proud I am of what I do and I'll tell you why. Because I know that every single tower I develop, every single tower I build, I save lives. I don't know how many or how often but I know for a fact I save lives and that's more important than anyone's view. Thank you.

Chairman Robert Dee: Wait let me ask you a question.

Manny Vicente: Sure.

Chairman Robert Dee: There’s 64 acres here, okay, on this piece of property. Now I know the owner, Mr. Fadden, only wants it to be on this one little small piece. If he was open to moving this, let's say more down toward the commercial, or further away from the homes or something, you know there’s 64 acres. Would you be agreeable to that? If you could find a spot that, you know, RF stuff and everything else, I'm asking if you would be agreeable to it? As a person.

Manny Vicente: Yes and we've reached out to him several times.

Chairman Robert Dee: So you would be agreeable to that?

Manny Vicente: We reached out to him multiple times, including last Friday when I spoke to him personally. He is not interested in any other location on the property.

Chairman Robert Dee: Okay so I understand everything you said. Okay. Some I agree with, some I disagree with but I understand it. But I also want you to understand, we're here, we're working for the town, we have to go by the law. (Inaudible) But here the thing is 64 acres. It would be so easy to move this tower, you know, in a different location that would be more aesthetically pleasing not only to the
local residents but to the town. But we have one person, one person, Fadden, who says no. So the whole town is supposed to say okay? You understand the town’s position?

**Manny Vicente:** Chairman I understand and nothing would make me happier than to, than if there were a site available to us that wouldn’t be as contentious.

**Chairman Robert Dee:** On this 64 acres.

**Manny Vicente:** Anywhere.

**Chairman Robert Dee:** Well I’m just talking about one particular piece of property. There probably are locations there that you could use that would be more aesthetically pleasing both to the town and to the residents and it would be a happy ending but one guy says no.

**Robert Gaudioso: Inaudible**

**Chairman Robert Dee:** We’re not finished. I’m talking to him. Are you finished with your time? Are you finished with your time sir? Are you finished with your time?

**Manny Vicente:** I am chairman. Thank you very much.

**Chairman Robert Dee:** Thank you. Yes Mr. Campanelli.

**Andrew Campanelli:** I’m not gonna rehash old grounds I’m just gonna address the issues that have been addressed by the applicant this evening. First and foremost, the issue of supplemental submissions, written submissions to this board. Now I was here for the last meeting, I thought there was an understanding and agreement. When I enter an agreement, I live by that agreement. And I thought, and the record can prove me wrong if I am, but there was an agreement between this applicants attorney and myself and this board. And that agreement was that written submissions for the record would be submitted no later than a minimum of ten days before today. And Mr. Gaudioso had the opportunity and did submit those, in fact, he made written submissions which did not afford me sufficient time to provide responses. Now I could have come and provided responses to you today and said hey, this is a public hearing, I have a right to submit things but I didn't. And the reason is, I entered an agreement, just as this applicants attorney did, which was that any written submissions would be submitted no later than 10 days before today. Now, either he can honor that agreement, you can hold him to that agreement, or if not, if he wants to submit something else while holding your feet to the fire because today is the last day for the shot clock, I respectfully submit, if he wants time to submit things outside the scope of his agreement, he should be amenable to extending your shot clock because it’s unfair to sandbag this board by handing you new materials on the last evening of the shot clock when he demands that you make a decision. It’s outrageous. It’s disgusting. There's no grounds for it.

**Chairman Robert Dee:** No we’ve had people come...I had a challenge gentleman come in tonight from the Rockwald Association and he had prepared a presentation.

**Andrew Campanelli:** And it was rejected. I saw that.

**Chairman Robert Dee:** And I rejected it.
Andrew Campanelli: That's right.

Chairman Robert Dee: And I told you December 29 for the thing and that was for all people.

Andrew Campanelli: This board made it crystal clear. You want to make written submissions, we're putting this on for the 8th, all written submissions will be supplied to this board at least 10 days before the date of that meeting. It's on the record and Mr. Gaudioso agreed to it, no objections. Now he wants to breach the agreement; it doesn't surprise me under the circumstances. Now...

Adam Rodd: Just to interject real quick. To the extent that, and you've heard the applicant in lieu of submitting written materials, says I'm representing to you and providing testimony about what the supplemental materials indicate. What, what's your response to that?

Andrew Campanelli: That's fine. It's a public hearing, he wants to make oral presentations that's within his right. But he entered agreement with this board and he should be held to that agreement or, at a minimum, if he's not going to honor his own agreement, he should agree to extend the shot clock to afford this board an opportunity to review documents that they're seeing for the first time tonight while being demanded by the applicant to make a decision tonight. It's absurd, it's unfair, and it's unjust.

Adam Rodd: If I could ask the applicant, Mr., would you be amenable to that?

Robert Gaudioso: No we stand by our representations and again there was a question about what Verizon agreed to and whether there are agreements in place. I made representations to the record as both Verizon's council and Homeland Towers council as an officer of the court and we'll stand by those representations.

Adam Rodd: So you would not, based upon what you indicate, you would not agree to extend the shot clock based upon...

Robert Gaudioso: I don't see any reason to.

Adam Rodd: So you're refusing to do that.

Robert Gaudioso: I haven't been asked and I don't see a reason to. If you told me what the reason was to extend the shot clock then we would consider it.

Chairman Robert Dee: I'm asking. I'll ask you. Because somebody here from the residence approached me with a presentation and asked if they could present and I said no. December 29th, we all agreed on December 29th so I'll ask you. Are you willing to let the public hearing continue for another month?

Robert Gaudioso: No we...

Andrew Campanelli: Now, one of the principals apparently, of Homeland got up and gave a speech and talked about the community and what people there are and how they think and all this other good stuff.

Manny Vicente: It’s Manny Vicente.

Andrew Campanelli: Thank you Mr. Vicente. Mr. Vicente made a speech before you. Let me make the record perfectly clear about some basic things. Number one, I represent a number of homeowners, your constituents. They are not against cell towers. Cell towers, as I said last time, are a necessary evil. No less necessary than sewage treatment plants. What they are opposed to is the irresponsible placement of cell towers. You don't put it in a more intrusive location where it'll inflict greater adverse impacts on your homeowners properties than is necessary, as is the case here. Now as far as the need for towers and saving lives, let me make this perfectly clear, Homeland Towers does not need this tower for anything except to make money. They don't provide personal wireless services. They're not claiming they have a gap in personal wireless service. What they're claiming is, Verizon, their customer, has a gap in services; that's what you're claiming despite the fact that you don't see a representative from Verizon here. No representative of Verizon has provided you a sworn statement of any type telling you any need and quite frankly, common sense would dictate, if the Verizon really needed a tower here, really had a problem with drop calls, they'd be applying for this tower and not Homeland. However, Verizon does do business with other companies. By way of example, Crown Castle. Verizon is one of Crown Castle’s customers. Crown Castle also doesn't provide personal wireless services. They, just like Homeland, build infrastructure, like the tower at McKeel’s, and they lease space to Verizon. And there's no reason why Crown Castle can't extend the height of its tower and lease space to Verizon. That's exactly what it does for money. You won't hear Mr. Gaudioso say that because he can't, he has a conflict of interest between his 2 clients.

Chairman Robert Dee: Please, please. I'm gonna give you, I'm gonna give you a chance to talk. I'm gonna, I said I'd give you a chance to talk. After he's done I'll let you talk.

Andrew Campanelli: The owner of McKeel’s property is sitting in the audience tonight and she has absolutely no reservations about allowing a 190 or even a 200-foot tower being built on her property. She's perfectly fine with that. Ironically, somewhere out of magic, she got a letter from Crown Castle, Mr. Gaudioso’s client. And Mr. Gaudioso, it's a matter of public record...

Robert Gaudioso: Chairman, I do not represent Crown Castle....

Chairman Robert Dee: You can talk after he is finished. I don't want you to keep interrupting, it's gonna be an all night long. I'm gonna give you a chance, believe me. I'm fair to you. Go ahead.

Andrew Campanelli: For some unknown reason, Crown Castle sent a letter to the owner of the property saying, oh we don't want a taller tower there. Please.

Chairman Robert Dee: You’re gonna have to come up and speak into microphone. I'm sorry.

Annie Meyers I’m the lease holder at McKeel’s. I will not benefit financially one nickel more if they put a tower that's taller on the site, as it is now subject to a perpetual lease. I had nobody to leave it to, so. I'm single, so they gave me a contract they pay me....
Annie Meyers: Alright so they called to ask because you've been persistent about wanting to have it in another site. Now I remember all of the site studies from 1998, there was no signal at the dump. There was no signal at the very location that they picked on my lot the first balloon test; they had to go to another location on the same lot. You know...

Chairman Robert Dee: Okay. Let me ask you something. Are you against your tower being increased? Raised?

Annie Meyers: I have no say in it. I have no say in it.

Chairman Robert Dee: You have no say in it?

Annie Meyers: I have no say in it. Crown Castle has leased it; they can do anything they want within 3000 square feet, for, and went long after I'm dead.

Chairman Robert Dee: Well, hope that's a long time from now. Thank you very much.

Annie Meyers: They can do anything.

Chairman Robert Dee: Okay thank you.

Andrew Campanelli: Ma'am, if Crown Castle wants to make it 210 feet tall would you have a problem with that?

Annie Meyers: I don't, I would have a problem personally but I couldn't do anything about it because I've already signed away my rights.

Chairman Robert Dee: Thank you. Continue Mr. Campanelli.

Andrew Campanelli: The bottom line, is there is no reason why Verizon, who allegedly has the gap not Homeland, there's no reason why Verizon can't go to the company that it does business with, let them extend the height of the tower and put it there. But Verizon's not here. Verizon is not applying for this, Homeland Towers is. Now you've heard discussions of, well, let me get to the brokers Mr. Gaudioso said the brokers letters submitted on behalf of the residents don't, are not based on data. I asked the court to review the memorandum of law that, or the memorandum opposition I've submitted and the OmniPoint decision where a federal court said that letters from real estate brokers should be considered as substantial evidence and the reason is, the brokers who drafted those letters, talking about the adverse impacts on the real estate property values, they are not merely licensed professionals who know about real estate markets. They are licensed real estate brokers who know about this specific real estate market and these properties, and that is compelling evidence of the adverse impact on the real estate which this proposed structure will have. And the OmniPoint case tells you, that is evidence that you should consider. Now with regard to the 2% gap, I was here when your engineer said, oh yeah well the companies they want, they want 98% success rate. They'd consider 2% a failure; if there's a 2% of drop calls, that's a failure. Well the law is, that does not constitute a significant gap. Just because
Verizon or another company wants it, their failure to obtain it doesn't mean they have a significant gap in coverage; that's not what the law says. What the law says is, the Telecommunications Act of 1996 does not guarantee that carriers such as Verizon have seamless or perfect coverage. If they want to invoke the Telecommunications Act they have to show they have a significant gap in personal wireless coverage and nothing that's been submitted shows that. As far as the submission that came in within the past 10 days from Mr. Gaudioso, I understand that they talk about the 2100 megahertz range. If you look at your own engineer's testimony, he basically said that's a farce. The reason is, everybody knows, every RF engineer knows, you're not going to get coverage at the 2100 hundred megahertz range. It's a farce; it's a joke; it has to be ignored. Substantial evidence. Mr. Gaudioso told you, you have to make a decision based upon substantial evidence. What does it mean? This is what it means as a matter of law. It means a court must recognize, if they proceed and if the board makes a decision they don't like and they try to challenge it, a federal judge is going to look at the evidence you have and say, was there more than a scintilla of evidence in the record to support the conclusion rendered by the board. Was there sufficient evidence to support a reasonable mind coming to the conclusion the board did. If there is, then the decision is based on substantial evidence. So any decision you make should be based upon the evidence before you and you should cite the evidence when you make your decision. I'm telling this not to tell you how to do your job but to increase the likelihood that your decision would be immune from challenge and hopefully not be challenged at all. I really don't think I need anything else. Are there any questions?

Chairman Robert Dee: No I don't think....well I guess you talked about the, deciding and like that. The board in this town itself is not against cell towers. I mean I disagree with the gentleman, not against cell towers. We just want the cell towers to be in a decent location, okay. And there is a decent location on the 64 acres other than the one little piece of property. They've couldn't have put this any further closer to the residential area if they tried. If they could move it anywhere else but, they're not against it. They said they would do it, it's just one person again. The owner who says no that he can't do it. I'm sure this gentleman would move that tower to a better location but one owner, one guy is holding up this whole town. Thank you.

Andrew Campanelli: One of the things that amuses me, and again I've handled these cases across the entire United States, when I see an applicant, not necessarily this one, but an applicant goes up before board and says, this is the only place we can put it, you know, we sent a letter to Smith's over there because he's got a place out in the woods but he didn't respond to us. They don't tell them that he offered to pay him $100 a month for the tower. There's a saying, every man has his price. The owner of this parcel, they say he won't put it anywhere else. Really? What did they offer him? Do you think if they offered him $10,000 a month he might let them move it? Now I'm not saying that they have to do that, all I'm saying is, they have to establish to this board that this is the only location and the only spot at that location. Did they use, did they prove to you, that they made sufficient reasonable efforts to try to persuade the owner to put the proposed structure in a less intrusive alternative location. What's his price? I don't know what they offered him; they're not going to let you know that. They said they're going to submit the leases but they're going to cross out, they're gonna black out the data of how much they're paying him. Well what's to say they're only paying him $500 a month. For $500 a month I wouldn't want it near my house either. You can put it on my property, put it on the farthest corner. What if they offer them $2,500 a month or $3,000? Have they showed you they've tried their best efforts to persuade that owner to put this structure in the least intrusive location and the answer is no they haven't. They won't address that. Why? Because this whole application is about money. They want to put up a tower as cheaply as possible, so they're not gonna offer him $5000 a month, even if they
make $15000 a month in rent. They're not going to do it, and again this is only about money. Homeland Towers does not provide personal wireless services. Ask them. Ask them in attempting to persuade the owner to put this proposed structure in a location which would have less adverse impacts on the neighbors. Ask them how hard they tried. What do they offer as incentives? They're not going to tell you. Thank you.

Chairman Robert Dee: Mr. Gaudioso.

Robert Gaudioso: Just a very, very few responses. Since May 23rd when we filed the application Verizon Wireless has been an applicant. They continue to be an applicant. They are an applicant as a co-applicant of this application. Mr. Graiff, your prior RF consultant, he testified on the record that Verizon Wireless did have a significant gap in service. Substantial evidence on the record does have to be based on a code criteria and that's a very important nuance and it's not one guy holding up, holding up the relocation. Again, one man happens to own 64 acres but that's the zone, that's the permitted zone. That's the zone that allows the towers up to 195 feet whereas the other zones, it's a 110 foot height limitation. This is the OC, the office commercial zone that is the permitted zone under the town code. That's how we came to this property. If there was another property owner, that had a similarly situated zone, that would have made their property available, we would have looked at that. But it was the town's decision to make the OC zone the zone with the applicable height limit, to make it with the applicable setback requirements and the lesser standards by being in the correct zone; it was the town that had created the zoning map; it was the town that created this particular location. Nevertheless we still looked at alternatives that were not in the OC zone, such as the Lane Gate landfill and it wasn't a matter that we didn't want to go there, it was a matter that it didn't work from a technical standpoint. It's the same thing, this concept that either Ms. Meyers or Crown could raise the tower. It's not a matter of whether they could raise the tower, it's a matter of that, it's not code-compliant number one, and more importantly number two, it doesn't remedy the significant gap in service, particularly along that 3200 linear foot area on the heavily traveled, 15000 travelers, along Route 9 to the north. That's the key; the key is that it doesn't work from a technical standpoint. Verizon Wireless wants to provide service, they don't care which site they're at as long as they can remedy their gaps and that's our response. Thank you.

Chairman Robert Dee: Let me ask you one question. The town is not against cell towers. I don't believe they are because everybody uses cell phones, everybody uses internet, everybody needs, needs service, okay. If I ask you to delay this to the next month and you approach the owner to ask him that, you could move this to a site on that 64 acres which would be more aesthetic to the town and make the residents a little more happy, they're not looking at the tower in their way, would you do that?

Robert Gaudioso: No, and I'll have Mr. Vicente speak to the fact, I'll have Mr. Vicente testify.

Chairman Robert Dee: No, no I mean...

Inaudible – Crosstalk

Robert Gaudioso: No because we've tried that; we've done that already. Number one, we don't believe that relocating it would be any less visual to the community than what we've shown at 140 feet. Number two...
Chairman Robert Dee: On 64 acres.

Robert Gaudioso: On 64 acres, correct. Number two, more importantly, the property owners refused, it had nothing to do with money, money is not the issue to this property owner. Money is not the issue to this... I'm sorry?

Chairman Robert Dee: So it is one man.

Robert Gaudioso: No, in this particular piece of property. If there was another piece of property that was in the OC zone, that someone else controlled, then we would be willing to go there, if it worked from a technical standpoint. Mr. Vicente will testify about what the landlord indicated to him and it had nothing to do with money.

Chairman Robert Dee: Mr. Vicente, you sound like a reasonable man, okay.

Manny Vicente: Some people say.

Chairman Robert Dee: No you do. You sound like a reasonable man. I understand what you're trying to do. You're a businessman, you're trying to make a living, you're trying to do the right thing. And so is the board. And so is the town. And I just find it obscene that you can't go back and speak to this gentleman and say listen, we could settle this whole thing if you just, if we could just, let us move this a little a little bit over here, a little over there, so it's both aesthetically pleasing to the town and the residents. And if that could be done that would be the end. Wouldn't that be the better answer?

Manny Vicente: That would be wonderful and not only did we try to convince Mr. Fadden to do that even before we brought the application, we, on several occasions, have tried to get him to open up other areas of the property for our use. As recently as last Friday I spoke with him and I made my case. I made every issue that I could come up with to try and convince him to give us another spot on the property and his concern, his concern was stated to me very clearly: I've given this a lot of thought, you've asked me, you know, countless times, I have future plans on the property and the only location that I will entertain and that I will lease to you is the current location. And we have tried on several occasions and I want to make sure the board understands that I am, I am a reasonable person and I would love to be able to further mitigate the impacts that we've already mitigated to some extent, I think successfully, but I would love to further mitigate it but I don't have that option.

Chairman Robert Dee: Okay.

Adam Rodd: If I can just follow up. Did you propose paying him more money for alternate sites?

Manny Vicente: We proposed more money; we proposed different compensation schemes and that wasn't the issue. The issue was his future plans on the property and that this was the only location that he felt, and he feels strongly about it, that wouldn't interfere with his future use or plans.

Adam Rodd: Are you willing to be more specific with respect to the financial negotiations that you had with the owner?
Manny Vicente: You know I would love to but we have to respect, this is a contract between two individuals, we have to respect privity of contract. I'm not at liberty to, to make financial arrangements public. I don't think that's appropriate.

Chairman Robert Dee: Okay last minute, last month was three hours. We're not going to go three hours because we have a lot to hear but I just want to tell you what was presented, besides Mr. Gaudioso's information, was a detailed report, I would say in support of against the cell tower from the Rockland Towers or Rockwald Road Association and in there is a few pictures of houses where it shows you the balloon test they took that the houses are visible. It's 100 Rockwald and 43 Rockwald. I don't want to go over this whole thing but I want to give the gentleman who prepared this, if he wants, Mr. Eldridge, a few minutes to speak if you want to. Or Mr. Cooper? Okay. Like I said, I, this is a real detailed report and you know, I just, I don't want to go over the whole thing but I, you know, we let them talk and I feel that I should give the residents a chance to talk.

Paul Eldridge: I didn't bring a copy of that with me but I...

Chairman Robert Dee: Alright well don't read the whole thing.

Paul Eldridge: I'm not gonna read it I'd just like to...

Chairman Robert Dee: It was an excellent report.

Paula Clair: From December 11th or...

Chairman Robert Dee: No this is the December 28th. This she just put it in with the package that...you put it in by the 29th.

Paul Eldridge: Yes.

Chairman Robert Dee: Yeah you made that date, okay. Go ahead.

Paul Eldridge: If I may, I wanted to address a couple of things that Mr. Vicente and Mr. Gaudioso had stated. I think I mentioned at a previous meeting that I called, neighbor to neighbor, to Mr. Fadden prior to this getting to this extent and I didn't really know him. I had only met him actually at a couple of wakes, unfortunately, mutual friends had passed. And I, subsequently, not knowing about the cell tower, I called him, despite my neighbors saying, he's not going to talk to you. I said, well I feel, since I am abutting his property, as a neighbor to another neighbor, I would ask him. So I called him. I was told he wouldn't answer the phone or he wouldn't take my call. Carolyn Fadden answered. I heard the phone muffled as she asked him, there's a guy by the name of Paul Eldridge on the phone, do you want to talk to him? He says yeah, I know Paul, I'll talk to him. And he talks to me. And what he said was, you folks located the tower, he had nothing to do with its location. And what he said to me was, I just told them don't put it in a spot where I can see it. Now the 64 acres is exclusive of 27 acres he has on the top of the mountain, with a mansion that is being, it's on the market for $8.8 million. He's got 91 acres altogether. Yet this particular parcel, this tower, will be between 185 or 200 feet from my property line. It's patently, grossly unfair. I will see it, even at 140, I will see it every day from almost every room in my house. We look out to the valley and there it is, dead center, from our view, from our back deck. I realize I'm only one person but, that is something after you've lived in a place, you owned it, we've
owned it for 37 years, we've lived there, in a house, on that property for 35. There's something wrong when somebody can dictate this situation and we have no recourse.

**Chairman Robert Dee:** Thank you. Well like I said, the board has tried to, you know, ask them to move it or you know put in another location on the 64 and I honestly, fairly, I think, and listening to this gentleman, I believe him. I believe him that he tried to do that.

**Paul Eldridge:** I do too.

**Chairman Robert Dee:** But this owner, okay. So I don't fault them for that.

**Paul Eldridge:** I don't either.

**Chairman Robert Dee:** I honestly believe that.

**Paul Eldridge:** It's really an unfortunate set of circumstances.

**Chairman Robert Dee:** It's a shame that one person could, could do all this but that's what we're dealing with.

**Paul Eldridge:** But I'd like to correct...

**Adam Rodd:** If I could just follow up.

**Chairman Robert Dee:** Sure go ahead.

**Adam Rodd:** When you spoke to, is it your position that Fadden would not entertain another location on the property?

**Paul Eldridge:** No. He said to me I had, Paul, I had nothing to do with it. They picked the location. I've got one of these situations. They said this, he said that, I don't know what's true.

**Adam Rodd:** Did he tell you he would entertain alternate locations on the property?

**Paul Eldridge:** We didn't get into that depth of a conversation. What he said was, it sounded like he would, because he said to me, I didn't pick it, they picked it. They say he picked it. I don't know who picked it.

**Joel Cooper:** We were in a book club together...

**Chairman Robert Dee:** I'm sorry you have to state your name so the lady...

**Joel Cooper:** Joel Cooper. Just anecdotally, we were in the book club, when I found out, we were in a book club with them...

**Chairman Robert Dee:** And you are? I'm sorry.
Joel Cooper: Joel Cooper.

Chairman Robert Dee: Okay.

Adam Rodd: book club with who?

Joel Cooper: The Fadden’s and other people. And so we knew them for years and so it was a surprise and we felt it was really an insult. So we said we're not joining the book club, I mean we're suspending our participation in the book club.

Chairman Robert Dee: That’ll fix them.

Joel Cooper: Well, he was, actually I got an email and that's something, he was upset about that and said he's sorry we take it so personally but in the end it more or less echoed the comment that this was coming, Homeland Towers picks it and I had nothing to do with the location and then he ended with, you'll, anyhow, you'll get used to it. Don't worry you'll get used to it.

Paula Clair: Excuse me, I just want to interject, that he did submit a letter to the board that said that this was the only location that he would entertain on his property. So, he's contradicting what he said to both of you.

Paul Eldridge: I believe that was submitted after, way down, after my conversation with him. I had a conversation with him in the summertime.

Chairman Robert Dee: All right, thank you very much. I’m sorry go ahead.

Paul Eldridge: If I may too...

Chairman Robert Dee: We’re not doing the whole thing now. We’re not doing the whole report.

Paul Eldridge: Before we get to that I would like to address one other thing that was mentioned. Mr. Gaudioso submitted the May 23rd, 17 letter, cover letter for the application...

Chairman Robert Dee: Address the board please.

Paul Eldridge:...application, he stated in it that the, in about the third paragraph, that Putnam County was going to use this for emergency services communications. That was not true. In speaking, there is a letter on the record from Mr. Lannon-

Chairman Robert Dee: Wait, let’s not go back and forth. You’re gonna get a chance to speak.

Paul Eldridge: There’s a letter on the record from Mr. Lannon that indicated that they, Homeland Towers, was told on numerous occasions that the county would not use that facility at 50 Vineyard. They cite even, I think it was Pinnacle in their report said what the tower or, excuse me, what the antenna was; they gave a Sinclair model something. They told me, and they gave a letter that's on the record, that they had stated they did not need it and that Motorola had also communicated with you that it was not necessary, that the county would not use it for that purpose. Two things for the record.
There's a, there's been an issue and a concern that I've had relative to the 140 feet. And I believed that when you said that you agreed with 140 feet that that's what it was potentially going to be, not 180 feet. Then we see, two and a half weeks after you make that commitment, and I have, and I'm not boring you with the details of each, each back and forth, but twice you said that that was correct; you're gonna revise it to 140. Two and a half weeks later, what gets submitted, because you asked that the application form be revised, he revise it by saying we want 180 foot monopole tower and in the alternative, conditioned on approval, we'll go to 140 and may paint it brown. I thought, as everybody else in this room thought, that when he said and agreed, yes that's correct we're agreeing to 140 and they were gonna revise the application, that it was unconditioned, that that's, his words meant what he said they, they were, that that's what you were going to do. Instead, we get legalese on the actual form that says, it's 180 foot monopole tower, pole tower, and in the alternative, conditioned upon approval, it would be 140 and may be painted brown. That tells me that I'm not sure who or what I'm dealing with. That lacks honesty as far as I'm concerned. It's patently unfair. Statements, numerous statements were made on the record that if Vineyard Road was put up that, and the state, the words that were used were that McKeel's Corner would be removed. It would be taken down. Replaced. However, we only found out at the last public hearing that it was only Verizon's antennas that were going to be moved and there was again, back and forth, with the board and Mr. Cestone I think said, well what you're saying then is that we're gonna still have the two towers? Yes. So this is not replacing, they're not removing McKeel's, you're taking the Verizon equipment off of that tower at McKeel's and putting it over here, which by the way, that tower is owned by another company, CCI, Current Communications. That doesn't make sense. You say one thing but you really meant, or were hiding, what you really meant, which was, we're not taking the tower down. And now I understand, you know, you can't take the tower down because you don't own it. But the statements were pretty clear that it was going to be removed, taken down, replaced. Common language tells me that's what you meant. There's another tower on route, just off of Route 9 on Tower Road. This is...

Chairman Robert Dee: Across from ESP somewhere?

Paul Eldridge: Yeah it's across from ESP near what was Minardi's, I knew Chris Minardi. It's called, at the time, when it was approved, Schubert's property monopole site. That is 2.7 miles from the Vineyard Road location. It's 2.2 miles from the McKeel's Corner location. When that application was submitted back in the late 90s Mr. Gaudioso was part of the team that presented that with Snyder and Snyder. And Ms. Snyder. You were actually an assistant to her at the time, now this is 20 years ago. Okay? The indication was at that time, including maps, and I would ask that you, because they are town records. It's not something I'm submitting tonight, they are part of your town records. All the records related to that construction of that tower and the maps that were shown for the coverage. And it's interesting. This 3200 linear foot, which is the major issue, problem as far as significant gap stated by PierCon. Their maps from that presentation back years ago said that the placement of the tower at Schubert's would cover exactly the area that they claim is now a gap. This, it's hard to see, but this is Philipstown over here, that's the rest of Putnam County. 553 is the proposed site and coverage; it covers, not only almost down to 301, it covers past, into Fishkill. At that time, that was what was expressed. Here's another map. So, I would respectfully ask that the complete documents from the submissions made 20 years ago, and subsequent until it was built, be included in the record. They are town records and I can tell you exactly where it is. It's on tax map 16.20-1-9. Where, this 3200 linear feet. What, what's in that area? Well PierCon says it's 36 buildings. Priscilla and I, on Sunday, went along that 3200 feet. And we have found 36 buildings. Of the 36 there's 13 business oriented buildings that currently house 15 businesses. These businesses are: a fruit and vegetable market and coffee shop, one manufacturing
warehouse, one construction contractor warehouse, one car repair shop, used car and auto body business, 2 truck repair shops, one motorcycle customizing shop, one tree removal company, one firewood supply company, a blueprint shop, a personal trainer location, one land surveyor, who happens to be here tonight, one wall systems company office, that's only open two days a week, a used-car lot and an empty antique store. I dare to say these are not high trafficked businesses; they're not Walmart. They're not highly visited by a lot of customers. There's 13 houses along that stretch, so now we're up to 26, and 10 studio cabins. And anybody that lives in Philipstown knows what I'm talking about, the studio cabins that are kind of behind Vera's and south of Vera’s fruit and vegetable market. They're called studios because I don't know how you, how many people you could possibly squeeze in any of those but many of them are unoccupied and several of them don't have siding on them. Those 13 business buildings, 13 houses, 26, and 10 studio cabins is the significant gap area that they have.

Verizon has a 37 or a 36, somewhere in that range, market penetration, we've been told. In those 36 building’s, we're talking about an estimated 13 Verizon customers. To address the claimed significant gap for this small group Homeland Towers is going to construct, and I don't know at this point if it's 140 or 180 foot tower. If they build this tower, there will be 3 towers within 2.7 miles from Vineyard Road to Tower Road, which is the Schubert’s. The town code section 175 - 46 Section C entitled “Colocation Use of Tall Structures or Communication Towers” reads, at all times, this is the town code, says, at all times, shared use of tall structures and existing or approved communication towers in accordance with Subsection B(2) shall be preferred to the construction of new communication towers. I dare say the record shows that the supposed gap, I can't imagine it's considered significant, was covered by the tower that was put up at Schubert’s. McKeel’s, if it's raised, is gonna cover the rest. And I believe there is no significant gap and this application should be denied.

**Chairman Robert Dee:** Thank you very much.

**Joel Cooper:** Well it's hard, tough to follow that act, but the only thing I would add, which seems to be overlooked in all of these discussions when we talk about gap in service or necessity, is we're only talking about a gap in high-speed data service. As far as I can read the law, and I used to be a lawyer, the law is from Willoth, which is a 19-9 decision, is the test of gap in coverage is voice coverage. Can you make a call from your cell phone, excuse me, hand-held cell phone to a tower. All these propagation maps, everything submitted so far, talks about two frequencies, 700 and 2100. And Mr. Campanelli mentioned 2100 is a frequency design for over capacity. There's never been a whisper that there's not enough capacity, so, I just think, focus on that, please. Thank you.

**Chairman Robert Dee:** Thank you.

**Joel Cooper:** I had some other stuff but I put it back in the car.

**Chairman Robert Dee:** No that's okay. That's enough. Alright just before, I want to say something then you can, we'll give you a shot. I also got new information before the 29th, there was a number of affidavits, sworn, notarized affidavits from residents in the area. The area’s, was several from Rockwald Road, several from Lane Gate Road, several from Round Hill Road, several from, one from Route 9 like that. Well I did (inaudible) a map. I took it, I made dots on a map and it was funny because it made a complete circle around where you're gonna put the tower. I just thought that was interesting. But go ahead sir.
Robert Gaudioso: Thank you. Regarding the affidavits, I'll note that at least one of them was notarized but not signed. I'm not sure how the notary notarized something that was signed, was not signed. I also note that they're in the location generally where the coverage is from McKeel's and that's the point. And from day one we've never said McKeel's tower is coming down. You can go back and check, check the videos.

Chairman Robert Dee: Okay.

Robert Gaudioso: You can go back and check the videos. let's check the videos I'm going to

Chairman Robert Dee: I'm glad you said that.

Robert Gaudioso: And every single time it was Verizon Wireless' facility. It was never represented to this board once that the McKeel's tower would be taken down. Never once.

Chairman Robert Dee: Can I speak?

Robert Gaudioso: Sure.

Chairman Robert Dee: Thank you. I thought the same thing. When, I'll be honest with you, okay. I thought for the whole time that McKeel's Corners was to be taken down. I thought that, I did. And then last month you said that it wasn't taken down, just Verizon was gonna come off. So I thought I'm losing my mind. I said must be losing it, I must be getting old, I'm getting crazy, right? So I went back and looked at the minutes. I said well how could I possibly think this? And I found on page 17, in September 11th minutes. Now I'll read it to you. This is word for word so there's no mistake. We're speaking about, I was asking a question about do we need this tower or not. (inaudible) Chairman Robert Dee and you said something about that the RF people would explain that it would be needed, your people. So I said:

Chairman Robert Dee: Okay I'm gonna, like you say, ask RF engineers to address that but I have a question here, there. You have like several pages of where towers and so on and so forth. And then you have McKeel's Corner, okay. Then you have with McKeel's Corner and without McKeel's Corner. And I also saw some note that you were gonna maybe abandon McKeel's Corner and replace it with this?

Robert Gaudioso: We would replace McKeel's Corners with this site. Correct.

Chairman Robert Dee: So why would you just leave McKeel's Corners and then we wouldn't need this.

Robert Gaudioso: Because McKeel's Corners does not provide the full coverage to the area whereas this would and, and this would be duplicative of McKeel's Corners so that's why we would eliminate McKeel's Corners.

Chairman Robert Dee: Alright so we have a cell tower you're eliminating for, to put this one in.
Robert Gaudioso: Correct.

Chairman Robert Dee: I'm not losing my mind. Any reasonable being would understand that you meant that.

Robert Gaudioso: Yeah I think even, I think from day one, the representation was the Verizon facility. It was never about the McKeel's cell tower and there's been use...

Chairman Robert Dee: This is word for word.

Robert Gaudioso: Use of words. Well, you know, I'd have to go back and look at the...

Chairman Robert Dee: I got it here.

Robert Gaudioso: I don't know if that's a stenographic record or not.

Chairman Robert Dee: Here.

Robert Gaudioso: I'm not, yeah I don't believe that's a stenographic record.

Chairman Robert Dee: You don't think it's a stenographic.

Robert Gaudioso: No I don't believe so but in any event...

Chairman Robert Dee: So our minutes are not correct?

Robert Gaudioso: I didn't say that. I didn't say whether it was a stenograph, I said well I don't know if it's a stenographic record or not.

Chairman Robert Dee: Want to explain what stenographic record means? I don't know.

Robert Gaudioso: Yeah, when a stenographer actually takes it word for word.

Chairman Robert Dee: Now you want a stenographer

Inaudible - Crosstalk

Robert Gaudioso: ...and certifies it. I don't know whether you said the word tower or not and in any event, the bottom line is...

Chairman Robert Dee: So you're calling me a liar.

Robert Gaudioso: No I'm not saying you're a liar. I'm saying, I don't recall the exact discussion going that way but I can tell you from day one we never made a representation that the tower was coming down, and in any event, you understand that to be the case now. It's been Verizon's application and Verizon's facility and Verizon's site and that's all we've represented all along. It's the same thing with the thing about that we were gonna put the county on the tower. Let me read it to you. It was from May
23rd and we've never said anything different. The facility will be designed to support colocation including the emergency service antennas and equipment for Putnam County. That's required by your code that we design for colocation. We never provided a document from Putnam County to say they were gonna go on the tower. We never showed them on the site plan. The only place we showed them was in the RF report on exposure so that no one could say that the facility would be dangerous if we ended up adding the county. So we included a worst case scenario and if I recall correctly, you had actually asked us to include all the carriers on the visuals and on different materials throughout the process and we did that. So never once did we ever say that the county was definitely coming on this tower. We never made that representation. We never made the representation the tower was coming down, and I apologize if that was not correctly understood, but we never made a representation otherwise.

**Chairman Robert Dee:** Well I think there's a difference between correctly understood (inaudible) what you said. That's my opinion. And you're entitled, I'm entitled to mine, you're entitled to yours. Go ahead.

**Robert Gaudioso:** That's fine. Regarding Schubert, I mean obviously it was 20 years ago, different technology, different types of systems at that time. Regarding the significant gap. The gap, the gap is not limited that this facility is going to cover to that 3200 linear area on route 9. That's the difference if the tower at McKeel's, which is speculation at this point, there's no application to raise McKeel's, was raised to a height that was almost double the height limit of the code, would need at least three set, two setback variances and a street frontage variance, would be closer to more residences, and quite frankly, from the visuals we submitted, would be more visible above the treeline, particularly from the residents that are, that are here tonight with respect to this application. So the gap is not just limited to that 3,200 linear foot location on route 9; that's just the difference between 140 at Vineyard Road in the permitted OC zone, height limit of 195 feet, compared to McKeel's with the height limit of 110 feet and McKeel's up to 190. And again, McKeel's is not an existing tall structure at 190 feet. It's an existing tall structure at 100, at 110 feet under your code. And then finally I just would have liked to have Mr. Xavier testify that he did receive written confirmation today from the property owner that he would not allow any other property on, any other location on the 64 acre property.

**Chairman Robert Dee:** We have that, we have that already. We have the letter from before. You know, so...

**Robert Gaudioso:** No you didn't accept the letter but I just wanted to get the testimony on the record from Mr. Xavier that as of today...

**Chairman Robert Dee:** Sit down please. I'll determine who's next. Go ahead.

**Robert Gaudioso:** I'd like permission to have Mr. Xavier testify that today he received correspondence from Mr. Fadden that he would not allow any other location on the 64 acre priority.

**Chairman Robert Dee:** (Inaudible) Have you anything else? Are you finished? I mean, do you have, had enough time?

**Robert Gaudioso:** In response those last comments I did, I have Chairman, thank you.
Chairman Robert Dee: You had enough time?

Robert Gaudioso: In response to those last comments, correct.

Chairman Robert Dee: Okay you don't need any more time?

Robert Gaudioso: Correct.

Chairman Robert Dee: Thank you. Yes sir, you've been waiting.

Audience Member: I’m fine. (inaudible)

Chairman Robert Dee: I’m sorry? You’re fine. Okay. Mr. Xavier.

Vincent Xavier: Board, members of the public here, my name is Vincent Xavier, I’m the regional manager of Homeland Towers and just to be concise as a follow-up to Mr. Vicente’s assertions regarding his calls on Friday and the discussion, we did offer him the weekend to mull it over and provided him documentation to look at and then today I did speak to him again and obtained another letter from him. Evidence in his determination that, there not only is that location that was proposed by Ron Gainer but any other place on the property is still not going to be allowed by him so we had a secondary letter signed, which obviously you want except today, but I’ll just testify that I did receive that letter and I would be prepared to submit it.

Chairman Robert Dee: Okay (inaudible) you’re talking about, I know Friday I got a call from Mr. Gainer, I believe on Wednesday I think he looked, he found another location or something and he emailed it to you, is that to what you're talking about?

Vincent Xavier: That’s correct yes.

Chairman Robert Dee: (inaudible) and Mr. Fadden refused that location.

Vincent Xavier: That's correct.

Chairman Robert Dee: Okay thank you. Okay anybody else that I missed? One last person. Yes sir. Come on up, unless Mr. Gaudioso has anything else. No. Okay. And this will be it.

Steve Sterling: I’m very sorry to be designated as the last person because there’s a lot of people that have to talk. First off I want to thank you, Mr. Chairman. Your character and your strength to deal with all this for so long, and both boards combined together, it’s been a lot to deal with. It's really, really impressive and your strength of conviction is really fantastic for us. I think also everybody’s got to recognize tonight’s a little lighter night than a lot of the crowds that have been showing up for here and even the Nelsonville ones, that probably has a lot to do with the weather. I just want to make three simple points, and please correct me if I’m wrong, my recollection is that months ago when you were reviewing the application you pointed out to Mr. Gaudioso in his application, I believe and you'll correct me if I’m wrong, or we can look it up, that he made a statement that there were 500 cars or something that pass by Route 9 and you, in good faith, helped him with this application and said, well that can't possibly be true. Tonight, I don't know if you picked it up that he's, that now they're saying
15,000, right, and I think we have established a long track record of these gentlemen talking out of both sides of their mouth and misrepresenting things and actually relying on you all to catch things and correct them, which you've done in good faith. You are standing up for a community that is trying to explain to these people, Mr. Vincente was standing saying I need this to happen, who are saying we're fighting for our community, the beauty of our community, the unusual place we are and the value that we have. Two last things I'd like to say is, if there were any chance that you Mr. Chairman, Mr. Vicente, maybe Mr. Gaudioso, Mr. Eldridge, Mr. Cooper could actually meet with Chris Fadden and say Chris, do you want this to be the legacy of your reputation here in this town? He's, he is somebody who seems very dispassionate about all this but I'm convinced listening to all of you, if you all sat down with him, give him a half an hour and say Chris, this would be better for the community, here's what we'd like to do and he'd really find out what these good people would like to try to do. Lastly, I would like to say that it's very difficult; you are all between a rock and hard place because Mr. Gaudioso has informed numerous times that they're gonna go to court over this. And you're sitting here saying, what's the best use of our community's proceeds and money and where can we take a fight. I'm convinced these guys have talked out of both sides of their mouth so much, and as much as Mr. Gaudioso has taken a few of us up on misrepresenting things, he is very slipshod and they become very slipshod on the facts, on a number of occasions and you all in good faith have corrected them in trying to just be even-handed about it. I would like to encourage you to stand your ground, let's take this legal as far as it have to go, you're all standing up for the community, there's a lot of people that have been raising money to get attorneys, other RF engineers and really take a stance against these people and let's go for it. It's not gonna be cheap, it's not gonna be easy but you've seen months and months and months of hundreds of people now in the communities showing up. It's something we all feel so strongly about and I would encourage you all to say, you know what we don't have to coward to this, we don't. There's a lot of people that are going to have your back, we're ready to raise some money if that's what it takes, outside of the community funds, we don't want you to be exposed to anything but clearly this is something that we all want to fight for and we all believe in substantiating the beauty of where we all live and fighting for it. Thank you all very much.

Chairman Robert Dee: As far as sitting down and speaking to Mr. Fadden I'd be, I'd love to do it but unfortunately that's impossible because we do have a shot clock and they're not gonna...

Adam Rodd: Unless Mr. Gaudioso would agree to extend the shot clock to facilitate that communication.

Robert Gaudioso: I think unfortunately we did, we did use our best efforts to convince him. I don't believe that a discussion between members of the board and a particular property owner would, in an ex-parte setting would be appropriate anyway, so I don't, I don't believe that that would be the right forum for any type of discussion. I think it would, quite frankly, put the board at risk because I don't believe the board should be having that type of discussion with a particular property owner so I don't, I don't see the opportunity there and as I said before...

Adam Rodd: If I could just, forget about ex-parte communications, including the applicant. In other words, a representative from the board, you, I mean, no one is doing it in secret, it would be a joint communication. I mean it's just a proposal to extend the shot clock to, if it's no, it's no, but it's, it seems that there are obviously unsettled issues.
Robert Gaudioso: Could I just, Mr. Chairman could I just take a two minute adjournment to speak to my client? Would that be possible?

Chairman Robert Dee: Yeah, you can go in the hall, sure.

Robert Gaudioso: Okay, thank you.

Chairman Robert Dee: Sure. No problem. We're gonna take a break after this. After the vote we'll take a break.

CROSSTALK - INAUDIBLE

Chairman Robert Dee: Alright, take a five-minute break? Yeah okay let's take a five-minute break so if anybody has to go to bathroom. They'll be right back.

Chairman Robert Dee: Ready? Okay (inaudible) both attorneys I guess basically that we will meet with Mr. Fadden, is that correct?

Robert Gaudioso: We'll attempt to, or offer to.

Chairman Robert Dee: Offer to meet with him, yeah and, well, I thought we were gonna meet with him.

Robert Gaudioso: I mean if he says no I can't control, that's all I'm saying so.

Chairman Robert Dee: Oh no, no I mean, that's all I'm saying so, okay, if he says, all right. I understand if he says no but, and it would be, it would be at the town, like the town hall, something like that where we would meet. Alright but we would have to have an, to see we could move to tower someplace that's acceptable to residents and to the town as far as the stakes go. Okay. I'm sure, this gentleman here spoke before, I believe him and I think that he would be willing to do that. I think the block seems to be Mr. Fadden and that's what we're trying to break but we would have to have another board meeting. It'll be a public hearing but it won't be everybody talking. It'll be a public hearing just at these, you know, to let everybody know whether Mr. Fadden decided. If he decided not to meet, it'll be a very short hearing.

Robert Gaudioso: So we had offered was that the hearing would be closed tonight, meet after the meeting with Mr. Fadden for a decision. If Mr. Fadden agrees to relocate the tower, we would ask to reopen the hearing to, you know, present that. But if he says no then we would want a decision. We would extend the shot clock to that next January meeting for a decision. We, we had offered the 22nd of January.

Chairman Robert Dee: 22nd or 29th, is that what you said? I think 22nd, right? So that would have to, we would have to bring everybody back unfortunately. I know you guys are working for months and months and months and hours and hours and hours. I hate to do this but we're trying to come to some kind of an agreement. Would it be possible for, to get a quorum on January 22nd? It'll be for this
meeting only and it'll be a very short meeting. Of course it'll be a vote one way or the other, right? I guess. Is anybody available? Check your calendars for a January 22\textsuperscript{nd}, it would be a Monday.

MJ Martin: I can do the 22\textsuperscript{nd}.

Chairman Robert Dee: 22\textsuperscript{nd}? Did I get enough, enough people? Okay. 22\textsuperscript{nd}? Okay yes?

Andrew Campanelli: Question. If I understand Mr. Gaudioso's position, that would mean that the public hearing would be closed tonight but the board would reconvene next month, and the shot clock would be extended to next month. The only question I have is, does the record remain open until the next meeting. And if it does that's fine. If it does not is the town going to accept the records, the documents that have been submitted by Mr. Gaudioso this evening?

Robert Gaudioso: We're not asking, let me be perfectly clear; we would ask, we agree to extend the shot clock to the 22\textsuperscript{nd} of January for a decision if the public hearing was closed tonight and we would not, we would not request to submit any new information. If Mr. Fadden says, yes we'll relocate it and he'll agree to it, then we would have to consider reopening the hearing at that point.

Chairman Robert Dee: Okay. Alright, Mr. Rodd? I think at this point in time the board agrees that we'll meet on a 22\textsuperscript{nd}. It will be 7:30 here. In the meantime we'll talk to, we'll have a meeting with Mr. Fadden and Mr. Gaudioso and Mr. Rodd and Mr. Gainer and see if we can find a better location, or a location that would work for everybody.

Robert Gaudioso: I appreciate, I think that the closing of the hearing probably needs motion.

Chairman Robert Dee: Yes it does. If you want to sure.

Robert Repetto: If there's no more public hearing we can't bring it in.

Chairman Robert Dee: Alright. Go ahead. All right, yes. I'll close the public hearing but the Conservation Board wants to put something into the record.

Robert Gaudioso: That's fine.

Chairman Robert Dee: Okay. Go ahead. Chairman of the Conservation Board.

Mark Galezo: This is just a statement we are gonna make to the Zoning Board. The Philipstown Conservation Board has taken great care and time to review the application in front of the ZBA, and our board, for the proposed cell tower on Vineyard Road. We have evaluated the application and associated materials under lens which speaks to the CB's professional expertise, from science related fields to a general contractor's perspective, focusing not only on how to mitigate impacts to the community's natural resources, but to the community as well, when proposals such as this come before our board. While the CB has regulatory authority under Chapter 93 of the Philipstown code concerning wetlands and watercourses, our board also acts in an advisory capacity to other boards in Philipstown, such as the ZBA. That being said, the Conservation Board would like to convey the following points before you and your board members, renders a decision on the Homeland Towers application at Vineyard Road. Number one: the CB has never allowed building within wetland buffers or
encroachment on water courses unless there is an absolute compelling reason to do so, ie, lot size
restrictions, major topographic obstacles, etc. The fact that the landowner will not allow alternative
sites on his 61-acre property to be investigated is not a compelling reason for the CB to approve the
wetlands permit. The provided visual impact studies are greatly flawed. The study has undertaken
when, was undertaken when most of the foliage was still on the trees, and it appears that the study
purposely, purposefully ignored vantage points from the vast amount of public lands, which include
many miles of hiking trails and important scenic vistas. The current fenced-in compound size is
potentially unsafe in regard to falling ice, ditch, dislodged equipment, or the catastrophic collapse of
the cell tower itself. The compound would need to be significantly enlarged to provide a realistic safe
zone. Lastly, while not fully within the purview of the CB, I do not think that the applicant has
demonstrated without a shadow of a doubt that there is significant under coverage of wireless mobile
service/voice service in the area that is, this tower will be designed to augment. This is important
because without resounding proof, the town will be setting a very troubling precedent for additional
cell tower proposals. We just wanted to have that in the record.

Chairman Robert Dee: One legal question I have before we do this is, if we meet Mr. Fadden and we
come to an agreement of a better location that does not need a wetlands permit, would the conservation
board be required to come back to, to that second meeting, in January?

Adam Rodd: If it, and maybe…

Chairman Robert Dee: You understand what I’m saying?

Adam Rodd: Yeah. My, I believe that if it had absolutely no effect and was not even in a buffer area
pertaining to wetlands and it wouldn’t, wouldn’t need their approval then they would not need to
participate in an approving that.

Chairman Robert Dee: Okay. You understand Mr. Gaudioso? Do you agree with that or…

Robert Gaudioso: We don't know what the location is yet.

Chairman Robert Dee: We don't know.

Robert Gaudioso: But if Mr. Fadden refuses to meet or stands by his position, then on the 22nd they
would need to render a decision.

Chairman Robert Dee: But I do appreciate you, granting this very much and the board appreciates it.
Thank you.

Robert Gaudioso: Thank you.

Chairman Robert Dee: Okay. That's for the end of that so anybody who's here for that can leave if
they want. The conservation board can leave, you guys are done, thank you for all the time and I'll let
you know about the next meeting whether you're gonna be needed or not. I'm sorry. Oh I got to make a
motion, yeah I'm sorry. I have to make a motion to close the public hearing.

Vincent Cestone: Second.
Lisa Saban: I have a question before you close.

Chairman Robert Dee: One second. Yes, go ahead.

Lisa Saban: My question is, I appreciate that you're all, my name is Lisa Saban. Lisa Saban. I appreciate that you're trying to work in good faith and trying to meet with the landowner to come to a solution that best, work best for everyone. My question is, if magic happens and he says, okay put it in a prettier place, does that mean you're all gonna go yay and approve it, or are you still going to take in all this evidence and have the option to do what our community strongly is urging you to do, which is to deny.

Chairman Robert Dee: We still have the option to do that.

Lisa Saban: I would just express that support of, I think it's wonderful that we're all working, working together in great, in good faith, but to get the assurance that that doesn't mean that all this other weighty wonderful evidence will not be equally and continually weighty and wonderful.

Chairman Robert Dee: No no no, we'll take in all evidence and everything else like that and the board... just trying, we're just trying to, you know, make it the best we can but the board still has the opportunity, even if they move it, the board still has to look at the location. If they feel it's not acceptable or whatever, if they feel it didn't meet the law, as far as I'm saying, well then yes the board can deny it.

Lisa Saban: Thank you sir.

Chairman Robert Dee: Thank you.

Adam Rodd: I think the Conservation Board also needs to make a motion to close the public hearing.

Chairman Robert Dee: Okay.

Mark Galezo: Can I have a motion?

MJ Martin: So moved.

Andy Galler: I'll second it.

Mark Galezo: All in favor?

MJ Martin: Aye.

Jan Baker: Aye.

Robert Repetto: Aye.

Andy Galler: Aye.
Eric Lind: Aye.

Mark Galezo: Aye.

Chairman Robert Dee: Okay, you guys can go. Thank You. And anybody for the cell tower can go.

Vincent Cestone: Aye.

Granite Frisenda: Aye.

Paula Clare: Aye.

Lenny Lim: Aye.

Chairman Robert Dee: All right we'll meet with this guy. Okay thanks guys I appreciate it.

CROSSTALK - Inaudible

Chairman Robert Dee: Alright let’s do, I’m gonna change it a little bit. I know you’re okay.

Robert Gaudioso: Great, thank you.

Chairman Robert Dee: This is for a replacement of a tower that's been in existence at 22 Sky Lane and the applicant seeks to amend special permit to replace an existing communications tower. Go ahead.

Robert Gaudioso: Great. Thank You Mr. Chairman. Yes. This was approved back in 1957 as a public utility rather than a communication tower but the determination was made because Sprint was approved back in 2000, back in 2003, to go on the tower, we have to relocate them. And basically the point is, is that the tower’s 50 some-odd years old, needs to be replaced. It'll be designed to allow Verizon, which came before you and received approval in 2013 but they did not go on the tower; you subsequently approved a temporary tower because the existing tower was structurally inadequate. We also submitted three different letters from the county showing their need to come on the tower, and again, the new tower would be in the same general location, the same general height, to replacement tower, but would be able to support that colocation which is encouraged by the code. We submitted the EAF, the plans, the application fee, the escrow fee, the letters of support from the county, as I mentioned, the no violations letter and the letters of authorization. The town engineers comments had requested some minor changes to the plans; we’ve already made those changes. Also requested a removal and colocation agreement, we’ve already prepared that agreement and had it signed by the property owner. You request an insurance certificates, we’ve already had those insurance certificates prepared and, and
we have them with us as well, none of the comments in the town engineer's memo were problematic to us and we'd be happy to respond accordingly.

Chairman Robert Dee: Ron, is there anything else they need that we don't have here?

Ron Gainer: Again, the board has a technical memorandum from us, just that’s been summarized by the applicants attorney. Memorandum outlines the procedures that are involved in moving the application along and also identifies specific deficiencies that were in their original submittal. Provided that the revised materials satisfy this, you can obviously move it forward. It's a matter that we'd have to review whatever this latest material is. I know tonight I was just handed a revised plan so I can get through that and respond to the board shortly, in terms of what materials have come in and how it satisfies the deficiencies noted. And then the letter also identifies the notice requirements for notification to other localities and also the public hearing requirements for the project.

Chairman Robert Dee: Well the next meeting would be February 12. That's Lincoln's birthday, is that a holiday? I mean as far as closing, is that a problem with anybody? It's a Monday. I don't see the problem. Yeah, well yeah but I don't see that as a problem meeting what anybody. Does anybody on the board?

Adam Rodd: The following week is the 19th, that's President’s day. The 12th is...

Chairman Robert Dee: So that’s President’s day. Okay so that would be at, the next meeting for that would be the 12th. February 12th. Is there any questions from the board? As far as...

Vincent Cestone: That's at Town Hall yes?

Chairman Robert Dee: All right as far as review for completeness. Do you want to make a motion for review of completeness and set it up for public hearing or?

Adam Rodd: Well just if I can ask, Rob, did we get a long-form EAF because I think the code requires that.

Robert Gaudioso: I think the code requires a long form for a communications tower but if you recall it was, we had some back and forth and it was not a communications tower, so I don't know if the communication tower section technically even applies. So we asked, so, we'd, there's also a section in there about whether we need the variances. What my thought was is that, we would notice it for the variances with the understanding that we would also ask for an interpretation whether we need it or not. Because we don't think we need the variances, but I don't want to not get the variances if the board determines we need the variances. The long form, it is a replacement tower so I don't know what additional information the long form would actually provide and we'd ask for a waiver if you felt it was required.

Adam Rodd: Well I think it was brought to our attention by Mr. Gainer that the code does require a long form. I imagine, although the other regulations don't say you need it, the code augments those regulations and it seems to say you do need it. So I think for the integrity of the application, it's probably safer to submit a long form. I can't imagine that’s...
Robert Gaudioso: We...

Adam Rodd: And also I believe there was an absence, unless it's been supplied, of a visual assessment?

Robert Gaudioso: So this is a replacement tower, it'll look nearly identical. It's the same height; it's within I think 15 or 20 feet and I'm sorry, I'm, I should have introduced Mr. Bob Furlong came down for the meeting. He's Executive Vice President with Pamal Broadcasting and he's here with me this evening. But the visual, the visual resource evaluation would be literally just pictures of the tower; it's gonna look exactly the same.

Adam Rodd: Again, for the complete, so the application has all of its I's dotted, we would need that.

Robert Gaudioso: Would photographs over the existing tower suffice?

Adam Rodd: I defer to the board and the engineer.

Ron Gainer: Well, again the visual assessment is a (inaudible) of the applicant...

Chairman Robert Dee: Ron you're gonna have to go up to... I think the idea we're looking for here tonight is, do we, are we going to have the meeting February 12th, we just continue for more review of completeness because it's not complete tonight.

Ron Gainer: That's right, that's right and with respect to the assessment that's, that's physically the EAF document that's prepared by the applicant is part of the EAF that could be done, that normally includes photographic evidence and I think his proposal is, would be adequate. But as you say, the determination on completeness couldn't be held until all the...

Chairman Robert Dee: Yeah we can't vote it complete because it's not complete.

Ron Gainer: That's correct.

Chairman Robert Dee: So we'll push it over to the 12th to the February 12th will be the next meeting but that would be at town hall. At town hall and maybe you could discuss during the time with Mr. Gaudioso and Mr. Rodd exactly everything that's needed.

Ron Gainer: Yes.

Chairman Robert Dee: And hopefully that day we could vote on a review of completion. Okay?

Adam Rodd: Is that enough time, Rob?

Chairman Robert Dee: Is that enough time by the 12th? You want to make...

Robert Gaudioso: Like I said, we have just about everything done already. So all the other materials we already had prepared. I think really what you're just asking for is a long EAF with, with
photographs and we can, agree on some photo locations, that shouldn't be a problem. We have, we already have a plan and are engaged to prepare that, so.

**Chairman Robert Dee:** So that'll be review for completion at the 12th.

**Robert Gaudioso:** Okay. Very good.

**Chairman Robert Dee:** Thank you.

**Robert Gaudioso:** Thank you.

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**200 Jaycox Road, David & Ann Provan**

**Chairman Robert Dee:** Okay next is a review of completion, we'll get rid of that one. For, it is, let's see, a 200 Jaycox Road, David and Ann Provan. Are they here? Oh okay. Mr. Provan? This is a review for completion.

**Karen Parks:** Correct.

**Chairman Robert Dee:** Correct, okay.

**Karen Parks:** I brought materials, I didn't know.

**Chairman Robert Dee:** Okay yeah, go ahead. That's this one here.

**Paula Clair:** (inaudible)

**Chairman Robert Dee:** Go ahead.

**Karen Parks:** My name is Karen Parks, I'm here tonight representing David and Ann Provan who are the homeowners at 200 Jaycox Road and just to review the packet for completeness as you mentioned. So if you'd like me to go through the materials we submitted?

**Chairman Robert Dee:** No, I don't think so. I think we've read it and I think the package is complete.

**Paula Clair:** Yeah I think so.

**Chairman Robert Dee:** Alright anybody have any questions on it? No? I'd like a motion that the application is complete.

**Vincent Cestone:** I'll move.

**Chairman Robert Dee:** All in favor?

**Vincent Cestone:** Aye.

**Granite Frisenda:** Aye.
Paula Clare: Aye.

Lenny Lim: Aye.

Chairman Robert Dee: Aye. Alright we’ll set you up for a public hearing. Okay February 12th at 7:30 that’ll be at town hall.

Karen Parks: Okay.

Chairman Robert Dee: Okay hopefully this cell tower thing will be done with by then. And that’ll be the end of it. Okay thank you.

Karen Parks: Just one question, does the Zoning Board send out notices to the neighbor or is that our responsibility?

Chairman Robert Dee: No we do that.

Karen Parks: Okay thank you.

Chairman Robert Dee: The secretary takes care of that.

Karen Parks: Okay.

Chairman Robert Dee: Thank you. Just make sure she has the list of the neighbors.

Karen Parks: They do, yes. that was part of the application.

Essex Green, Inc., Douglas Lane

Chairman Robert Dee: Okay just supply it to our secretary in the back. Okay. Now, Essex Green. I'm sorry Mr. Richmond you've been, you've been extremely patient, I thank you for that.

Dan Richmond: I admire you for your perseverance. It’s been a long night for you.

Chairman Robert Dee: We try. Go ahead.

Dan Richmond: Thank you.

Chairman Robert Dee: Before you start, I received an email, I don't know if you have it or not, if not I'll make sure you get a copy of it. It's from Greg Wunner. It's to Greg Wunner, actually, from the code enforcement officer from Nelsonville, William Bujarski.

Dan Richmond: Yes is that dated November 29th?

Chairman Robert Dee: Yeah about that driveway?
Dan Richmond: It confirms that...

Chairman Robert Dee: Okay, yeah, they confirm that the intention of the office is to issue an appropriate permit to allow the construction of an access driveway to the residence as approved on the Philipstown portion of the site. The permit would be for related site work and include a code compliant driveway.

Dan Richmond: Yes.

Chairman Robert Dee: So if you get through this at least you know you got a driveway.

Dan Richmond: Yes.

Chairman Robert Dee: Okay.

Dan Richmond: Yes. I wanted, I was actually gonna introduce that if you did not already have it. I want to make sure your board had that.

Chairman Robert Dee: Go ahead.

Dan Richmond: So we're prepared to give a full presentation. Good evening your board, Chairman Dee, members of the board. My name is Daniel Richmond, I'm with the law firm of Zarin and Steinmetz, here on behalf of Essex Green for this Douglas Lane property. Essex Lane, Essex Green is here tonight to respectfully request that your board confirm that the property is a legal, non-conforming lot, pursuant to the town’s 1957 zoning code, and that based upon the, that confirmation, issue variances from the current town codes front yard setback and impervious surface coverage requirements. Essex Green also respectfully asks that your board further find that even if the property were not a legal preexisting, non-conforming lot, that it should issue the variance’s that the current town codes would require for area front yard setback, rear yard setback, impervious surfaces and frontage. And as much as this project would be in harmony with the prevalent community character and otherwise conform with the standards for the applicable zoning code, I want to emphasize that I would really ask your board that even if it agrees with us on the non-conforming lot issue, which we’ll explain and which I think it should, that it also further find that even if that were not the case, it would find the variances should be granted, all variances should be granted to bring some finality to this application. With me this evening are Glen Watson from Badey & Watson, Daniel Simmons from Simmons Construction. Susan Green is ill with the flu this evening, could not join us. By way of background, as you will recall, the town code enforcement officer issued a denial letter dated August 25th 2017 which accepted that the property is a legal, non-conforming lot within the meaning of the town code and determined that the applicant would need 2 variances, due in part to correspondence from the town's Planning Board and in response to a referral from the ZBA and community opposition, the code enforcement officer issued a new denial letter on October 25th 2017 which stated that it was necessary for the, for the owner to apply to the Zoning Board of Appeals for a code interpretation of the meaning of the words “taken for a public purpose” as used in 1957 code or, in the alternative, a variance to lot area. The new denial letter sets forth the variances that would be required should the board concur that the property is a legal non-conforming lot and alternative the variances that would be required should your board find that the property is a legal preexisting non-conforming lot. And again we're requesting that the Board finds the property is a legal non-conforming lot and further determine, even if it does
confirm that it is a non-conforming lot, that the variances would be, should be granted. The history of this property and the basic (inaudible) of statutory interpretation, as we've explained to your board in several correspondence, indicate that this property is a non-conforming lot. As this board is aware section 17-175-23 defines a non-conforming lot to be quote “a lot of record which is created legally but which no longer complies with the area, shape, frontage, or locational provisions of this chapter.” As we have explained, again to the board, the property was legally created pursuant to an exemption in effect at the time of the property's creation, which was codified in section 9B of the town's 1957 zoning code, which specifically exempted reductions in areas of parcels where the land was quote “taken for a public purpose”. Factually, it is undisputed that in 1966 the Village of Cold Spring acquired approximately one acre of land from the parent parcel, from which this property derives, for the public purpose of establishing a municipal connection to the Catskill Aqueduct. Cold Spring’s Board of Trustees in approving that acquisition, specifically stated that quote “such land was vital and an important link in the connection with the proposed New York City water supply.” Under basic Maxims of statutory construction, Cold Spring’s acquisition of this land for a public purpose fits within the scope of section 9B of the 1957 code. It has been incorrectly argued by certain members of the public that section 9B of 1957 is only applicable where the government is quote “forcibly taken pursuant to eminent domain” not withstanding the fact that the term eminent domain does not appear and there is no such limiting language in section 9B. This argument, again as we've demonstrated to your board and repeated correspondence, violates numerous Maxim's of statutory construction, to begin with, that zoning restrictions, being in derogation of a common law property rights, should be strictly construed and any ambiguity resolved in favor the property owner. Moreover, it is also axiomatic that interpreting this statute, as the Court of Appeals has held, the starting point must be the language itself, giving effect to its plain meaning. In fact, Article 2 of the Philipstown’s 1957 code, which is the definition sections of the code, specifically establishes that, except were specifically defined, all words used in this ordinance shall carry their customary meanings. Here, the word taken is simply the past participle of the verb take, in it's plain and ordinary sense, which simply means to get possession of, get hold of, or obtain, or acquire. Even Black's Law Dictionary, the first two definitions comports with this plain and ordinary meaning of, to obtain possession control, whether legally or illegally are quote “to cease with authority.” The argument that a restriction must be read into this provision, which is not in the law itself, ignores the fact, as the Court of Appeals has repeatedly also held that quote “the absence of a word in the law is a meaningful and intentional as we have previously observed that the failure of a legislature to include a term in the statute is a significant indication that his exclusion was intended.” Or as the Court of Appeals says elsewhere repeatedly held quote “we have firmly held that the failure of the legislature to include a substantive significant prescription in a statute is a strong indication that the exclusion was intended.” Stated differently as the Court of Appeals has further held quote “new language cannot be imported into a statute to give it a meaning not otherwise found therein.” Moreover, again as the Court of Appeals has held, it is improper effectively to quote “amend a statute by inserting words that are not there” and it is improper to quote “read into a statute provision which the legislature did not see fit to enact”. Again, an inference must be drawn that what is omitted or not included was, as the Court of Appeals held, intended to be omitted or, and excluded. Accordingly the contention that the additional language or restrictions, such as compliance with eminent domain procedures, should be grafted on to or read into that section 9B of the towns 1957 zoning law, cannot be countenanced. This is particularly true where such an interpretation would cause hardship or injunction or injustice. Simply put, if the town board had, in 1957, intended to restrict section 9B application to quote “forcible government action” or quote “eminent domain” it would have been easy enough for it to have done so. Moreover, as attested to by Mr. Watson who had a close working relationship with Mr. Doyle who served as counsel at the time for both the Village of Cold Spring as well as the Town, based on his
personal knowledge and practices, Mr. Doyle would never have engaged in a process that create an illegal subdivision or allowed the creation of a non-buildable lot. It's also reasonable to conclude that the owners of the property's parent parcel, including one who is a practicing attorney, who graduated from Harvard Law School, would also not have allowed Cold Spring to acquire property for a contemplated aqueduct connection so as to render the remainder land illegal. As such, the property is a non-conforming lot exempt from Philipstown's codes requirements for area, shape, frontage, or coverage. Nevertheless, in an excess of caution, we are asking that your board determine that such variances would be appropriate. Again, should the board concur with us that the property is a legal non-conforming lot, the only variances that would be required would be from the technical front yard setback and impervious surface requirements. As the board obviously knows, in determining whether to grant the requested area variances, the board must engage in the balancing test by statute quote “in making the determination of zoning importance shall take into consideration the benefit to the applicant if the variance is granted as weighed against a detriment to the health, safety, and welfare of the neighborhood or community by such grant”. And town law, as the board knows, establishes a five factor test to consider: whether the undesirable change would be produced as a result of the variances, whether the benefits sought by the applicant can be achieved by some other method, whether the requested variance is substantial, and whether then proposed variance will have an adverse impact on the physical environmental conditions in your, in the neighborhood or district, and whether the alleged difficulty was self-created. This analysis, if it were actually applied here to these facts, shows that this requested variance should be granted because the result will be a single-family home that is wholly in harmony with the prevailing pattern of community development in this area. Respectfully, there can be no reasonable argument that the project would produce an undesirable change in the character of the neighborhood, adversely impact physical or environmental conditions, or otherwise result in detriment to the health, safety, welfare of the neighborhood or the community. First, with respect to the front yard setback, the Philipstown zoning code requires a 60-foot setback in this subject RC zoning district. Here, the town code enforcement officer has determined that the proposed would have a zero front setback, which he measured from the town line. Again, as your board will recall, the town line bisects the property. We would submit that, the use of the municipal boundary to the property to calculate the required front yard was incorrect. The Philipstown zoning code defines a setback as a distance between a structure and a property line, which would be here, the center line of a road or an identified natural feature such as a watercourse. In any event, as a practical matter, as the board can see, the property extends beyond the town line and has land located to Douglas Lane as well as Moffat Road. Measured from Douglas Lane, the single-family residence would actually be set back approximately 73.8 feet from the road, which is in excess of the setback requirement. Again, so in reality, the property provides significant front yard setback that we submit, should submit the codes intention and again demonstrates that the property would be consistent with community character. Impervious surface coverage, again the Philipstown code limits impervious surface to 10% while the project would result in 13%. Again, that is just factoring in just this portion of the property, in the Town of Philipstown, not factoring into the portion of property that is in the Village of Nelsonville and that would remain largely undeveloped except for the driveway, which you referred to, Mr. Chair. As such, with respect for impervious coverage, while the concern is stormwater and runoff, not only is the variance minimal but the project will, again, sit on a much larger parcel than was used to calculate the variance. And in reality, the project will be able to accommodate the stormwater runoff from its impervious surfaces. Should your board determined that the property is a legal non-conforming lot, again these are the only variances that would be required according to the code enforcement officer. But Essex Green, again, requests that your board also further, go beyond this to address the codes area rear yard setback and frontage requirements, which the code enforcement officer said would apply if it were not a legal non-
conforming lot. With respect to lot area, considering only the Philipstown portion of the property as the code enforcement officer did, the property is 0.55 acres while the town code requires a minimum of 10 acres in the district. In reality the proposed single-family home will be located on a 1.43 acre property, which we submit, that in the analysis considers how the, we submit that analysis that concerns how the variances would affect the public's perception of an area, the entirety of the property must be considered in assessing the instant variance request. As demonstrated, and Glenn Watson will speak to this point, there are multiple properties in the area that are two acres or less. I believe they're approximately 30 plots in the area that are two acres or less and about 20 lots in the area that are between two and five acres. Glenn I don't know if you want to speak to that. And also Glenn, if you could talk to, you know, one of the other remarks that a member of the public made, of the proposed house would be the largest house on the smallest lot in the area, significantly change the character, and again, as Glenn can demonstrate at the same time, the property is actually thoroughly in keeping with the size of other houses in the immediate area.

Glenn Watson: The subject property is here at the center of the drawing and it's bounded in red and what you see in the triangular shape is the entire piece of property the, which is split by the, by the town/village line. Those parcels, we went through the tax maps, and those parcels that you see here in green are all under 2 acres. Those are, those that you see here in blue are between 2 and 5 acres.

Chairman Robert Dee: Are there homes on those 2 acre properties?

Glenn Watson: There's homes, there's a home here, I believe there's a home here, there's homes here. There’s a home here for sure. Yes, there’s a home there.

Chairman Robert Dee: Okay.

Glenn Watson: There, there. I believe there’s homes here.

Chairman Robert Dee: Okay. Obviously on the 2 acre…

Glenn Watson: I don't know, I can't rattle them all off. And there's several homes along this, along a long hilly road. Now these are the Villetto subdivision, so there's several homes here.

Chairman Robert Dee: Okay.

Paula Clair: On the 2 acre ones? Because I thought you pointed all to the 5 acre.

Glenn Watson: There are homes on the two acre ones as well.

Paula Clair: Okay.

Glenn Watson: I'm sorry I thought that's what he's asking and that's, that's the former Merante home. There's a new home being constructed here on this lot, there's a couple of homes in here, there are homes on most of these lots, I'm not sure if they're all built…

Chairman Robert Dee: There's a new home that's being constructed along that road there's homes.
Paula Clair: And right so the triangle that is the property in Philipstown is- okay but these people also own land in Cold Spring right?

Glenn Watson: Nelsonville.

Paula Clair: Nelsonville. I mean adjacent...

Chairman Robert Dee: But it’s split in half. It kind of, the Town line runs in the middle of the property.

Paula Clair: Oh, ok so the...

Chairman Robert Dee: The property actually is 1.4 or something like that.

Dan Richmond: 1.3 acres.

Chairman Robert Dee: 1.3 acres.

Paula Clair: Oh, the Philipstown one or the...

Glenn Watson: What's happening is here, this, the property is split. Part of its in Philipstown. the smaller part, part of its in Philipstown and Nelsonville as well, and we're applying the Philipstown rules because the house was moved into Philipstown really at the suggestion of the building department so that they didn't have a, I think really, administrative problem.

Paula Clair: Which part is Cold Spring?

Glenn Watson: Nelsonville.

Paula Clair: I mean Nelsonville.

Glenn Watson: This triangle, this triangle is Philipstown.

Paula Clair: Okay and...

Glenn Watson: And this is Nelsonville.

Paula Clair: Okay and then and the triangle on the map, the other map, is that just the Philipstown portion of it?

Glenn Watson: No, that's the entire piece of property.

Paula Clair: Oh, okay.

Glenn Watson: The other issue that was raised that was, that we're presenting the largest house on the smallest lot. Well there can only be one smallest lot so that, so they sort of take a double entendre in making that point. I mean they're, they're trying to make it twice as much as it is. It's a, not, it's not the,
it's not the largest house in the area and it's also not the smallest lot. It's among the smaller lots. It's not both and if you think about the logic of the statement it's, it really doesn't make sense because you can, you can't have another smallest lot to have a smaller house on.

Paula Clair: Are there other lots that are less than 2 acres there?

Glenn Watson: Oh yeah. They're, in here the...

Paula Clair: Oh I thought you said the green one's were two acre ones.

Glenn Watson: Two acres and under.

Paula Clair: Oh and under, oh okay.

Glenn Watson: Two acres and under.

Paula Clair: Okay.

Glenn Watson: Our point was to show you, to give you something, here's a 1.5, 1.15, 1.6, so they're, they're around in the general area where we are. There's a couple up here, this is .9 acres, this is 1 acre. So we have a piece of property that is consistent with the other lots around and that's what we're trying to demonstrate. We also, do you want- I was gonna go there next. I know there was some concern for the, for the how it would affect people who might have a view. So we took a look at that and this is what, this is to demonstrate. This is, this plan view is the proposed house, adjacent to the aqueduct is darker gray, and above it are one, two, three houses. This is Sean Patrick Maloney's house, I think that's also part of, on the same piece of property. This is maybe the Condak people, anybody know the Condak house? This is an old, this is an old converted barn that's right on Moffat Road. That sits right up- so what we did is we, sorry. We do a profile from each of the houses over the proposed house. And this gets, it's a little, it has to be drawn in two different scales; vertically it's different. It's not as steep. If we drew it with an absolute scale it would, it would look just flat to you because there's so much relief here that there's so little, actually little relative relief. So we took a point in each house and we drew a line towards the near edge of the Hudson River, just a straight line, straight shot down to the water that passed over the house and then we drew what the house was, and you can see it's exaggerated vertically to make- and in the case of (inaudible) Maloney's house, right across the top towards the northwest, there's a significant distance between the top of the house, the proposed house, and the line to see the river. Similarly, from the other house on his property, there's not quite as much but there's still a significant shot over the top of the house that, if you can see the river, it's not going to be interfered with. With the Condak house, which is the old barn, it's, if there is, there will be some roof but I also actually think that this is not a river view this way, or if it is, it's very distant because it's going on an angle towards the river instead of directly towards the river. So, we don't think there'll be a significant impediment to people's views, that's what that's supposed to show you.

Dan Richmond: (Inaudible) ...in exhibit G to our November 3rd 2017 submission talked about the (inaudible).

Glenn Watson: Oh, that's right this is from the submission. Just, incidentally when we talk about these houses, house A is a 4500, 4460 square foot footprint. House B, 3725 foot, square foot footprint. House
C, which is this one, that's a 3514 square foot print. House D, which is the Meyer's house, and we didn't get in there to check it, but from the aerial photos we determined it has something about a 4500 footprint but that may include a covered garage or, or something like that so we couldn't tell. The house that's being proposed is 3300 square feet so it's, it's right in line with the two in the middle, so. And house E, I guess that's E, I'm not sure where E is so I'm not gonna point at it, that one is 2,600 feet. So at any rate, we don't have the largest house on the smallest lot, as possible as that may seem so. If there are any questions I'd be happy to answer them but I wanted to show you a couple of things from Susan Green. I mentioned a couple of times, and kind of did it on purpose, I called the Condak house a barn. For those that don't know, that house is a converted, it's a converted barn. And what Susan Green does, she builds houses that were modeled after barns. And what we'll have is a relatively small barn, of course barns often are 10,000 square feet or something like that. This barn will be 3,000 square feet. Typically you'll see on her houses barn doors, sliding barn doors and this will be a, really will be a barn in a field. It will not be, in my view it will not be inconsistent. I actually find her designs very appealing from an aesthetic point of view. I wish I could tell you I'm an expert in aesthetics but my wife will tell you I can't even pick out a good tie so, but, sorry. They usually give me one that clips on and yell at me when I forget but at any rate, Susan has a, has a style. She has several homes in the town. I'm sure that you've passed more than one of them in your travels around town. They're, they're unobtrusive, they're pleasant looking, they're always muted colors and, and just very pleasant to look at.

Vincent Cestone: What’s the total height? The highest point?

Glenn Watson: I don't know that answer. I have that answer somewhere. I do have that answer.

Chairman Robert Dee: Are you gonna have to change that tape soon? Yeah, let's do it now. She's gonna have to change the tape. You ready? Okay Sir. Alright so front yard and surface coverage, if we vote, if we voted a non-conforming lot I guess basically right?

Adam Rodd: Legal non-conforming.

Chairman Robert Dee: Legal non-conforming. And if we vote that it's not a legal non-conforming what do we need then?

Adam Rodd: The same two variances plus a rear yard setback and an area variance, lot area.

Dan Richmond: And also frontage.

Adam Rodd: Front yard? Or road frontage?

Dan Richmond: Again this is on page 4 of our November 20017 submission.

Chairman Robert Dee: Alright, if we voted legal non-conforming you need the front and what else? I'm sorry.

Dan Richmond: If you voted…

Chairman Robert Dee: Front and…
Adam Rodd: Well I should just mention on the denial letter, and I’ll re-read it as you’re speaking, I don’t, I believe all it would require would be a road access permit under town code chapter 112 and that would take care of road frontage.

Dan Richmond: Okay. Well I think we got that from the initial email that I think the Chair read.

Adam Rodd: Right the most recent denial does not talk about road frontage.

Dan Richmond: Okay.

Glenn Watson: Okay the, we did have it on the chart in what was submitted to you. The building height is 30.3 feet, 40 is allowed in the zone, and just to be sure you understand, that 30.3 feet and the 40 feet are measured to the mean height between the peak and the eve.

Chairman Robert Dee: Okay. Anything else? You guys are-

Glenn Watson: I think, unless you have any questions.

Chairman Robert Dee: Okay no I just, I think, like I say we’re gonna hear from the public and then I guess it would be just the thing and how we vote, you know as far as you know.

Dan Richmond: And just a couple of other points, if I could Mr. Chair. Again I think, you know as Glenn has shown, the house would look like any other single-family home in the neighborhood. One of the other variances that would be required, if the board said it were a non-conforming lot and again we ask you to make this finding, regardless of how you come up on the legal non-conforming lot issue, is rear yard setback, which again, we deemed to be essentially something that doesn't have a real-world impact. Technically the code requires 50 feet of setback whereas the property, the project would only be providing 24 feet but as you can see from the map, in fact the rear yard would not be visible and as Glenn demonstrated for many of the neighboring properties, reality is that there's the Catskill aqueduct immediately behind it and so there would actually be over 200 feet between it and the nearest privately-owned property. And the Catskill aqueduct, as the board may be aware, is covered with trees and other vegetation, so it would be minimally visible, if at all, from the property owned to the rear. Frontage, as Mr. Rodd pointed out, we care to satisfy by having the building code officer from the Village of Nelsonville confirm that he would be issuing a road opening permit so in some, the only change to the neighborhood would be the addition of a single-family home. The applicant cannot achieve the desired benefit without the variances, indeed without the variances Essex Green could not develop the property and be improperly denied the use of its land. It has now completed 2 design iterations; it changed the layout so that it lies only in Philipstown based on discussions with both municipalities. Without the variances it could not develop the property. While several of the requested variances may be numerically substantial, as I’m sure your board has heard in prior applications, substantiality is not measured in the abstract but is considered in terms of the, all the relevant circumstances here, which again, as we have shown, all the relevant circumstances show that this would be essentially a single-family home like many others in the neighborhood. It would have, be visually imperceptible from the rest of the community. The variances have no impact, adverse impact on the environment. Again, it’s a type 2 action under SEQRA, presumptively has no environmental impacts. Granting variances for single-family homes (inaudible) previously had granted approvals and we, if the board wanted to condition it on getting updated approval for this project, we’d be happy to do that. Certainly not a self-
created hardship in the first instance. Again, our client bought a legal non-conforming lot, we would submit. Most of those setbacks we'd submit our technicalities. When purchasing the property I think she had every reason to anticipate that any, if any variances, would get, yes sir?

Vincent Cestone: When the applicant bought the property did he know its limitations?

Dan Richmond: Did she know, I'm not sure if she, I'm not sure if she knew the extent of the limitations but I think she expected that it would be buildable based on the fact that it had DOH approval when she acquired it. And I think based on her just, general knowledge of, you know, she's done many projects in the area.

Chairman Robert Dee: It had Board of Health approval when she purchased it?

Dan Richmond: Yes.

Chairman Robert Dee: Okay.

Dan Richmond: So again, in summation when the required variances are viewed for the prism of other homes in the neighborhood, of what they're, many of which are actually significantly larger, granting the variances would not harm the community and would certainly benefit our client and we respectfully request that your board grant- determine that it's a non-conforming lot and grant all the necessary variances. Should your board have any questions, we're here to answer them.

Chairman Robert Dee: Thank you. Any questions right now, I don't think, I'm sure there will be more. Anybody any want to speak from the audience? All right, yes sir.

Josh Meyer: Good evening Mr. Chairman, board members. So I don't exactly know where to start after- that was a-

Chairman Robert Dee: Tell us your name.

Josh Meyer: Josh Meyer, I'm here on behalf, with my brother Jeff, on behalf of the Meyer family who are directly across the, the driveway here, Douglas Lane, we're, we own this property right here. And so to begin with, I think we do have to probably take it step by step. Initially it's on the interpretation issue, I believe, because that's going to dictate the number of variances that we'll have to address, so we should probably take it maybe, maybe in that regard. I mean I do think, I really do believe, and I can't believe that we're in this position where there's a misunderstanding that there is an ambiguity in the law. I think that the term 'taken for a public purpose' is very clear; it's a very clear legal term of art. I agree 100% with the statutory interpretation theory that if the town wished to draft in specific words into the, into the law for the exemption, that they would have said acquired for public purpose. So if it was acquired for public purpose the, the Village Cold Spring could have purchased it at arm's length in a voluntary purchase, which is what this was, or they could have done it pursuant to eminent domain, which obviously did not occur. But it is very clear. I do have some documents I can provide to the board with the, the backup and with documentation that discusses what 'taken for a public purpose' really means under the fifth amendment. Really I do believe that it, were you to rule on this interpretation that taken for a public purpose does not mean forcibly taken from the homeowner, I really do believe it sets back constitutional law 200 years because the fifth amendment was adopted in
1789 and, and it contained the language in there taken, that no property shall be taken for public use without just compensation, very closely tracks what this language is. The New York State Constitution which also has very similar language, that you can't take property for public use without just compensation, very closely tracks what's in here. The Philipstown Zoning Commission was actually formed in 1953. In 1954 the Supreme Court came out with a seminal case, Berman v. Parker, where they actually modified the language and for the first time said, that property can't be taken for a public purpose. Not for public use, if the public, if it was a public park and the, and, or public road that the public could use but it was for any piece of property that was a public benefit. And so in 1954 while the, while the Philipstown Zoning Commission was in the process of drafting their code, this seminal Supreme Court case came out and said that, and modified the way that it appears in the, in the Fifth Amendment, didn't modify the Fifth Amendment, but modified the way that it was to be interpreted, to mean taken for a public purpose. And the only way that that can be interpreted is if the government forcibly took it. There's no other reason for the protection for anyone. It, there's only one case I could find out there, for or against, in the national database, that addresses the, this specific language that is in the Philipstown law dealing with taken for, with this type of exemption. It was in Vermont, I do have a copy of the case. I have enough copies if the board would like to see it. I do have it discussed in the write-up as well. There's a Vermont environmental case and it was the same exact exemption as to what, the way that the Philipstown's law reads. And the language and, and the way that their decision came out on it, and like I said I do have a copy of it, it is, and it's interpreted exactly the way that I believe that it was meant to be interpreted. What the court said there is, that section contains an exception if the reduction in lot area is due to part of the original lots having been taken for a public purpose, that is, if the reduction in lot size was beyond the control of the lot owner. Section 709 does not apply, it does not apply because the conveyance of the undersized lot was voluntary on the part of the original lot owner. So it's exactly what happened here. Under Village law, New York Sate Village law, any Village can go out and purchase a piece of property at any time that they want to just like anyone else can. That's all they did; they went to the homeowner the, or they went to the property owner who was selling, sold about two dozen of their properties within about a two year period because they were just getting rid of the properties. That's exactly what they did here. Nobody, the government didn't come in, didn't take it for a public purpose. I've never heard that in the customary usage. When, when I go and purchase a piece of property, or somebody does that, I don't go out and say, I took it for a private purpose, and say that I just don't, I have no idea where that would ever come about where, someone would, if you purchase it voluntarily, that you would ever say that you took it for a public purpose, that you took it. You purchased it; you acquired it. In this write-up, I have a dozen and a half other, from a dozen and a half other communities around the United States, that instead of saying 'taken for a public purpose' they said 'acquired for public purpose'. And that's exactly what, if Philipstown had chosen to build that language in, and they did not do that because there was no reason to protect those people, to protect somebody if the government purchased it voluntarily, when they made that transaction, they just should have known better, and they should know better, not to diminish the size of their property to less than what the standard was at the time. So it's exactly what happened here, voluntary arm's length transaction. And there's, and there was no reason to protect that homeowner, that property owner. They knew exactly what they were getting into. They did that, maybe there was a mistake, maybe the. I don't understand what the bearing is as to what Mr. Doyle, as the Village Attorney, whether he knew it or not. What's very strange to me is that, they're making the argument that Mr. Doyle and the property owner, who was a Harvard Law grad, made a mistake. They, maybe they didn't understand where the line was, it's very odd to me because their own client made the same exact mistake with the benefit of the internet, computers, aerial, you know, the satellite images and she didn't recognize all the issues were with this, but they expected Mr. Doyle and Mr. O'Neal, the
property owner, to understand that. And so, I'm not quite sure where that comes into play and actually what's very strange on this is that, when Mr. Watson originally looked at this, and in the April report that you have, Mr. Watson said at the time that the deed to the Village does not support the notion that the land was taken. The deed does not indicate that it was a result of a taking. On its face, the 1966 subdivision was not eligible for the exemption provided in the zoning law in effect at the time and should have obtained area variances. I believe that there was a subsequent affidavit that Mr. Watson addressed and he basically reversed course on it but I believe that he understands that that was the correct interpretation at the time.

Vincent Cestone: I'm a little confused. Are you in support of the application or against the application?

Josh Meyer: I'm against the application. What I'm saying is the...

Vincent Cestone: Why though?

Josh Meyer: Why? Because what we're asking for is, what the property owner is trying to do is- this property is zoned for ten acres. She is trying to put in a tremendous, you know, a 3,300, a 3,500 square-foot house on a property that's supposed to be zoned for ten acres and she's trying to get it on a .55 acre piece of property.

Chairman Robert Dee: Well it's not really 0.55. The entire piece of property is 1.43.

Josh Meyer: Pursuant to the town law section 261 though, this body cannot look beyond your own line; you can't, you can only address the zoning laws outside of the incorporated villages.

Chairman Robert Dee: Correct.

Josh Meyer: And so, so your limit...

Chairman Robert Dee: Common sense has to be used also.

Josh Meyer: No no. No no, but the law says that you cannot look beyond us. Here and I'll tell you why that is.

Chairman Robert Dee: Sure.

Josh Meyer: You have no control over this parcel right here, the Nelsonville parcel. Right here is the Cold Spring parcel and, which is in Philipstown, here as well. As a result of precedence, you approve this one, somebody comes along and buys Cold Spring, you're going to be required to approve that one.

Chairman Robert Dee: First of all we're not required, all things are different. What I mean by that is, we've passed one thing on one side of street and denied it on the other side.

Josh Meyer: Okay, I'll take that back. I'll take that back, I agree with you. Most likely, you will be granting this because it's right next to this and it's larger than this piece. This is 0.61; this is 0.55. Very likely, somebody comes along and they buy this. They'll be looking to put a house in here.
Chairman Robert Dee: It's got an easement for Cold Spring water though? I mean to get to the aqueduct?

Josh Meyer: That's not an easement. No, no, the easement’s actually across the road. They actually have a fee title ownership for these parcels here.

Chairman Robert Dee: (Inaudible) to get to the aqueduct though.

Josh Meyer: That's correct.

Chairman Robert Dee: I’m sorry?

(Inaudible)

Josh Meyer: Which could be taken away at any time. Plus, since you have no control, a house can be built on the Nelsonville side, potentially, and then also one here so. Here's a piece of property that's 2.414 acres in total and you have the potential, you grant this one, due to precedent, which I agree is not required, but most likely someone's going to come along and say, you're treating similar things differently, and you'd be looking to put a house right here. So now, this is zoned for twenty acres and you'll be getting 2 houses in, when it's just over an acre. And then, and then you have no control here; if they can get septic in here then they could put two houses in here. Actually when, and when Board of Health, when this was Board of Health approved, that means nothing when somebody comes in to buy a piece of property. That means that you can get a septic on there. That has nothing to do with when, whether or not pursuant to the town's zoning laws, that you can get a house here. So when she came in and she said it was Board of Health approved, she’s an experienced developer. She entered into the contract in August and closed in October. She didn’t do any due diligence on this property. She just felt that she could get it in there and cram a house in there.

Paula Clair: Can I just ask I guess either you or Badey & Watson or the attorney, the two segments. I understand there's one segment in Philipstown and there's one segment in Nelsonville. What are the acreage on each segment?

Dan Richmond: So it would be, the entire property is 1.43 acres.

Paula Clair: 1.43 or-

Dan Richmond: 1.43 acres.

CROSSTALK – Inaudible

Dan Richmond: The entire property is 1.43 acres. This portion of property which is in Philipstown is 0.55 acres. This portion of property which is in Nelsonville is 0.89 acres.

Paula Clair: Okay. Alright and then but this man had said that this area is zoned for 10 acres? Is that right?
Dan Richmond: This, in the town of Philipstown, this portion is 10 acre zoning.

Paula Clair: But we've seen that in Philipstown there are other nearby houses that are on two acres and less.

Dan Richmond: Yes.

Paula Clair: So how is that...

Josh Meyer: So the, what's interesting about, and, do you mind if I borrow- so what's interesting about this is that the majority of the ones that they are- is that a trick, is that- that's good. That sounds good. I don't need any help with that. So these are actually, when they're making the comparison, what's interesting is, these are all in Nelsonville, you know. So they're sort of comparing apples and oranges because...

Paula Clair: (Inaudible) I've driven through the area.

Josh Meyer: No question they're close. These all, these all, and I do have an analysis on there for down Healey Road that shows the majority of these were actually developed pre-zoning, from Nelsonville. And the reason why it's apples and oranges is because this has a, the town of Philipstown obviously has its own zoning standard and what they require, and this is hillside residential and in Nelsonville, which is 1.5 acres, but the majority of these...

Paula Clair: But Nelsonville is part of Philipstown anyway.

Josh Meyer: Right but your, your, but to compare the two would be, like I said apples and oranges but actually, these all predated zoning. So it...

Vincent Cestone: Where's your property on that map?

Josh Meyer: Where's the subject property?

Vincent Cestone: No your property.

Josh Meyer: Our property is this one right here.

Vincent Cestone: In Nelsonville.

Josh Meyer: It's all in Nelsonville, yes that's correct. Yes that's correct. So, so this is actually across, you know part of their line abuts ours, part of their property abuts ours but in, in Philipstown, the average parcel size though are these ones in white, if you're looking. I agree that this is the neighborhood and that's what you look at but this is, this all meets the zoning though. This is 1.5 acres or less and, and these actually, except for one or maybe two, they all predated zoning. So it's not really, and so you're comparing 1.5 acre parcels not against 1.434. You, you're required, pursuant to the law, to be at 0.55 acres because of the reason that I said, that they could build a, if you look at it at 1.434, it's sort of a false assumption because they're looking, you're including Nelsonville and they have the potential to actually go to Nelsonville after your approval and try to get another house in there and then
somebody could buy the property next to that and try to get two houses in there and that's exactly what the developer has done, back in I believe 2002 or so, built a house on Jaycox, clear-cut it.

Paula Clair: This particular developer?

Josh Meyer: This developer bought, and I do have the article here that discusses this, she bought the property, put the house in, clear cut all the woods, then went to the Planning Board said, oh by the way I want to build another house on here. The neighbors all came out and said, wait a minute, she clear-cut the property, we don't like it. She went to get the other house in there, they put restrictions on it that she couldn't clear cut the trees, she went and did it anyhow, violated it. There's a big issue with that and, and they penalized her, fined her $500 and required her to put back all the trees to the tune of twenty to thirty thousand dollars in, in labor.

Paula Clair: So if we, if we were to consider this but to make a condition on our, if we approved it, that she could only build one house on that property would that make-

Josh Meyer: That's only on Philipstown's though, not Nelsonville. You won't have the control over Nelsonville's property in that regard. But it wouldn't be binding on them because you could go to Nelsonville and it would not be binding on them.

Chairman Robert Dee: But the driveway goes through, the driveway would go through Nelsonville correct?

Josh Meyer: The driveway would go through Nelsonville right. Right but, but it's possible that they could, like I said we have no idea what they would do. We have no idea if the Board of Health regulations, they already in the past five years were reduced for the size of the septic fields there. You just never know in the future is what I'm saying.

Adam Rodd: The applicant owns the lot that is bisected by a municipal boundary correct?

Josh Meyer: Yes.

Adam Rodd: So as a condition of a potential grant the board could say, as the lot owner, as a condition of approval, they cannot subdivide or build more than one house or whatever other condition.

Josh Meyer: Like I said, you only control what's outside of the incorporated Village. So I'm not quite sure how that would, to be totally honest with you, I'm not quite sure how that would work. You could try to do that. You could try to do that I just don't know if that would work ultimately. But, but like I said, if we take it, if we take a step by step, the first thing's the interpretation. And then, and then that'll dictate sort of, because if you said that, that you agree with, with our interpretation, which is taken from a public purpose means the village had to come in and, like I said, by all accounts there's not a single case out there that, that we could locate, that has that taken for a public purpose means anything other than a forcible seizure, the municipality came in and involuntarily restricted the property rights. There's no other way to interpret that; there's no ambiguity on that, that issue. And what happens with that is, if you agree with our interpretation, then the variance that you would have to grant, then it's not a legal non-conforming lot, then it would be an illegal, substandard, non-conforming lot, in which case, they would not be grandfathered in and what they would need is a, basically a 95% variance on, 94.5%
variance, for the area because it's 0.55 acres and they need 10. And so, so that's in addition to the rear setback, which they would need over a 50% variance and there's other issues, including 280A of the town log, where they don't abut a Town Road. That, this is a landlocked piece of property as far as Philipstown's review of it.

Vincent Cestone: I'm gonna argue. You've been saying all along that we can't consider anything that happens in Nelsonville correct?

Josh Meyer: Yes.

Vincent Cestone: Then we shouldn't even be concerned about your property is that correct? Right?

Josh Meyer: No but we're, but we're adjoining landowners though. And, so and there's other people here from Philipstown as well but it's not only that, it's not only having to do with, to protect ours, but it's also enforcing the, the way that this property is developed. Like I said it's, it's very, it's very, it, all I'm doing is not making creative legal arguments but just asking that the board enforce the laws that are on the books, and we're in 1957, which says that if it was taken for a public purpose than they were exempted from, from when their property was diminished, reduced below one acre.

Paula Clair: If there was some way we could ensure that only one house was gonna be built on that property would that allay your concerns? If there was some legal way that that could be assured.

Josh Meyer: No no, right, no and it wouldn't-

Chairman Robert Dee: You don’t want anything built on it.

Josh Meyer: We, we’re looking for nothing to be built on it because, because like I said. What, what-

Chairman Robert Dee: I’m just asking a question.

Josh Meyer: Right and, and right, and so we're asking that nothing be built on that property. What it is is, is that what we're asking the board to do is to enforce the zoning laws that are on the books and not allow the developers to come in, try to get a piece of property like this that's not, not supposed to be built on based on the way that the laws read, it's zoned for ten acres. On point .55 they're looking to put in a 3300 square foot house and to be honest with you, Badey and Watson had said that, you know and there's, there's been many misstatements by the developer throughout this whole process. What Badey and Watson is saying is that, is that my parents house is 4777 square feet; it's approximately 2,900 square feet. I'm sure the Assessor would love to, would love to know if it's 4777; it's 2900 square feet. The barn, the other property that's referenced on this one, on this, that's a, on this one right here, house B, that's a barn. That's not a, that's not a residence. And house C, the Condak's is not what they say is 3300 square feet, it's about 2700 square feet. And this is, this is all publicly available information. And what has occurred throughout this process, in our estimation, is that the developer is saying and doing anything to get this house put in here. If you go through the five factors, which we're prepared to do, and one of which is whether or not it's a self created hardship. This developer went in and did no due diligence. This is what this is and this is what we're trying to prevent, the board from condoning that type of behavior here. Go in, do no due diligence. Mr. Watson had said to me at the time, he contrasted it with a piece of property that was for sale across from Boscobel. Flat piece of property, more than a
minimum standard, and the percolation test and the soil was very good for percolation test. He said that one wouldn't really ever require that much due diligence. On this one, it has slopes on the property, it's a very sloped piece of property, it's a very tight piece of property. You have the boundary, municipal boundary line going through it, you have the aqueduct right there, very difficult to get that house in there and, and this is what the board would be condoning with this because it's a, it's clearly a self created hardship. And depending on the way that, that the interpretation is, the substantial variances are something that would have to be dealt with. That's why this is, like I said, one step at a time. If we determine, depending on how you feel about the interpretation issue, then you would get on with the variances and determine whether or not not ten acres, and there's plenty of case law out there that says a 95% variance is more than substantial- you know is substantial to the extreme and it's, and it would not be appropriate and it would be perfectly within the board's purview to deny the variances along those lines.

Chairman Robert Dee: All right. You have some information that you want to give to the board I guess right?

Josh Meyer: Yes.

Chairman Robert Dee: Okay. Other people wanted to talk. How many mean people want to talk to us tonight? Okay. We're never going to get through this tonight. We could see that. I'm sorry? Okay, so, and this gentleman wants to give us some, the board some information, I think that the board should have to look at. I agree with that, so what I'd like to do, I know you, Mr. Richmond, you've been extremely patient at this, I understand. I don't think we're gonna get through this tonight, it's almost 11 o'clock at night. If I could put you at first on the agenda of the January, of the February 12th meeting, let me finish before you say no. I'm doing a lot of negotiating tonight. All right, we could make it, put you first on the agenda. Okay this way it'll give anybody a chance if they wanted to, the board to put any information in. They'll give it to the town or our secretary, okay. It has to be all presented to her by February 1st; anything presented after February 1st will not be looked at, okay, and you'll be first on the agenda and I guarantee you that we will, we will vote one way or the other. Because we're not gonna do this tonight because we're not going to get out of here until 2 o'clock in the morning.

Audience Member: Do you mind if I, I won't be here on February 12th, I have to travel. Can I just say what I want to say?

Chairman Robert Dee: You say, you know, you're gonna say you don't want the house correct? You don't want it built? Okay, for different reasons. Yes go ahead. I'm sorry. I'll let you say...

Dan Richmond: I mean, if everyone’s here I think should be given an opportunity to speak, then I would ask that the board close the public hearing. If you want to give 10 days for written submission or something like that, you know.

Vincent Cestone: Inaudible

Paula Clair: I don’t want to close it either.

Chairman Robert Dee: Yes?
William O'Neil: Mr. Chairman it has been a long night but if a few of us could speak, I promise I will keep my remarks to under 2 minutes.

Chairman Robert Dee: All right, well...

Adam Rodd: I mean, it's up to the board it's fine, I mean- Excuse me?

Kenny Levine: I've been here all night, listening to this...

Chairman Robert Dee: So have we.

Kenny Levine: And I'm, I gave up what I consider my life watching a football game. Believe it or not, Alabama is in the National Championship and I'm here waiting patiently since 7:30...

Chairman Robert Dee: I hope you taped it.

Kenny Levine: And I think you guys are the best. I watch you on TV, you're doing everything. If you want to continue exactly where we left off, I don't have a problem with it; I'll come back, as long as it's the same setting, the same maps. Those are intriguing the way they're set up, to make you think that there's more to it. That, it's not giving you a clear picture at all. If you haven't been on the property, if you haven't walked it, if you haven't seen it, those maps are not telling you anything and those pictures, so what.

Chairman Robert Dee: We've seen the property. What I'm trying to say here, it's not fair to the residents and it's not fair to the applicant because it's 11 o'clock at night, we're gonna be doing this to 1 o'clock in the morning and it's just not gonna work out. You're not going to get your chance to say what you exactly want to say, okay, and you may be rushed on also. What I'm asking for is a compromise that, we put you on the agenda first at 7:30 and everybody who wants to put in their, whatever new information you want to put in, whatever new information you'd like to put in by February 1st and we guarantee that we will give you a vote on that night.

Dan Richmond: The only thing I would say. Mr. Chair, is that if there are going to be new public submissions, that we want an opportunity to respond to them in a timely manner.

Chairman Robert Dee: Right. Do you think if you had, if everything was in on the first and the meetings the 12th, do you think you'd have enough time to prepare for that or?

Dan Richmond: Well we would want to make submissions to your board in time for your board to review them.

Chairman Robert Dee: Of course.

Dan Richmond: So when would we need to make submissions?

Chairman Robert Dee: February 1st, by February 1st.
Dan Richmond: So maybe if you had public submissions due by January 25\textsuperscript{th} then the response we would give...

Josh Meyer: But then we would want to respond to what you’re saying, so it’s not...

Dan Richmond: At some point, Chair, it has to end.

Josh Meyer: Let’s just put them in all at the same time.

Dan Richmond: No, we’re not get ambushed. Mr. Chair. I mean, I think...

Chairman Robert Dee: No, I understand. I understand what you’re saying. I’m...

Adam Rodd: Well, if I could suggest, you made your application, you’re, whoever is going to submit opposing submissions. Correct? You have?

Josh Meyer: No.

Adam Rodd: You have a pile of papers, were those submitted to the board?

Josh Meyer: (Inaudible)

Adam Rodd: Okay. My suggestion is submit them to the board tonight.

Josh Meyer: Well I would like to have more time (inaudible).

Dan Richmond: It’s a game, this is gamesmanship. We don’t (inaudible) what’s going on here. He has his submissions ready...

Adam Rodd: Well I,

Josh Meyer: By the 1\textsuperscript{st}, if we do it by the 1\textsuperscript{st} you’d have the ability to respond...

Dan Richmond: Not in time to submit it for the board.

Adam Rodd: Well it's now January 8\textsuperscript{th}. You'd like how much time, sir, to submit opposing submissions? You want to just, how about until the 22\textsuperscript{nd}?

Josh Meyer: The question is do I get the opportunity to respond back to what he’s saying (inaudible)?

Chairman Robert Dee: The public hearing, at the public hearing you would.

Adam Rodd: Yes, and look, and no one is foreclosed, I mean anyone can ask the board, if something was raised, I would request leave from the board to submit X because it's a very important point and the board would entertain that. I'm, what we're trying to do is just to create manageable deadlines. So if you want to...
Josh Meyer: (Inaudible)

Adam Rodd: So that would be until the 22nd and Mr. Richmond, you would need how much time before the 12th to respond to that?

Dan Richmond: I guess, would 10 days in advance would that get us to February 1st?

Chairman Robert Dee: February 1st, right.

Adam Rodd: Do you want to make it February 5?

Dan Richmond: February 5th? Okay.

Crosstalk – Inaudible

Chairman Robert Dee: Is that acceptable?

Dan Richmond: Yes.

Chairman Robert Dee: Okay, now one gentleman is not going to be able to be there, so I'll allow you to speak, please. I know what you're gonna say but, I don't know, I know you don't want it, but go ahead.

Randy Florke: So my name is Randy Florke. My husband is Congressman Maloney. We have the house here. I would just say a few things. Yes our house is 4,500 square feet but it's on 8 acres so it's a big difference when you're talking about size. I don't know if you've been there lately, at the property, but you represented that there were lots of trees and growth on the aqueduct...

Chairman Robert Dee: Please, speak to us.

Randy Florke: ...in between. The DEC or (inaudible) is now clear cutting the thing, so they can fly over by helicopter to monitor security. So a lot of it has been cleared and they're going to continue to clear more of it, so it is not going to be trees and bushes in between...

Chairman Robert Dee: On your property?

Randy Florke: It's on the aqueduct, so the buffer zone...

Chairman Robert Dee: Who's doing that, I'm sorry.

Randy Florke: The DEP, or whoever controls, the DEC, who controls the aqueduct. They're clear-cutting so that they can, they can monitor it by helicopter, okay, with the overgrowth they can't. So they're clear-cutting okay so there's not going to be the trees and they've taken away a lot already. So if you go, recently you'll see like, you can see straight through. Also I would argue the view point, like the view is not just the river, okay. It's not just whether you can see the river or not; there are mountains and things like that, so it is not just whether we can see the river. This house I will see perfectly clear right backed up to the aqueduct, it will be right in our line of vision, so it is not that it will not- just
because it's this to the river, does not mean that it does not affect your view, Storm King mountain, etc. And so that matters a lot. And so, and you know, I think that if you're going to surrender, you know and give a variance from 0.55 acres, and even if you want to be generous and count the entire lot of 1.43, it's still 10 acre zoning in Philipstown, where they're doing that. And I think that if this was just a regular Jane Doe person who was buying this and didn't understand and was hoodwinked by real estate, I do real estate, and I am very Pro building and development and I go before planning boards and ask for things, I understand what that's like; I would never ever let one of my clients buy a piece of property like this, without obtaining contingencies for approval to build before. And an experienced builder should know that, okay, and they did not. I think they're only relying on a board that has, has a lack of sophistication, they think, because, that they think this board is not sophisticated enough to figure it out; and I believe that you guys are sophisticated enough to know because if you don't, if you don't honor zoning laws then, what is the point of having them. I think when it's such a discrepancy like this, we're not talking about, oh it's a half acre less; it's 9.5 acres less of a 10-acre zoning. I think that's a big deal and a big amount and I think that like, if you set that precedent, then it's a downhill slope and you know, kind of destroys what we're all trying to do and have a beautiful scenic place. And I think it sets a really bad tone and I would urge you, you know, strongly, to not approve it. Okay.

Chairman Robert Dee: Thank you. Well like I said, we'll, we'll, I thank you for agreeing to that Mr. Richmond I know it's been a long, a long haul for you and they'll be first on the agenda and everybody can speak and everything else like that. But present, anything you have to present, make sure it's presented early so we get it before the hearing. What happens is, it's mailed to us and it gives us time to look at it, so, because we don't have time to look at the meeting.

Dan Richmond: January 22nd.

Chairman Robert Dee: Yes, right.

Paula Clair: So, I have this. Do you want this back, or?

Chairman Robert Dee: And you have to make enough copies, you know, for everybody.

Josh Meyer: Yes, I appreciate it.

Chairman Robert Dee: Okay, all right. Now I make a motion to adjourn the meeting.

Paula Clair: Second.

Vincent Cestone: Second.

Chairman Robert Dee: I'm sorry to keep you so late, thank you for your understanding.

(The meeting adjourned at 11:03 pm by a unanimous decision.)

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

DATE APPROVED: ____________________
Respectfully submitted,

Tara K. Percacciolo
Secretary
The Zoning Board of Appeals for the Town of Phillipstown held their regular monthly meeting on Monday, January 22, 2018, at the Phillipstown Recreation Center, 107 Glenclyffe, Garrison, New York.

PRESENT:  
ZONING  
Robert Dee - Chairman  
Vincent Cestone - Member  
Paula Clair - Member  
Granite Frisenda - Member  
Leonard Lim - Member  
Adam Rodd - Attorney  

CONSERVATION  
Mark Galezo - Chairman  
M.J. Martin - Member  
Robert Reperrto - Member  
Jan Baker - Member  
Andrew Galler - Member  
Eric Lind - Member  
Max Garfinkle - NRO  

ABSENT:  
Lew Kingsley - Member  
Ron Gainer - Engineer  

**PLEASE NOTE that these minutes were abstracted in summary from being present at the meeting and the television video. If anyone should seek further clarification, please review the video.**

Chairman Robert Dee opened the meeting at 7:33 P. M. with the Pledge of Allegiance.

Chairman Robert Dee: Thank you. This is a special meeting to discuss the cell tower and you know the public hearing has been closed so, we do have the meeting so I guess (inaudible) public hearing so. I make a motion that the public hearing be opened.

Paula Clair: Second.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Granite Frisenda: Aye.

Paula Clare: Aye.

Lenny Lim: Aye.
Chairman Robert Dee: Okay. We had a meeting last Wednesday afternoon at the building department with our attorney Mr. Rodd, Mr. Gaudioso, the gentleman from homeland towers, and Mr. Fadden. The purpose of the meeting was to discuss to see if we could find another site that may be more suitable for the neighbors view, basically that was the, the site they have is legal as far as setback and all like that there's no question about the setback. Homeland Towers, actually, they're under a pretty big restriction because a lot of the property Mr. Fadden, naturally, wants to develop and build homes on. And there's some other property, other locations that we discussed, one in particular was on the other side of the property which would be away from the residential area and, but Mr. Fadden felt that he would be able to see that from his house so he rejected that. We talked about putting it up on top of the hill because I thought that would be a better location but then I found out from Homeland it actually wasn't, it wasn't a better location for them on top of the hill, wouldn't it make any difference because Mr. Fadden didn't want to look at it, on top of the hill so, by his home. So, they come up with an alternative location. I gave the board members, Mr. Gaudioso emailed it to me.

Robert Gaudioso: We actually brought some copies.

Chairman Robert Dee: No that's okay. No (inaudible). So, I emailed everybody and at it, so they had a chance to look at it. When I discussed it with you guys, and you guys were very cooperative, Homeland Towers, they were under a great restriction. I could see the restrictions you were under. I went out over the weekend and I looked at it and, I know you had asked for a straw poll, Mr. Gaudioso asked for a straw poll because he said that he didn't want to go any further with it if the board wasn't interested and he didn't want to put any more resources in it which I understood. So, I went and I looked at the property and I walked it again and I looked at both locations and as far as the straw poll, from my opinion, the alternative is not going to work; the other site actually, the proposed site is better from what I saw. So, I’ll ask for a straw poll. My straw poll is that we don't continue on that and we stay with the original location. Mr. Cestone?

Vincent Cestone: Oh, I agree. I agree 100%.

Chairman Robert Dee: Mr., Lenny?

Lenny Lim: I’ll agree.

Granit Frisenda: Yes, I agree also.

Paula Clair: And I agree.

Chairman Robert Dee: All right. So, as far as that goes, that's the end of that site. It was a good try but it's just, the other one actually was a better site. Okay at this time I ask to make a motion to close the public hearing.

Vincent Cestone: I make that motion.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.
Chairman Robert Dee: The public hearing is closed. Alright. At this time, I'm going to ask the Conservation Board. Do you have a decision on your wetlands permit?

Mark Galezo: If we understand it correctly, it's the original site? All of our-

MJ Martin: Yes.

Mark Galezo: -issues with the crossing of the wetland and the buffer still stand. The other things that we mentioned last time are just advisory in nature and that's it. I think that, I believe that we're in the position that we feel that we would vote no, but, I'd like to hear everybody else's opinion. Are we still of that mind? Based on the fact that we'd have to cross a wetland and there is no alternative site being presented, no reasonable one.

Andy Galler: Yeah, I mean, I know I would vote no.

MJ Martin: I would also vote no.

Eric Lind: No.

Jan Baker: No.

Robert Repetto: No.

Mark Galezo: Okay that's the wetlands permit.

Chairman Robert Dee: Now, as far as the-

Robert Gaudioso: I'm sorry can I just ask for clarification?

Chairman Robert Dee: No, that's the vote.

Robert Gaudioso: You said you would vote no. Did you just vote no?

Chairman Robert Dee: Did you vote no?

MJ Martin: I'll make a motion to deny the permit as it stands with the existing location.

Andy Galler: I'll second that.

Mark Galezo: All in favor?

Andy Galler: Aye.
MJ Martin: Aye.

Eric Lind: Aye.

Jan Baker: Aye.

Robert Repetto: Aye.

Mark Galezo: Aye.

Chairman Robert Dee: Okay. Now I'm gonna ask for a roll call vote on it and far is the permit for, the special use permit. At this time, I'm going to call on Mr. Cestone.

Vincent Cestone: As far as this application, I spent the past month going over the documents and, that were submitted by Homeland Towers appeal. During my review I couldn't help but feel that I was missing something, then it came to me. Homeland Towers is using software to generate maps and propagation predictions. Being a software engineer, there's two things that you need when you use software: what are your assumptions and what are the parameters used in the software? After going back and reviewing the documents once again, I could not find that information anywhere on any of the documents. This means we have no idea how the software was set up and run. We all know that's, depending on how you make your assumptions and put in your parameters, you can get software to say just about anything. Just look at the hurricane season and the, all the models that were out there and how they were all over the place. I'm not saying that any deception was done. What I am saying, without reviewing the assumptions parameters, we can't make an informed decision about the information that was provided. So, based on the lack of clear information explaining how the software was set up, I discount the propagation maps and the predictions because we don't, we just don't know how they were set up. The second thing that we were looking at were the, the housing values. Looking at the document that was submitted, it was basically a list of houses with some basic information and a price; there weren't any map, any pictures, there wasn't any analysis, there was none of that was done. So, I took the document and I went to look at one of the houses in Philipstown and I went to the property, stood on the lawn, leaves are off the trees, and I look around. For the life of me I couldn't see a cell tower, and I know where the towers are in this town, and I couldn't see it. So, based on the lack of information, lack of the visuals and appraisal documents and any kind of analysis, that document, and also, I discount as not providing any useful information. You know, with my, I have some first-hand experience with the pricing of houses that are in direct contact with cell towers, not ones that are a distance away, because that's debatable, but when they were directly in contact, they can have a devastating effect on the price of the house. And the example that I use is the Garrison Greenhouse cell tower and the adjoiner right next to it. I happen to know the owner who, who was selling his house, the cell tower was there, he, he was telling me some of the problems he had. He had people coming to his property, not even getting out of the car and leaving, and just leaving. In the end he ended up dropping the price tens of thousands of dollars and, in his own words, losing a lot of money on it. I don't want to see that happening to other people in Philipstown. So now, what do we know? Our RF engineer, after reviewing the project and evaluating the McKeel's Corners cell site, stated that if the McKeel's Corners site was raised, it would provide adequate coverage for the area identified with a weak signal. I would be agreeable to reviewing that. Also what do we know? Almost all the residents in the area provided affidavits stating that they have good coverage within the target area. This has provided possibly thousands of data points of statistical significance that can be used to do future analysis. And then I
have my own experience. I drive on 301 almost every day for years and I've never lost a connection on that side. So what am I saying? What I find is that the adjoining houses, closely located with clear view of the proposed tower, would have devastating impact on their house values. I also believe that there is not a significant low signal area on 301 from route 9 to Putnam Valley border. I believe that the McKeel's Corners would be more than adequate to meet Verizon's need if the height was raised. So, my finding is that Homeland Towers has not provided enough significant information to prove their need under the zoning code 175.6. In addition to that, I feel that they did not provide sufficient information in support of the 1996 Telecommunications Act either, so therefore, I vote against the cell tower.

Chairman Robert Dee: Mr. Frisenda.

Granite Frisenda: I vote to approve it.

Chairman Robert Dee: I'm sorry?

Granite Frisenda: I vote yes.

Chairman Robert Dee: You vote to approve the...

Granite Frisenda: -the permit.

Chairman Robert Dee: I'll vote next I guess. To make my decision I referred to the Town of Philipstown zoning code. The town board revised the code in June of 2011. Communications Tower regulations are in Section 175 - 46. There are approximately 16 pages regarding cell towers. 175-46A explains the purpose of these regulations. I'd like to read that. The purpose of this section is to promote the health, safety and general welfare of the residents of The town of Philipstown; to preserve the scenic, historic, natural, and man-made character and appearance of the Town while simultaneously providing standards for the safe provision, monitoring, and removing of wireless telecommunications consistent with applicable federal and state regulations; to minimize the total number of communications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures; to minimize adverse visual effects from communications towers by requiring careful siting and configuration, visual impact assessment, and appropriate landscaping; to provide a procedural basis for action within a reasonable period of time for request for authorization to place, construct, operate, or modify communications towers; to encourage camouflaging of communications towers. A necessity of the tower. Homeland states there is a gap in services in this area and the tower is necessary. Homeland Towers states the gap is not in vehicle coverage, but residential coverage. At no time has a representative of Verizon attended one meeting, in this six-month period. At no time has this board received a letter from Verizon stating a gap exists. Verizon is currently located on the McKeel's tower. If this gap that Homeland Towers claims exists why has Verizon not approached Crown Castle, the leaseholder at McKeel's to correct any problem, which our engineer Mr. Menkes and the applicant's RF engineer Mr. Feehan both agree the McKeel’s Corners tower raised would be a better option than Vineyard without the Nelsonville tower. This would eliminate the need for not only the Vineyard tower but also for the Nelsonville tower. At the December public hearing a number of residents, who would be affected by the Vineyard tower, stated they have Verizon services and have not experienced dropped calls. To support their claim, they produced legal affidavits. Barbara Barosa County, Putnam County planner, and RF engineer Menkes Associates have stated that Verizon and Homeland Towers have failed to prove a gap in service. The
residents in the area of the proposed tower have submitted legal affidavits that they have had Verizon service for years and had not experienced any dropped calls, I agree with our RF engineer Mr. Menkes and the Putnam County planner, the applicant has failed to prove that there is a substantial gap in service in the area to support a new cell tower less than one mile from an existing tower. Testimony has been given by the applicant due to the short distance. Verizon could not operate on both towers because of the interference in the signal. The board at its December meeting learned that McKeel's Corners cell tower was not going to be eliminated and other cell service providers located on this tower will remain. Also, if there is any doubt Verizon has a gap in service, Verizon has the solution that both RF engineers agree, which is to raise the existing McKeel's tower. Section 175 - 46D, subsection 1, states - Information establishing the present need for the proposed tower. Special permits are to be based on the actual need and not on a speculation of future needs. Verizon being a co-applicant has not submitted any evidence that they have approached Crown Castle, the owner of McKeel's Corners towers in regards to a gap in service. I believe the new proposed cell tower submitted by the applicant is not an actual need, but is being proposed by Homeland Towers on the speculation of future needs, which is in violation of this code. Alternative sites. The Zoning Board and the Town Board offered the town landfill, at 59 Lane Gate Road as an alternative site. This is the same site that Homeland Towers approached the Town Board several years ago, in order to put up a tower, but now they state it does not work for them. The Zoning Board offered the possibilities of raising McKeel's Corners towers. Our RF engineer Menkes Associate states in his report dated December 21st 2017 that the existing McKeel's Corners site with a 190-foot tower is a better choice based on offered coverage. The applicant's RF engineer Mr. A. Feehan agrees with the conclusion and is recorded in his November 30th 2017 RF report which states- based solely on area of coverage provided by the two options Mr. Menkes is correct in concluding that the existing site is the better choice without Nelsonville. This board has no voice in a Nelsonville tower but this could possibly eliminate the need for the Nelsonville tower. There is another alternative site, a second tower at McKeel's Corners. Section 175-46, section F, subdivision (a) states- where shared use of structures or existing or approved communications tower is found to be impractical, applicants shall also investigate the possibility of constructing a new communications tower on property occupied by an existing communications tower in accordance with Subsection D the above. In such case the ZBA may allow more than one tower on a lot. At a public hearing Ms. Meyers, owners of the property at McKeel's Corners, states that there is a piece of property available for second tower which she agrees the tower may be installed on same. Homeland Towers has submitted no evidence regarding any conversations with Ms. Meyer's regarding installing a second tower and is in violation of this section. Aesthetics. The Vineyard Road site is 64 acres bordering on commercial area off route 9 and continuing east towards a residential area. The proposed tower is 200 feet from the residential area. The other 63 acres of available land is closer to route 9. This is area would be better aesthetically. Several other sites that would be better aesthetically have been presented by the board, but have been rejected by the applicant. Visual impacts. Section 175-46 I subsection (8) states- Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of terrain, so that, as much as possible the top of the tower does not protrude over the ridgeline, as seen from public ways. The proposed tower in this, would be in violation of this section because of simulated photos and actual photos of the balloon tests showing the tower will be visible to public ways route 9 and route 301. Photos presented by the applicant and local residents show the top of the tower will be visible over the tree line to residents on Roundhill Road, Rockwald Road and White Rocks Lane. Property values. The applicant's attorney has stated reduction of property values cannot be considered in the Board's decision. But the applicant has introduced into evidence an extensive report from Lane Appraisals in which twelve cell tower locations are evaluated, five in Westchester County, three in Rockland County, two in Orange County, one in Patterson and one in Philipstown, they indicate home sales. However, it does not compare home sale prices before and after the tower has been installed. Mr. Gorevic at 60
Round Hill Road, one of the residential homes that will have a direct view of the Vineyard tower, has introduced into evidence several reports from local real estate brokers - Limited Editions Realty of Cold Spring, New York, Robert McCaffery owner of McCaffery Realty, Houlihan Lawrence and Sotherby Realty. I will just read one from limited Realty. This is from Limited Realty, 10 Marion Avenue, Cold Spring, New York and it's signed by Patrick O'Sullivan, licensed broker. Dear Cali and Roger, I thank you for the opportunity to evaluate your home on June 1st and June 27th 2017 for the purpose of ascertaining a fair market value. The purpose of evaluation is to determine the value of your home if a cell tower were to be erected on a contiguous property and said tower was to be in your viewshed. After visiting your home on June 21, when no balloon testing was being conducted, and also on June 27th, when the balloon testing was done, I find that there would be significant devaluation to the value of your home with a tower being erected. In my opinion, you would have a minimum of 30% devaluation of your property if the tower was erected. I've attached photos taken on both days to confirm my observations. And there's three or four other letters say the same thing, anywhere between 25% to 30% loss in property evaluations. For the many reasons stated and the explanations of same, I vote no in granting a special use permit located at 50 Vineyard Road, applicant Homeland Towers. I call now on Ms. Clair.

Paula Clair: Regarding aesthetics, the homes on 60 Round Hill Road and the homes on Rockwald Road will not only have a view of the cell tower at close proximity but will also have a view of an industrial cell tower pad, measuring over 4,000 square feet which, in addition to the tower, consists of storage sheds, a generator and pervious surface. This is not the view enjoyed at these homes over their many years of occupancy and I believe that no rural homeowner would find that industrial view either pleasing or acceptable. It is in my opinion that the installation of the proposed cell tower at Vineyard Road will greatly interfere with the homeowners' enjoyment of their property. Necessity. Philipstown, a community with 9,000 inhabitants currently has nine cell towers, including a tower at McKeel's Corners located in Philipstown on Grey Rock Road, which is eight tenths of a mile away from the proposed tower on Vineyard Road. That's one tower for every thousand people. Homeland Towers and Verizon had originally informed us that to effectively deploy the proposed cell tower, it will be necessary to take down the existing cell tower at McKeel's Corners to avoid interference between the two cell towers' signals. In December 2017, they informed us that, in fact, only the Verizon antenna would be removed from McKeel's Corners and that the existing tower would remain there as well, thus increasing the Philipstown cell tower count to 10. In addition, there are two more cell towers proposed within Philipstown, which if approved, would increase the cell tower count to 12. The board proposed an alternative to 50 Vineyard Road, which is increasing the height of the cell tower at McKeel's Corners. Our RF engineer, H.E. Menkes, has informed us that this arrangement will be more effective in providing cell coverage than the proposed tower at 50 Vineyard Road. We had also offered several alternative sites at the Philipstown landfill at 59 Lane Gate Road. In addition, we have stated we would be amenable to a commercial location on route 9, away from all residences. In view of these less detrimental alternatives, and the better coverage enabled elsewhere, it is my opinion that the proposed cell tower at 50 Vineyard Road is unnecessary. It should also be noted that, to date, Putnam County has not approved this cell tower, because the county has concluded that it has not received adequate evidence from the applicant to prove a significant gap in service. Property values. Philipstown is a community that, by design, maintains a non-industrialized, rural atmosphere. That is stated in the Philipstown Comprehensive Plan, which was completed within the last ten years. To further clarify the town's mindset on this point, it should be noted that the town has not approved any large retail project, since it is felt that this would interfere with our rural atmosphere. In large part, people move here to enjoy this style of living. To say that a nearby industrial pad and/or cell tower within the view of one's home does not affect its property value is questionable in any community, but especially in
Philipstown. These industry additions are an abomination because here, our rural atmosphere is a significant factor in property desirability and thus valuation. The houses that would be affected by the proposed cell tower have heretofore enjoyed this rural atmosphere, and the installation of this cell tower would constitute a significant adverse change in their home environment, view, and property value. The real estate study provided by the applicant is flawed in my opinion, for several reasons. Number one, it does not show before and after the cell tower valuation on the homes it references. It does, 2, it does not provide information on any other factors other than selling price and square feet. Factors that should have been included, in my opinion, are the condition of the home and total acreage of the property. The homes in the study referenced, references- the homes in the study referenced in Philipstown are not, well there's only one, are not near the tower and either the tower cannot be seen from that home or if there is some view, it is so far away that it is not a factor in home value. Therefore, these home valuations are not relevant to a nearby cell tower. Gap in service, Philipstown has received affidavits from 18 residents in the alleged gap area, who have had Verizon as their carrier for 20 years or more, and have made thousands of calls on their cell phones and attest to the fact that they have had no problems in their cell phone service. Our RF engineer has produced a report, using data originating from Pier Con Solutions. In this report, he states there is no gap in service in the alleged deficiency area. In addition, several Philipstown residents including Paul Eldridge and Joel Cooper and others have driven the alleged gap area with their Verizon cell phones on from beginning to end and experienced no dropped calls or interruption of calls along this route. Lastly, we have asked Verizon to give us a listing of dropped calls from the alleged gapped area, which they originally refused to do so, stating this was proprietary property. They did give us something last meeting but frankly I find it not clear in terms of what it is purporting to state and I don't, I don't feel that that is a reasonable response. And lastly, I concur with our Chairman Robert Dee that this cell tower does not meet the standards of the Philipstown Zoning Code 175-46 for the reasons already outlined in his presentation, therefore I am voting no on this proposed cell tower at 50 Vineyard Road.

Chairman Robert Dee: Okay. Mr. Lim.

Lenny Lim: My co-board members already covered everything I would like to have covered except for one or two little items. First of all, I've never seen 3 towers in a three-mile radius on one road. There's actually three towers and I was on the board in the 90s when we put the Shubert tower in and back then I was told, because I went back and took a look at the records, that we had coverage all the way past 301, from the county line. I don't see anything that's changed at all. I'm voting no.

Chairman Robert Dee: To review the vote, roll call vote. Oh. He voted.

Paula Clair: Oh, he voted yes?

Chairman Robert Dee: Roll call vote. Mr. Cestone was a no. Mr. Lim was a no. Ms. Clair was a no. Mr. Dee was a no. Mr. Frisenda was a yes. So that's four against and one in favor so therefore the Special Use Permit is denied. Make a motion, make a motion that the-

Adam Rodd: Mr. Chairman I would just ask, in addition, that you make a motion directing counsel to prepare a formal resolution memorializing the findings of the board.

Chairman Robert Dee: I'll make that motion.

Vincent Cestone: Second.
Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Paula Clair: Aye.

Granite Frisenda: Aye.

Lenny Lim: Aye.

Chairman Robert Dee: Aye. Alright I make a motion the meeting is adjourned.

Lenny Lim: Second.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Paula Clair: Aye.

Granite Frisenda: Aye.

Lenny Lim: Aye.

Chairman Robert Dee: Alright, thank you.

(The meeting adjourned at 8:01 pm by a unanimous decision.)

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

DATE APPROVED: ____________________

Respectfully submitted,

Tara K. Percacciolo
Secretary
February 5, 2018

Hon. Robert Dee, Chairman and Members of the Town of Philipstown Zoning Board of Appeals
238 Main Street
P.O. Box 155
Cold Spring, New York 10516

Re: Essex Green, Inc. Application
Douglas Lane (Section 49.6, Block 1, Lot 12) and
(Section 49.6, Block 2, Lot 14) (the “Property”)

Dear Chairman Dee and Members of the Zoning Board of Appeals:

As you will recall, this Firm, in coordination with Glennon Watson, L.S., of Badey & Watson, represents Essex Green, Inc. (“Essex Green” or the “Applicant”) in its application to the Town of Philipstown (the “Town”) Zoning Board of Appeals for a zoning text interpretation, as well as all variances necessary to allow the construction of a single-family home (the “Application” or “Project”) on the above-referenced Property. Essex Green makes this written submission pursuant to the schedule established by your Board at its January 8, 2018 Public Hearing (“January 8th Public Hearing”) in response to the Meyer family’s (the “Meyers”) submission, dated January 29, 2018.¹

¹ At your Board’s January 8th Public Hearing, the Board directed that the Meyers’ written comments in opposition to the Application be submitted by January 22, 2018 (i.e., approximately two weeks after the Hearing), and that the Applicant’s comments in response be submitted by February 5, 2018 (i.e., approximately two weeks after written comments in opposition were submitted). The Applicant learned on January 22nd, however, that, to the Applicant’s prejudice, the Meyers had requested and been granted another week — i.e., until January 29th — to submit comments (i.e., approximately three weeks after the Hearing). In order to prevent the Board’s consideration of this matter from being delayed any further, the Applicant has remained committed to the original schedule for written comments established by the Board at its January 8th Public Hearing.

Respectfully, it is unfortunate that the Meyers’ gamesmanship has repeatedly interfered with the Applicant’s ability to process this Application. After the Applicant duly appealed the Town Code Enforcement Officer’s (the “CEO”) initial denial letter for the Project to your Board in August of 2017, the CEO subsequently issued an unprecedented “new” denial letter for the Application two (2) months later, in significant part in response to opposition from the Meyers, which, inter alia, stated for the first
In sum, the Meyers’ submission is replete with misstatements and misleading contentions. It offers nothing to rebut the essential truth here that an appropriate balancing that takes into account, as the law requires, the totality of the circumstances shows, respectfully, that the requested Variances should be granted to allow for a single-family home on par with the size and scale, and similar in character, to the surrounding community.²

**Interpretation of the Term “Taken”**

The Meyers err fundamentally in contesting the applicability of Section 9B of the Town Zoning Law of 1957 by improperly seeking to shift “the burden of proof regarding the overall analysis [onto] the applicant,” and mistakenly stating that this “burden” requires the Applicant to “conclusively confirm[] that a ‘taking’ includes the voluntary conveyance by the property owner to the Village of Cold Spring,” stating:

And, because the applicant is requesting the exemption, the burden of proof regarding the overall analysis is on the applicant to produce some evidence conclusively confirming that a “taking” includes the voluntary conveyance by the property owner to the Village of Cold Spring.

(See Meyers’ Memorandum of Law “Taking” Analyzed (the “Meyers’ Taking Memo.”), at 9.) As is characteristic of most of the Meyers’ submission, this statement is made without citing any legal authority to support it.

The reason the Meyers cannot cite any legal authority to support this assertion is because, in fact, as the Applicant has already repeatedly explained, all the Applicant is required to do, which it has more than accomplished here, is show that the language in the former Town Code is ambiguous. See Letter to Z.B.A. from Zarin & Steinmetz, dated September 29, 2017 (the “Applicant’s September 29th Letter”), at 2, citing Toys R Us v. Silva, 89 N.Y.2d 411, 654 N.Y.S.2d 100, 105 (1996) (“To be sure, zoning restrictions, being in derogation of common-law property rights, should be strictly construed and any ambiguity resolved in favor of the property owner.”); Capital City Rescue Mission v. City of Albany B.Z.A, 235 A.D.2d 815, 658 N.Y.S.2d 388, 389 (3d Dept. 1997) (“[B]ecause zoning ordinances are in derogation of the common law, they are to be strictly construed against the municipality.”); Letter to Z.B.A. from Zarin &

² The only other written submission to your Board concerning the Project was from a resident of 103 Healy Road. The reality is that the Project would essentially look like barn from at least 600 feet away.
Steinmetz, dated November 3, 2017 (the “Applicant’s November 3rd Letter”), at 3, citing Toys R Us and Capital City).³

In fact, the law in favor of property owners and their rights is so strong, that, even if there is a possibility of an ambiguity in a municipal zoning ordinance, it must be resolved in favor of the private property owner. See Town of Huntington v. Braun, 99 A.D.3d 987, 952 N.Y.S.2d 633, 634 (2d Dept. 2012) (“Possible ambiguities in zoning ordinances are to be construed against the municipality which has enacted them and seeks to enforce them.”) (emphasis added)). While the Meyers self-servingly declare that the CEO “agrees with [their] analysis,” (see Meyers’ Taking Memo., at 9,), in fact, as they recognize just one sentence later, the CEO actually stated “that there could be an ambiguity in the language” of the 1957 Code. (See id., citing CEO’s New Denial Letter, dated October 25, 2017 (emphasis added), copy attached to the Applicant’s November 3rd Letter as Exhibit “A”.) In fact, as the Town CEO went on to state, “the 1957 Code did not expressly state that the ‘taking’ must be by eminent domain, and as the property owner points out, any ambiguity in the Zoning Code must be construed in the light most favorable to the property owner.” (New Denial Letter, at 2 (emphasis added.).)

While the Meyers make multiple other self-serving assertions to support their contentions, such as asserting, again without citation, that “[t]he intention of the 1957 Ordinance is clearly to provide relief to a landowner in the event that property is forcibly or involuntarily taken from them,” (see Meyers’ Taking Memo. at 3), their contentions are, again, notably devoid of legal substantiation.⁴ Indeed, as the Meyers acknowledge, the only case that they erroneously claim involved “very similar circumstances of what is being addressed here” is a fifteen (15) year old case from the Vermont Environmental Court, which, similar to the Meyers, summarily states in one sentence, without any analysis, discussion or legal citation of any sort, that a distinguishable municipal code provision “does not apply because the conveyance of the undersized lot was voluntary on the part of the original lot owner.” See Meyers’ Taking Memo,

³ See also Mamaroneck Beach & Yacht Club, Inc. v. Z.B.A. of Village of Mamaroneck, 53 A.D.3d 494, 862 N.Y.S.2d 81, 85 (2d Dept. 2008) (“It is well settled that zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality and in favor of the property owner’ in accordance with their ordinary meaning. Ambiguities, if any, are to be resolved in favor of the property owner.”) (citations omitted); Meier v. Village of Champlain Z.B.A., 129 A.D.3d 1364, 11 N.Y.S.3d 743, 744 (3d Dept. 2015) (“Further, zoning laws are ‘strictly construed against the municipality that enacted them and ‘any ambiguity in the language employed must be resolved in favor of the property owner’”) (emphasis added, citations omitted); Boni Enterprises, LLC v. Z.B.A. of Clifton Park, 124 A.D.3d 1052, 2 N.Y.S.3d 631, 633 (3d Dept. 2015) (“Because zoning ordinances are in derogation of common law, they must be strictly construed against the municipality that drafted them, and any ambiguity must be resolved in favor of property owners.”)

⁴ Most of the sources invoked by the Meyers have no relevance to the discussion at hand, and do nothing to resolve the ambiguity of the 1957 Town Code. The Meyers, for example, invoke a “Primer in Eminent Domain” on the American Bar Association’s website, which patently concerns, as its title indicates, the exercise of eminent domain, and consequently, does nothing to elucidate the meaning of “taken” in the Town’s 1957 Code. See Meyers’ Taking Memo. at 6.
This appears to be the heart of the Meyers' argument on this point and, respectfully, it is simply too thin of a reed to resolve the ambiguous language of Philipstown's 1957 Town Code.

As further set forth in the Applicant's November 3rd Letter, the Meyers' argument improperly seeks to synonymize words and concepts, such as "eminent domain" and "force", with the term "taken" in the 1957 Code. Again, however, if the Town Board had, in 1957, intended to restrict Section 9B's application to forcible government action or "eminent domain," it would have been easy enough for it to have expressly done so in the language of the code. As such, their absence from Section 9B must, respectfully, be recognized to be meaningful.

Again, the plain meaning of the word "taken" is simply the past participle of the verb "take," which has the plain meaning of "to get possession of," "to get hold of," or "to obtain, acquire [or] assume." See Webster's New World Dictionary & Thesaurus, at 626 (1996). It is axiomatic that in interpreting a statute or law, the "starting point" must be "the language itself, giving effect to the plain meaning thereof." Commonwealth of Northern Mariana Islands v. Canadian Imperial Bank of Commerce, 21 N.Y.3d 55, 967 N.Y.S.2d 876, 879 (2013) (citation omitted).

In sum, your Board could reasonably interpret the term "taken" to mean that a property was acquired for a vital public purpose. At best, the Meyers have made the case for an ambiguity in the Code, which must be construed in the Applicant's favor. Here, as we have previously explained, the Village of Cold Spring ("Cold Spring") acquired approximately one (1) acre of land from the parent parcel from which the Property derives, for the "vital and important" public purpose of establishing a municipal connection to the Catskill Aqueduct. See Applicant's November 3rd Letter, at 2.

Ultimately, as the Applicant has previously noted, "[a]t best, the Meyers bring up an ambiguity in the 1957 Code, which, as they fail to recognize, must be read in favor of the property owner, Essex Green." See Applicant's November 3rd Letter, at 3.

**VARIANCES**

Again, Essex Green respectfully asks that your Board further find that, even if the Property were not a legal, pre-existing Nonconforming Lot, it should be granted variances from the current Town Code's area, front yard set-back, rear yard set-back, impervious surface, and frontage requirements, inasmuch as Essex Green's project would be fully in harmony with the prevailing community character in the area. Nothing in the Meyers' submission contradicts this.

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Notably, the first two definitions of the word "take" in Black's Law Dictionary comport with both its plain and ordinary meaning of "[t]o obtain possession or control, whether legally or illegally," as well as "[t]o seize with authority, to confiscate or apprehend," with reference to eminent domain procedure. See Black's Law Dictionary, at 1466 (7th ed. 1999).
1. There Would Be No Undesirable Change To The Community

The Meyers improperly ask the Board to discount the fact that while the Property in the Town consists of 0.55 acres, in reality the proposed single-family house will be situated on 1.43 acres of land, including 0.88 acres in Nelsonville. In particular, the Meyers argue that the Applicant “should not be able to ‘tack on’ land from an adjoining municipality in considering whether to grant a variance from the Town of Philipstown Code.” See Letter to Z.B.A. from Martino & Weiss, dated January 29, 2018 (the “Meyers’ Counsel Letter”), at 3.)


Again, as the Applicant has already pointed out, the caselaw is clear that, where, as here, there is no evidence that granting the variances would actually have an undesirable impact on the character of the neighborhood, the requested variances should be granted. See Applicant’s November 3rd Letter at 5-6, citing Wambold. 32 N.Y.S.3d at 630; Quintana v. B.Z.A. of Muttontown, 120 A.D.3d 1248, 992 N.Y.S.2d 332, 334 (2d Dept. 2014) & Schumacher v. Town of East Hampton Z.B.A., 46 A.D.3d 691, 849 N.Y.S.2d 72, 74–75 (2d Dept. 2007). As the Second Department held in Schumacher, ZBA’s should not “improperly succumb[] to community pressure” in denying area variances where, as here, “there [is] no evidence that granting the proposed variances would have an undesirable effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community.” Schumacher, 849 N.Y.S.2d at 74–75.

Respectfully, the Board cannot factor in hyper-technical or “trivial contentions that the variance will adversely affect neighboring property.” Zwitzer v. Z.B.A. of Canandaigua, 144 A.D.2d 1023, 1024, 534 N.Y.S.2d 298, 299 (4th Dept. 1988).

The Meyers also misleadingly assert that “[t]he proposed house will be seen from [the Healy] property and impact the view from this historically important property.” Meyers’ Counsel Letter, at 3 (emphasis added). In fact, the Meyers are being misleading both by stating that the Healy property is approximately 175 feet from the instant Property, and also by suggesting that the Healy property is listed on the National Register of Historic Places (“Register”). In fact, the National Register Listing is for the building on the Healy property known as Montrest (National Register #90PR05769), but it is on a different parcel than the
Meyers would have the Board believe. As indicated on Exhibit "A," Montrest is located on the east side of the Catskill Aqueduct (Tax Map 38.-3-7.7). The only Healy property that the Meyers could be referring to is the vacant parcel on the west side of the Aqueduct (Tax Map 38.-3-4). The parcel hosting Montrest and the parcel on the west side of the Aqueduct were, however, separated in 1909 when the Aqueduct land was acquired by the City of New York. While these two parcels were, at the time of the National Register nomination, owned by a single person, this is no longer the case. Since then, the Healy Estate has been subdivided and distributed among the Healy Heirs and the Elizabeth Todd Healy Revocable Trust. Montrest is owned by the Trust. The land to which the Meyers refer is owned by Elizabeth Dale Lincoln, the daughter of Elizabeth Todd Healy.

As shown on Exhibit "B," Montrest and the house that is being proposed by Essex Green are separated by more than 1,450 feet horizontally and approximately 70 feet vertically. The line of sight between them crosses no less than three (3) other parcels, and it crosses a stand of evergreen trees immediately behind Montrest. As a result, it is doubtful that the proposed house will be visible from Montrest. If there is a view, it will be broken up by the trees and it will be a distant view that will appear from Montrest, which is historically associated with agriculture, as a small barn. The distant view of a small barn like building simply does not have the impact suggested by the Meyers.6

The Meyers also incorrectly assert that the proposed home “will be located on top of a hill,” and that “[s]uch a siting is in contravention of Town Code § 175-31, requiring buildings to be sited so as not to protrude above treetops and crest lines of hills.” Meyers’ Counsel Letter, at 3. In fact, the Project will not be located on top of a hill, and will not protrude above treetops and crest lines of hills. In fact, there are no designated ridgelines near the Property. See Town Code § 175-36(C)(1) (defining the “ridgeline and hillside protection area” to “consist of all land lying 50 feet downslope, measured vertically, below a ridgeline indicated on the Zoning Map”). The nearest ridgeline shown on the Town Zoning Map is at least three-quarters (¾) of a mile away. Furthermore, as indicated on Exhibit “C,” the land to the east of the Property continues to rise for well over 100 feet measured vertically from it. Simply put, there is no basis for the Meyers’ assertion.7

Indeed, it is telling that the Meyers do not, because in the real world they cannot, take issue with any of the specific variances that would be required for the Project if the Board determines that the Property is not a legal, pre-existing Nonconforming Lot.

a. Lot Area: The Meyers continue to ignore the “totality of the circumstances” in their so-called “Analysis of Healy Road Properties,” which, purports to

6 Moreover, when visual impacts are considered in the context of historic resources, the analysis focuses primarily on views of the structure and potential changes to its context, such as new construction in immediate proximity to an historic building.

7 The Meyers are similarly misleading in asserting that “it appears that this property is within the Scenic Protection overlay district.” (See Meyers’ Counsel Letter, at 3.) In fact, as indicated on Exhibit “A,” the proposed house will not be in that District.
compare the Project to twenty-four (24) improved lots in the vicinity, but which ignores the total area of the Property that is available and that will be utilized by its eventual occupants.

In particular, the Meyers focus in a vacuum solely on the 0.55-acre area of the Property that is in Philipstown to argue that the subject lot is the second smallest lot among those that they analyzed, while the reality, as anyone in the real world would experience it, is that the Property also includes .88 acres in Nelsonville, leaving it with total acreage of 1.434 acres. When the true totality of the circumstances is recognized, it becomes clear that the Property is not the smallest lot in the area by any measure. Out of the overwhelming majority of the lots that the Meyers analyzed, eighteen (18) out of twenty-four (24) or 67%, contain 2 acres or less, and all lots that they analyzed have an average lot size of 2.27 acres. This places the subject Property well within the range of lots shown on the Meyers’ “Analysis.”

With respect to the Meyers’ contention that the proposed home would be “the largest house” in the neighborhood, (see Meyers’ Counsel Letter, at 2), the Meyers’ “Analysis” notably appears to rely on the “Livable Area” posted on the County’s Image Mate Data, which tends to underestimate the square footage of the buildings because it fails to include items such as finished basements and attached garages. The footprint of the Meyers’ residence, for example, as shown on their survey, appears to be approximately 4,000 square feet. (See Exhibit “E”). Their reference to just the “living area” significantly understates the true size and massing of the building. Again, the reality is that the proposed 3,300 square foot home would fit well within the prevailing community character.

b. Front Yard Setback: While the CEO has determined that the Project proposes a 0-foot front yard setback, this is because the CEO has measured the setback from the Village line, which bisects the entire Property. In reality, and as the public would experience it, the Property extends beyond the Village line over land located in Nelsonville next to Douglas Lane, meaning that the single-family residence would actually be set back approximately 73.8 feet from Douglas Lane. The Nelsonville portion of the Property provides a significant front yard setback that meets the spirit and intent of the Code’s requirements.8 Even if the CEO is correct in determining that the front yard setback must be measured from the Village Line, the 73.8 foot setback from Douglas Lane fully mitigates any impact associated with granting this variance.

c. Rear Yard Setback: The rear of the Property abuts the Catskill Aqueduct. As such, in reality, the proposed single-family home would be located over 200 feet from the property line of the nearest privately-owned property to its rear in the Town.

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8 The Applicant respectfully notes, again, that the front yard setback should have been measured from the proposed house to either the property line at Douglas Road, or the center line of Douglas Lane. The Town Zoning Code defines a setback as “[t]he distance between a structure and a property line, the center line of a road, or an identified natural feature such as a watercourse.” The Applicant respectfully reiterates that use of the municipal boundary on the Property, which the CEO used to calculate the variance required for the front yard setback, was incorrect.
d. **Impervious Surface Coverage:** Again, the reality is that the Project sits on land larger than 0.55 acres. The entire site (which includes the Nelsonville portion) for the Project will be more than able to accommodate the stormwater and runoff from its impervious surfaces. Furthermore, as noted in the November 3rd Letter, the DOH has already granted approvals and Construction Permits for subsurface sewage treatment systems for a single-family home on the Property, demonstrating that if the variances are granted can be effectuated in harmony with environmental considerations. The DOH approvals are annexed hereto as Exhibit “D.” Moreover, to the extent that limiting impervious surface coverage is intended as an aesthetic control to prevent property owners from paving over their land, the area of the Property in Nelsonville also serves to mitigate any impact associated with granting this variance.

e. **Road Frontage:** While so much of the Property as is located in the Town technically lacks frontage, the reality, as the public would experience it, is that the Property has frontage along that portion of the Property that is in Nelsonville.

2. **The Desired Benefit Cannot Be Achieved By Feasible Alternatives**

The Meyers misleadingly suggest that one “feasible alternative” to the current proposal is to “attempt to build this on the municipal boundary line or entirely in Nelsonville.” See Meyers’ Counsel Letter, at 6. In fact, as the Board is aware, the Applicant changed the layout of the Project so that it only lies within the Town property in consultation with and advice from the Village and Town staff. See Applicant’s November 3rd Letter, at 7; Letter to Z.B.A. from Zarin & Steinmetz, dated August 31, 2017 (the “Applicant’s August 31st Letter”), at 5-6.

The Meyers also suggests that a “feasible alternative” would be to downsize the house from a 4-bedrooms to 3-bedrooms. See Meyers’ Counsel Letter, at 6. In fact, reducing the number of bedrooms to 3 would not affect the scale or massing of the house. There still would need to be 3 baths upstairs. Moreover, as a matter of practice, when Essex Green creates 4-bedroom homes, it anticipates small children and, accordingly, make the 3rd and 4th bedrooms as small as possible.

In sum, without the requested Variances, the Applicant cannot develop the Property and will be denied any use of its land. See November 3rd Letter at 7, citing Krueger v. Z.B.A. of Niskayuna, 48 A.D.2d 734, 368 N.Y.S.2d 63 (3d Dept. 1975).

3. **Based On The Totality Of The Circumstances, The Requested Variances Are Not Substantial**

The Meyers, again, either fail to understand or are attempting to mislead your Board from the maxim that “substantiality cannot be judged in the abstract” or “in a vacuum” or by simplistic numerical analysis disconnected from the “totality of the relevant circumstances;” rather, the Board is required to assess what the actual impacts in the real world would be of granting the requested variances. See Applicant’s November 3rd Letter at 8-9 (citing cases). The reality here, which the Meyers basically do not challenge, is that while several of the requested variances appear numerically large, in actuality, the Project would be in harmony with the rural-
suburban character of the surrounding community. Annexed hereto as Exhibit “F”, are photographs taken from the Site, which show the character of the area around the Site. The photographs demonstrate that the proposed one-family home would be in harmony with the character of the neighborhood.

The cases the Meyers inappropriately invoke in their arguments on substantiality are easily distinguished. See the Meyers’ Memorandum of Law Area Variance (the “Meyers’ Area Variance Memo.”), at 7-8.) The Meyers, for example, cite Matter of Mary T. Probst Family Trust v. Zoning Bd. of Appeals of Town of Horicon, a case where the Court upheld a denial of a 92% area variance. 79 A.D.3d 1427, 1428 (3d Dept. 2010). The Meyers fail to explain that the reason the “substantial” variance was denied is because approval of the variance would have permitted construction of a cottage only four (4) feet from the public road, and would have resulted in vehicles entering the road from the parcel emerging near a sharp, dangerous turn. Id. Although the Project before your Board has variance percentages that, on paper are equally numerically “substantial” to the variance in the Probst Family Trust case, a granting of the requested variances would not result in any of the “substantial” impacts that were the basis of the denial in the Probst Family Trust case.

Similarly, the Meyers inaptly cite Pecoraro v. Board of Appeals of Town of Hempstead, in which the Court of Appeals upheld the denial of a 33.3% lot area variance and 27.3% frontage width variance. 2 N.Y.3d 608 (2004). Again, the Meyers fail to explain that the reason the variances for the proposed dwelling was denied was that the neighborhood the dwelling would have been located in was a neighborhood where almost all other parcels were in conformance with the zoning requirements. Id. Granting the variances, thus, would have had a negative impact on the community character of the neighborhood. In the instant matter, in contrast, multiple other lots, in both Philipstown and Nelsonville, are not in conformance with the zoning requirements. Just as an example, as demonstrated in the Analysis Charts of Healy Road, Moffatt Road, and Moffatt Road/Douglas Lane/Rockledge Road Properties included with the Meyers submission (the “Analysis Charts”), five (5) out of the eight (8) Philipstown properties listed are not in conformance with the permitted road frontage requirement, and all of the Philipstown properties listed in the same zoning district as the Property are not in conformance with the required lot area.

Finally, the Meyers incorrectly rely on Matter of McGlasson Realty, Inc. v. Town of Patterson Bd. of Appeals, in which the Court upheld the denial of a variance seeking to build on a substandard lot. 234 A.D.2d 462, 651 N.Y.S.2d 131 (2d Dept. 1996). The Meyers neglect to mention that a major rationale for the denial in that case was that the proposed waste disposal system would adversely affect local well water and flooding conditions. Id. In the instant matter, in contrast, DOH has approved the waste disposal system for the Project. The Project and associated waste disposal system would have no adverse impact, so as to warrant a denial of the variances.

Again, the Meyers ignore the fact that the Board is required to consider the “totality of relevant circumstances,” in the real world, when deciding whether the requested Variances would actually impact the relevant community. See supra. In the real world, the
Project would sit on 62,290 s.f. (1.43 acres) of land, in a neighborhood with, according to Meyers’ Analysis Charts, eight (8) lots of even smaller size.

4. **There Will Be No Adverse Impacts On The Environment**

The Meyers also incorrectly contend that the Project would result in adverse environmental impacts to the area due to the septic system and an existing pipe that runs under the Property.

With respect to the septic system, the Meyers misleadingly allege that a June 2007 report determined that “this parcel is sized too small for an adequate septic system.” See Meyers’ Area Variance Memo., at 8. The Meyers’ argument on this point fails in two (2) ways. In the first instance, the Meyers fail to acknowledge that DOH has already issued its approval for the septic system on the Property. See Exhibit “A.” Such approval proves that the Property can support an adequate septic system for the Project. Secondly, with respect to the 2007 Groundwater report, the Meyers allege that the Property is too small for a septic system. A closer look at that report shows that the minimum lot sizes of 1.6 to 3.0 acres are a recommendation and not a standard that should be applied to all existing lots in the Town. The 2007 Groundwater report recognizes that there are existing lots that are smaller than the recommended minimum size, and that traditional septic systems, with a tank and absorption fields, can and do work if they are properly installed. In fact, Figure 7 of the Report identifies the Property as one of many existing lots throughout the Town that contain less than the recommended minimum area.

The Putnam County Department of Health has stringent regulations that must be complied with before it issues a permit to construct a well or septic system. Among other things, the regulations require: minimum separation distances between the septic system and any well; minimum depth of soil; maximum soil percolation rates; and the ability to install a replacement system in the event of a system failure. The Applicant’s plan for both its well and septic system complies with these regulations and, again, a Permit for each has been issued.

The Meyers are, again, being misleading by referencing an existing pipe that runs from the aqueduct property and exits onto the Meyers’ property. In fact, this piping is located to the south of all of the construction proposed by the Applicant. Its location is shown on both the septic system plan approved by the Putnam County Department of Health and the Applicant’s survey. The construction activities for the Project simply will not affect this pipe and the final grading of the Property will not direct stormwater into it.

Also, as set forth in greater detail in the Applicant’s November 3rd Letter, area variances and other activities associated with the construction of a single-family home are actions which presumptively have no significant adverse environmental impacts pursuant to the New York State Environmental Quality Review Act. See Applicant’s November 3rd Letter, at 9 (citations omitted).
5. **A Self-Created Hardship Is Not Determinative**

As explained in the Applicant’s November 3rd Letter, while the hardships may technically be self-created, this factor is not dispositive, particularly, where, as here, the totality of the circumstances show the merit of the requested variances. See Applicant’s November 3rd Letter, at 10 (citations omitted).

Finally, in a parting effort to attempt to disparage on the Applicant, the Meyers falsely assert that “this particular developer has had significant issues with the Town in the past.” Meyers’ Area Variance Memo., at 11. In fact, not only does the referenced article overblow the issue, but, moreover, this incident occurred more than fifteen (15) years ago. The Applicant has completed approximately eight (8) high-quality and sensitively designed projects in the area since that time without incident.

**CONCLUSION**

For the foregoing reasons, under the totality of the circumstances, the benefit to the Applicant easily outweighs any detriment the proposed single-family home could be argued to pose to the surrounding community.

We look forward to answering any questions the Board may have at the continuation of the Public Hearing in this matter at your February 12, 2018 Meeting. Should you have any questions or comments in the meantime, or require any additional information, please do not hesitate to contact us.

As always, we thank you for your consideration.

Respectfully submitted,

ZARIN & STEINMETZ

By: Daniel M. Richmond
Kate Roberts

DMR/mth
encls.

via email

cc: Susan Green (Owner), Essex Green, Inc.
Glennon J. Watson, LS
Dana Simmons, Simmons Construction Inc.
Adam Rodd, Esq.
PUTNAM COUNTY DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL HEALTH SERVICES

APPLICATION TO CONSTRUCT A WATER WELL

Please print or type

PCHD Permit # 01-12

Well Location
Street Address: 555 Lakeside Ave.
Town/Village: Putnam
Tax Map #: 001-01-12
Map Block: 001

Well Owner:
Name: Michael Smith
Address: 555 Lakeside Ave.
Phone #: (512) 555-1234

Use of Well

Residential
Public Supply
Irrigation

1- Primary Business
Farm
Test/Monitoring

2- Secondary Industrial
Institutional

Amount of Use
Yield Sought: 5 gpm
# People Served: 20
Est. of Daily Usage: 10,000 gal.

Reason for Drilling
Replace Existing Supply
Test/Observation
Additional Supply
New Supply (new dwelling)
Deepen Existing Well

Detailed Reason for Drilling
To provide a portable water supply to a new residence

Well Type
Drilled
Driven
Gravel
Other

Is well site subject to flooding?
Yes __ No X

Is well located in a realty subdivision?
Yes __ No X

Name of subdivision
Lot No.

Water Well Contractor:
Dwight Wells
Address: 555 Lakeside Ave.

Is Public Water Supply available on site?
Yes __ No X

Name of Public Water Supply:
Address:

Distance to property from nearest water main:

Proposed well location & sources of contamination to be provided on separate sheet/plan.

Date: 03/21/17
Applicant Signature: ____________________________

PERMIT TO CONSTRUCT A WATER WELL

This permit to construct one water well as set forth above, is granted under provisions of Article 10 of the Putnam County Sanitary Code and Subpart 5-2 of Part 5 of the New York State Sanitary Code and provided that within thirty (30) days of the completion of water well construction, the applicant or their designated representative shall: 1) Pump the well until the water is clear. 2) Disinfect the well in accordance with the requirements of the Putnam County Health Department. 3) Submit a Well Completion Report on a form provided by the Putnam County Health Department. 4) The well driller shall abide by all conditions of the permit. 5) During all well drilling operations the well driller shall take appropriate action to assure that any and all water and waste products from such well drilling operations be contained on this property and in such a manner as not to degrade or otherwise contaminate surface or groundwater.

Additional Permit Requirements:

APPROVED FOR CONSTRUCTION: This approval expires two years from the date issued unless construction of the well has been completed and inspected by the PCDOH and is revocable for cause or may be amended or modified when considered necessary by the Commissioner of Health. Any revision or alteration of the approved plan requires a new permit. Well to be constructed by a water well driller licensed by Putnam County.

Date of Issue: 03/21/17
Permit Issuing Official: ____________________________
Title: ____________________________

Date of Expiration: 03/21/19
Permit is Non-Transferable

White copy – HD file; Yellow copy – Building Inspector; Pink copy – Owner; Orange copy – Well Driller

Form WP-97 Rev. 1/16
PUTNAM COUNTY DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL HEALTH SERVICES

CONSTRUCTION PERMIT FOR SEWAGE TREATMENT SYSTEM

PERMIT # 11-01-12

Located at DOXLAKE LANE Town or Village PHILMONT

Subdivision name Subd. Lot # Tax Map 49, Block 01, Lot 14

Date Subdivision Approved Renewal Revision

Owner/Applicant Name REX GREEN INC. Date of Previous Approval 02-24-17

Mailing Address 31 WEST 9th STREET NEW YORK, NY Zip 1001

Amount of Fee Enclosed

Building Type Lot Area No. of Bedrooms Design Flow GPD

Separate Sewerage System to consist of 1,250 gallon septic tank and 500 ft.

Other Requirements: 1,000 BTU capacity manual air ventilation alarms, 7” OD pipes, and 14’ length

To be constructed by MULCAHY CONTRACTORS Address COLD SPRINGS, NY 10510

Water Supply: Public Supply From Address COLD SPRINGS, NY 10510

or: Private Supply Drilled by MULCAHY CONTRACTORS Address COLD SPRINGS, NY 10510

I represent that I am wholly and completely responsible for the design and location of the proposed system(s) and that the separate sewage treatment system described above will be constructed as shown on the approved amendment thereto and in accordance with the standards, rules and regulations of the Putnam County Department of Health, and that on completion thereof a "Certificate of Construction Compliance" satisfactory to the Public Health Director will be submitted to the Department, and a written guarantee will be furnished the owner, his successors, heirs or assigns by the builder, that said builder will place in good operating condition any part of said sewage treatment system during the period of two (2) years immediately following the date of issuance of the approval of the Certificate of Construction Compliance of the original system or any repairs thereto.

Signed: John P. Delauney P.E. R.A. Date 08/21/17

APPROVED FOR CONSTRUCTION: This approval expires two years from the date issued unless construction of the sewage treatment system has been completed and inspected by the PCHD and is revocable for cause or may be amended or modified when considered necessary by the Public Health Director. Any revision or alteration of the approved plan requires a new permit. Approved for discharge of domestic sanitary sewage only.

By: Title: APLT Date: 10/21/17

White copy - HD File; Yellow copy - Building Inspector; Pink copy - Owner; Orange copy - Design Professional

Form CP-97
To:

Honorable Chairman Robert Dee and members of the zoning board of appeals,

First I would like to thank you for your service to our community. I could not make this meeting due to my travel to Florida to take care of my mother who is gravely ill.

I will get right to the point.

- Existing lot .55 acres R.C. = 10 acres
- S 175-26 lots
  - A - does not meet and must meet required minimum setbacks of 20 ft.
- Will impede on view sheds of neighbors
- Allowing this project will have a negative impact to this neighborhood

Yours truly,

Kenneth J. Levine

103 Healy Road
January 29, 2018

Hon. Robert Dee, Chairman
Members of the Town of Philipstown
Zoning Board of Appeal
238 Main Street
P.O. Box 155
Cold Spring, New York 10516

Re: Essex Green, Inc.
Douglas Lane
TM: 49.6-1-12
49.6-2-14

Dear Chairman Dee and Members of the
Zoning Board of Appeals:

My office represents the Meyer family, residing on property
directly adjacent and to the west of the above property.

This correspondence is respectfully submitted in connection
with the Application before you by Essex Green, Inc. for
multiple area variances which would be necessary for the
construction of a 3,300 square foot house on Douglas Lane. The
applicant’s property is across from the shared driveway known as
Douglas Lane. The Meyers, as well as other homeowners in the
neighborhood, are directly impacted by your decision.

For the purposes of this submission, I have omitted
certain legal citations and some of the other exhibits
supportive of the positions taken herein; however, should the
Board wish me to submit a Memorandum of Law, I would be happy to
do so. I also incorporate into this letter all prior filings,
which have are part of the administrative record in this matter.

There are numerous and significant variances required for
this project to go forward and I will firstly address this
issue. I will thereafter touch on the applicant’s approach to
the term “taken for a public purpose” as contained in the Town’s
1957 Zoning Code.
Variance

The applicant here needs at least six variances, ranging in size from a minimum of 24.8% to several 100% variances. I refer the Board to the Dimensional Table Analysis attached to this letter for the types and percentages of the variances needed.

In considering whether to grant a particular variance, in this case a minimum of six individual variances, a zoning board of appeals must consider the benefit to the applicant if each variance is granted, as weighed against the impact to the health, safety and welfare of surrounding neighborhood in particular and the community at large.

In arriving at its determination, a board must consider five separate and discrete factors: (1) whether the grant of the variance will produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties; (2) whether the benefit sought by the applicant can be feasibly achieved by a means other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district; and (5) whether the alleged difficulty was self-created.

Each of these five factors will now be considered as applicable to the matter under consideration.

1. Whether the grant of the variance will produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties

Construction of the house as proposed on this substandard lot would result in an oxymoronic anomaly: the largest house on the smallest lot in the neighborhood. Despite the applicant's claim to the contrary, even a cursory review of the attached "Analysis of Healy Road Properties" bears this out. The applicant has stated that the house will contain 3,300 square feet, well in excess of most of those in the surrounding area.

Interestingly, the applicant notes that the statement of the largest house on the smallest lot is incorrect because "technically" the house is located in the Town of Philipstown, although most of the adjoining property is in the Village of
Nelsonville. Technically or not, the simple fact is that this Board has jurisdiction over where the applicant intends to place the house and it should not be able to “tack on” land from an adjoining municipality in considering whether to grant a variance from the Town of Philipstown Code. In fact, the house, according to the applicant, will be “located within the Town of Philipstown”. The applicant cannot have it both ways. It attempts, in short, to compare houses in Nelsonville with those in Philipstown in order to argue that the variances this Board is being asked to grant would have no detrimental effect on those within the Town, the same town in which this house is to be constructed. Such circular logic merely confirms that the granting of these variances will in fact, produce an undesirable effect in the Town of Philipstown.

Several other additional considerations must be weighed when considering this factor. Every other house in the neighborhood is at or below road level. The applicant’s proposed house will not only be sited above road grade, but will be located on top of a hill, protruding approximately 29 feet above the hill’s crest. It will be able to be seen from a significant distance along Healy Road, approaching the intersection with Moffat Road. Such a siting is in contravention of Town Code § 175-31, requiring buildings to be sited so as not to protrude above treetops and crest lines of hills. In addition, it appears that this property is within the Scenic Protection overlay district, pursuant to Section 1745-15 of the Philipstown Zoning Code as it is within 250 feet of a Town road.

Notably, the Healy property located across Moffat Road approximately 175 feet to the north of this property is listed on the National Register of Historic Places. The proposed house will be seen from this property and impact the view from this historically important property.

From the foregoing it is clear that the proposal before this Board will create an undesirable and detrimental change in the character of the neighborhood and the requested variances should be denied.

2. Whether the benefit sought by the applicant can be feasibly achieved by a means other than an area variance

The applicant admits that the alternative to the current plan would be to revert to its initial plan, i.e., construct the
house so that it is located within both the Town and Village. However, the applicant neglects to state just why this is not a feasible alternative. It would be, of course, inconvenient to deal with two municipalities, but that certainly does not make that alternative an impossibility, or even unfeasible. In any event, an unmentioned option is to seek permits to build entirely in Nelsonville.

Of course, downsizing the house is another alternative. Notably, in this regard it must be remembered that the applicant sought Board of Health approval to increase the size of the house from a three to four bedroom house, even though the building permit seeks permission to build a three bedroom house. This discrepancy should be explained, since a smaller septic system also has an impact on the siting of the house.

3. Whether the requested area variance is substantial

The applicant boldly states that the requested variances are not substantial. This is clearly belied by the Dimensional Table Analysis attached hereto. Although the applicant concedes that while the requested variances “in the abstract [are] numerically substantial”, it curiously contends that “their overall impact must still be viewed as minimal, as construction of a one-family house would not have an adverse impact on the surrounding neighborhood of other one-family houses”. This is most assuredly not the case.

As noted above, this “one-family house” is not in keeping with the character of the neighborhood. Its problems in this regard are discussed at length above and need not be repeated here. What does need to be considered is the scope of the requested variances, individually and cumulatively.

As the chart shows, the applicant will need a 94.5% variance on lot size, a 100% variance on front setback, a 100% variance on frontage, at least a 52% variance on rear setback and at least a 24% variance on impervious surface coverage. Individually, each variance is significant; cumulatively, to call them substantial is a gross understatement.

This does not even take into account the fact that the applicant cannot comply with Town Law § 280-a which requires direct access to a town road from this parcel within the Town.
4. **Whether the proposed variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district**

It is the applicant’s contention that the construction of a "single family house" on this parcel will have no negative impact on environmental conditions in the neighborhood. Again, this statement does not take into the account this parcel’s constrictions and the size and location of this particular "single family house".

There is an existing stream that runs through a clay pipe from the aqueduct property, east to west through that pipe across the applicant’s property and drains onto our property. This pipe is over 100 years old and has been crushed by tractors and other vehicles driving over it, causing drainage problems on the Meyer property and neighboring properties as well. This now-crushed pipe is immediately adjacent to and just south of the proposed driveway. Runoff from the driveway will enter what’s left of this pipe and cause further drainage and erosion problems on the Meyer property as well as undermining Moffat Road.

The former Philipstown Highway Superintendent wrote to the former Town Supervisor on July 13, 2007 about the erosion problem on Moffat Road which was being caused by the water coming off Douglas Lane and the stream piped through applicant’s property as noted above. This letter will be made of the record. Additionally, during rain events, this situation causes dirt and rocks to be washed onto the asphalt surface of Moffat Road.

This situation will obviously be exacerbated by construction of this single family house, particularly since the lot would require in excess of a 24% impervious surface variance. Notably, the applicant’s engineer was the engineer of record on the proposed project to rebuild that section of Moffat Road impacted by the erosion and drainage issues and is aware of the problems.
5. Whether the alleged difficulty was self-created

The applicant admits and at the same time attempts to deflect the simple fact that the situation it faces is entirely self-created. The applicant concedes the hardships it faces are "technically self-created", as it "should have acquired the Property with knowledge of applicable zoning requirements".

One has to ask where the applicant's due diligence was prior to purchasing this lot. The Board is not faced with a situation where a novice or individual purchased this lot to build his or her own residence. Rather, the applicant is an experienced developer, who knew, or certainly should have known better. Simply put, the applicant either created its own problems or knew of the problems developing this lot would entail, and is now asking this Board to solve its self-created problems—to the detriment of the entire neighborhood.

Indeed, and again this must be said, not only would this neighborhood be negatively impacted by the granting of these variances but the entire Town would be impacted as well, since this would become a precedent for other developers and builders to come in and seek variances to build on the many other essentially unbuildable, substandard lots.

From the foregoing, it is clear that, when considering the specific and known issues with this parcel, and applying the five factors noted above, there can be no justification for the granting of the requested variances.

"Taking for a Public Purpose"

As a means to address a novel approach by the applicant to the need for multiple area variances, I will briefly address the issue of "taking". The term "taking" has always under established law referred to a forcible seizure of a person's property, or an involuntary deprivation of property rights.

The official records of this parcel, which was part of a subdivision process, by their very terms, clearly indicate that no "taking" took place.

Section 10(B) of the 1957 Zoning Ordinance provides that "No lot shall be reduced in area so that any required area or open space will be less than prescribed in the regulations for the district in which said lot is located." It then goes on to
say that "These provisions shall not apply when a portion of a lot is taken for a public purpose."

The attorneys for the Applicant (Essex Green) have advanced the notion that Cold Spring "acquired" the property for a public purpose and that therefore the property falls within the exemption—instead of being an illegal nonconforming substandard parcel. They very carefully selected the word "acquired" as opposed to a "taking" of the property as they know that the word "taken" has a very specific meaning and clearly implicates the use of condemnation and eminent domain to effectively acquire the property by force or an involuntary deprivation of property rights by the government.

The language in Section 10(B) of the 1957 Zoning Code tracks the language of what is known as the "Takings Clause" of the 5th Amendment to the US Constitution—which states that "nor shall private property be taken for public use, without just compensation." That is the basic tenet of eminent domain and condemnation proceedings. In addition, the New York State Constitution provides that "Private property shall not be taken for public use without just compensation".

The interpretation of the word "taken" has been variously described as "forcible appropriation", "seizure", "deprivation of property", "involuntary proceeding or transfer" and "involuntary transfer of property without the owner's consent".

There is no evidence that the Cold Spring parcel was acquired by condemnation or eminent domain or involuntarily in any manner, nor indeed any claim to that effect. The 1966 resolution of the Village of Cold Spring clearly lays out that this was a typical acquisition by a municipality—without any force or any type of legal proceeding or the use of the prescribed statutory process for eminent domain; it was in fact an arms-length transaction between two willing parties.

This is reinforced by the fact that the sellers (Ralph and Cyril O'Neil) sold over a dozen parcels of their landholdings immediately surrounding the subject parcel between 1965 and 1967, indicating that this was not an anomaly; the sellers were selling all of their properties and the transaction with the Village of Cold Spring was just another transaction.

Cold Spring acquired the property for use as a connection to the Catskill Aqueduct. Cold Spring purchased 1 acre of property, .67 acres of which was a portion of the 1.22 acre lot located in
the Town of Philipstown—leaving only .55 acres in Philipstown, where the minimum lot size was 40,000 square feet, and cutting off the frontage on Moffatt Road. Cold Spring’s acquisition of the parcel in question did not create a legal non-conforming parcel. What it did was create a land locked parcel, in effect creating a non-buildable lot. This was the effect of its acquisition of the lot. The Cold Spring municipality, having the facts before it in 1966, is presumed to have intended to create a non-buildable lot in 1966. It was neither accidental nor improper for the municipality to do so.

On its face, this subdivision is not eligible for any exemption under the law from the need to obtain area variances, because there was no taking. Speculation, and surmise notwithstanding, there is really nothing to support the applicant’s position on this issue.

To now come before this board and state, some 50 years later, that this result was not what the municipality intended to do is sheer speculation, since nothing in the history of the acquisition of this parcel supports that conclusion.

Critically, it must be noted that even Mr. Glen Watson, the applicant’s engineer, notes in his original report that “the deed to the Village does not support the notion that the land was ‘taken’”. He goes on to state that “On its face, the 1966 subdivision was not eligible for the exemption provided in the Zoning Law in effect at the time and should have obtained area variances”, meaning should have obtained variances at the time of the transfer.

In short, since there was no taking and since, because of the municipality’s action created a non-buildable lot, the applicant cannot avail itself of any exemptions under the then Town Code, and I suggest it unable to demonstrate its’ entitlement to the numerous variances it would need to proceed with this project.

Should the Board require anything further from me, I would be most happy to immediately comply with any requests.

DOUGLAS J. MARTINO

MARTINO & WEISS
Memorandum of Law
Area Variances

The Zoning Board of Appeals is required to take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board is also required to consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

1. Five Factors

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance

i. If this home were to be constructed on this lot it would result in the largest house on the smallest lot in the neighborhood. This
house does not fit in the neighborhood. The majority of the houses in this neighborhood were constructed prior to zoning in Philipstown and Nelsonville (see attached table). Several of the homes are more than 100 years old. In Nelsonville, it is a completely different zoning district and subject to the Village’s zoning laws. In Philipstown, the parcels are much larger than the subject parcel by a large magnitude.

ii. Every other house in the neighborhood is at or below the level of the road. This house is set up above the grade of the roadway. In this instance, the siting of this house is in contravention of Section 175-31 of the Town Zoning Code, entitled Rural Siting Principles, which suggests that owners “Site buildings so that they do not protrude above treetops and crest lines of hills as seen from public places and roads.” In this instance, the house is to be sited at the top of the hill and protrude approximately 29 feet above the crest of the hill and will be able to be seen from a significant distance on Healy Road as you approach the intersection with Moffat Road.

iii. In addition, as can be seen from the attached table analyzing the houses in the area located on Healy Road, Moffatt Road, Douglas Lane and Rockledge Road, only 1 parcel with a house on it out of the 75 identified on the map prepared by Essex Green’s engineer (1.3%) is SMALLER than the subject parcel. Furthermore, an analysis of the table also shows that the lot sizes in the neighborhood are much larger than the Essex Green lot in Philipstown, the vast majority of which have more than the required frontage, contain houses that are much
smaller than the proposed house (many with only 1 story) and were built prior to the adoption of zoning laws in Philipstown and Nelsonville.

iv. The Town’s 2006 Comprehensive Plan set a number of goals for the proposed amendments to the zoning laws for Philipstown. The first goal was to “Conserve Philipstown’s rural, historic and river-community character”. The drafters provided that,

"Philipstown is a unique place characterized by great natural beauty, historic places and a sense of small-town community. This uniqueness is fragile and could be lost through a rapid influx of development. Development should be done in a manner that is sensitive to the town’s special rural and historic qualities. . . . Preserve elements that contribute to Philipstown’s rural and historic character — dirt roads, stonewalls, historic structures, sites and areas, significant trees, ridgelines, farmland, forests, the Hudson River shoreline and scenic viewsheds."

We are asking the board to protect and preserve this area in conformance with the Town’s Comprehensive Plan.

v. The homes in the neighborhood are much more modest than the proposed house and are properly sized on appropriately sized lots — not at the crest of the hill built at the maximum height limitation and more than 33 to 50% bigger than homes in the neighborhood. Please see the attached chart at the end of
this document with an analysis of the homes along Healy Road.

vi. The Healy property located across Moffat Road approximately 175 feet to the north of this property is listed on the National Register of Historic Places. As proposed, this property and the house to be constructed thereon will be seen from this property and impact its viewshed.

vii. In addition, it appears that this property is within the Scenic Protection Overlay District pursuant to Section 175-15 of the Philipstown Zoning Code as it is within 250 feet of a Town road.

viii. In In Re: Gregory Pecoraro v. Board of Appeals of Town of Hempstead, 2 NY3d 608, (May 4, 2004), the lot in this case was an illegally created substandard parcel and the New York State Court of Appeals held that the Board was entitled to consider that granting a variance for such a parcel could set a precedent within the neighborhood “such that landowners of oversized parcels could illegally subdivide their land and seek an area variance to improve the substandard plot with the idea that two parcels with two houses are worth more than one parcel with one house.” The Court found that the Zoning Board “concluded that the character of the area had not changed since its 1969 determination and that the neighborhood surrounding the subject property was overwhelmingly conforming to or larger than the zoning requirements. The Board thus held that granting the variance would have an adverse effect on the character of the neighborhood.” The Court also held that “As the Board is
entrusted with safeguarding the character of the neighborhood in accordance with the zoning laws (see Town Law § 267-b[3][c]), it was well within its discretion to deny a variance that would have allowed an owner to take advantage of an illegally nonconforming parcel by erecting a dwelling upon it."

xi. Based on this theory of precedent, should the Board vote to grant the variance and permit the construction of the house, precedent would dictate that a house could be built on the portion of the Cold Spring parcel which is larger than this parcel. And the Board has no control over the Nelsonville parcels. So it is feasible that two additional houses could be constructed on those parcels for a total of 4 houses on a lot with total overall lot size of 2.414 acres which is zoned in the aggregate for 24 acres.

x. In In the matter of Anthony Ramundo v. Pleasant Valley Zoning Board of Appeals, 41 AD3d 855, (June 26, 2007), the Court upheld the denial of variances where,

"The tax map for the area, included in the record, constitutes admissible evidence that neighboring lots are in excess of 1.5 acres and have adequate street frontage. The requested area variances are substantial. Further, the difficulty was self-created since the petitioner purchased the lots knowing that they were nonconforming."

That is very similar to the situation the Board is facing here. The majority of the lots in the neighborhood surrounding the Applicant's lot either meet or exceed the dimensional
requirements of the zoning code or pre-existed the enactment of the zoning code. The requested variances here are extremely substantial (as further discussed below). And the difficulty was self-created as the Applicant knew or should have known of the issues with this parcel.

2. **Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance**

   i. No one forced the applicant to place the house in its current location. The applicant proposed building it on the municipal boundary line between Philipstown and Nelsonville but withdrew the application of their own volition. They could still attempt to build this on the municipal boundary line or entirely in Nelsonville. They could also downsize the house. The applicant applied to the Board of Health to increase the septic from 3 bedroom to 4 bedroom which further impacted their ability to site the house. Unclear why the applicant would apply for a 4 bedroom home when they are applying for a 3 bedroom building permit. So the applicant could reduce the size of the septic system to site the house in some other manner.

3. **Whether the requested area variance is substantial**

   i. As can be seen from the attached chart, the variances requested are unprecedented in the Town. Depending on the outcome of the interpretation of the "taken for a public purpose" clause, the Applicant will need a 94.5% variance on Lot Size, a 100% variance on
Front Setback, a 100% variance on Frontage, at least a 52% variance on Rear Setback and at least a 24% variance on Impervious Surface Coverage. Any one of these variances on their own would be significant. The combination of all of these would, again, be unprecedented for the Town. Also, the Applicant does not have access to a Town road in the Town of Philipstown so it has no frontage and this requirement cannot be satisfied as the lot is bisected by the Village/Town line — and the Town road can only be accessed through the Village parcel which is not permitted. In addition, the Applicant cannot satisfy Town Law Section 280-a which requires direct access to a Town road from this parcel. (See Matter of Indelicato v. Town of Lloyd 2006 NY Slip Op 08682, 34 AD3d 1056 (November 22, 2006).

ii. In Matter of Mary T. Probst Family Trust v. Zoning Bd. Of Appeals of Town of Horicon, 79 AD3d 1427 (December 16, 2010), where the petitioner sought a 92% reduction in the roadway setback requirement, the Zoning Board of appeals found the variance to be “substantial to the extreme” and the court upheld the denial of the variance. Here, there are a number of “substantial to the extreme” variances be requested by the applicant which should result in the denial of the variance.

iii. In In Re: Gregory Pecoraro v. Board of Appeals of Town of Hempstead, 2 NY3d 608, (May 4, 2004), the New York State Court of Appeals upheld the denial of the requested variances where the Zoning Board of Appeals found the variances to be substantial where there would have been a 33.3% deficiency in lot area and a
27.3% deficiency in frontage width. The court also held that it was not an abuse of discretion to determine that the substantiality of the variance weighed against granting it.

iv. In Matter of McGlasson Realty, Inc. v. Town of Patterson Bd. of Appeals, 234 A.D.2d 462, 651 N.Y.S.2d 131 (1996), the Court there upheld the denial of a variance where “the variance sought by the petitioner was substantial, in that the petition sought to build upon a 22,500 square foot parcel located within a zone requiring a minimum acreage of 40,000 square feet.”

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

i. According to Figure 7 of the Town of Philipstown Groundwater Report and Planning Resource (June 2007) prepared by the Chazen Companies (see attached), this parcel is sized too small for an adequate septic system which could result in the deterioration of well water quality in the area. The recommended minimum average parcel sizes for septic systems are between 1.6 and 3.0 acres. Accordingly, the granting of the variances for this parcel could result in the deterioration of the well water quality in the area.

ii. There is an existing stream that runs through the Applicant’s property from east to west through a pipe from the aqueduct property and exits onto our property on our side of Douglas Lane. The clay pipe on the Applicant’s property has been crushed as a result of it
being over 100 years old and tractors and other vehicles driving over it. This pipe is immediately adjacent to and just to the south of the proposed driveway. Runoff from the driveway will enter this pipe and cause further drainage problems and erosion problems on our property as well undermining Moffat Road. As you can see from the attached letter from the former Philipstown Highway Superintendent to the former Town Supervisor, dated July 13, 2007 the elevated portion of Moffat Road in this area is being eroded by the water coming off of Douglas Lane as well as the stream that is piped through the Applicant’s property that ends at a pond further down on Moffat Road which drains under Moffat Road to the west. In addition, during rain events, water runs down along Douglas Lane out onto Moffat Road causing dirt and rocks to be washed out onto the asphalt surface. This condition will only be exacerbated by the construction of this house and the increase in impervious surfaces on the property. The water is also piped under Douglas Lane between the two stone pillars at the bottom of the driveway which causes further erosion to Moffat Road at a separate location from the pond. It is our belief that these additional impervious surfaces will cause additional drainage and erosion problems to Douglas Lane as well as Moffat Road exacerbating an already very dangerous problem. The Applicant’s engineer was the engineer of record on the proposed project to rebuild that section of Moffat Road and is very familiar with the erosion problems at that location. On the map prepared by the Applicant’s engineer
for that project (see attached), the stream as well as the pond is clearly identified.

5. **Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

i. The applicant is an experienced developer and it is beyond belief that the applicant was not aware of the Town/Village boundary line.

ii. The applicant paid almost a quarter million dollars and did almost no due diligence on the site other than confirming that it had Board of Health approval and now these boards have to invest their time, effort, energy and money to grant her forgiveness rather than making sure the applicant requested permission prior to purchasing the property.

iii. We would suggest that this body not condone or encourage this type of behavior - especially from experienced developers.

iv. It is our understanding that the applicant is building a spec house here.

v. The applicant is trying to maximize her profit based on the size and location of the house.

vi. The applicant is not some first time novice homeowner who literally had no idea about such things.

vii. Responsible developers enter into a contract of sale with a property owner - subject to zoning approval prior to actually buying the property. This did not occur here.
viii. As can be seen by the attached Letter to the Editor from the Putnam County News, this particular developer has had significant issues with the Town in the past and has been sanctioned by the Town and fined in connection with a prior development project in the Town.

ix. In *In Matter of Weisman v. Zoning Board of Appeals of Kensington, 260 A.D.2d 487 (2d Dept. 1999)*, the Court held that "A prospective purchaser of property is chargeable with knowledge of the applicable restrictions of the zoning law, and is bound by them and by the facts and circumstances which can be learned by the exercise of reasonable diligence, even where there are harsh results (see, *Matter of Parkview Assocs. v City of New York, 71 N.Y.2d 274*). Weisman, a seasoned purchaser of real estate, failed to exercise the reasonable diligence which would have readily revealed that this lot was substandard and nonconforming."

The Court went on to say that "Weisman's failure to consider alternatives was properly held to be a negative consideration in determining whether relief should be granted (see, *Matter of Sakrel, Ltd. v Roth, 182 A.D.2d 763*), as was his refusal to sell the substandard property to his adjoining neighbors (see, *Matter of Townwide Props. v Zoning Bd. of Appeals, 143 A.D.2d 757*)."

x. The Applicant's engineer had previously conveyed to me that on a parcel of property such as this - with slopes, very small lot...
size, and on the municipal boundary line - due diligence should be performed prior to purchase. He contrasted it to a piece of property across 9D from Boscobel that was for sale at the time. He indicated that that property was flat, larger than the minimum lot size requirement and had good drainage for septic. He indicated that he would be very comfortable if someone purchased that property without due diligence as compared to this lot.

Based on the foregoing we respectfully request that the requested variances be denied.

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By:  

DOUGLAS J. MARTINO
Rider 1

In addition, as can be seen from the attached table analyzing the houses in the area located on Healy Road, Moffatt Road, Douglas Lane and Rockledge Road, only 1 parcel with a house on it out of the 75 identified on the map prepared by Essex Green’s engineer (1.3%) is smaller than the subject parcel. Furthermore, an analysis of the chart also shows that the lot sizes in the neighborhood are much larger than the Essex Green lot in Philipstown, the vast majority of which have more than the required frontage, and contain houses that are much smaller than the proposed house (many with only 1 story) and were built prior to the adoption of zoning laws in Philipstown and Nelsonville.

Finally, the Town’s 2006 Comprehensive Plan set a number of goals for the proposed amendments to the zoning laws for Philipstown. The first goal was to “Conserve Philipstown’s rural, historic and river-community character”. The drafters provided that,

Philipstown is a unique place characterized by great natural beauty, historic places and a sense of small-town community. This uniqueness is fragile and could be lost through a rapid influx of development. Development should be done in a manner that is sensitive to the town’s special rural and historic qualities. . . Preserve elements that contribute to Philipstown’s rural and historic character - dirt roads, stonewalls, historic structures, sites and areas, significant trees, ridgelines, farmland, forests, the Hudson River shoreline and scenic viewsheds.
Rider 2

In addition, in a June 2007 report prepared for Philipstown, entitled “Town of Philipstown Groundwater Report and Planning Resource” analyzes the impact of overdevelopment of the Town and how such development can negatively impact the water quality in the Town. This parcel was identified on Figure 7 as located in an area where “the recommended minimum average parcel sizes are between 1.6 and 3.0 acres.” This parcel contains only .55 acres - well below the recommended minimum for appropriate septic systems. Figure 7 provides that the colored parcels shown on the figure, “which rely on individual wells and septic systems, may be experiencing water quality defects, on the basis of septic system wastewater loading analysis discussed in the attached report.”

Rider 3

Furthermore, as can be seen by the attached Letter to the Editor from the Putnam County News, this particular developer has had significant issues with the Town in the past and has been sanctioned by the Town and fined in connection with a previous development project.

Rider 4

...including the one immediately adjacent to this lot to the north owned by the Village of Cold Spring located in the Town of Philipstown.

Rider 5

Stated another way, this lot was legally created prior to 1966, as this lot was 1.22 acres and the zoning in effect at the time required a minimum of 1 acre. The sale to Cold Spring of .67 acres in Philipstown created a .55 acre substandard illegal parcel. This was not permitted pursuant to Section 10(B) of the Town’s 1957 zoning law.
Memorandum of Law

"Taking" Analyzed

An interpretation that the phrase "taken for a public purpose" does not mean a forcible seizure of a person's property or an involuntary deprivation of property rights would set constitutional law back over 200 years. The language in Section 10(B) of the 1957 Zoning Code tracks the language of what is known as the "Takings Clause" of the 5th Amendment to the US Constitution (adopted in 1791) - which provides that "nor shall private property be taken for public use, without just compensation." In addition, Article I, §7(a) of the New York State Constitution provides that "Private property shall not be taken for public use without just compensation".

By way of background, the portion of the original lot located in the Town of Philipstown was 1.22 acres. In 1966 (9 years after the adoption of the 1957 zoning law), Cold Spring purchased an approximately 1 acre parcel of property - .67 acres of which was a portion of the 1.22 acre lot located in the Town of Philipstown - leaving only .55 acres in Philipstown - when the minimum lot size was 40,000 square feet - AND the frontage on Moffatt Road was also completely cut off - and the land was landlocked. This .55 acre portion of the lot is where the applicant seeks to construct the 3,300 square foot house (which would cause this house to be the largest house on the smallest lot in the neighborhood - a significant fact that cannot be ignored.)
Section 10(B) of the 1957 Zoning Ordinance provides that "No lot shall be reduced in area so that any required area or open space will be less than prescribed in the regulations for the district in which said lot is located." It then goes on to say that "These provisions shall not apply when a portion of a lot is taken for a public purpose." The attorneys for the Applicant (Essex Green) have advanced the notion that Cold Spring "acquired" the property for a public purpose. As a result, they are trying to say that they fall within the exemption instead of being an illegal nonconforming substandard parcel. They very carefully selected the word "acquired" as opposed to a "taking" of the property as they know that the word "taken" has a very specific meaning and clearly implicates the use of condemnation and eminent domain to effectively acquire the property by force or an involuntary deprivation of property rights by the government.

The language in Section 10(B) of the 1957 Zoning Code tracks the language of what is known as the "Takings Clause" of the 5th Amendment to the US Constitution - which states that "nor shall private property be taken for public use, without just compensation." That is the basic tenet of eminent domain and condemnation proceedings. In addition, Article I, §7(a) of the New York State Constitution provides that "Private property shall not be taken for public use without just compensation". And the interpretation of the word "taken" has been variously described as "forcible appropriation", "seizure", "deprivation of property", "involuntary proceeding or transfer" and "involuntary transfer of property without the owner’s consent".

There is no evidence that the Cold Spring parcel was acquired by condemnation or eminent domain or involuntarily in any manner. The 1966 resolution of the
Village of Cold Spring clearly lays out that it is a typical acquisition by a municipality without any force or any type of legal proceeding or the use of the prescribed statutory process for eminent domain; it was in fact an arms-length transaction between two willing parties.

This important fact is reinforced by the fact that the sellers (Ralph and Cyril O’Neil) sold over a dozen parcels of their landholdings immediately surrounding the subject parcel between 1965 and 1967 indicating that this was not an anomaly; the sellers were selling all of their properties and the transaction with the Village of Cold Spring was just another transaction.

The intention of the 1957 Ordinance is clearly to provide relief to a landowner in the event that property is forcibly or involuntarily taken from them. They would not get relief - and logically so - if they entered into a willing transaction with the Village of Cold Spring as they would be able to protect themselves under those circumstances. If they were unable to agree on sufficient protections in the transaction then they would require the Village to go through the statutory process to take the property from them. Accordingly, “taken for a public purpose” has a very particular meaning in this instance.

There is no confusing this issue - “taken” in the context of the term “taken for a public purpose” cannot mean that property was acquired by a municipality with the consent of a landowner without the implementation of the statutory process of eminent domain or some forcible or involuntary action on behalf of the municipality. Taking property by force, physically seizing the property and depriving the owner of their property rights is vastly different from obtaining or acquiring the property at arms-length-with a willing
and consenting owner. In no way can the two concepts be confused.

Even if Cold Spring demanded that the property owner sell their property to them or they would initiate eminent domain proceedings, the property would not have been considered to be "taken". It is only "taken" if the municipality acquired the property through the use of the statutory procedures or in a manner in which the property owner had no say in the deprivation of the property right.

Up until 1954, courts held that the term "public use" included cases in which the public actually "used" the property such as a public park. But in 1954, for the first time, the Supreme Court decided a case in which the property was not literally used by the public but the use of the property served a public purpose, such as redevelopment of a blighted area. In Berman v. Parker, decided on November 22, 1954, the Court expanded the definition of "public use" to include "public purpose". Importantly, this seminal case was decided just as the Town was in the process of drafting the original 1957 zoning ordinance as the Town's first zoning commission was established in September of 1953 (one year prior to the decision) and drafted and debated the document until it was adopted in April of 1957. The importance of the timing of this decision cannot be overstated. It is clear that the language of the 1957 ordinance purposely tracked the language of this Supreme Court case dealing with eminent domain ("taken for a public purpose").

The only case that could be located under very similar circumstances of what is being addressed here is Appeal of Caryl T. Adams and Sallie K. Adams (State of Vermont Environmental Court, Docket No. 142-6-02 Vtec, December 31, 2002). In that case, Section 709 of the Town of West Haven, Vermont very closely tracked
the language of the Town's 1957 Zoning Code, as follows:

"Reduction of Lot Area. No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of these Regulations shall be smaller than prescribed for the district in which the lot is located. The provisions of this section shall not apply when part of a lot is taken for a public purpose."

In that case, the property was voluntarily sold to the Town of West Haven and the property owner had sought the right to build on the property. The Environmental Court held as follows:

"Section 709 prohibits the reduction of the area of a complying lot if that reduction would result in a lot that is non-complying as to any of the dimensional requirements. That section contains an exception if the reduction in lot area is due to part of the original lot's having been taken for a public purpose, that is, if the reduction in lot size was beyond the control of the original lot owner. Section 709 does not apply, for two reasons. First, it does not apply because the conveyance of the undersized lot was voluntary on the part of the original lot owner. Second, even if the exemption applied "when part of a lot is taken 'or otherwise acquired' for a public purpose", the exemption applies to the reduction in size of the original lot after the portion is taken or acquired, and not to whether the portion taken or acquired is itself is undersized, as in the present case." (emphasis added)
This is exactly the argument we are making here. The exemption in Section 10(B) of the 1957 Code does not apply in this instance as the conveyance of the lot was voluntary on the part of the original lot owner and as such there was no taking by Cold Spring.

On the American Bar Association website there is a discussion of “takings” titled, “A Primer in Eminent Domain and Takings Law under the U.S. Constitution” ([https://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/primer_eminent_domain_takings_law_under_us_constitution.html](https://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/primer_eminent_domain_takings_law_under_us_constitution.html)). It very succinctly describes the two types of “takings” that can occur by a government - direct condemnation and inverse condemnation - as follows:

“There are two types of governmental appropriations of property—commonly called “takings.” The first type involves the exercise of eminent domain powers and is known as direct condemnation. The government admits that it wishes to take or has taken private property from an individual. It then brings the individual into court to obtain the property in exchange for just compensation. A civil jury determines the value of just compensation. The second type of taking, known as inverse condemnation, occurs where the government takes property from an individual but denies that it is using its power of eminent domain. In this situation, an individual who wants to receive compensation must bring a claim against the government. The individual only receives compensation if it succeeds in court.” (emphasis added)
All of the federal or state case law dealing with "takings" or "property being taken for a public purpose" addresses either direct or inverse condemnation as described above. It is clear in those cases when property has been taken for a public purpose.

Importantly, Glen Watson, the applicant's engineer, identifies the significance of the issue and in an April 17th report his firm prepared for this Board, he completely agrees with our analysis. He ultimately concludes that the Village of Cold Spring did not acquire the property pursuant to a taking. In such report, Mr. Watson concluded as follows:

"The deed to the Village does not support the notion that the land was 'taken', but it is clear that the land was acquired by the Village of Cold Spring for a public purpose." (Page 2, Paragraph 5). "While the land acquired by the Village of Cold Spring was clearly intended for a public purpose, the deed does not indicate that it was the result of a 'taking'. On its face, the 1966 subdivision was not eligible for the exemption provided in the Zoning Law in effect at the time and should have obtained area variances. (Page 4, Paragraph 1) (emphasis added)

These statements are from the Applicant's own engineer. Although we are aware of an affidavit from Mr. Watson executed on September 29, 2017 where he appears to have "changed his mind" and now believes that the lot was legally created, we believe that the reasoning set forth in his April 17, 2017 is much more convincing than his effort to reverse course in the affidavit.
In the affidavit, Mr. Watson also indicated that the Village of Cold Spring’s attorney, C. Edward Doyle, Jr. would “never have engaged in a process that created an illegal subdivision, or an illegal, non-buildable lot.” We doubt that this has any bearing on the analysis as it would not impact the property purchased by the Village in any manner. In addition, it is incredible to us why this argument is even being made where Mr. Watson’s own client is claiming to supposedly have overlooked the same exact issue – that because of the location of the municipal boundary line, the newly created lot was ultimately an illegal, substandard nonconforming lot.

In addition, Mr. Watson claims that the property owner, as a Harvard Law School graduate, would have never overlooked this issue as well. Again, it is unclear what bearing this has on the issue other than it appears that he did overlook the issue or he did not recognize the significance of the location of the municipal boundary line. And it had no bearing and did not act as an impediment on the property owner’s ability to sell the property a year later to Charles MacGill, another attorney, who previously purchased a 7.7 acre parcel which was the main part of the Moffat Estate located on the other side of the NYC aqueduct from this property. In any event, the parties back in 1966 appeared to have overlooked the issue without the benefit of computers and the internet and technology that the Applicant (as a developer and architect) clearly had and should have utilized to conduct even a minimal amount of due diligence to identify the issues with the property.

In the April 17, 2017 report, Mr. Watson also noted that he performed research and confirmed that no variances were ever issued for the substandard parcel. It should also be noted that Mr. Watson placed a note on the site plan submitted to this board that
identified that they were requesting a variance from 1966 Zoning (.37 acres) AND the 2011 Zoning (9.45 acres), effectively indicating that the issue was, at best, unresolved in his mind. And, because the applicant is requesting the exemption, the burden of proof regarding the overall analysis is on the applicant to produce some evidence conclusively confirming that a “taking” includes the voluntary conveyance by the property owner to the Village of Cold Spring. Absent such evidence, the property must be determined to be an illegal nonconforming substandard parcel.

In addition, in the October 25, 2017 denial letter of Greg Wunner, Code Enforcement Officer, he agrees with our analysis in that,

“the word ‘taken’ in land use parlance is generally understood to mean a “taking” by eminent domain or, at least, an involuntary exaction, and if this definition is accepted then the property is not a legal nonconforming lot, and an area variance is needed.”

He goes on to say that “the 1957 Code did not expressly state that the ‘taking’ must be by ‘eminent domain’”, and that there could be an ambiguity in the language. As we have stated above, there can be no ambiguity here.

Some historical background is informative: The Village of Cold Spring purchased the Cold Spring Lumber Company parcel across the street from the gazebo in October 1967 - only a year after the purchase of this parcel. No one is claiming that they “took” the parcel. They purchased it at arms-length and it was voluntarily sold by the owner. The Village used their standard powers to purchase the property pursuant to Village Law Section 1-102(1), just as they used it to purchase the subject property. There is no magic to
this; municipalities may acquire property just like any person or corporation and this is how they acquired the .55 acre parcel as well as the Lumber Company parcel.

It should also be noted that Article II - Definitions, Section 2: Definitions of the 1957 Code provides that "Except where specifically defined herein all words used in this ordinance shall carry their customary meanings." Not just any meaning and not every meaning - but its customary meaning. And customary here is in connection with real property.

In its September 29, 2017 submission to this Board, the applicant's attorney claims that our argument on this matter

"ignores the fact, as the Court of Appeals has repeatedly held, that "[t]he absence of [a] word [in a law] is meaningful and intentional as we have previously observed that the failure of the legislature to include a term in a statute is a significant indication that its exclusion was intended."

They went on to say that the Court of Appeals has held that "the failure of the Legislature to include a substantive, significant prescription in a statute is a strong indication that its exclusion was intended." Finally, they cite to Section 74 of the N.Y. Statutes which established that "the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intentional."

In fact, this analysis is correct. If the Town had intended the exemption to apply to the voluntary purchase and sale of the property it would have clearly done so. They did not.
We are attaching a list of 18 other municipalities throughout the United States that specifically provided for the “acquisition” of a lot for a public purpose which would cover a “taking” as well as the voluntary purchase and sale of the property. (See Attachment B). It is clear that the Town did not wish for both of those scenarios to be exempted or else they would have included that term as opposed to “taken” which is what they drafted into the ordinance; very likely as a result of the Supreme Court decision of Berman v. Parker described above.

In addition, it should be noted that the Applicant’s attorney highlights the fact that an ambiguity must be read in favor of the property owner. What the Applicant’s attorney failed to indicate is that while “generally a zoning board’s interpretation of a zoning law is afforded great deference and will only be disturbed if it is irrational or unreasonable” (Matter of Mack v. Board of Appeals, Town of Homer, 25 AD3d 977, 980 (2006)), the Courts have held that “no deference is required if the question is merely the pure legal interpretation of an ordinance” (Matter of Salton v. Town of Mayfield Zoning Bd. Of Appeals, 116 AD3d 1113, 1114 (2014)), which would clearly be the case here.

As a result of the way in which Cold Spring acquired the property, it is not subject to the exemption set forth in Section 10(B) and the parcel is an illegal substandard nonconforming parcel - subject to the current zoning regulations. That zoning in the Rural Conservation District requires minimum lot sizes of 10 acres and frontage on a Town Road of 250 feet. The lot size is .55 acres so they would need a 9.45 acre variance (a 94.5% variance).
We are attaching additional materials that discuss and describe the term "taken for a public purpose" and " takings" that confirm and support the above conclusion.

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Attorneys for Plaintiff
800 Westchester Avenue
Suite S-608
Rye Brook, NY 10573
(914) 668-5506

By: DOUGLAS J. MARTINO
Additional "Takings" Materials

On the New York State Attorney General's website, there is a frequently asked questions page (https://ag.ny.gov/real-property/faqs-about-nys-eminent-domain-procedure-law). The first question is as follows:

"Q: What is 'eminent domain'?
A: It is another word for condemnation - the right of the government to take private property for a public purpose. Various examples would be to make way for a road or public park, or to provide housing for disadvantaged persons. The United States and New York Constitutions require the government to pay you fair compensation if it takes your property."

This language, tracks Section 10(B) of the 1957 Zoning Ordinance almost verbatim. The rest of the website page goes on to describe the process that would be required to effectuate a "taking" of property pursuant to the eminent domain laws.

In addition, Ballentine's Law Dictionary defines "taking for public use" as follows:

1. Entering upon private property for more than a momentary period and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment
thereof. 26 Am J2d Em D § 157. An actual interference with, or disturbance of, property rights, as distinguished from injuries and interferences which are merely consequential, incidental, trivial, insignificant.

2. **Within the meaning of a constitutional provision that private property shall not be taken for public use without just compensation, the term includes any action, the effect of which is to deprive the owner of all or most of his interest in the subject matter, such as destroying or damaging it.**

3. Diminution in value of a business made less prosperous as a result of regulation does not constitute a "taking" of property within the due process clause of the constitution. California State Auto." (emphasis added)

Furthermore, on the FindLaw.com website (http://realestate.findlaw.com/land-use-laws/how-the-government-takes-property.html), a discussion of how governments take property provides as follows:

"As cities and towns expand and undertake improvements to roadways, sewer and power lines, communications, and other systems, the government must often secure or acquire access to private land. Without the government's power to do so, the size and capabilities of our public infrastructure would become inadequate to serve the needs of society. **The right of the government to obtain private land for public purposes is known as eminent domain**, and this right derives from federal and state constitutions and related laws."
The power of eminent domain allows the government to take private land for public purposes only if the government provides fair compensation to the property owner. The process through which the government acquires private property for public benefit is known as condemnation." (emphasis added)

Even the legal definition of "taking" in the Merriam Webster dictionary (https://www.merriam-webster.com/legal/taking) provides as follows:

"1 : a seizure of private property or a substantial deprivation of the right to its free use or enjoyment that is caused by government action and especially by the exercise of eminent domain and for which just compensation to the owner must be given according to the Fifth Amendment to the U.S. Constitution — see also inverse condemnation, physical taking, regulatory taking, takings clause

2 : the wrongful acquisition of control over property (as in larceny) or a person".  
(emphasis added)

Attachment B

Municipalities with Alternative Reduction in Lot Area Provisions

1. Gainesville, GA - Section 9-3-2-11 - Acquisition for a Public Purpose
   "When a portion of a lot is acquired for a public purpose . . . ."
2. Lowell, MA - Section 5.1.9 - Reduction of Lot
   “This provision shall not apply when a portion of a
   lot is acquired for public purposes.”

3. Cookeville, TN - Section 204.4 - Reduction of Lot
   Area Prohibited
   “This section shall not apply when a portion of a
   lot is acquired for a public purpose.”

4. Morehead, KY - Section 154.127 - Reduction of lot
   area prohibited
   “This section shall not apply when a portion of the
   lot is acquired for public purposes.”

5. Canterville, UT - Section 12-55-130(2) - Lots, Parcels and Yards
   “If a portion of a lot or parcel which meets
   minimum lot or parcel area requirements is acquired
   for public use in any manner, including dedication,
   condemnation or purchase, and such acquisition
   reduces the minimum area required . . .”

6. Elizabethton, TN - Section 14.205(5) - Reduction of Lot Size
   “This section shall not apply when a portion of a
   lot is acquired for a public purpose.”

7. Youngstown, OH - Section 24 - Reduction of Lot Size
   “This section shall not apply when a portion of a
   lot is acquired for a public purpose.”

8. Fanning Springs, FL - Section 4.1.5.4 - Reduction of Lot Area Prohibited
   “ . . . except by reason of a portion being
   acquired for public use in any manner including
   dedication, condemnation, purchase and the like.”
9. Fayette County, GA - Section 5-6 - Reduction of Lot Area
   "... This restriction shall not apply when a portion of a lot is acquired for a public purpose."

10. Indiatlantic, FL - Section 17-83 - Reduction of lot area
    "This section shall not apply where a portion of a lot is acquired for public purposes."

11. Sandy Springs, GA - Section 4.2.3 - Reduction of lot area
    "... except that if a lot or property is reduced in area to less than the minimum lot size as a result of government action, the lot shall be deemed nonconforming."

12. Macon County, GA - Section 16 - Reduction of yard or lot area
    "... unless said reduction or division is necessary to provide land that is needed and accepted for public use".

13. Oconee County, GA - Section 106.07 - Reduction in lot size
    "This limitation shall not apply when a portion of a lot is acquired for a public purpose."

14. Chatham County, GA - Section 3-4 - Reduction or Change in Lot Size
    "... unless said tract of land is needed and accepted for public use."

15. Savannah, GA - Section 8-3009 - Reduction or Change in Lot Size
“B. Such land parcel is needed and accepted for public use.”

16. Caldonia, NY - Section 130-91 - Reduction in lot area prohibited
   “This subsection shall not apply when a portion of a lot is required for a public purpose.”

17. Washougal, WA - Section 18.50.040 - Reduction in lot size prohibited
   “. . . unless such reduction or division is necessary to provide land which is acquired for a public purpose unless otherwise specifically authorized.”

18. Grand County, UT - Section 5.6.2(A) - Lot Area Reduction for Public Purpose
   “When an existing lot is reduced as a result of conveyance to a federal, state or local government for a public purpose . . .”
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<th>Acres</th>
<th>Sq Ft</th>
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<td>* properties listed herein are in the Town of Philipstown and Village of Nelsonville – as marked</td>
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<td>** houses built prior to zoning laws</td>
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* properties listed herein are in the Town of Philipstown and Village of Nelsonville – as marked
** houses built prior to zoning laws

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<th>Address</th>
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<th>Bathrooms</th>
<th>Year</th>
<th>Zoning</th>
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<td>3.73 ac</td>
<td>162,479</td>
<td>26.35</td>
<td>2,332</td>
<td>Contemporary</td>
<td>2</td>
<td>3/3</td>
<td>1987</td>
</tr>
<tr>
<td>Essex Green</td>
<td>.55 ac</td>
<td>23,958</td>
<td>0 Landlocked</td>
<td>3,300</td>
<td>Modern Barn</td>
<td>2</td>
<td>3/3</td>
<td>-</td>
</tr>
</tbody>
</table>

* properties listed herein are in the Town of Philipstown and Village of Nelsonville – as marked

** houses built prior to zoning laws
For areas with Hydrologic Soil Group A: 1.2 acres per system
For areas with Hydrologic Soil Group B: 1.6 acres per system
For areas with Hydrologic Soil Group C: 3.0 acres per system
For areas with Hydrologic Soil Group D: 5.4 acres per system

Figure 7 shows areas in Philipstown where existing parcels underlain by each of the four Hydrologic Soil Groups are below the parcel sizes referenced above. Where single parcels or small groups of parcels are identified, it is unlikely that well water quality is suffering since adjoining larger parcels are likely to be providing compensatory aquifer recharge to preserve groundwater quality. However, within larger clusters of under-sized parcels, some decrease in groundwater quality may be expected and some water quality samples may identify nitrate concentrations nearing or even exceeding 10 mg/l.

Additional sources of nitrate entering aquifers do exist but are not included in this density model. This because, if properly applied, lawn fertilizers are fully utilized by site vegetation and need not contribute to elevated regional groundwater nitrate concentrations. Moreover, lawn fertilizer is not used at all homes, and is applied at ground surface rather than being released below ground level as are septic system discharges. Accordingly, nitrate from lawn fertilization can be readily addressed or mitigated by modified practices and community best management practice education and so need not be included in the calculations above.

Density recommendations based on nitrate dilution rely on various fundamental hydrogeologic and operational assumptions. These are listed in detail in Chazen (2006a). Most are judged to fully apply to Philipstown and are reprinted here:

- Wastewater releases and on-site groundwater recharge occur in the same aquifer and at least seasonally there is a high likelihood of complete and uniform mixing of the two aspects. During wet periods, some components of wastewater and groundwater may leave sites as interflow, but during dry seasons, both components will fully mix in the common aquifer on or near the site. The model selected here may generally be considered to predict the average nitrate concentration in the aquifer at the downgradient property line.

- The only water available to dilute wastewater is on-site recharge. The assumption ignores mixing of the plume with upgradient groundwater since the calculation is intended for sub-regional applications (e.g. build-out, subdivision, or zoning district scale applications) where density cannot rely on other areas to provide necessary dilution water streams.
General location of year-round water supply district

NOTE: Colored parcels shown on this figure, which rely on individual wells and septic systems, may be experiencing water quality defects, on the basis of septic system wastewater loading analysis discussed in the attached report. Wells in isolated clusters of colored parcels are only slightly likely to have defects since surrounding lands provide compensatory recharge and wastewater dilution opportunities.

This analysis does not apply to the parcels within Cold Spring, Nelsonville and portions of Continental Village receiving year-round public water which do not rely on groundwater wells for their water supply.

LEGEND

- Parcels less than 1.2 acres with Group A or A/D soils,
- Parcels less than 1.6 acres with Group B soils,
- Parcels less than 3.0 acres with Group C or D/D soils
- and Parcels less than 5.4 acres with Group D soils

Parcels less than 1.2 acres with Group A or A/D soils,
Parcels less than 1.6 acres with Group B soils,
Parcels less than 3.0 acres with Group C or D/D soils
and Parcels less than 5.4 acres with Group D soils

FIGURE 7 - HYDROLOGIC SOIL GROUPS WITH RECOMMENDED MINIMUM AVERAGE SEPTIC SYSTEM SIZES
Town of Philipstown, Villages of Cold Spring and Nelsonville
Putnam County, New York

Sources: TCC GIS Database for Putnam County, USDA Soil Survey
1.2 Developed Areas

The population in Philipstown is widely distributed, but population and commercial concentrations exist along the NYS Route 9 corridor, and in population centers in Garrison, the villages of Nelsonville and Cold Spring, and in the Continental Village community near Cortlandt Lake.

1.3 Water Quality Issues

The Town of Philipstown does not lie within the New York City Watershed and is not regulated by the City of New York. The restrictions imposed by the 1997 Watershed Rules and Regulations do not apply, unlike the remaining majority of Putnam County. The only area within the town that has a traditional wastewater collection and treatment system of any significance lies within the Village of Cold Spring.

Some of the more densely settled areas within the Town of Philipstown and the Village of Nelsonville reportedly experience difficulty with closely-spaced septic systems. In addition to instances of surface-water septage seeps, groundwater sampling would likely show elevated concentrations of wastewater constituents in such areas. Figure 7 in the main body of this report identifies areas where existing parcel sizes are smaller than recommended to ensure adequate dilution of septic system wastes. Options for the proper treatment and disposal of wastewater is a subject of concern both for existing areas with reported or suspected wastewater management difficulties, and for future proposed development areas recommended in the Town's Comprehensive Plan. The use of traditional septic systems too close together represents a potentially-significant source of non-point aquifer contamination. Contaminants from septic systems include compounds with existing regulatory standards such as nitrate or e-coli, which are primary sources of concern at this time, and more recently recognized constituents such as caffeine, pharmaceuticals, and hormone residues, for which no standards yet exist.

The coincident use of septic systems and groundwater wells requires an evolving management strategy to ensure continued sustainable use of both, or requires infrastructure modifications, either by introducing enhanced treatment capabilities to the existing septic systems or by investing in either decentralized or traditional gravity/central treatment wastewater systems.
Stop Work Order Results In Tree Restoration

Dear Editor,

By PCNR Staff | on December 04, 2002

Susan Green is an architect/developer who has built/is building a number of spec houses in Philipstown. A few years ago she bought land on Jaycox Road and built one house. She then split the property in order to build another house. The Planning Board gave her permission to do so, but because of the outcry from the surrounding neighbors over the way she had cleared the land for the first house, specified that (among other restrictions) she could not cut down "any trees greater than 6 inches in diameter as measured at a point 4.5 feet above the ground". Ms. Green then cut down nearly 60 of them (she disputes the actual number), many on a steep slope measuring nearly 40 degrees.

Building Inspector Tom Monroe promptly issued both a violation ticket and a Stop Work order on the house. Ms Green went to trial on October 28, 2002, and here is the verdict:

Ms. Green is guilty of violating our Steep Slopes law (175-11). She must pay a fine of $500 and restore the slope. She must replant (18) 8-10 foot evergreens and (10) 1 1/2" caliper hardwoods, as well as (35) native shrubs and (2) lbs of seed mix, at the minimum cost of $7500 without labor. The trees have to be mulched, watered and cared for for 3 years, with Wetlands Inspector Steve Coleman overseeing the process.

She will give the town a performation bond of $7000, 40% of which will be held by the town for 3 years. If any plantings die within the 3 years she must replace them. If she sells the house, the 3-year plant maintenance agreement will be written into the buyer's contract, and they will have to assume responsibility. There will be a yearly inspection. The Stop Work order will be lifted upon proof of payment of the $7000 and proof that she has started the restoration, which must be finished by Thanksgiving. She will not be given a Certificate of Occupancy unless the planting is complete.
It is estimated that the cost of labor will bring her re-planting bill to between $20,000-$30,000, and work was stopped on her house for several months. If you are aware of anyone cutting down trees on a steep slope or violating other local laws, call Tom Monroe at 265-5202. If you are aware of anyone disturbing wetlands or crossing streams without a permit, call Steve Carlson at 914-238-7278.

Suzie Gilbert

Garrison
MEMORANDUM

TO: William Mazzuca – Supervisor
FROM: Roger M. Chirico
DATE: July 13, 2007
RE: Moffett Road Letter of 6/25/07

The following is the information for letter dated 6/25/07 Moffett Road. (Numbers follow letter sequence)

1. Approximately two years ago, I closed Moffett Road due to erosion which made part of the road collapse. This section is elevated and very narrow for approximately 500’. This would be widened to 18’ and guide rail installed. The western section has very limited sight distance and is one lane. To do one section without the other would create a dangerous road hazard. The project on Moffatt Road is necessary to provide a safe travel way for vehicles and pedestrians. This road is narrow and unstable making it unsafe for traffic. Especially School buses and emergency equipment. It is my responsibility to secure safe travel on our highways. I approached the homeowners whose property was involved. They agreed that because of the site distance and width of road this project should be done. The width is a problem especially when it snows bringing this road from 12’ to 14’ down to 10’ because of nowhere to push the snow back. Taking into consideration all of the facts I feel as Highway Superintendent this project should go forth for safe travel and pedestrians walking on Moffatt Road.

2. There have been no traffic reports of major accidents at this time. But there is visual evidence, headlights and other automobile parts that have been cleared from the road by the highway dept. on occasion.

3. The engineer study was done by Badey & Watson September 2006. copy of voucher & bill attached.

4. We have a survey and design for moffatt rd reconstruction map.

5. We requested $160,000.00 for this project.

6. You will supply.
Badey & Watson
Surveying & Engineering, P.C.
3065 Route 9, Cold Spring, New York 10516
Phone (914) 265-9217 Fax (914) 265-4428
A Professional Corporation Tax ID No.: 13-3384340

Billed To:
Town of Philipstown
50 Fishkill Road
Cold Spring, NY 10516

Work Requested By:
Roger M. Chirico, Super.
Town of Philipstown
50 Fishkill Road
Cold Spring, NY 10516

For Professional Services Rendered:

Description of Services Completed:

Surveying, Mapping and design necessary to reconstruct a portion of Moffatt Road from Healy Road toward Plumbush.

Note: See attached sheet(s) detailing billable hours and charges

Fee: $8,157.50
Expenses: $4,020.00
Retainer: $0.00

Please Pay this Amount: $12,177.50

Payment is due upon receipt of this invoice. Please return yellow copy.
TOWN OF PHILIPSTOWN
338 MAIN ST P.O. Box 159 Cold Spring, N.Y. 10516

VOUCHER
(Return Voucher to Town Clerk)

Department: HIGHWAY

CLAIMANTS
NAME: BADEY & WATSON
SURVEYING & ENGINEERING, P.C.
3063 ROUTE 9
COLD SPRING, N.Y. 10516

FUND - APPROPRIATION
AMOUNT

DBO-0X-5112-200 - $1,775.00

TOTAL: $1,775.00

WARRANT NO.

DO NOT WRITE IN THIS BOX

Date Voucher Received: 9-26-06

TERMS: net 30

VENDORS REF. NO: 355

<table>
<thead>
<tr>
<th>Dates</th>
<th>Quantity</th>
<th>Description of Materials or Services</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>9/26/06</td>
<td>1</td>
<td>Survey &amp; Design for Moffett Road reconstruction. See attached Invoice 29414</td>
<td>$12,177.50</td>
<td>$12,177</td>
</tr>
</tbody>
</table>

Claimants Certification

Rebecca W. Linda
(signature)

Date: 9/26/06

Approvals

- Departmental Approval: 10
- Approval for Payment: 

This claim is approved and ordered paid from appropriation indicated above.

Signature

Date: 9/26/06

TOTAL: $12,177
NOTICE IS HEREBY GIVEN that a public hearing will be held by the Zoning Board of Appeals of the Town of Philipstown on Monday, February 12, 2018 at 7:30 P. M. at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York to hear the following appeal:

David & Ann Provan, 200 Jaycox Road, Cold Spring, New York. Tax Map # 27.19-1-28. The applicants seek to obtain a variance for a sideyard setback for a proposed addition of 1,099 square feet to the existing residence and a deck of 339 square feet. A 30 foot sideyard setback is required under section 175-11 of the Town Code and the proposed setback is 11 feet. The property is located in the SR (Suburban Residential) Zoning District in the Town of Philipstown.

At said hearing all persons will have the right to be heard. Copies of the application, plat map and other related materials may be reviewed in the office of the Building Department at Philipstown Town Hall.

Dated 1/25/2018
Robert Dee, Chairman of the Town of Philipstown Zoning Board of Appeals
January 29, 2018

Honorable Chairman Robert Dee
and Members of the Zoning Board of Appeals
Town of Philipstown
238 Main Street
Cold Spring, NY 10516

Re: WHUD Tower Replacement
22 Sky Lane
Garrison, NY 10524

Dear Hon. Chairman Dee and
Members of the Zoning Board of Appeals:

We are the attorneys for Pamal Broadcasting (" Applicant") in connection with the above referenced matter.

In response to the comments of the Town Engineer, dated December 1, 2017, enclosed please find nine (9) copies of the following documents and a disk with copies of all documents:

1) Full EAF, Visual EAF and photographs of the existing conditions;
2) Collocation commitment agreement pursuant to Section 175-46.E and agreement on removal and repair pursuant to Section 175-46.P;
3) Proof of Insurance; and
4) Revised Site Plan.

Please confirm whether the Town will make the necessary referral to the County Planning Department. The applicant understands the inter-municipal notifications that it is required to send prior to the hearing pursuant to Section 175-46.Q.

It is our understanding that the original tower was approved as a public utility and not a communications tower, and thus the Section 175-46 requirements do not apply to the tower, but rather the plan is subject to approval of the Zoning Board, and the relocation of the Sprint communications collocation is subject to Section 175-46. Please confirm whether a height (175-
Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either “Yes” or “No”. If the answer to the initial question is “Yes”, complete the sub-questions that follow. If the answer to the initial question is “No”, proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

### A. Project and Sponsor Information.

<table>
<thead>
<tr>
<th>Name of Action or Project:</th>
<th>Telephone: 602-316-9935</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pamal Replacement and Installation of a guyed tower at 22 Sky Lane</td>
<td>E-Mail:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project Location (describe, and attach a general location map):</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 Sky Lane, Phillipstown, NY (Town of Phillipstown, Putnam County)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Brief Description of Proposed Action (include purpose or need):</th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposed action is the removal and replacement of an existing Guyed Tower which supports Public Utility services. The replacement does not alter the location of any existing ground based buildings. The replacement is a like-in-kind action upon the property.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Applicant/Sponsor: Pamal Broadcasting Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone: 602-316-9935</td>
</tr>
<tr>
<td>E-Mail:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address: 6 Johnson Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>City/PO: Latham</td>
</tr>
<tr>
<td>State: NY</td>
</tr>
<tr>
<td>Zip Code: 12100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project Contact (if not same as sponsor; give name and title/role): Robert Furlong, EVP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone: 602-316-9935</td>
</tr>
<tr>
<td>E-Mail:</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Address:</th>
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<tbody>
<tr>
<td>City/PO:</td>
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<tr>
<td>State:</td>
</tr>
<tr>
<td>Zip Code:</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Property Owner (if not same as sponsor): James Morell</th>
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<tbody>
<tr>
<td>Telephone:</td>
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<tr>
<td>E-Mail:</td>
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</tbody>
</table>

<table>
<thead>
<tr>
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</tr>
<tr>
<td>State: NY</td>
</tr>
<tr>
<td>Zip Code: 12100</td>
</tr>
</tbody>
</table>
B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

<table>
<thead>
<tr>
<th>Government Entity</th>
<th>If Yes: Identify Agency and Approval(s) Required</th>
<th>Application Date (Actual or projected)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. City Council, Town Board, or Village Board of Trustees</td>
<td>☐ Yes ☑ No</td>
<td>Amendment of Special Permit, Possible Variance</td>
</tr>
<tr>
<td>b. City, Town or Village Planning Board or Commission</td>
<td>☐ Yes ☑ No</td>
<td>Building Permit</td>
</tr>
<tr>
<td>c. City Council, Town or Village Zoning Board of Appeals</td>
<td>☑ Yes ☐ No</td>
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<tr>
<td>d. Other local agencies</td>
<td>☑ Yes ☐ No</td>
<td></td>
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<tr>
<td>e. County agencies</td>
<td>☐ Yes ☑ No</td>
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<tr>
<td>f. Regional agencies</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
<tr>
<td>g. State agencies</td>
<td>☐ Yes ☑ No</td>
<td></td>
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<tr>
<td>h. Federal agencies</td>
<td>☐ Yes ☑ No</td>
<td></td>
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<tr>
<td>i. Coastal Resources.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?</td>
<td>☐ Yes ☑ No</td>
<td></td>
</tr>
<tr>
<td>iii. Is the project site within a Coastal Erosion Hazard Area?</td>
<td>☐ Yes ☑ No</td>
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</tbody>
</table>

C. Planning and Zoning

C.1. Planning and zoning actions.  
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?  
☐ Yes ☑ No  
• If Yes, complete sections C, F and G.  
• If No, proceed to question C.2 and complete all remaining sections and questions in Part I

C.2. Adopted land use plans.  

a. Do any municipally-adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?  
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?  
☐ Yes ☑ No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)  
If Yes, identify the plan(s):  

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C. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?  
If Yes, identify the plan(s):  

<p>| | |</p>
<table>
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</table>

Page 2 of 13
C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. 

[Yes] [No]

If Yes, what is the zoning classification(s) including any applicable overlay district?

R-80

b. Is the use permitted or allowed by a special or conditional use permit?

[Yes] [No]

c. Is a zoning change requested as part of the proposed action?

[No]

i. What is the proposed new zoning for the site?

C.4. Existing community services.

a. In what school district is the project site located?

Lakeland School District

b. What police or other public protection forces serve the project site?

NY State Police and Putnam County Sheriff's Department

c. Which fire protection and emergency medical services serve the project site?

Garrison Fire District

d. What parks serve the project site?

Hudson Highland Gateway Park, Leonard Wagner Memorial Park.

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)?

Public Utility

b. Total acreage of the site of the proposed action?

12.06 acres

c. Total acreage to be physically disturbed?

0.005 acres

d. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?

12.06 acres

c. Is the proposed action an expansion of an existing project or use?

[No]

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % Units:

--

d. Is the proposed action a subdivision, or does it include a subdivision?

[No]

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed?

[No]

iii. Number of lots proposed?

iv. Minimum and maximum proposed lot sizes? Minimum ______ Maximum ______

c. Will proposed action be constructed in multiple phases?

[No]

i. If No, anticipated period of construction:

2 months

ii. If Yes:

• Total number of phases anticipated

• Anticipated commencement date of phase 1 (including demolition) _____ month _____ year

• Anticipated completion date of final phase _____ month _____ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

--
f. Does the project include new residential uses?  
   If Yes, show numbers of units proposed.
   
<table>
<thead>
<tr>
<th>One Family</th>
<th>Two Family</th>
<th>Three Family</th>
<th>Multiple Family (four or more)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Phase</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>At completion of all phases</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
   
   g. Does the proposed action include new non-residential construction (including expansions)?
   If Yes,
   i. Total number of structures
   ii. Dimensions (in feet) of largest proposed structure: height; width; and length
   iii. Approximate extent of building space to be heated or cooled: square feet
   
   h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?
   If Yes,
   i. Purpose of the impoundment:
   ii. If a water impoundment, the principal source of the water: Ground water Surface water streams Other specify:
   iii. If other than water, identify the type of impounded/contained liquids and their source.
   iv. Approximate size of the proposed impoundment. Volume: million gallons; surface area: acres
   v. Dimensions of the proposed dam or impounding structure: height; length
   vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both?  
   (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
   If Yes:
   i. What is the purpose of the excavation or dredging?
   ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
      - Volume (specify tons or cubic yards):
      - Over what duration of time?
   iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.
   iv. Will there be onsite dewatering or processing of excavated materials?
      If yes, describe.
   v. What is the total area to be dredged or excavated? acres
   vi. What is the maximum area to be worked at any one time? acres
   vii. What would be the maximum depth of excavation or dredging? feet
   viii. Will the excavation require blasting?
      If Yes, describe.
   ix. Summarize site reclamation goals and plan:

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?
   If Yes:
   i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description):
ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavation</td>
<td></td>
</tr>
<tr>
<td>Fill</td>
<td></td>
</tr>
<tr>
<td>Placement of structures</td>
<td></td>
</tr>
<tr>
<td>Alteration of channels</td>
<td></td>
</tr>
<tr>
<td>Banks and shorelines</td>
<td></td>
</tr>
</tbody>
</table>

iii. Will proposed action cause or result in disturbance to bottom sediments?  □ Yes □ No
If Yes, describe:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation?  □ Yes □ No
If Yes:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acres of aquatic vegetation proposed to be removed:</td>
</tr>
<tr>
<td>Expected acreage of aquatic vegetation remaining after project completion:</td>
</tr>
<tr>
<td>Purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):</td>
</tr>
<tr>
<td>Proposed method of plant removal:</td>
</tr>
<tr>
<td>If chemical/herbicide treatment will be used, specify product(s):</td>
</tr>
</tbody>
</table>

v. Describe any proposed reclamation/mitigation following disturbance:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

c. Will the proposed action use, or create a new demand for water?  □ Yes □ No
If Yes:

i. Total anticipated water usage/demand per day:  gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  □ Yes □ No
If Yes:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of district or service area:</td>
</tr>
<tr>
<td>Does the existing public water supply have capacity to serve the proposal?  □ Yes □ No</td>
</tr>
<tr>
<td>Is the project site in the existing district?  □ Yes □ No</td>
</tr>
<tr>
<td>Is expansion of the district needed?  □ Yes □ No</td>
</tr>
<tr>
<td>Do existing lines serve the project site?  □ Yes □ No</td>
</tr>
</tbody>
</table>

iii. Will line extension within an existing district be necessary to supply the project?  □ Yes □ No
If Yes:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe extensions or capacity expansions proposed to serve this project:</td>
</tr>
<tr>
<td>Source(s) of supply for the district:</td>
</tr>
</tbody>
</table>

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  □ Yes □ No
If Yes:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant/sponsor for new district:</td>
</tr>
<tr>
<td>Date application submitted or anticipated:</td>
</tr>
<tr>
<td>Proposed source(s) of supply for new district:</td>
</tr>
</tbody>
</table>

v. If a public water supply will not be used, describe plans to provide water supply for the project:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

vi. If water supply will be from wells (public or private), maximum pumping capacity:  gallons/minute.

d. Will the proposed action generate liquid wastes?  □ Yes □ No
If Yes:

i. Total anticipated liquid waste generation per day:  gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

iii. Will the proposed action use any existing public wastewater treatment facilities?  □ Yes □ No
If Yes:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of wastewater treatment plant to be used:</td>
</tr>
<tr>
<td>Name of district:</td>
</tr>
<tr>
<td>Does the existing wastewater treatment plant have capacity to serve the project?  □ Yes □ No</td>
</tr>
<tr>
<td>Is the project site in the existing district?  □ Yes □ No</td>
</tr>
<tr>
<td>Is expansion of the district needed?  □ Yes □ No</td>
</tr>
</tbody>
</table>
iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? □ Yes □ No

If Yes:
• Applicant/sponsor for new district: ________________________________
• Date application submitted or anticipated: __________________________
• What is the receiving water for the wastewater discharge? ________________________________

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):
__________________________________________________________________________________________

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: ________________________________

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? □ Yes □ No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

____ Square feet or ____ acres (impervious surface)
____ Square feet or ____ acres (parcel size)

ii. Describe types of new point sources:
__________________________________________________________________________________________

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?
__________________________________________________________________________________________

• If to surface waters, identify receiving water bodies or wetlands:
__________________________________________________________________________________________

• Will stormwater runoff flow to adjacent properties? □ Yes □ No

iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? □ Yes □ No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? □ Yes □ No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

Delivery trucks for equipment, Crane ________________________________

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

Crane for installation ________________________________

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)
__________________________________________________________________________________________

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? □ Yes □ No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) □ Yes □ No

ii. In addition to emissions as calculated in the application, the project will generate:

• ______ Tons/year (short tons) of Carbon Dioxide (CO2)
• ______ Tons/year (short tons) of Nitrous Oxide (N2O)
• ______ Tons/year (short tons) of Perfluorocarbons (PFCs)
• ______ Tons/year (short tons) of Sulfur Hexafluoride (SF6)
• ______ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)
• ______ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)
h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?  
   □ Yes □ No  
   If Yes:  
   i. Estimate methane generation in tons/year (metric):  
   ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring):

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  
   □ Yes □ No  
   If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  
   □ Yes □ No  
   If Yes:  
   i. When is the peak traffic expected (Check all that apply): □ Morning □ Evening □ Weekend  
   □ Randomly between hours of __________ to __________.  
   ii. For commercial activities only, projected number of semi-trailer truck trips/day: __________  
   iii. Parking spaces: Existing ________ Proposed ________ Net increase/decrease ________  
   iv. Does the proposed action include any shared use parking? □ Yes □ No  
   v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? □ Yes □ No  

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? □ Yes □ No  

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? □ Yes □ No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? (Replacement Structure. Services exist on site.)  
   □ Yes □ No  
   If Yes:  
   i. Estimate annual electricity demand during operation of the proposed action:

   ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

   iii. Will the proposed action require a new, or an upgrade to, an existing substation? □ Yes □ No

l. Hours of operation. Answer all items which apply.  
   i. During Construction:  
      - Monday - Friday: 8:00 AM - 4:00 PM  
      - Saturday: ____________________________  
      - Sunday: ______________________________  
      - Holidays: ______________________________  
   ii. During Operations: 24/7 / 365 days  
      - Monday - Friday: ____________________________  
      - Saturday: ____________________________  
      - Sunday: ____________________________  
      - Holidays: ______________________________
s. Does the proposed action include construction or modification of a solid waste management facility?  □ Yes ☑ No
If Yes:
  i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities):
  ii. Anticipated rate of disposal/processing:
    - ______ Tons/month, if transfer or other non-combustion/thermal treatment, or
    - ______ Tons/hour, if combustion or thermal treatment
  iii. If landfill, anticipated site life: ___________________ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  □ Yes ☑ No
If Yes:
  i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility:
  ii. Generally describe processes or activities involving hazardous wastes or constituents:
  iii. Specify amount to be handled or generated ______ tons/month
  iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents:
  v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  □ Yes ☑ No
If Yes: provide name and location of facility:
If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.
  i. Check all uses that occur on, adjoining and near the project site.
    □ Urban □ Industrial □ Commercial ☑ Residential (suburban) □ Rural (non-farm)
    □ Forest □ Agriculture □ Aquatic ☑ Other (specify): Public Utility
  ii. If mix of uses, generally describe:

<table>
<thead>
<tr>
<th>Land use or Covertype</th>
<th>Current Acreage</th>
<th>Acreage After Project Completion</th>
<th>Change (Acres +/-)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roads, buildings, and other paved or impervious surfaces</td>
<td>12.055</td>
<td>12.055</td>
<td>0</td>
</tr>
<tr>
<td>Forested</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agricultural (includes active orchards, field, greenhouse etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface water features (lakes, ponds, streams, rivers, etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wetlands (freshwater or tidal)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-vegetated (bare rock, earth or fill)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Describe: Public Utility Tower</td>
<td>0.006</td>
<td>0.006</td>
<td>0</td>
</tr>
</tbody>
</table>

Page 9 of 13
c. Is the project site presently used by members of the community for public recreation?  
   □ Yes □ No
   i. If Yes: explain:

   i. If No:

   i. If Yes: explain:

   i. If Yes: explain:

   d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?  
   □ Yes □ No
   i. Identify Facilities:

   i. If Yes:

   i. If Yes:

   i. If Yes:

   e. Does the project site contain an existing dam?  
   □ Yes □ No
   i. Dimensions of the dam and impoundment:
      • Dam height: ____________________________ feet
      • Dam length: ____________________________ feet
      • Surface area: ____________________________ acres
      • Volume impounded: ____________________________ gallons OR acre-feet
   ii. Dam’s existing hazard classification:
   iii. Provide date and summarize results of last inspection:

   i. If Yes:

   i. If Yes:

   i. If Yes:

   f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?  
   □ Yes □ No
   i. Has the facility been formally closed?  
      □ Yes □ No
      • If yes, cite sources/documentation:
   ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:
   iii. Describe any development constraints due to the prior solid waste activities:

   i. If Yes:

   i. If Yes:

   i. If Yes:

   g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?  
   □ Yes □ No
   i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

   i. If Yes:

   i. If Yes:

   i. If Yes:

   h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?  
   □ Yes □ No
   i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database?  
      □ Yes – Spills Incidents database Provide DEC ID number(s):
      □ Yes – Environmental Site Remediation database Provide DEC ID number(s):
      □ Neither database
   ii. If site has been subject of RCRA corrective activities, describe control measures:
   iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  
      □ Yes □ No
      If yes, provide DEC ID number(s):
   iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

Page 10 of 13
m. Identify the predominant wildlife species that occupy or use the project site: None.

n. Does the project site contain a designated significant natural community?  
   □ Yes ☑ No
   If Yes:
   i. Describe the habitat/community (composition, function, and basis for designation):

   ii. Source(s) of description or evaluation:

   iii. Extent of community/habitat:
   - Currently: _______________________ acres
   - Following completion of project as proposed: _______________________ acres
   - Gain or loss (indicate + or -): _______________________ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species?  
   □ Yes ☑ No

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern?  
   □ Yes ☑ No

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing?  
   □ Yes ☑ No
   If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  
   □ Yes ☑ No
   If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present?  
   □ Yes ☑ No
   i. If Yes: acreage(s) on project site:
   ii. Source(s) of soil rating(s):

   c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark?  
   □ Yes ☑ No
   i. Nature of the natural landmark:  □ Biological Community  □ Geological Feature
   ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

   d. Is the project site located in or does it adjoin a state listed Critical Environmental Area?  
   □ Yes ☑ No
   If Yes:
   i. CEA name:
   ii. Basis for designation:
   iii. Designating agency and date:
e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places?  
   ☐ Yes ☑ No  
   If Yes:  
   i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District  
   ii. Name:  
   iii. Brief description of attributes on which listing is based:  

f. Does the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?  
   ☑ Yes ☐ No  

f. Have additional archaeological or historic site(s) or resources been identified on the project site?  
   ☐ Yes ☑ No  
   If Yes:  
   i. Describe possible resource(s):  
   ii. Basis for identification:  

h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?  
   ☐ Yes ☑ No  
   If Yes:  
   i. Identify resource: Hudson Highlands State Park, Clarence-Fahnstock memorial State park  
   ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): State Park Preserve-National Register Banerman Island, Clarence-Fahnstock memorial State park  
   iii. Distance between project and resource: 2.7, 3.5 respectively, miles.  

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?  
   ☑ Yes ☐ No  
   If Yes:  
   i. Identify the name of the river and its designation:  
   ii. Is the activity consistent with development restrictions contained in 6 NYCRR Part 666?  
      ☑ Yes ☐ No  

F. Additional Information  
Attach any additional information which may be needed to clarify your project.  

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.  

G. Verification  
I certify that the information provided is true to the best of my knowledge.  

Applicant/Sponsor Name Pamal Broadcasting  
Date January 29, 2018  

Signature ___________________________  
Title DMS Consulting Services, Inc - President  

PRINT FORM  
Page 13 of 13
Property Location Map

Subject Parcel

Pamal Broadcasting LLC

Project Address:
22 Sky Lane
Philipstown, NY 10524

DMS CONSULTING SERVICES, INC.
65 Ramapo Valley Road
Mahwah, NJ 07430
This form may be used to provide additional information relating to Question 11 of Part 2 of the Full EAF.
(To be completed by Lead Agency)

### Visibility

1. Would the project be visible from:

<table>
<thead>
<tr>
<th>Resource Description</th>
<th>Distance Between Project and Resources (In Miles)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A parcel of land which is dedicated to and available to the public for the use, enjoyment and appreciation of natural or man-made scenic qualities?</td>
<td>0-¼ ¼-½ ¾-3 3-5 5+</td>
</tr>
<tr>
<td>An overlook or parcel of land dedicated to public observation, enjoyment and appreciation of nature or man-made scenic qualities?</td>
<td>Yes</td>
</tr>
<tr>
<td>A site or structure listed on the National or State Registers of Historic Places?</td>
<td>No</td>
</tr>
<tr>
<td>State Parks?</td>
<td>Yes</td>
</tr>
<tr>
<td>The State Forest Preserve?</td>
<td>No</td>
</tr>
<tr>
<td>National Wildlife Refuges and State Game Refuges?</td>
<td>No</td>
</tr>
<tr>
<td>National Natural Landmarks and other outstanding natural features?</td>
<td>No</td>
</tr>
<tr>
<td>National Park Service lands?</td>
<td>No</td>
</tr>
<tr>
<td>Rivers designated as National or State Wild, Scenic or Recreational?</td>
<td>No</td>
</tr>
<tr>
<td>Any transportation corridor of high exposure, such as part of the Interstate System, or Amtrak?</td>
<td>No</td>
</tr>
<tr>
<td>A governmentally established or designated interstate or inter-county foot trail, or one formally proposed for establishment or designation?</td>
<td>No</td>
</tr>
<tr>
<td>A site, area, lake reservoir or highway designated as scenic?</td>
<td>No</td>
</tr>
<tr>
<td>Municipal park, or designated open space?</td>
<td>No</td>
</tr>
<tr>
<td>County road? CR 21</td>
<td>Yes</td>
</tr>
<tr>
<td>State road?</td>
<td>No</td>
</tr>
<tr>
<td>Local road? Ridge Road, Nova Street, Elinor Pl</td>
<td>Yes</td>
</tr>
</tbody>
</table>

2. Is the visibility of the project seasonal? (i.e., screened by summer foliage, but visible during other seasons)

- Yes [x] No

3. Are any of the resources checked in question 1 used by the public during the time of year during which the project will be visible?

- Yes [x] No
**DESCRIPTION OF EXISTING VISUAL ENVIRONMENT**

4. From each item checked in question 1, check those which generally describe the surrounding environment.

<table>
<thead>
<tr>
<th>Environment</th>
<th>*¼ mile</th>
<th>*1 mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Essentially undeveloped</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Forested</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Agricultural</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Suburban Residential</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Industrial</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Commercial</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Urban</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>River, Lake, Pond</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Cliffs, Overlooks</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Designated Open Space</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Flat</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Hilly</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Mountainous</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Other</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

**NOTE:** add attachments as needed

5. Are there visually similar projects within:

<table>
<thead>
<tr>
<th>Distance</th>
<th>Within ¼ mile</th>
<th>Yes □ No</th>
<th>1 mile □ Yes □ No</th>
<th>2 miles □ Yes □ No</th>
<th>3 miles □ Yes □ No</th>
</tr>
</thead>
<tbody>
<tr>
<td>*</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

*Distance from project site is provided for assistance. Substitute other distances as appropriate.

(Existing Structure to be Replaced)

**EXPOSURE**

6. The annual number of viewers likely to observe the proposed project is **REF: NYSDOT Traffic Data Viewer– CR21 – segment Int Peekskill Hollow RD to Int Cimmarron RD, AADT4826 year of count 2015.**

**NOTE:** When user data is unavailable or unknown, use best estimate. **Nearest traffic count listed.**

**CONTEXT**

7. The situation or activity in which the viewers are engaged while viewing the proposed action is:

**FREQUENCY**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Daily</th>
<th>Weekly</th>
<th>Holidays/ Weekends</th>
<th>Seasonally</th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel to and from work</td>
<td>★</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Involved in recreational activities</td>
<td>★</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Routine travel by residents</td>
<td>★</td>
<td>○</td>
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</tbody>
</table>
Photos of Existing Conditions
Photos of Existing Conditions
AGREEMENT

THIS AGREEMENT, dated as of this 6th day of December, 2017, made by PAMAL BROADCASTING, with its principal office at 715 Route 52, Beacon, NY 12508 (hereinafter referred to as “Applicant”) and The TOWN OF PHILIPSTOWN, a municipal corporation, with its principal office at 238 Main Street, Cold Spring, NY 10516 (hereinafter referred to as “Town”).

WITNESSETH

WHEREAS, Section 175-46.P of the Town Code requires that: (1) the applicant shall provide the reviewing board an agreement committing the property owner, communications tower owner, lessee, and their successors in interest to keep the tower and accessory structures in good order and repair and in compliance with any approval, and to notify the Zoning Administrative Officer within 60 days of the discontinuance of use of the tower for its original or any other purpose. This agreement shall be filed with the Zoning Administrative Officer prior to the issuance of a building permit under this chapter. At anytime after 120 days of receiving this notice, the Zoning Administrative Officer may require removal of the obsolete, unnecessary, or unused communications towers and associated accessory structures or such towers or structures no longer needed for their original purpose by sending a notice to the property owner, tower owner, and any lessee to remove the same. The property owner, tower owner, and any lessee shall remove such towers and/or accessory structures within 45 days of receipt of the notice from the Zoning Administrative Officer and (2) Failure to notify and/or to remove the obsolete, unnecessary, or unused tower in accordance with these regulations shall be a violation of this chapter and shall be enforceable according to § 175-57, including all of the remedies set forth therein.

WHEREAS, pursuant to 175-46E, of the Town Code, future shared use, applicants shall design proposed new communications towers to accommodate future demand for reception and transmitting facilities. The site shall be designed for the maximum foreseeable possible number of users, with sufficient ground area set aside for accessory structures, landscaping, and screening of the site at full build-out. Applications for new communications towers shall include an agreement committing the owner of the proposed new communications tower, and its successors in interest, to negotiate in good faith for shared use of said tower by other providers of communications in the future. This agreement shall be filed with the Zoning Administrative Officer prior to issuance of a
WHEREAS, in connection with the foregoing requirements of the Town Code, the Applicant has agreed to execute this Agreement in order to obtain the necessary permits to construct and operate the a wireless telecommunications tower at the Property known as Sky Lane, Town of Philipstown, NY.

NOW, THEREFORE, as consideration for the Applicant obtaining all necessary permits to construct and operate the tower at the Property pursuant to the requirements of the Town Code, the Applicant agrees as follows:

(1) The Applicant commits on behalf of the Applicant, property owner, communications tower owner, lessee, and their successors in interest to keep the tower and accessory structures in good order and repair and in compliance with any approval, and to notify the Zoning Administrative Officer within 60 days of the discontinuance of use of the tower for its original or any other purpose. This agreement shall be filed with the Zoning Administrative Officer prior to the issuance of a building permit under this chapter. At anytime after 120 days of receiving this notice, the Zoning Administrative Officer may require removal of the obsolete, unnecessary, or unused communications towers and associated accessory structures or such towers or structures no longer needed for their original purpose by sending a notice to the property owner, tower owner, and any lessee to remove the same. The property owner, tower owner, and any lessee shall remove such towers and/or accessory structures within 45 days of receipt of the notice from the Zoning Administrative Officer.

(2) Failure to notify and/or to remove the obsolete, unnecessary, or unused tower in accordance with these regulations shall be a violation of this chapter (175-46) and shall be enforceable according to § 175-57, including all of the remedies set forth therein.

(3) The Applicant and its successors in interest agree to:

- Respond within 45 days to a request for information from a potential shared-use applicant.
- Negotiate in good faith concerning future requests for shared use of the communications tower by other providers of communications.
- Allow shared use of the communications tower if another provider of communications agrees in writing to pay reasonable charges. The charge may include but not be limited to a pro-rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation as well as all of the costs of adapting the tower or equipment to accommodate shared use without causing electromagnetic interference.
This Agreement is intended to benefit the Town, and notwithstanding anything stated to the contrary in this Agreement or otherwise, no other person or entity shall claim or be entitled to any rights hereunder by virtue of so-called “third party beneficiary rights.” The Applicant reserves any rights it may have at equity or in law.

IN WITNESS WHEREOF, the party has herein set its hand and seal the day and year first above written.

APPLICANT:

Pamal Broadcasting

By: __________________________

Name: James Morrell

Title: President

Dated: ________________

State of New York

County of Albany

On __________________ before me, the undersigned officer, personally appeared James J. Morrell, the President of Homeland Towers, LLC, a New York limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: __________________________ (Affix Notarial Seal)

Commission No.: __________________________

My Commission Expires: ________________

Andrea L Stukey
Notary Public, State of New York
No. 01ST618934
Qualified in Saratoga County
Commission expires June 16, 2020
ACORD CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER
Arthur J. Gallagher Risk Management Services, Inc.
677 Broadway 4th Floor
Albany NY 12207

CONTACT NAME: Wendy Bentley
PHONE: 518-869-3535
FAX: 518-869-3560
E-MAIL ADDRESS: WENDY_BENTLEY@AJG.COM

INSURED
Pamal Broadcasting Ltd
John Vandenburgh
6 Johnson Road
Latham NY 12110

INSURER(S) AFFORDING COVERAGE

INSURER A: Hartford Fire Insurance Company
NAIC #: 19682

INSURER B: Hartford Insurance Company of MidWest
NAIC #: 37478

INSURER C: Trumbull Insurance Company
NAIC #: 27120

REVISION NUMBER:

CERTIFICATE NUMBER: 552114560

COVERAGES

COMMERCIAL GENERAL LIABILITY
- CLAIMS-MADE
- OCCUR

AUTOMOBILE LIABILITY
- ANY AUTO
- OWNED AUTO
- HIRED AUTO
- SCHEDULED AUTO
- NON-OWNED AUTO

UMBRELLA LIABILITY
- OCCUR
- CLAIMS-MADE

WORKERS COMPENSATION AND EMPLOYERS' LIABILITY

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

GL Broadening Endo applies form HG0001 9/16 Blanket Coverage inc Prim-N/C
WOS on GL Blanket HG0001 9/16
Auto Blanket Al inc WOS and PNC Form HA9917 11/12
Blanket WC WOS 000313

CERTIFICATE HOLDER
Town of Philipstown
238 Main Street
Cold Spring NY 10516

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD
CERTIFICATE OF LIABILITY INSURANCE

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IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Arthur J. Gallagher Risk Management Services, Inc.
677 Broadway 4th Floor
Albany NY 12207

INSURED
PAMAL BROADCASTING LTD
6 JOHNSON ROAD
ALBANY NY 12210

CERTIFICATE NUMBER: 1501611775

COVERAGES

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CONTACT

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

TOWN OF PHILIPSTOWN
238 MAIN STREET
COLD SPRING NY 10516

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Town of Philipstown
Code Enforcement Office
238 Main Street PO Box 155
Cold Spring, N.Y. 10516
845-265-5202

1/28/2018

Todd & Heather Berland
22 Hudson River Lane
Garrison N.Y. 10524

Re: Proposed Pool and Deck Construction
Location: 22 Hudson River Lane
Tax # 89.7-1-11

Included:

1. Application for building permit
2. Plans for proposed Pool and Deck
3. Site Plan showing location of proposed set backs

The Site Plan proposes a 12’-5” side yard set back to the north where a 30’ set back is required and a zero side yard to the South where a 30’ set back is required.

Since the set backs to meet the requirements of the Philipstown Zoning Code 175-11B the building permit application is DENIED.

If you are aggrieved by this decision, you may submit an application to the Zoning Board of Appeals pursuant to the provisions of Article IV of the Town Code within 60 days from the date of this letter.

An application is enclosed.

Note: You will also need to make application with Philipstown Conservation Board Ref. Wetlands

Any questions please contact this office.

Greg Wunner
Code Enforcement Officer
APPLICATION FOR BUILDING AND ZONING PERMIT

Tax Map #: 89.7-1-11 Date Received: __________________________

Construction Located at: 22 Hudson River A2 Garrison or Cold Spring

Owner: Todd Beallander Phone Number: 401- 483-5613

Mailing Address: 22 Hudson River, PO Box 155 Philipstown, NY

Authorized Agent: Joshua Hall, Kees Schmitt Phone Number: 845-764-8049

Mailing Address: 80 Airport Dr., Wappingers Falls, NY 12590

Description of Work: 12'x16' Pool w/ Deck / Patio / Fence

Occupancy Classification: 210 Construction Classification: R Number of Stories: 2 Building Area: __________ sqft


Heating Appliance: ___ Electrical, Mechanical, Plumbing: ___ Wood Stove: ___ Oil or LP Tank: ___

Zoning District: 2.1 Located within Special Flood Hazard Zone: N Located within 100 feet Wetland/Watercourse: X

Area of Land Disturbance: 192 sq. ft. Estimated Value of Construction: $876,040.00

Putnam County Licensed # for Home Improvement, Plumbing, HVAC, LP Gas and Electrical Contractor only (PCL#)

Design Professional: Joshua Hall, Kees Schmitt Phone: 845-764-8049

General Contractor: NEAVE GROUP Phone: 845-764-8049 PCL# PC2021

Subcontractor: Phone: PCL# ___

Subcontractor: Phone: PCL# ___

I hereby make application for a permit and all information entered above is true and accurate. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of this application for a permit. I understand that as the permit holder, I shall immediately notify the Code Enforcement Official of any change occurring during the course of the work and further understand that if the Code Enforcement Official determines that such change warrants a new or amended permit, such change shall not be made until and unless a new or amended permit reflecting such change is issued.

Owner/Authorized Agent Signature: Joshua Hall 2/1/18

Make Checks Payable To: Town of Philipstown (Office Use)

Chargable footage: __________________ sqft FEES __________________ Received Date: 2011

When the application for permit has been examined and the proposed work is deemed in compliance with the applicable requirements of the Uniform Code, Energy Code and the Code of Town Philipstown, the Code Enforcement Official shall endorse this application by signature and date which hereby authorizes the issuance of said permit when payment of FEES are received and duly recorded.

Code Enforcement Officer Signature: __________________ Date: __________

BUILDING PERMIT NUMBER: __________________
Scope of Work to be performed at 22 Hudson River Dr, Philipstown, NY

Work to be performed:

Existing Patio:
The existing patio was installed and out of angle from the rest of the house. We are going to remove some of the existing patio to square it up to the house and the property lines.

Site Prep & Demolition
- De-construct existing deck and remove debris from site.
- Remove existing patio from site.
- Remove sub-base of patio from site.

Install a 12’ x 16’ Pool:
The yard is small and client wanted enough yard space for family activities. We also kept in mind the amount of space between the neighbors and the river that we would need, to do our due diligence to use a small footprint for the design. Therefore; a pool of 12’x16’ and only 4’ deep was designed. The pool also is 18” above grade to avoid any possibility of 100 year flood overflow into the pool. This keeps us from interfering with high water table while maintaining some frontage to the river as well. The pool will be the only site disturbance, as it requires 30” of soil removal.

Installation of Gunite pool according to design:
- Pool will be approximately 192sq‘
- Interior dimensions will be 12’ x 16’ to waters edge
- Pool will have a Bench on (3) sides with steps.
- The pool will be approximately 4’ deep.
- A 6” layer of 3/4” angled washed stone will be installed beneath the pool for hydrostatic relief.

Deck Installation:
A small deck will be built around the level of the pool. The pool and the deck will be 18” above grade.

Deck Installation
- Install new deck as shown on plans.
- Deck to be framed with pressure treated lumber.
- Stairs to be installed as shown with appropriate stringers.
- Railing on upper portion of the deck will be Trex Post with Cable
- Trex Select decking will be installed on the stairs and deck surface.
- Azek PVC Trim boards will be used to wrap the perimeter of deck and landing, stair risers, and supports for deck and landing.
**Short Environmental Assessment Form**  
**Part 1 - Project Information**

**Instructions for Completing**

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

### Part 1 - Project and Sponsor Information

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<th>Name of Action or Project:</th>
<th>POOL &amp; DECK</th>
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<tbody>
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<td>Project Location (describe, and attach a location map):</td>
<td>22 HUDSON RIVER DR</td>
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<tr>
<td>Brief Description of Proposed Action:</td>
<td>Install a 12 x 16 foot pool 6' feet deep w/ DECK</td>
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<tr>
<th>Name of Applicant or Sponsor:</th>
<th>JOSHUA HAIL/NEAVE GROUP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone:</td>
<td>845 764 8049</td>
</tr>
<tr>
<td>E-Mail:</td>
<td><a href="mailto:josh@neavegroup.com">josh@neavegroup.com</a></td>
</tr>
<tr>
<td>Address:</td>
<td>80 AIRPORT DR WAPPINGERS FALLS</td>
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<td>WAPPINGERS FALLS</td>
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<td>NY</td>
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<tr>
<td>Zip Code:</td>
<td>12590</td>
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</tbody>
</table>

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?  
   - [ ] Yes  
   - [ ] No

   If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.

2. Does the proposed action require a permit, approval or funding from any other governmental Agency?  
   - [ ] Yes  
   - [ ] No

   If Yes, list agency(s) name and permit or approval:

3. a. Total acreage of the site of the proposed action?  
   - [ ] 0.36 acres

   b. Total acreage to be physically disturbed?  
   - [ ] 0.923 acres

   c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?  
   - [ ] 0.36 acres

4. Check all land uses that occur on, adjoining and near the proposed action.  
   - [ ] Urban  
   - [ ] Rural (non-agriculture)  
   - [ ] Industrial  
   - [ ] Commercial  
   - [ ] Residential (suburban)  
   - [ ] Forest  
   - [ ] Agriculture  
   - [ ] Aquatic  
   - [ ] Other (specify): RAILROAD, METRO NORTH
5. Is the proposed action,  
   a. A permitted use under the zoning regulations?  
   b. Consistent with the adopted comprehensive plan?

6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?

7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?  
   If Yes, Identify: ____________________________________________________________

8. a. Will the proposed action result in a substantial increase in traffic above present levels?  
   b. Are public transportation service(s) available at or near the site of the proposed action?  
   c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?

9. Does the proposed action meet or exceed the state energy code requirements?  
   If the proposed action will exceed requirements, describe design features and technologies:

10. Will the proposed action connect to an existing public/private water supply?  
    If No, describe method for providing potable water:

11. Will the proposed action connect to existing wastewater utilities?  
    If No, describe method for providing wastewater treatment:

12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?  
    b. Is the proposed action located in an archeological sensitive area?

13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?  
    b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?  
    If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:  
   Shoreline  Forest  Agricultural/grasslands  Early mid-successional  
   Wetland  Urban  Suburban

15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?

16. Is the project site located in the 100 year flood plain?

17. Will the proposed action create storm water discharge, either from point or non-point sources?  
   If Yes,  
   a. Will storm water discharges flow to adjacent properties?  
   b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?  
   If Yes, briefly describe:
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?
   If Yes, explain purpose and size:
   [NO] [YES] □

19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?
   If Yes, describe:
   [NO] [YES] □

20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?
   If Yes, describe:
   [NO] [YES] □

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Joshua Hall  Date: 2.1.17
Signature: Joshua Hall