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VILLAGE OF NELSONVILLE
COMBINED PUBLIC HEARING
PLANNING BOARD AND ZONING BOARD OF APPEALS
JANUARY 10, 2018

DISCUSSION OF PROPOSED CELL TOWER

TRANSCRIBED BY: GLORIA VEILLEUX
Schmieder & Meister, Inc.

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1 CHAIRMAN RICE: Everyone, I think we're
2 going to get started, so if you can direct your
3 attention up here to the Board. Now, there's no
4 microphone, so we'll try to speak loudly. Just raise
5 your hand if you can't hear us.

6 So what I'd like to do is open the meeting.
7 It's a joint meeting of the Zoning Board of Appeals
8 and the Nelsonville Planning Board. I wanted to
9 thank the Haldane School District and Diana Bowens
10 for letting us use this auditorium this evening.

11 Now, what are we here for? We're here for
12 the Homeland Towers Rockledge Road cell tower
13 application for a special permit and a variance of
14 the New York State Village Law Section 376, and then
15 perhaps site plan approval.

16 As I said, we're going to open this public
17 hearing. Thank you for coming.

18 The public hearing agenda topics are going
19 to mostly be a discussion of the Applicant's recent
20 submissions, the public's recent submissions. We are
21 going to have a short presentation by the
22 Phillipstown Cell Solutions Group. They've put
23 together a packet they'd like to present to the Board
24 and to the Applicant. But we would like everyone to
25 keep their presentation short.

1 People that have spoken before just in
2 opposition to the tower, perhaps you don't have to
3 speak again where you've come through loud and clear.
4 Anybody in support of the tower, please step up to
5 the plate and let us know, but if you're just going
6 to say you hate the tower, we've already heard that,
7 but if we have some people that are going to make --
8 present some new testimony, we certainly would like
9 to hear that. Keep it short and to the point.

10 I would like to introduce -- this is a bit
11 of a lengthy process, to introduce for the record new
12 documents and correspondence that we received since
13 our last meeting, which was November 28th. As you
14 remember, our meeting was canceled last week during
15 the snowstorm, so we're a little bit of a week behind
16 schedule, but it gave everybody an opportunity to put
17 together even more information. It gave the
18 Applicant time to respond to that information, but
19 we've actually got some brand new information that
20 just came in like at 6:00, which I don't think that
21 the Applicant has yet seen, but I will announce it.

22 But starting with our last Board meeting, we
23 did have some information that was delivered to us by
24 hand. One was from the Applicant, which was the
25 building permit that was issued in 1974. We have a

1 copy of that. There's been some comments on that.
2 If anyone wants to comment in it they may.

3 Now, almost the majority of this information
4 is on the website. Pauline, am I correct?

5 MS. MINNERS: I tried to put as much as I
6 can on the website.

7 CHAIRMAN RICE: Right. And, hopefully, the
8 Applicant has seen most of it, too. We've tried to
9 send it off to Homeland.

10 So we have that building application. We
11 did receive two large packages from the Phillipstown
12 Cell Solutions Group. It was a statement in
13 opposition to the Homeland Towers application for 15
14 Rockledge Road.

15 There were a number of exhibits in this
16 submission. One, most importantly, was the Scenic
17 Areas of Statewide Significance, or SASS, that was
18 issued in 2004. It was Exhibit A.

19 Exhibit B was Policy 24 which prevents
20 impairment of scenic resources on a statewide
21 significance mostly to do with Phillipstown, Cold
22 Spring, Nelsonville.

23 Exhibit C was a letter from Kathleen Foley
24 which we have previously announced, I believe. There
25 was a letter from the Cold Spring Historic Review

1 Board. There was also a letter from the Putnam
2 County Historian, Sarah Johnson. Included in Exhibit
3 D was a historical journal from the horticulturalist.
4 Had a lot of photographs of the cemetery.

5 Sarasota Associates put together -- oh,
6 there was comments on Sarasota Associates within that
7 exhibit. There was photo simulations of the
8 monopine.

9 There was a letter from Parks and Recreation
10 referenced in there that we had seen before from John
11 Bodify (phonetic), the Phillipstown Cell Solution
12 comment on that. There's a letter from Jennifer
13 Zerek (phonetic) who's part of that group. Included
14 was a walking tour map and a guide of historic
15 Nelsonville sites. And there was an old note from
16 Eric Doole (phonetic) about the Nelsonville
17 Sesquicentennial anniversary.

18 Exhibit E was a phone call log of voice and
19 text.

20 Exhibit F, Phillipstown (indiscernible)
21 Group (indiscernible), and they explained their
22 testing methodology. They had coverage maps. They
23 also included the Verizon coverage maps and the AT&T
24 coverage maps in that exhibit.

25 Also in that exhibit were the 4G coverage

1 maps of Nelsonville and Cold Spring, and New York
2 State Department of Transportation functional class
3 viewer maps.

4 Exhibit G again had more Verizon coverage
5 maps and AT&T coverage maps in Nelsonville.

6 Exhibit H was from New York State Department
7 of Transportation, again functional class viewer with
8 functional classification systems. This is all on
9 the website. It's kind of highly technical stuff.
10 There's graphics.

11 Exhibit I was a letter from Chris Merrison
12 (phonetic) on a critique of the modeling software I
13 think used by Purecon. And Dr. Merrison let us know
14 that he had a degree from Princeton University. He
15 included his degree in there.

16 Exhibit J was a discussion of alternate
17 sites in Nelsonville, and the tax lots were itemized
18 as potential alternate Homeland cell tower sites.

19 Again delivered by hand at that meeting was
20 a supplement to the at-a-glance opposition report to
21 a cell tower facility proposed by Homeland Towers.

22 I think the next day or the -- on 11/30, I
23 should announce these dates, so those were all
24 delivered by hand, then we start getting the emails,
25 one from Snyder & Snyder on 11/30/17. The FCC

1 declaratory ruling that talks about Section 332, I
2 think it was about the shot clock. On 11/30/17 from
3 Snyder & Snyder we received the FCC report dated
4 10/24/14 about the acceleration of broadband
5 deployment that's improving wireless facilities
6 citing policies which talked about, you know, the --
7 we had brought up the issue of the difference between
8 broadband data and voice, and that addresses those
9 issues.

10 Ronald Gray on 12/9/17 responded to the
11 Phillipstown Cell Solutions statement of opposition.
12 He wrote a report which we've distributed to
13 everybody. He made some points about their RF
14 concerns. Again --

15 And then on 12/18 from Snyder & Snyder and
16 CBRE from Laura Mancuso, there was a letter from her.
17 She talked again about -- or she brought to our
18 attention that I think they're closing out the tribal
19 consultation issues. She talked about substantial
20 and significant adverse effects.

21 On 12/27, Dave Pedlowski (phonetic) emailed
22 us asking us about the status of the SEQRA process as
23 it relates to the Homeland Towers application.

24 On 12/27/17, right after Christmas, again
25 Snyder & Snyder wrote a cover letter in response to

1 the Zoning Board, Planning Board, and public comments
2 at the November 28th public hearing. Vince Xavier
3 from Homeland, you look at the alternate site
4 analysis and all those tax lots had been mentioned by
5 the Phillipstown Cell Solution, talked about there.

6 There was a Purecon Solutions radio
7 frequency engineering report that wanted to rebut the
8 Phillipstown Cell Solutions Group report. Again,
9 there was the closing out of the tribal analysis.
10 The Algonquin Consultants weighed in saying there was
11 no cultural resources on the site.

12 And Saratoga Associates, the landscape
13 architects and engineers again commented on the
14 visual resources and discussed the SAS visual impacts
15 that Cell Tower Solutions had put together.

16 On 12/28, Cuddy & Feder, the attorney for
17 Singular Wireless, I believe, or aka AT&T, wrote a
18 letter in response to the Phillipstown Cell Tower
19 Solutions regarding the zoning code, actual need,
20 permit criteria, applicable case law, et cetera.

21 On 12/28, Gareth Guest, a member of the
22 community, sent out a memorandum questioning some of
23 Purecon's formulas in their RF report.

24 MR. GAUDIOSO: I'm sorry, what was the name
25 of that last one, Mr. Chairman?

1 CHAIRMAN RICE: 12/28/17, I don't know if
2 Gareth is here tonight. He could speak to that.
3 Maybe not.

4 MR. GAUDIOSO: Who's that from?

5 CHAIRMAN RICE: Gareth Guest, he's a
6 physicist in the neighborhood.

7 MR. GAUDIOSO: I don't believe we received
8 that.

9 CHAIRMAN RICE: Oh. That's easy enough to
10 send to you. And I have a copy here. We'll give it
11 to you, too. He wrote a two-, three-page memorandum.
12 He questioned some of Daniel's formulas, just one,
13 sort of one formula, but it's an interesting report.

14 Okay, 12/29/17, Phillipstown Cell Solutions,
15 an email with attachments.

16 A 10/22/15 memorandum opinion. This is a
17 law case called Partnership Verizon Wireless vs.
18 another company we -- it's probably on the website,
19 case law.

20 There's another, second one, Memorandum of
21 Decision and Order, U.S. District Court, Eastern
22 District, Clear Wireless vs. the Building Department
23 in the Village of Lynbrook. And then an FCC fax
24 sheet restoring internet freedom, declaratory ruling,
25 report and order, WC Docket 17108.

1 MR. GAUDIOSO: I didn't receive that either,
2 Mr. Chairman.

3 CHAIRMAN RICE: Okay. It's easy enough to
4 send you. They're just case law probably off the
5 internet. We'll send those to you. All right. We
6 have a list of this stuff.

7 Let's see if you got this, CMS -- on
8 12/29/17, CMS, another engineer that's working for
9 the cell tower group, Richard Comey, talking about
10 the gap in service. Does that ring a bell?

11 MR. GAUDIOSO: That one I believe I have.

12 CHAIRMAN RICE: Okay. Okay. AKRF wrote a
13 three- of four-page letter talking about the review
14 of the Sarasota Associates Visual Resource Assessment
15 of 6/02/17, and Sarasota Associates report of the
16 balloon test. Did you receive that, AKR?

17 MR. GAUDIOSO: We received that at 11:00
18 this morning.

19 CHAIRMAN RICE: Okay. All right. That --
20 okay. Here's another one. Right after the new year
21 on 1/02/18, Phillipstown Cell Solutions via email
22 with attachments, these are a number of things --
23 it's a bulletin number -- does this ring a bell at
24 all with anybody? Number 98135, attachment. They're
25 VRM guidelines. Another of the VRM guidelines of

1 1/17/84. Also something we received in the past in
2 March 2001, Planning a Designed Manual Wireless
3 Telecommunication Facilities, which is guidelines for
4 the community. Another VRM handbook, H8431.3, Visual
5 Resource Contrast Ratings published in 1986. Another
6 attachment was from 2013, the NCHRP Report 7741.
7 It's an evaluation, Methodologies for Visual Impact
8 Statements, Assessment, excuse me. And something
9 we've seen before, but I'll announce again, the East
10 (indiscernible) Case Summary was off a blog and
11 summarized by -- it was sent to us, I forgot, by
12 Salcon (phonetic), I forgot the young lady's first
13 name, but they were sent to us.

14 Again on 1/02/18, Phillipstown Cell
15 Solutions via email sent us a letter from SUNY, Dr.
16 Robin Hoffman, and Mr. Connor Nelville with
17 attachments. The SUNY College Environmental Science
18 and Forestry, Department of Landscape Architecture,
19 again, the review of methodologies for visual
20 resource assessment. They sent -- it's a fairly long
21 binder which I couldn't print up, but I did read over
22 it.

23 On 1/03/18, Hudson Highlands Land Trust via
24 email sent us a letter, Michelle Smith, who is the
25 executive director of the Hudson Highlands Land Trust

1 sent with attachments, and Exhibit A, Park Agency
2 Policy Procedures and Guidance System, the Agency
3 Review of Proposals for New Telecommunication Towers,
4 another set of guidelines for areas of New York
5 State.

6 Okay, getting to the end of this. On
7 January 3, 2018, Snyder & Snyder sent an email, and
8 what was -- oh, this is from Purecon, a letter from
9 Purecon from Adam Fehan (phonetic) addressing Ron
10 Grafe's (phonetic) letter of 12/09/17 regarding
11 capacity issues.

12 On 1/03/18, Snyder & Snyder sent a letter
13 for a FOIL request, which we're putting that
14 together.

15 On 1/08/18, Ronald Grafe, our RF consultant,
16 via email sent us a supplemental report regarding the
17 Phillipstown Cell Solution Group report talking about
18 their RF engineer's report. That was from the letter
19 of Richard, is it Comey? Yeah, he was talking about
20 Richard's report.

21 And then again -- so that was 1/08. And
22 then 1/09, which was yesterday, from Richard Comey
23 where you received another letter about Phillipstown
24 Cell Solutions' drive test that I guess you guys had
25 done on December 17th. Purecon had done a drive

1 test, Richard's comment on that. Do you have that?

2 MR. GAUDIOSO: Yes.

3 CHAIRMAN RICE: Okay. Now, that's not the
4 end of it. There's a few things that have just come
5 that aren't even on the list, but we received a very
6 lengthy -- and you don't have this. Maybe you do. I
7 think Pauline sent it to you. It's a letter from Liz
8 Campbell-Kelly, a licensed landscape architect, who
9 addresses a number of issues on the visual assessment
10 regarding the Cold Spring Cemetery. That just came
11 in. We skimmed over that.

12 We just received this -- I don't think you
13 have this yet, Robert, from Kate Beaverman, the
14 president -- this just came in, right, Pauline?

15 MS. MINNERS: Yeah, it just came in.

16 CHAIRMAN RICE: Just came in over the wire.
17 It's two, oh, no, two -- it's from Jack Goldstein
18 from the Cold Spring Area Chamber of commerce.
19 Frankly, I wasn't able to get this, it just -- I'll
20 read this through. Oh, we have that.

21 And then the last thing that was hand-
22 delivered at this very -- four, five minutes ago I
23 the statement to and opposition to the Homeland
24 Towers application for 15 Rockledge Road submitted to
25 the Village of Nelsonville Zoning Board of Appeals by

1 the Phillipstown Cell Solutions. And, apparently,
2 this is not the entire submission. It's being -- it
3 was sent via email. Is this the one we have here,
4 the 52-page -- obviously, I haven't read it yet, but
5 it's some new information. I believe Phillipstown
6 Cell Solutions is going to give a small presentation
7 today and they can address what's in this and what
8 else has been sent to the Village via email, which
9 we'll put on the website tomorrow.

10 So there you have it for the record. You
11 can see we've got a lot of information. We have a
12 lot of information we haven't really read yet because
13 we just got it, but we will do that over the next few
14 days.

15 So at this point the Planning Board and the
16 Zoning Board members, as we usually do, will identify
17 themselves. My name is William Rice. I'm the Chair
18 of the Zoning Board. So let me go left.

19 MR. MARINO: Steve Marino, I'm the Chairman
20 of the Planning Board.

21 MS. CLEMENTS: Peggy Clements, Zoning Board
22 of Appeals.

23 MR. KEELEY: Chris Keeley, member of the
24 ZBA.

25 MS. BRANAGAN: Susan Branagan, Planning

1 Board.

2 MR. HELLBOCK: Paul Hellbock, Planning

3 Board.

4 MR. MERANDO: Steve Merando, Zoning Board.

5 MS. MEYER: Judy Meyer, Zoning Board.

6 CHAIRMAN RICE: All right. And we'd also
7 like to introduce Ron and Bill. Would you guys like
8 to -- Ron is our village engineer. Bill is our --

9 MR. BEJARSKI: Bill Bejarski (phonetic),
10 Code Enforcement.

11 CHAIRMAN RICE: -- code enforcement officer.
12 Let's identify the Applicants as we normally
13 do. We'll start with Vince.

14 MR. XAVIER: Vincent Xavier, Homeland
15 Towers.

16 MR. VICENTE: Manuel Vicente, President of
17 Homeland Towers.

18 MR. GAUDIOSO: Robert Gaudio on behalf of
19 Homeland Towers and New York SMSA Limited Partnership
20 doing business as Verizon Wireless. My colleague,
21 Dan Laub, representing AT&T is on his way. He's just
22 running a little late.

23 CHAIRMAN RICE: Okay, no problem.

24 We have a gentleman sitting here with a lot
25 of stuff. Are you part of the --

1 MR. CAMPANELLI: I am. I am an attorney
2 representing a number of homeowners who are opposed
3 to the application. I'm prepared to make a
4 presentation.

5 CHAIRMAN RICE: Okay. So we'll get back to
6 you, sure.

7 MR. GAUDIOSO: Mr. Chairman, can we identify
8 exactly who Mr. Campanelli is representing.

9 MR. CAMPANELLI: Certainly, if I may.

10 CHAIRMAN RICE: Yeah.

11 MR. CAMPANELLI: I represent Melissa Gilmer
12 and her husband, Mr. Rossi.

13 CHAIRMAN RICE: Okay.

14 MR. CAMPANELLI: I have a memorandum in
15 opposition which I provided a copy to the applicant's
16 attorney, Mr. Gaudioso. I only have copies, six or
17 seven more for the rest of the Board. I wasn't aware
18 the Board would be so large.

19 Essentially, these are replies to the
20 submissions from Homeland Towers which established
21 that the submissions from the Applicant have failed
22 to establish that it meets the requirements of the
23 code.

24 In a similar vein, the submissions by
25 Homeland Tower failed to establish that this board is

1 required or constrained to grant the application
2 under the constraints of the Telecommunications Act
3 of 1996. And I'm prepared to explain exactly why
4 this evening.

5 CHAIRMAN RICE: Okay. And you signed up,
6 signed in?

7 MR. CAMPANELLI: I did. Thank you.

8 CHAIRMAN RICE: All right. Okay.

9 We were going to introduce Todd Stekler
10 (phonetic). Todd was not able to make it tonight, so
11 Todd won't be here.

12 MR. GAUDIOSO: I would just like to put on
13 the record, we're going to place our objection
14 officially on the record to Mr. Stekler's retention.
15 We believe that there's --

16 MR. KEELEY: I'm sorry to interrupt. Can
17 you just make sure everyone can hear? I see a lot of
18 people struggling --

19 MR. GAUDIOSO: Sure, sure. We're going to
20 object to the retention of new counsel at this stage
21 based on an appearance of impropriety and a conflict
22 of interest. Mr. Stekler does work with Mr. Comey
23 who represents the opposition. In particular, Mr.
24 Stekler and Mr. Comey work together in opposition to
25 a Homeland Towers application in upstate New York,

1 and Mr. Stekler represents the Town of Hemstead which
2 uses Mr. Comey as its consultant, and that's in
3 connection with federal litigation brought by a
4 number of carriers, including AT&T and Verizon
5 Wireless. So we believe that there's a conflict of
6 interest, at least an appearance of impropriety, and
7 we'll just state that for the record.

8 CHAIRMAN RICE: Because Richard works for
9 the Phillipstown Cell Solutions?

10 MR. GAUDIOSO: Correct.

11 CHAIRMAN RICE: Oh.

12 MR. GAUDIOSO: And we'll point out the fact
13 that, you know, we extended the shot clock last time
14 and it was very important to move things along, and
15 we were a bit disappointed that there were reports as
16 early as December 9th that we didn't receive until
17 today. And that is not conducive to us being able to
18 bring this application to a conclusion. And we're
19 particularly concerned with the fact that Mr. Comey
20 was apparently communicating directly with Mr.
21 Stekler by way of his own letter. He emailed Mr.
22 Stekler directly, so again --

23 CHAIRMAN RICE: Oh, yeah. I can see --

24 MR. GAUDIOSO: -- based on -- we stated the
25 fact that we haven't even received the reports except

1 we had asked for them and chased for them and didn't
2 get them until the day of the meeting. And, in fact,
3 Mr. Comey, we believe, has a conflict with Mr.
4 Stekler, have been communicating and we believe
5 that's inappropriate.

6 CHAIRMAN RICE: Okay, thank you.

7 The -- Todd's not here. All right.

8 The next item on the agenda is something
9 we've talked about before. The Zoning Board is the
10 lead agency regarding SEQRA, which is the State
11 Environmental Quality Review Act, and for the
12 application at 15 Rockledge Road.

13 And as everyone knows, the cell tower is
14 going to go on a 9.6-acre wooded site. It's directly
15 east of the 30-acre Cold Springs Cemetery.

16 Just to be clear, the Village of Nelsonville
17 Zoning Code Article 7, Commercial Communication
18 Tower, Section 188.68, Application for Special Permit
19 to Place a New Tower, notes in addition to seeking
20 site plan approval from the Planning Board, "An
21 applicant proposing to construct a new commercial
22 cell tower as permitted in the use schedules, the
23 applicant shall apply to the Zoning Board for a
24 special use permit," and that's why we are here
25 tonight.

1 In addition to the special permit, the
2 Applicant seeks an interpretation of the New York
3 State Village law, Section 7736, or a variance from
4 the requirements of Section 7736.

5 Steve, did you want to make any Planning
6 Board announcement?

7 MR. MARINO: Sure. Just that
8 (indiscernible) backing on what the ZBA is doing in
9 issuing the special use permit, the Planning Board
10 will also look at a site plan for site plan approval
11 should the special use permit be granted. We will be
12 looking at issues such as access to the site,
13 parking, fencing, landscaping, lighting and
14 screening, et cetera, as part of that process. And
15 so that's why we've been running kind of concurrently
16 with the ZBA to get all the information together
17 expediently as we can.

18 CHAIRMAN RICE: Yeah, I failed to mention we
19 did get a new set of site plans from your site civil
20 engineer. I sort of had that handwritten there.

21 All right, Robert, the Homeland Towers, we'd
22 like to have any -- if you have any additional
23 information you'd like to talk about. It seems like
24 you do. If we could summarize the application
25 process to date, any new material which we've

1 announced a lot of it.

2 MR. GAUDIOSO: Sure.

3 CHAIRMAN RICE: Yeah.

4 MR. GAUDIOSO: I'd like to just go into a
5 little bit more detail on some of the materials that
6 we cited.

7 CHAIRMAN RICE: Okay.

8 MR. GAUDIOSO: As I mentioned before, Mr.
9 Grafe's original memo was received by the Town on
10 December 9th. We didn't receive it until December
11 28th. We did submit a response to that report.

12 CHAIRMAN RICE: Correct.

13 MR. GAUDIOSO: We included clarification
14 that the facility is not for capacity reasons, that
15 it is for coverage reasons. We included what's known
16 as key performance indicators, which are things like
17 access failure rates and drop-call rates, and what
18 Purecon looked at were -- was the existing gamma
19 sector from the McKeel's Corner site which faces
20 towards Phillipstown and showed that the access
21 failure rates and the drop-call rates were well above
22 the standard which, again, demonstrates that there's
23 a gap in service. And, in fact, it was not only just
24 well above, it was significantly above. And I
25 believe that your consultant, Mr. Grafe, followed up

1 on and agreed as well.

2 We submitted confirmation that the tribal
3 consultation was complete, although that's not a
4 SEQRA issue or a Board issue. That is an EPA issue,
5 but we did have questions about that in the past and
6 we showed that that nation did finally concur.

7 We submitted additional visual resource
8 analysis from Saratoga Associates dated December
9 19th. It looked at the relevant standards of the
10 SEQRA and confirmed that there would be no
11 significant adverse visual impact. I believe that
12 that's a determination that I believe was agreed with
13 by the Board's consultant, AKRF, in its report dated
14 January 2nd.

15 The Saratoga Associates reports, which I'm
16 not sure AKRF actually had, confirmed that Coastal
17 Management Plan Policy 24 is not relevant. It's not
18 relevant under your code, but it's also not relevant,
19 as we mentioned last time, because there are no FCC
20 permits and no state permits or license is required
21 of the facility. And I believe that AKRF had
22 indicated they thought it was an FCC license is
23 required and, therefore, the Department of State
24 would require concurrence at some point, but that's
25 not the case. There are no FCC permits specifically

1 for this facility.

2 The visual resource assessment also actually
3 included a bird's eye view of the area. It's
4 actually the photograph that was included at the at-
5 a-glance document, and they were also concerns in
6 some of the other documents about a bird's eye view,
7 which we don't believe is relevant because the birds
8 aren't actually, you know, the people that are
9 viewing potential facility.

10 Nevertheless, we did use the exact bird's
11 eye view that was provided, particularly in the area
12 of the Hudson River, and it showed that the facility
13 would be nearly imperceptible when we look at that
14 visual rendering, and that's in the visual resource
15 assessment from Saratoga Associates.

16 Saratoga also confirmed that the tower is
17 actually not on a ridge line, and when you look at
18 the topography, you look at the maps. You look at
19 the different angles. The topography actually goes
20 up pretty significantly towards the backside, which
21 I'll call the south side. And that's shown on some
22 of the site plans that were submitted. And that's in
23 conformance with some of the other documents which
24 are not binding documents, not criteria of the Board,
25 but you mentioned the Pittsfield document as far as

1 analyzing cell sites and things of that nature, and
2 that's one of the things that it points out. This
3 would not be on the ridge line and we're not on the
4 ridge line.

5 The Saratoga report went through some of the
6 inaccuracies in the at-a-glance document. And one of
7 the most important things is that the visual
8 renderings that were provided in that document were
9 completely inaccurate.

10 As you may recall, the tower is 110 feet.
11 Mr. Gaynor (phonetic) asked us to float the last
12 balloon at 120 feet, and the visual renderings were
13 shown at that and even higher, completely inaccurate
14 compared to what the actual facility would look like.

15 It also placed the facility in the
16 foreground, not behind the trees that will actually
17 remain. So those are very misleading representations
18 that what the tower would look like, and Saratoga
19 pointed that out.

20 Saratoga also went through all the prior
21 visuals, all the different historical resources that
22 were analyzed, and confirmed that all those different
23 resources that are both listed and eligible were
24 actually analyzed.

25 And finally, Saratoga went through the point

1 about -- I think there were some comments about
2 basically cherry-picking unrepresented locations, and
3 that's clearly not the case. We specifically asked
4 the Board, we specifically asked Mr. Gaynor for
5 input. We proposed (indiscernible) maps. We gave
6 (indiscernible) maps for proposed locations.
7 Saratoga actually went out with Mr. Gaynor and they
8 took the photographs in conjunction by picking the
9 locations. If anything, those photographs were
10 worse-case scenario or not the best case scenario
11 from the Applicant's standpoint.

12 The alternative site analysis prepared by
13 Mr. Xavier, that included confirmation that the
14 Masonic Lodge was not looked at, and we've looked at
15 every single property in the village, and Mr. Xavier
16 confirms that. The Masonic Lodge is one of them. We
17 don't think it's less -- necessarily a less-intrusive
18 alternative, but it's nearby to Secore (phonetic)
19 Street, and that was represented to us as something
20 we should look at, so we also looked at the Lodge and
21 they're not interested.

22 There were some statements about the
23 (indiscernible) lot being a very large lot. That's a
24 little bit misleading. The lot is actually very
25 narrow. I think it's 186 feet for most of its length

1 and there's an aqueduct underneath it, so we don't
2 believe that it's safe to put the cell tower over the
3 top of the aqueduct. We don't believe that property
4 is available. And in any case, we documented Mr.
5 Xavier's report that's in very close proximity to
6 homes that are right next to the property line of
7 that particular property.

8 We also confirmed through representations to
9 the Village that OSI would not allow cell towers on
10 its property that's within the Village, that that was
11 something they wouldn't make available, and we've
12 represented that. And if anyone disagrees, I would
13 like to hear that.

14 We also confirmed again that every lot was
15 looked at. And I know there's been statements that
16 there are less-intrusive alternatives. I don't want
17 to go through every single one that we've looked at,
18 but we've looked at all different types of options,
19 and if there's a property that the Board feels is
20 less-intrusive that we didn't look at fully and
21 thoroughly, you know, please bring that to us because
22 we'll continue to do due diligence on that. But
23 every alternative site that was brought up we've
24 looked at. I dare to say that your own consultants
25 have agreed with us where we said facilities didn't

1 work from an engineering standpoint, and we've also
2 spent considerable time and effort looking at
3 locations that, quite frankly, were not made
4 available for leasing purposes because of public
5 opposition. So I believe the Applicant has made more
6 than a good-faith effort to review alternative sites.

7 The radio frequency engineering report dated
8 December 18th included a number of different things.
9 There was a request for actual drive-test data. The
10 drive test is not required by the code.

11 Nevertheless, Purecon, we actually requisitioned
12 Purecon to perform a new drive test throughout the
13 Village. They prepared the maps and submitted that
14 drive test, again confirming that the coverage maps
15 were correct and that there's a significant gap in
16 service which, again, your own consultant has, I
17 believe, agreed with.

18 Purecon also looked at the issue of the
19 handheld pole test that was represented. Apparently,
20 there were 52 phone calls or texts made, 47 of which
21 were outside, and that's consistent with what the
22 Applicants have said. You can find service on the
23 street. It's inside the buildings and inside the
24 vehicles where you have a problem, so that handheld
25 pole test, not only is it statistically irrelevant,

1 and the case law has held that up and the engineers
2 have put forth the reasons why that's the case,
3 particularly in comparison to the actual drive-test
4 data, but it's not necessarily consistent with the
5 findings of our own engineers, that there is on-
6 street service, just not just in buildings, but in
7 in-vehicle service.

8 The Purecon report will also confirm that
9 the facility does provide personal wireless services.
10 Even data service is a personal wireless service
11 because it carries voice calls and the voice calls
12 ultimately hit the public telephone switch network.

13 MS. BRANAGAN: I'm noticing people can't
14 hear you.

15 MR. GAUDIOSO: I'll try and speak up.

16 MS. BRANAGAN: I'm just telling you that --

17 MR. GAUDIOSO: Yeah. I'm trying to make my
18 presentation to the Board, which is very important.
19 I want to make sure the Board hears me. I certainly
20 don't want to turn my back to the Board. We didn't
21 choose the venue, but I'll definitely try and speak
22 up as best I can.

23 The Purecon report also went through, again,
24 the online coverage maps and the metric type maps
25 and, again, it's the same thing. They're on-street

1 coverage maps. They don't necessarily disagree with
2 the maps that Purecon has submitted and the drive-
3 test data, again consistent, although not relevant.

4 The Dr. Morrison methodology letter, again,
5 I don't want to belabor all the points. I think you
6 all have said it was an unfortunate document,
7 basically, you know, accusing the Applicants of
8 fudging the data. We stand by the data that's been
9 submitted, and we don't believe there's any evidence
10 to the contrary.

11 And finally, the Purecon report looked at
12 the minimum height, confirmed that, actually, what
13 your won consultant had pointed out I think back in
14 October was that there were areas in Cold Spring that
15 would not covered. We'd actually like to show
16 height, but we've designed the facility to actually
17 meet the height limitation of the code, being able to
18 support a co-location and be able to meet all the
19 setback requirements based on that height as well.

20 Again, the code as far as the gap in
21 service, its Village Code Section 188-68.A1, and
22 merely requires, quote, a report providing
23 documentation of an actual need by an actual provider
24 of communication services for the construction of a
25 tower in order to provide communication services.

1 There's nothing in there about personal
2 wireless services. There's nothing in there about
3 significant gap. You actually have two providers of
4 communication services that have shown an actual need
5 based on propagation maps, drive-test maps, and
6 actual key performance indicators including that
7 drop-call data.

8 My cover letter to the Board also included
9 the 2007 FCC decision and order which basically
10 clarifies -- you mentioned the Linbra (phonetic)
11 case. I haven't received those documents again, but
12 that case specifically was with respect to clear
13 wireless, was the Applicant the plaintiff in that
14 case? They were only providing broadband
15 (indiscernible). They were not providing personal
16 wireless services. What the 2007 FCC report
17 confirmed is that if you have a facility that's
18 providing both, the facility is still covered and
19 protected by the Telecommunications Act of 1996.

20 If there was a question I'd be happy to --

21 CHAIRMAN RICE: Do you mind being
22 interrupted or you want to --

23 MR. GAUDIOSO: No. I just said if there's a
24 question I'd be happy to answer it.

25 CHAIRMAN RICE: Okay.

1 MS. BRANAGAN: The question was whether we
2 were asking you questions at this point was the
3 question.

4 MR. GAUDIOSO: That's a good question. I'll
5 defer to the Chairman.

6 CHAIRMAN RICE: Does the Board want to hear
7 the whole presentation and then ask questions? Would
8 that be efficient?

9 MS. BRANAGAN: Whatever --

10 MR. GAUDIOSO: I'm comfortable either way.

11 MS. BRANAGAN: That's fine. I didn't want
12 to do --

13 CHAIRMAN RICE: We're taking notes.

14 MR. GAUDIOSO: We also noted for the record
15 some transcripts from Federal Court regarding Mr.
16 Comey's qualifications. I think those speak for
17 themselves.

18 We responded to the most recent Blanchard &
19 Wilson letter dated November 27th regarding access.
20 Again, we stand by the fact that the case law shows
21 that as long as access is not limited, that you're
22 allowed to have access and utilities.

23 We pointed out that the case law cited by
24 Mr. Blanchard only basically says that an easement
25 holder cannot relocate the easement unreasonably.

1 We're not proposing to relocate the easement.

2 Keep in mind that we believe it's a road.

3 If it's not a road, it certainly a right-of-way in an
4 easement. We've shown that. I believe your counsel
5 has confirmed that we made that prima facie showing.
6 We've shown that the case law states that that's a
7 private property dispute among parties not relevant
8 for the Board, but nevertheless, we also showed the
9 fact that there were four houses that are currently
10 using Rockledge Road. These are four habitable
11 structures that have been granted permits, therefore,
12 habitable structures that are subject to the need for
13 emergency services, even more so than we believe the
14 unmanned facility. Nevertheless, there was a concern
15 about Rockledge Road and upgrading it. The Applicant
16 has offered at the Board's discretion to upgrade
17 Rockledge Road. We showed it on the site plan. We
18 showed, I think, a very reasonable upgrade. It's a
19 gravel service. It's 15 feet wide. It's an
20 improvement over emergency services that's there now.
21 And we don't believe that it's excessive. If the
22 Board felt it was excessive, we would certainly do
23 less. If the Board felt that more was necessary,
24 we'd certainly do more, but within reason.

25 We've proposed underground utilities because

1 we believe that's less intrusive. There are existing
2 above-ground utilities. If the Board felt inclined
3 to waive the requirement to put the utilities
4 underground, we'd be happy to put in above-ground
5 utilities.

6 So we are happy to do as much or as little
7 on Rockledge Road to improve emergency service
8 access, not only to the facility, but to the four
9 homes that are currently there.

10 We did submit a number of items from JMC,
11 our engineers. We included a cover letter which
12 responded point by point to Mr. Gaynor's prior memo.
13 We submitted a storm-water management memorandum from
14 JMC pointing out the fact that the area of
15 disturbance is well under 100 -- well under one acre,
16 therefore, it does not require a storm-water
17 pollution prevention plan. But nevertheless, we did
18 a full storm-water set of calculations. We did a
19 full set of storm-water management practices, erosion
20 control practices. Those were all outlined in the
21 memorandum and also added now to the site plan.

22 If you recall, there was some discussion
23 about an alternative access drive. We have fully
24 engineered the original access drive. We believe it
25 maintains the 50-foot buffer that's required by the

1 code around the edge of the property. Even though
2 that's being maintained, we have also added
3 additional landscaping on the plans including
4 evergreen trees and deciduous shrubs to further
5 mitigate any potential views into the base of the
6 facility. So we've shown that on the updated site
7 plan as well as the additional questions that were
8 raised by Mr. Gaynor.

9 Finally, or really I should say originally
10 on the December 18th letter from Laura Mancuso from
11 CBRE, Laura actually is a secretary of the Interior
12 of Qualified Architectural Historian. She went
13 through the entire historic preservation process and
14 all of the different findings that were previously
15 made, including the concurrence of New York State
16 SHPO. She also did additional analysis of the
17 cemetery as it has now been deemed eligible for
18 listing. And she came to the conclusion that there
19 would not be an adverse effect. And I believe,
20 again, AKRF, your consultant hired by the Village,
21 concurred with that as well.

22 With that, I'd be happy to answer any
23 questions. Thank you.

24 CHAIRMAN RICE: If the Board has questions?
25 I think we do. Who wants to go first? Do you have

1 any?

2 MR. MARINO: I will. I do.

3 CHAIRMAN RICE: Okay.

4 MR. MARINO: Should I start then?

5 CHAIRMAN RICE: Yes.

6 MR. MARINO: As you're aware, we are kind of
7 going through this process with the ZBA and the
8 Planning Board concurrently, so there are some site
9 plan discussion issues that we haven't really gotten
10 to yet because we've been kind of (indiscernible) up
11 in this process with the public hearing so far, but
12 there's a few things I wanted to remind you of as we
13 move forward with site plan review that we discussed
14 in the past or has been brought up at the meetings,
15 and I think we continue to think about them as we
16 move forward.

17 I had asked at one of the original Planning
18 Board meetings about the options for other types of
19 towers, not necessarily the monopine stealth tower.
20 I've talked to several landscape design -- landscape
21 architect people I know that work in the business and
22 they feel that there may be some other options,
23 whether it's a flagpole type tower or other type of
24 tower, painted light gray or light blue that might
25 work better on site, be less intrusive, and I'd like

1 you folks to at least consider that and come to us
2 with some ideas on that issue.

3 MR. GAUDIOSO: So we can certainly respond
4 to that. One of the things we'll tell you up front
5 is that the limitation of a flagpole is that you're
6 not horizontally spacing the antennas and the
7 (indiscernible). You are vertically spacing it
8 inside a pole, but the problem if you do that is you
9 increase the height significantly, and we can
10 certainly not commit what that additional height
11 would be. It would be possibly 10 feet per carrier.
12 So not only are you adding an additional 20 feet,
13 you're also eliminating the ability for a co-location
14 in the future.

15 MR. MARINO: Okay. So that kind of
16 information would be helpful as to eliminate other
17 possibilities.

18 MR. GAUDIOSO: Are there other designs, Mr.
19 Chairman, that would be acceptable to the Board or
20 would be a thought that would be intriguing to the
21 Board?

22 MR. MARINO: Not being a cell tower person,
23 I can't -- the flagpole was one that had been
24 mentioned. I know there's a teardrop kind of looking
25 almost like a water tower looking, but much narrower

1 in -- that I've seen. I don't know. Other options
2 other than the monopole.

3 MR. HELLBOCK: Yeah, I think we were
4 expecting you to present other options, not for us to
5 come up with them, but you're in the business, you
6 should tell us what other options are out there.

7 MR. GAUDIOSO: Well, I think, quite frankly,
8 I think we've presented what we believe given the
9 context, given the height limitation, the best
10 option.

11 There was a mention that --

12 MR. HELLBOCK: Well, when we asked for
13 options, we got one. That's where we were hoping to
14 get some other options.

15 MR. MARINO: And I did go and look at the
16 two -- the one in North Salem and the one at Amawalk.

17 MR. GAUDIOSO: Sure.

18 MR. MARINO: I'm familiar with those towers.
19 I just would like if there any other options that we
20 might be able to look at that might be --

21 MR. GAUDIOSO: Sure.

22 MR. MARINO: -- we can make a determination
23 that would be less-obtrusive.

24 I had also asked for -- and to look at the
25 next Planning Board meeting is the idea of a couple

1 of cross-sections through the two existing residences
2 that are there.

3 MR. GAUDIOSO: Those are included.

4 MR. MARINO: Those are -- you do have those?

5 MR. GAUDIOSO: Yes. Those are -- I believe
6 they're the last page of the new site plan.

7 MR. MARINO: All right. Then I missed that.
8 I haven't got to those plans yet.

9 Oh, and the other thing that's come up now
10 repeatedly in both the correspondence from the
11 neighborhood as well as with other folks I've been
12 speaking to is the idea of the, I don't know if it's
13 called a distributed antenna, distributed array
14 system, a system where mini cells are mounted on
15 existing poles rather than a single high tower. We
16 haven't really discussed that as an option or if it
17 or isn't a possibility.

18 I know over in the town of -- well, in the
19 town of Marlboro over in Ulster County, Verizon just
20 went through a process that had a number of these
21 approved over there, and they're being installed.
22 Certainly, it's something worth looking at in terms
23 of we have existing infrastructure. We have existing
24 poles up and down Main Street where it seems that the
25 gaps are for the in-building on either side of the

1 street going through there and whether that is an
2 option. And if that is an option, part of that
3 option might be a smaller tower on the existing -- on
4 the proposed site with some of these micro cells or
5 mini cells, whatever they're called.

6 Again, not being an expert --

7 MR. GAUDIOSO: Sure. So --

8 MR. MARINO: -- I know I'm not using all the
9 right terminology, but I think you're aware of what
10 I'm talking about.

11 MR. GAUDIOSO: No, I appreciate what you're
12 saying. And, actually, your own expert discounted
13 that as being feasible in the latest report. Mr.
14 Grafe's report notes that.

15 We'll also note that that's an alternative
16 technology, which the Second Circuit in this area has
17 specifically said municipalities cannot require
18 carriers to choose alternative technologies. That's
19 a matter that's been federally pre-empted, and that's
20 a Clarkstown decision, but we can certainly provide
21 some additional --

22 MR. MARINO: When you say an alternative
23 technology --

24 MR. GAUDIOSO: It's an alternative
25 technology because what happens with that technology

1 is that it is not a -- it's not necessarily a
2 wireless technology. It's, in large part, a wireline
3 technology because the radio signal is turned into
4 light and it's put through a fiber optic and it's
5 sent to an antenna in a distributed matter. And the
6 courts have looked at this. Clarkstown actually
7 enacted an ordinance requiring it. And the District
8 Court and the Second Circuit, which is the highest
9 federal court in this area, one step below the
10 Supreme Court, struck the ordinance saying that
11 that's not permitted to require alternative
12 technologies.

13 MR. MARINO: Well, short of us requiring
14 that as an alternative, I would like it looked at as,
15 or justified as to why it can't be done here because
16 like I said, Verizon just got it done on the other
17 side of the river.

18 MR. GAUDIOSO: I think that would be
19 requiring it, but we can certainly add some
20 additional information.

21 (APPLAUSE)

22 MR. GAUDIOSO: Your own consultant has
23 indicated that's not a feasible alternative.

24 MR. MARINO: I'll double-check his report.
25 Thank you. I think that's all I have for now.

1 CHAIRMAN RICE: Robert, one of the FCC
2 reports that you sent seemed to indicate that this
3 DAS system is really the, you know, the wireless
4 communication system of the future. There's a whole,
5 you know, page after pager of "We're going to do
6 this. We don't need zoning boards to do it anymore,"
7 you know. I don't know if -- this is what you sent
8 me.

9 MR. GAUDIOSO: No. I -
10

11 CHAIRMAN RICE: It was just part of the
12 ruling.

13 MR. GAUDIOSO: As your own consultant
14 pointed out, that's used for densification in urban
15 areas.

16 CHAIRMAN RICE: Right.

17 MR. GAUDIOSO: That's used for densification
18 where you have a capacity problem. As we point out,
19 here's not the capacity problem. Here is a problem
20 of pure coverage, a problem of large area coverage.
21 To think that you put a couple antennas on the top of
22 a couple of utility poles in front of a couple of
23 people's houses --

24 CHAIRMAN RICE: Right.

25 MR. GAUDIOSO: -- is going to solve the gap
in coverage, which I think AT&T has pointed out, I

1 think it was seven or eight square miles, that's a
2 large area of coverage. So we can certainly document
3 more on that with the -- the future is is that it's
4 densification of networks. It's not necessarily the
5 replacement of macro sites, and that's pretty clear
6 in the industry.

7 CHAIRMAN RICE: We just want to be clear
8 that the tower you're suggesting won't be obsolete in
9 two or three years. If we put that tower there,
10 would -- and I'm not going to put words in your
11 mouth, would you say that we wouldn't get a
12 distributed -- there wouldn't --

13 MR. GAUDIOSO: I'm not going to speculate on
14 what application could come or won't come --

15 CHAIRMAN RICE: Yeah. I'm just thinking --
16 yeah.

17 MR. GAUDIOSO: -- because I just don't have
18 enough information to know what the future holds. If
19 I did, I would be doing something other than like
20 being here.

21 CHAIRMAN RICE: Right. We're wondering if
22 it will preclude -- I mean, the DAS system is not
23 that attractive. They can come and put it in front
24 of your house, hang it off your telephone pole
25 perhaps without zoning, you know, approval.

1 MR. GAUDIOSO: Yeah. I think it's one of
2 those things watch, you know, be careful what you ask
3 for because --

4 CHAIRMAN RICE: Right.

5 MR. GAUDIOSO: -- there's been -- you know,
6 Mr. Campanelli can tell you, he's representing
7 residents in the town of Huntington that are suing a
8 company that put antennas on utility poles in front
9 of its clients houses, so --

10 CHAIRMAN RICE: They did it as
11 (indiscernible).

12 MR. GAUDIOSO: -- watch out what you ask for
13 because that's, you know --

14 CHAIRMAN RICE: Right.

15 MR. GAUDIOSO: -- that's the --

16 MR. CAMPANELLI: And Mr. Gaudio is
17 representing the company that put the DAS systems in.

18 CHAIRMAN RICE: Right, but I mean because it
19 is -- they're being put in everywhere and you can see
20 them all over New York.

21 MR. GAUDIOSO: Well, they're not putting
22 them everywhere.

23 CHAIRMAN RICE: Yeah, okay.

24 MR. GAUDIOSO: They're putting them in
25 places where there is this capacity need --

1 CHAIRMAN RICE: Right.

2 MR. GAUDIOSO: -- where there's this
3 situation where you need to bolster that
4 densification of the network, and that's where
5 they're being used, particularly in places like New
6 York City, particularly in stadiums, particularly in
7 large venues, indoor venues like shopping malls and
8 airports where there's a congestion of use.

9 MR. MARINO: So I think the question is if
10 -- certainly from our standpoint it's a less visually
11 obtrusive option.

12 MR. GAUDIOSO: I don't think you can say
13 that. Number one, the code doesn't say that. Number
14 one, the code doesn't say that.

15 MR. MARINO: Oh, I understand.

16 MR. GAUDIOSO: The code specifically does
17 not permit it in many areas of the town including
18 areas that would be necessary to put them, number
19 one.

20 Number two, without having -- without
21 knowing what one looks like and where it would be
22 located, I don't think it's a fair statement to say
23 that in the historic district of downtown that it
24 would be less intrusive. I don't think that that
25 assumption, you know, is necessarily the case.

1 MR. KEELEY: To the coverage versus capacity
2 question, when did this transition from a coverage
3 and capacity conversation to just a coverage
4 conversation?

5 MR. GAUDIOSO: Well, you know what? It's
6 really funny because there was never a capacity
7 discussion. There was a capacity discussion last
8 month when Mr. Comey said it was a capacity issue,
9 and he wrote a memo this month saying that -- and if
10 you read his memo very carefully, it's very slyly
11 worded. It doesn't say that a site cannot be
12 approved for capacity because, in fact, Mr. Comey
13 just recommended approval in Old Westbury for another
14 cell company on purely capacity issues, and he has
15 done so in the past.

16 So I'm not sure where this transitioned, but
17 the Applicant has always taken the position that this
18 is a need for coverage throughout the village of
19 Nelsonville.

20 MR. KEELEY: I respectfully would push back
21 on that a little bit. Our original submission going
22 back to the original documents, you know, 14 inches
23 and 7,000 pages ago, June 2017 document from Mr.
24 Xavier said, "In consultation with Verizon Wireless
25 and AT&T based on their coverage and capacity needs

1 in the area, I began exploring the area and the
2 vicinity of the proposed site."

3 MR. GAUDIOSO: Correct.

4 MR. KEELEY: So from the very original
5 application it stated both coverage and capacity, but
6 now we're saying, you know, from Purecon, "No
7 capacity problems currently exist." I'm just trying
8 to marry the two and understand sort of where this
9 transition --

10 MR. GAUDIOSO: Yeah. There's no
11 inconsistency there in those statements. What Mr.
12 Xavier does is he finds sites that work from a
13 technological standpoint. He doesn't design the
14 network. He goes out and finds sites --

15 MR. KEELEY: But it says specifically,
16 "Based on the coverage and capacity needs."

17 MR. GAUDIOSO: Yeah. Well, you're not going
18 to build a network that wouldn't very quickly have
19 inadequate capacity. So he's not going to build a
20 tower where he can only put one antenna because then
21 there would be a capacity problem. And that goes
22 back to the flagpole problem.

23 If you only have three antennas and you can
24 squeeze them into a flagpole, okay, that's what
25 you've designed, okay. If you want to do a micro

1 cell because you only have a limited need for
2 additional capacity in an area, then you build a
3 micro cell, but if you have a wide-area coverage gap
4 that needs full LTE coverage and all the different
5 bands, then Mr. Xavier is going to find a site where
6 he can build a macro site, and that's what this is
7 proposing, a macro site with antennas that are
8 horizontally spaced on top of a tree, designed
9 monopole.

10 So it's -- we never claimed from an RF
11 standpoint that we had a capacity issue. If we built
12 the wrong solution, we would have a capacity issue.
13 If the need was for a super highway and Mr. Xavier
14 came here and he proposed a driveway, there would be
15 a capacity issue two minutes after the driveway was
16 built. It's the same thing with wireless networks.

17 MR. KEELEY: I understand the
18 driveway/highway comparison to an extent, but it just
19 seems strange that the very premise on which the
20 application was submitted under Homeland's letterhead
21 in June is saying it's both capacity and coverage.
22 So you know --

23 MR. GAUDIOSO: I don't think that's what the
24 letter said.

25 MR. KEELEY: That's fine. Just a couple

1 other quick questions because I know there's a lot of
2 people in the room that have things to say, but just
3 a couple other of quick things. Thank you for
4 submitting the Verizon drive test. We talked about
5 that last time. Thank you.

6 MR. GAUDIOSO: Sure.

7 MR. KEELEY: When should we expect an AT&T
8 drive test data?

9 MR. GAUDIOSO: I don't know if AT&T intends
10 to submit the drive test data. It's not required. I
11 don't know whether they will or whether they won't.

12 MR. KEELEY: Okay. In one of the -- in the
13 drive test data that was submitted, it seems that
14 pieces of it were overlapping with the Phillipstown
15 McKeel's Corner drive test data that was
16 (indiscernible). There was overlapping roads. It
17 seemed to have different results. It seemed to be
18 that, and this is beyond my pay grade in terms of an
19 RF, but it did seem to be that there were different
20 types of discounting in effect that went into play in
21 terms of showing the same stretch of road having very
22 different coverage.

23 MR. GAUDIOSO: Sure.

24 MR. KEELEY: What -- talk a bit about that.

25 MR. GAUDIOSO: Sure. So -- I'll give you

1 Purecon's response because, again, I think that was a
2 misleading statement by Mr. Comey with respect to the
3 Phillipstown case.

4 The Phillipstown drive test data was not
5 prepared by Purecon. It was collected by Verizon,
6 and it was the pure raw data. It was collected in
7 the wintertime and it was never adjusted for foliage.

8 The foliage adjustment which Purecon took
9 for Nelsonville would be different than in other
10 places, but Purecon took a very limited foliage
11 adjustment in Nelsonville of 5 dB, and that was based
12 on the actual methodology, the formula that we
13 included in this letter to account for the 5 dB.

14 Typically, you would take up to 20 dB, but
15 they took 5, and so the maps are not consistent. The
16 actual -- if you read the Purecon report with the
17 drive test data, it specifically talks about the need
18 based on winter drive test because the foliage
19 significantly degrades and attenuates the signal.

20 MR. KEELEY: Thank you for explaining that a
21 little bit.

22 During the inventory of things that were
23 submitted, a comment from Mr. Gareth Guest was
24 surfaced. Is Mr. Guest here? Because I would not do
25 it justice, but he talks to -- he speaks to the AT&T

1 data, test data. AT&T is not represented here today.

2 MR. GAUDIOSO: We have Mr. Pinesso, but he's
3 not -- we have not seen that report.

4 MR. KEELEY: Okay. So --

5 MR. GAUDIOSO: And, again, this is one of my
6 problems is that there have been reports submitted
7 and we're not getting them, but we're getting the
8 date (indiscernible).

9 MR. KEELEY: So what we'll flag is that
10 we'll make sure that you get that, but in short and,
11 again, I can't --

12 CHAIRMAN RICE: I might have one here.

13 MR. KEELEY: -- pretend to understand this
14 properly, but he does actually say he is the former
15 Control (indiscernible) Nuclear Research Division
16 Director for Plasma Theory Group at the Oak Ridge
17 National Laboratory. And he's saying that the AT&T
18 test is actually a violation of the conservation of
19 energy. That seems significant to me. I don't quite
20 understand it, so I think that that's something that
21 we should explore.

22 MR. GAUDIOSO: So I'll this, I just took a
23 quick look at it, it has nothing to do with the AT&T
24 coverage. It has to do with the RF compliance
25 report.

1 MR. KEELEY: Right. That's what I'm
2 referring to.

3 MR. GAUDIOSO: And the RF compliance report
4 is very straightforward. It shows that even with
5 (indiscernible) --

6 MR. KEELEY: It shows that you should just
7 be able to reconcile the laws of physics.

8 CHAIRMAN RICE: There's a formula -- he
9 claims there's a formula here in --

10 MR. GAUDIOSO: We'll take a look at it. Let
11 me say this for the record. The tower is over 10
12 meters in height. Because it's over 10 meters in
13 height, it is categorically excluded from FCC routine
14 compliance testing because by the laws of physics --

15 MR. KEELEY: Is that accepted from physics?

16 MR. GAUDIOSO: By the laws of physics, it
17 cannot be out of compliance.

18 MR. KEELEY: I think (indiscernible). We'll
19 go to the next one.

20 MR. GAUDIOSO: So I think that's an
21 important point.

22 CHAIRMAN RICE: Chris, anymore questions?

23 MR. KEELEY: Lots, but let's hear from
24 others.

25 CHAIRMAN RICE: Okay. Anyone else on the

1 Board have a question?

2 MR. HELLBOCK: Not right now, no.

3 CHAIRMAN RICE: Well, why don't move to
4 letting the public speak.

5 MS. BRANAGAN: I have a question.

6 CHAIRMAN RICE: Oh, yes, please.

7 MS. BRANAGAN: Did you say someone from AT&T
8 was going to be here?

9 MR. GAUDIOSO: I can't hear you. I'm sorry.

10 MS. BRANAGAN: Did you say someone from AT&T
11 was going to come?

12 MR. GAUDIOSO: We have their counsel on the
13 way. He's not here yet.

14 MS. BRANAGAN: Not here yet? Okay. Okay.
15 We can just go ahead.

16 CHAIRMAN RICE: So we'll reserve that
17 question. We're going to come -- we're going to
18 circle back and let -- but we do have a list of
19 people that would like to speak and we're going to
20 start with whoever signed up first, right, Pauline?

21 MS. MINNERS: Michelle Smith.

22 CHAIRMAN RICE: Michelle, you sent a -- the
23 letter today.

24 MS. SMITH: Yes, thank you.

25 CHAIRMAN RICE: Landscape architect? No?

1 MS. SMITH: No. Hudson Highlands.

2 CHAIRMAN RICE: Hudson Highlands, sorry.

3 MS. SMITH: I was just going to stand right
4 here so that both of you can hear me and, hopefully,
5 the audience can hear me as well.

6 So my name is Michelle Smith. I'm the
7 executive director of the Hudson Highlands Land
8 Trust, and as was mentioned earlier, we submitted a
9 letter at the end of December. I guess it was
10 received at the beginning of January, and the focus
11 of our letter was the Scenic Area of Statewide
12 Significance.

13 Now, I haven't seen the rebuttal. It sounds
14 like there's a rebuttal that says that it doesn't
15 apply. Is that on the website?

16 CHAIRMAN RICE: So your letter came in on
17 January 3rd.

18 MS. SMITH: Yeah. And I do have a copy of
19 it if that's helpful. But in any case, we pointed
20 out the importance of the fact that this site lies
21 within the Scenic Area of Statewide Significance.

22 CHAIRMAN RICE: Sure.

23 MS. SMITH: So --

24 CHAIRMAN RICE: Yeah. Well, there's been a
25 lot of rebuttals to that, not specifically to your

1 letter, but to --

2 MS. SMITH: Okay. So I'm going to go ahead
3 and talk about the importance of the Scenic Area of
4 Statewide Significance anyway.

5 CHAIRMAN RICE: Right.

6 MS. SMITH: If there can be something on the
7 website, whether it's (indiscernible) response or the
8 Applicant's response, I would love to see it. I'm
9 very puzzled as to why people think that that does
10 not apply.

11 The Rockledge Road side does lie in the
12 Scenic Area of Statewide Significance, and what that
13 means is under the State policies that there is a New
14 York coastal management policy that says that when an
15 application is being reviewed, it has to be reviewed
16 for any impairment of scenic quality. And impairment
17 of scenic quality can include anything that has
18 inappropriate scale and form, and that is our concern
19 at the Hudson Highlands Land Trust.

20 The particular area that the Scenic Area of
21 Statewide Significance is called HH20, which stands
22 for Hudson Highlands 20, and that area is called the
23 Garrison Four Corners Sub Unit of the scenic area.
24 And that area is very important to our land trust.
25 That Garrison Four corners Unit, even though it does

1 include -- it says Garrison, but it does include some
2 of Nelsonville. We have 13 conservation easements on
3 23 properties covering almost 400 acres in that sub
4 unit. A lot of that lies within the landscape that
5 we're talking about, so that is the sort of the Healy
6 Road, Lane Gate Road, Moffitt Road area, and we, of
7 course, would consider that an iconic Hudson
8 Highlands landscape. We think it's really important
9 to protect the scenic value of that landscape.

10 And what's interesting about that landscape
11 is that it is very visible from Storm King Mountain.
12 It's visible from Crow's Nest, visible from the
13 river, visible from Constitution Marsh, and perhaps
14 very relevant to us in this room. If you go up Mount
15 Taurus from here and you go about three-quarters of a
16 mile up the Nelson -- the yellow trail from
17 Nelsonville, you'll hit a scenic lookout that looks
18 out exactly on this landscape. And that -- the
19 center of that landscape is the Healy property, which
20 is a concerned property, and you can actually see
21 very clearly that the (indiscernible) of that chamber
22 that sits on that property, so I find it very hard to
23 believe that you couldn't see a 110-foot cell tower.
24 But the problem is none of the scenic analysis that
25 we've seen to date looks at any of those viewpoints,

1 so --

2 (APPLAUSE)

3 So, you know, when you think of the
4 importance of this landscape and the scenic quality,
5 the scenic quality being protected as a scenic area
6 of statewide significance and also scenic qualities
7 being protected under the Nelsonville code, we're,
8 you know, we're really concerned that the scale and
9 the (indiscernible) does impair the scenic quality.

10 Now, we have no comment on whether there's a
11 need for a cell tower or not a cell tower. I'm not
12 against cell towers, but it's really important based
13 on the guidance that we have and because this is an
14 iconic landscape that we don't let the cell tower
15 define the landscape. That it really has to be the
16 landscape that tells you how to build the cell tower
17 if one has to be built.

18 (APPLAUSE)

19 I'd just finish by saying to the Boards that
20 I think we really -- that it's really important to
21 work on the design so that it does indeed lend to the
22 landscape.

23 CHAIRMAN RICE: Okay. Thank you, Michelle.

24 Who do we have next that's going to speak?

25 (APPLAUSE)

1 MR. KEELEY: (Indiscernible) questions --

2 CHAIRMAN RICE: Absolutely, yeah. Michelle.

3 MR. KEELEY: For a visual assessment for
4 AKRF, you submitted the report recently, and it says
5 that the visual assessment submitted by the Applicant
6 does not provide enough supporting evidence to
7 document lack of visual impact or esthetic impact to
8 either the Hudson Highlands State Park or the Hudson
9 River. Can you commit to providing that data?

10 MR. GAUDIOSO: I can comment to that. We
11 already provided a lot of that data. I don't think
12 your consultant actually reviewed it.

13 MR. KEELEY: Okay, great. Can you just lift
14 that up to the top for me. Understandably, it may
15 have gotten lost in the shuffle.

16 MR. GAUDIOSO: Sure.

17 MR. KEELEY: If you can help me do that, I'd
18 appreciate it.

19 MR. GAUDIOSO: Yeah. It's the report on --
20 it's the report from Saratoga Associates that I went
21 through before --

22 MR. KEELEY: The most recent.

23 MR. GAUDIOSO: -- and that includes the
24 bird's eye view from the Hudson River.

25 MR. KEELEY: Got it. And then one other

1 thing. The November letter from the State Historic
2 Preservation Office, they had said, and I think we
3 passed this a little too quickly in the last meeting,
4 "At this point in time, our office is not prepared to
5 seek to reopen the review process with the FCC;
6 however, we would ask that any alternative analyses
7 that were done for the site location be provided to
8 us for further review, to the State for further
9 review.

10 We are particularly -- the State is
11 particularly interested in any documentation of other
12 sites that have been considered as well as
13 alternative lower heights that may have been
14 evaluated for the proposed tower."

15 So that was the letter from the State
16 November 22nd. What's been provided to the State
17 since then?

18 MR. GAUDIOSO: I don't know. We had this
19 whole discussion last time.

20 MR. KEELEY: This was directed -- I'm sorry.
21 It's not about us providing it. This was directed to
22 your consultant.

23 MR. GAUDIOSO: Yeah, but this was based on a
24 discussion that the Village had, and I specifically
25 asked to be included in those discussions and I was

1 rebuffed on that. If you want us to provide anything
2 to SHPO in this regard, I'm happy to do so, but we
3 certainly weren't directed to. In fact, I
4 specifically asked to be involved in those
5 discussions, and I was told that that wasn't
6 possible.

7 MR. KEELEY: Okay. So we'll close the loop
8 on that and we'll either handle that or will follow
9 up and get that settled, but that's an important
10 outstanding item that speaks to those same issues.

11 CHAIRMAN RICE: So you're saying alternate
12 sites, we should send --

13 MR. KEELEY: We just need to close the loop
14 with the State Historic Preservation Office.

15 CHAIRMAN RICE: Okay, sure.

16 MR. KEELEY: If we haven't. I may be
17 unaware of it, but if we haven't --

18 CHAIRMAN RICE: I don't think we have. We
19 haven't provided that latest report to them that
20 Xavier did.

21 MR. KEELEY: Right. Because they said "at
22 this time" and then requested more information.

23 MR. GAUDIOSO: I think, quite frankly, we
24 should send them the whole package. The whole
25 package should go to him.

1 CHAIRMAN RICE: Okay.

2 MR. KEELEY: Seems appropriate to me.

3 CHAIRMAN RICE: Okay. Good deal. Who is
4 next?

5 MS. MINNERS: Mark Blanchard.

6 CHAIRMAN RICE: Mark. He's the attorney for
7 the Rockledge Road property. You were here last
8 time, yes.

9 MR. BLANCHARD: Yes. Good memory, Mr
10 Chairman.

11 MS. CLEMENTS: Do you want to stand over
12 here like the other woman?

13 MR. BLANCHARD: Sure, sure.

14 MS. CLEMENTS: That's an excellent solution
15 to the problem.

16 MR. BLANCHARD: My name is Mark Blanchard.
17 I'm with the firm of Blanchard & Wilson. I represent
18 Mr. Richard Valella (phonetic), the owners of 16
19 Rockledge Road.

20 First, I'd just like to confirm I had heard
21 the lengthy list of submissions that was read at the
22 beginning of the meeting, but I had submitted
23 something yesterday which I did not hear about.

24 CHAIRMAN RICE: We do not have it. I don't
25 have that.

1 MR. BLANCHARD: It was submitted by email.
2 Certainly, other correspondence was submitted by
3 email.

4 CHAIRMAN RICE: To?

5 MR. BLANCHARD: To the Village clerk.

6 CHAIRMAN RICE: Could it have bounced back
7 because we --

8 MR. BLANCHARD: It did not bounce back to
9 me, no. Matter of fact, I had used a previous thread
10 that we had been corresponding on.

11 CHAIRMAN RICE: Oh, okay. We haven't had
12 it, so we haven't read it, but --

13 MR. BLANCHARD: Well, I'd just like to make
14 a note. I don't know if you're planning on making a
15 decision tonight, but --

16 CHAIRMAN RICE: We'd like to get it.

17 MR. BLANCHARD: -- I'd like to make sure
18 that that's a part of the public record.

19 CHAIRMAN RICE: It will be.

20 MR. BLANCHARD: Essentially, it was just a
21 brief that was a further elaboration of the points
22 that I made earlier. I'm sensitive to your comment,
23 Mr. Chairman, that I don't want to stand here and
24 repeat what was said earlier, but I do have just a
25 little bit to elaborate upon --

1 CHAIRMAN RICE: Sure.

2 MR. BLANCHARD: -- and I have another
3 submission that I'd like to hand-submit tonight, and
4 I'll be seated. I'll try to keep my comments as
5 brief as possible.

6 However, I would like to distinguish
7 something the Applicant had said earlier was that my
8 earlier citations to case law spoke to a limited
9 proposition that we were discussing only the movement
10 of an easement. And I would say that that is a mis-
11 characterization of the case law that I had cited.
12 Certainly, the case law that I'm citing, as you know,
13 16 Rockledge Road is the property over which the
14 Applicant must traverse to get to the land lot
15 parcel. All the case law that I've cited to very
16 clearly states that the access holder does not have
17 the right to unilaterally, in large, that right of
18 access and start making improvements to the land.

19 So while the cases that I cited to you did
20 involve movement of an easement, they most certainly
21 and explicitly state that a mere right of passage
22 does not grant that holder of the right of passage
23 property rights to unilaterally make changes to the
24 property. That's what is at issue here, and that's
25 what is relevant here.

1 And it's unfortunate that my submission from
2 yesterday was not able to be distributed. I'm not
3 faulting you, Madam Clerk.

4 MS. MINNERS: No.

5 MR. BLANCHARD: For whatever reason it's not
6 here. It'll catch up to you. But one of the things
7 that I did in that submission was use a case cited by
8 the Applicant, U.S. Cable Corporation. In that case
9 that you don't have, and I'll just read directly from
10 it, the case states that "The grant of a mere right
11 of way for ingress and egress does not, however,
12 include the right to install underground pipes or
13 utility lines." This is something that had come up
14 at the last meeting. That's what our reading further
15 elaborates upon that.

16 So we stand here continuing the legal theory
17 that the proper owner that should be part of this
18 process, the owner of the property who is objecting
19 to these improvements is not part of this application
20 process.

21 And I will say, earlier it was suggested
22 that the improvements are for the benefit of the four
23 properties that are existing up there. For example,
24 the widening of the road will help to provide
25 emergency vehicle access to the four residences that

1 are up there. But I do remind this board that none
2 of those property owners are asking for this. My
3 property owner is very specifically objecting to it.
4 And those houses were built according to the
5 Village's building permit regulations. They have
6 certificates of occupancies. There's no violation up
7 there based on a lack of emergency vehicle access, so
8 I ask you not to be distracted by that claim that
9 they are in dire need of the Applicant's help to
10 widen the right of way. No one up there right now is
11 in need of that access. Those houses are permitted.
12 They have certificates of occupancy, and they are
13 specific -- well, not they, my client is specifically
14 objecting to things that are contained in the
15 December 19th submission, the site plan submission.

16 We see multiple instances on the site plan
17 of tree removal of my client's property, the removal
18 of a hand-built rock wall. The notation just says
19 "Rock wall to be replaced." But no -- we're not
20 consenting to having it removed in the first place.
21 There are multiple instances where that 9-foot-wide
22 drive is being widened to 15 feet, okay. So all of
23 those improvements I stand here and reiterate that we
24 are objecting to them. We do not feel that there is
25 lawful access to them.

1 Of course as was stated last time, it's a
2 well-settled principle that the right to enforce a
3 private easement is, of course, something that can be
4 a side matter adjudicated by the parties in a court
5 of law. But what is before you and what remains
6 before you is a threshold question of propriety of
7 this application.

8 You have an applicant, okay -- for some
9 reason, the burden has been taken away from the
10 property owner. There's been a presumption granted
11 to an incomplete applicant. I just misspoke.
12 There's been a presumption granted to an incomplete
13 application where the burden now has been shifted,
14 unlawfully, and outside of the jurisdiction of your
15 code, the burden has been shifted to an aggrieved
16 property owner who is objecting viperously to this
17 application. But for some reason, the Applicant is
18 moving forward with an incomplete application or
19 without the proper person having signed and certified
20 the application.

21 MR. KEELEY: Can I -- oh, I'm sorry, go
22 ahead.

23 MR. BLANCHARD: Please, please, please.

24 MR. KEELEY: You actually touched on
25 something --

1 (APPLAUSE)

2 MR. KEELEY: -- that I had a question about.
3 And if I remember correctly, and I made them before.
4 You were representing the residents there. There was
5 a question about this rock wall that surfaced in some
6 of the original discussions in July, August,
7 September. And we had seen a proposed agreement
8 between two attorneys, one representing I guess it
9 would have been Mr. Logan, and one representing Mr.
10 Valella, or I guess it was just for the Logan site,
11 sending it to Mr. Valella suggesting that they needed
12 to modify this rock wall. That situation, it seemed
13 as though Mr. Logan in that situation was feeling it
14 necessary to go through legal means to acquire
15 approval to modify that rock wall, but now it doesn't
16 seem to be the case, but I'm not an attorney. I'm
17 just trying to square those two things.

18 MR. BLANCHARD: Well, I cannot speak with
19 specificity to that correspondence, okay. I was not
20 -- I don't know that correspondence. I certainly
21 will catch up to that and submit a supplemental
22 writing to this board to explain, but I can say this.
23 It speaks to the point that this is not an easement
24 holder who has your normal easement rights. The
25 deeds that you have on this record that are part of

1 this public record that are before you all contain
2 the deed going back to 1975, contain the same
3 language, right of way common with the others.

4 So answer your question, this issue of
5 having to have permission for Mr. Logan, I'm
6 certainly not speaking for Mr. Logan. I'm saying the
7 land lot parcel owner to enter upon the other estate,
8 the other property to get permission to widen the
9 wall or take down the wall, for whatever reason, is
10 evidence, and I will confirm it, but it seems to be
11 evidence that there is a recognition that one cannot
12 just unilaterally expand a right of access to the
13 detriment of the neighboring owner.

14 CHAIRMAN RICE: But again --

15 MR. BLANCHARD: Yes, sir, please.

16 CHAIRMAN RICE: -- you have to -- why should
17 this board, again, I mean, 99 percent seems to be a
18 disagreement between you and the Applicant --

19 MR. BLANCHARD: Yes.

20 CHAIRMAN RICE: -- and may be one percent
21 relevant to the Board. You're making a case, but why
22 should the Board, the Zoning Board of Appeals
23 consider this right-of-way issue?

24 MR. CAMPANELLI: May I be of assistance to
25 the Board because I've dealt with this issue?

1 CHAIRMAN RICE: Not right now, sir.

2 MR. BLANCHARD: You can certainly supplement
3 my answer, but I wanted to just say a threshold
4 matter, and this gets us -- we're not at TCA. We're
5 not -- as a threshold application matter, why this
6 matters to this board is that the application, the
7 owner of the property has not signed the application.

8 CHAIRMAN RICE: Which was your point before
9 they should be co-applicants with Homeland?

10 MR. BLANCHARD: Absolutely. The site plan
11 plays that out. I mean, the case law is not limited
12 to movement of the easement. The case law shows you
13 -- their applicant's own case law shows you that the
14 right-of-way holder does not hold a legal right to
15 physically alter the premises. You need the
16 permission of the property owner. You need -- the
17 property owner should be part of the application.

18 So, Mr. Chairman, it's a fantastic question.

19 As a threshold matter, the -- that's what I've been
20 arguing matter is the threshold matter. This board
21 is interested in this question or at least I'm asking
22 you to be interested because it's a jurisdictional
23 issue. It's an application issue. It's a threshold
24 question before we even get into a cell tower or a
25 two-family home or a mix-used residence, whatever

1 would be out there. It's a threshold matter.

2 One of the defects in this application as a
3 threshold matter is the property owner who's being
4 hurt by this has not signed off on the application.

5 MS. BRANAGAN: Do you know if the
6 application has questions about whether the other
7 neighboring property owners have any effect?

8 MR. BLANCHARD: Absolutely. Go through your
9 application.

10 MS. BRANAGAN: I was just looking for it.

11 MR. BLANCHARD: Well, if you go -- it's in
12 my previous submission. We state that the owner --
13 there's a certification where you have a signature
14 saying "I certify that everything in here is
15 correct." And they are making representations in the
16 application regarding the property that they do not
17 own, you know.

18 And even here, even here, let's say that
19 application was a very simple application and that
20 question wasn't asked, but how then is that person
21 who does not have the right to alter that property
22 stand here and tell you, "On our 12/19 submission, we
23 have multiple instances of tree removal on 16
24 Rockledge. We have multiple instances of widening
25 that hard-packed graveled lane."

1 One of the things that you are considering
2 as a board, and the Planning Board and the Zoning
3 Board is the character of the neighborhood. We all
4 know this is a mountain residence district, okay.
5 Widening -- part of the appeal is district, that
6 Moffitt Road, that country lane. Part of the appeal
7 here are these gravel drives into these little
8 subdivisions.

9 Here there's a proposal to completely alter
10 and destroy the character of that subdivision over
11 the objection of the owners. So even if -- let's
12 assume, arguendo, even if that answer on the
13 application -- the question wasn't asked on the
14 application, although it certain was, even if, how
15 does that person who doesn't have the right to alter
16 that land stand here and tell you "I'm going to alter
17 the land"? You don't have --

18 I'm sorry if I'm getting repetitive. I'm
19 about to wrap up, but the theory is you do not have
20 proper applicants before you to even hear or go
21 through this application process.

22 CHAIRMAN RICE: Okay.

23 (APPLAUSE)

24 MR. GAUDIOSO: (Indiscernible)

25 MR. MARINO: Let him speak.

1 MR. GAUDIOSO: So this is about the third
2 meeting that this has happened where counsel, the
3 Village's counsel has clearly indicated there's a
4 prima facie case for the Applicant to make the
5 application. If the Board believes otherwise, if the
6 Board believes that proper application -- the
7 Applicant isn't here this evening, I'd request the
8 Board take the decision tonight. We're past the
9 shock clock date.

10 This issue has been brought up three or four
11 times. The fact of the matter is the Village counsel
12 has concurred with us. He's clearly indicated on the
13 record that the Applicant has a prima facie case to
14 bring this application. And, again, if you feel
15 otherwise, I would ask for a decision at this point.

16 MR. BLANCHARD: If I may, it's not the
17 counsel's decision. He certain weighs in or she
18 weighs in and gives you authority, but it is this
19 board's decision. It's not limited just to -- I was
20 answering a very specific question, Mr. Chairman,
21 just to the propriety of the application. It's a
22 much broader issue in terms of the impact of the land
23 over the objection of the rightful property.

24 CHAIRMAN RICE: Okay. I think we'll -- yes.

25 MR. GAUDIOSO: And just to recall, the

1 Applicant did not propose to change the access way.
2 The access way was originally proposed to be left
3 alone over the right of way, over the easements that
4 have been submitted. It was the building inspector's
5 memorandum that asked based on the site visit with
6 the fire district for emergency services to go up
7 there and to improve the access road.

8 If everyone believes the access way
9 shouldn't be improved, the Applicant is happy with
10 the way it exists.

11 CHAIRMAN RICE: Okay.

12 MR. BLANCHARD: I think that's a
13 misstatement, though, because it's not that the road
14 need not be improved, it speaks that it's not the
15 right spot for this application. You want to put in.
16 You want to get emergency vehicles back there for a
17 reason. If you can't -- if you don't have the legal
18 right to enlarge the road, this is not the spot for
19 this.

20 (APPLAUSE)

21 CHAIRMAN RICE: Okay, thank you. Did you
22 want a follow-up point or --

23 MR. CAMPANELLI: Sure, if I may. I can just
24 start or I can --

25 CHAIRMAN RICE: Is it your turn to speak or

1 you just want to follow up on that?

2 MS. MINNERS: Well, Melissa Gilmore --
3 Gilmer.

4 MS. GILMER: I'm just going speak freely and
5 simply.

6 CHAIRMAN RICE: Yes, please.

7 MS. GILMER: I just wanted to go on the
8 record. My name is Melissa Gilmer. I live on 6
9 Rockledge Road, and I just wanted to -- the Boards to
10 really consider the adverse visual impact and the
11 (indiscernible) on the scenic quality.

12 I obviously bought my home on Rockledge in
13 Cold Spring in the Hudson Highlands for -- to have
14 these continuous views of trees, white oaks, red
15 oaks, maples, white pines, not monopines. Monopines
16 are not in any of my field guides. I'm a naturalist.
17 So I just want to put that on the record that I think
18 that that is something that is important to be
19 considered are the scenic views.

20 CHAIRMAN RICE: Melissa, thank you.

21 (APPLAUSE)

22 CHAIRMAN RICE: And, again, could you
23 identify yourself.

24 MR. CAMPANELLI: Sure. I feel uncomfortable
25 standing across the Board. You have to twist to see

1 me, but good evening, everybody.

2 CHAIRMAN RICE: That's all right. Yes.

3 MR. CAMPANELLI: My name is Andrew
4 Campanelli. I'm an attorney. My office is at 1757
5 Merrick Avenue, Suite 204, Merrick, New York. I'm
6 here representing Melissa Gilmer and her husband, Mr.
7 Rossi. Good evening.

8 I'd like to start first by addressing some
9 of the most recent questions from the Board which are
10 intelligent questions, and at any time I speak,
11 please do me a favor, ask me any question you have.
12 I handle cell tower cases from New York to
13 California. I've lectured before the New York State
14 Conference of Mayors and I know a lot about cell
15 towers and cell tower applications, as well as the
16 constraints of the Telecommunications Act of 1996 to
17 the extent they pose restrictions upon this Board's
18 ability to act.

19 My hope tonight is not merely to convince
20 you to deny the application, but equally, to ensure
21 that if you choose to do so, you do it for a valid
22 legal reason, and you do it in a manner which
23 purports with the Telecommunications Act because if
24 you do, you reduce the likelihood that anyone might
25 try to thereafter challenge you, and even more so,

1 reduce the likelihood that they would be successful
2 if they were foolish enough to try so.

3 Mr. Blanchard had an excellent point. The
4 magic word he missed was "standing." That's the
5 issue. I can't file an application to build a cell
6 tower on this site, and the reason is I have no
7 property interest.

8 In 2004, the Town of Huntington, T-Mobile
9 built a 100-foot tower. At least they have the first
10 50 feet up and they did so based upon the claim of
11 right. It was property owned by a water district.
12 They got a lease signed by the water district and
13 they built 50 feet of the tower, and the Town put a
14 stop work order on it. And at the end of the day,
15 the tower had to be ripped down, and the reason is
16 the applicant learned that water districts and their
17 commissioners have no legal authority to lease their
18 own property, so the lease was void. So T-Mobile had
19 to rip down the cell tower after it was built, and
20 the reason is standing.

21 If this applicant doesn't own, is not vested
22 with all of the property rights necessary to
23 construct what they are proposing, it is a prima
24 facie issue that they have no standing to pursue a
25 zoning application in the first place. And it's not

1 your burden to establish that they don't, it's their
2 burden to establish that it is.

3 And I don't care of anybody, if the building
4 inspector or anybody said "You know what? If you're
5 going to put this here, you should widen the easement
6 road. You should make it 12 feet." It doesn't
7 matter. If that's what they're asking for in the
8 application, they have no standing to pursue the
9 application which must be denied as a matter of law
10 before you consider anything else, number one.

11 Number two, the gentleman over here was
12 talking about the visual impact analysis. I've seen
13 the visual impact analysis, and it's only defective
14 for two reasons. You should disregard it entirely,
15 number one.

16 I looked at the list of locations from which
17 they took the images, and if I'm not mistaken, it
18 omits images taken from the actual perspective of the
19 homes who will sustain the most accurate, the most
20 significant adverse esthetic impact. And it's not by
21 accident.

22 Wireless companies do this all the time.
23 The whole purpose of a visual impact analysis is to
24 give this board an accurate understanding of the
25 actual adverse esthetic impact that homeowners are

1 going to sustain. Because of that, when applicants
2 file these applications, they bring all these great
3 photos. They take images from various locations and
4 they deliberately omit applications taken from the
5 back porch or the side property of the home who is
6 closest and will sustain the most serious adverse
7 (indiscernible) impact.

8 And federal courts, and it's in a brief
9 which I'm going to give you, federal courts have
10 affirmatively ruled, the Second Circuit Court of
11 Appeals, second highest court below the U.S. Supreme
12 Court, has ruled under those circumstances, these
13 boards are free to disregard those studies entirely
14 because they're defective and the applicants know it,
15 number one.

16 (APPLAUSE)

17 Number two, as I sat here I heard Mr.
18 Gaudioso say, "Well, the tower is on a 110, but we'd
19 like it to be higher." I submit to you if you
20 approve this tower at 110, that doesn't mean it's
21 going to be 110 feet. What am I talking about?

22 In 2012, then President Barack Obama signed
23 something called the Middle Class Tax Relief and Job
24 Creation Act of 2012, which sounds really good except
25 that in this Tax Relief and Job Creation Act, they

1 put a cute little section in for cell towers, and
2 here's what it says. "Once a municipality grants
3 approval for a cell tower, the owner of that tower
4 can thereafter increase the height of the tower
5 without any approval by the Board as long as it
6 doesn't significantly overall -- increase the overall
7 size of the wireless facility." What does that mean?

8 Nobody knew what it meant. So the FCC
9 stepped in and gave declaratory ruling, an
10 interpretory (sic) ruling, and basically what it says
11 is if the tower is over 100 feet, you go up an
12 additional 25 feet, which means if you
13 (indiscernible) with a 110-foot tower, Homeland can
14 raise it to 135 and you can't stop them. And if they
15 choose to do so, that visual impact study you got is
16 meaningless because a balloon on a string does not
17 convey to you the actual adverse esthetic impact
18 which will be inflicted on the community by a massive
19 tower with antennas on it. It's useless. Throw it
20 out.

21 (APPLAUSE)

22 Now with regards to the gentleman to my
23 right who said "We can agree to disagree as to what
24 was first represented to this Board by this
25 applicant's expert. Was this -- is this application

1 about capacity or is it about gap?" And he indicated
2 he believed that somehow the expert alleged it was
3 about capacity. It's about capacity. It's not about
4 gap.

5 But all you have to do is look at the
6 expert's report, and I'm referring, of course, to
7 Purecon Solutions' report dated August 30th of 2017,
8 page 6, where Purecon is describing the need for the
9 new tower and he says, "Additional capacity is needed
10 in areas like residential neighborhoods, schools,
11 business, and anywhere high-speed data is used." So
12 read their report, you can see it for yourself.

13 I believe the gentleman also asked about
14 site plans or mentioned site plans. The application
15 suffers from what you call the postage-stamp problem.

16 It does not meet the setback requirements and here's
17 why.

18 Your code says that cell towers, the setback
19 for cell towers must be the greater of 125 percent of
20 the height of the tower or 150 feet, whichever is
21 greater. Why do you think zoning boards and zoning
22 codes from here to California all set the setback
23 requirement based upon the height of the tower?
24 There's a reason they do that, and it's because there
25 are three specific dangers associated with cell

1 towers.

2 The first is structural failures. You won't
3 hear a lot about it, but at least once a month the
4 cell tower collapses. Ice (indiscernible), ice in
5 places like here forms in the winter, and when a
6 piece of ice forms and starts to melt and lets loose,
7 it comes down to the ground. And on a 150-foot
8 tower, by the time a piece of ice hits the ground,
9 it's doing 67 miles an hour. You don't want nobody
10 near this thing, okay.

11 You also have structural failures and debris
12 falls. Maintenance occurs on these towers once a
13 month, and when they do they tend to drop things.
14 And so there is a safe zone that you keep around the
15 tower. Typically, local jurisdictions say "We need a
16 setback of at least 110 percent of the height of the
17 tower." It's a safe zone to make sure nobody can get
18 within the zone of danger where any of those failures
19 could occur. So you set your code at 125 feet, 150
20 feet, or 125 percent of the height for the actual
21 setback, minimum. If the applicant -- the portion of
22 the property leased is only 60-by-60 and 38-by-38.
23 It's physically impossible for them to meet the
24 setback requirements.

25 If the base of the tower is 5 feet and the

1 whole facility is 60 feet wide, that means there's
2 only 55 feet left. If you divide in 2, that means
3 there's 27 feet, so their actual setback from the
4 area of the property that they lease, meaning the
5 only area from which they can exclude people from
6 getting into the danger zone is only 27 feet, so how
7 do they get around it? It's great.

8 If you look at their site plan, and I'm
9 referring specifically to page 2D-3, they write the
10 site plan as being the distance from the base to the
11 tower, not to the lot line of the lot they're
12 leasing, but to their landlord's property line, and
13 that's not the proper measurement because they have
14 no power to exclude anybody from there landlord's
15 property which they don't lease, so they don't meet
16 the setback requirements.

17 (APPLAUSE)

18 Now I've seen much about the Purecon
19 analysis and I've seen so much of the bait-and-switch
20 it just -- it blows my mind.

21 Look, what is a significant gap in service
22 and why is it relevant? It is very important.

23 Mr. Gaudioso, I read his papers. On the one
24 hand he says, "Well, we got a significant gap in
25 service," and at the same time he says "It's not your

1 job. Your code doesn't require that we show a gap in
2 service." I assure you this applicant does not want
3 you to make a decision whether or not there is or is
4 not a gap in service because if you don't and you
5 deny the application, they'll file a complaint in
6 Federal Court within 90 days and they'll get the
7 application approved, okay. And here's why.

8 One of the constraints imposed by the
9 Federal Telecommunications Act of 1996 says
10 irrespective of whether or not the application
11 violates your code, you must grant the application if
12 the applicant establishes two things. One, they
13 suffer from a significant gap in personal wireless
14 services, and two, that proposed installation is the
15 least-intrusive means of remedying that gap in
16 services.

17 You are a fact-finding board. You must make
18 those factual determinations. If you don't, a
19 federal court will rule against you by default, so
20 you must analyze those facts and render decisions,
21 make a written decision regarding that decision, and
22 cite to the evidence in the record that you used as a
23 basis to form that decision. If you do, you insulate
24 yourself from attack of the Telecommunications Act of
25 1996.

1 Any questions so far? I'm moving a little
2 bit fast.

3 (No audible response)

4 Okay. What's a gap in service? The code
5 doesn't define it, but federal courts have, and
6 here's what it says. It's not magic, it's not
7 voodoo, and it's certainly nothing that Purecon
8 submitted. This is what it says. This is a citation
9 from New York SMA Limited Partnership vs. Town of
10 Oyster Bay, Eastern District of New York, 2010. "A
11 coverage gap exists when a remote user of those
12 services is either unable to connect with a land-
13 based telephone network or to maintain a connection
14 capable of supporting a reasonably uninterrupted
15 communication. When a coverage gap exists, customers
16 cannot receive and send signals. When customers
17 (indiscernible) gap their calls are disconnected.
18 And a coverage gap exists or a need for a proposed
19 site is found to be substantial," not just a gap, but
20 a substantial gap, "where the coverage needed by the
21 carrier is not limited to a small number of houses in
22 a rural area or merely the interior of buildings in a
23 sparse populated area."

24 Two days ago these fine gentlemen and I were
25 also before Nelsonville on another Homeland

1 application, and we heard the same spiel. The bottom
2 line is this. A gap means you're unable to initiate
3 and maintain calls. That's what it means. And a
4 significant gap means it has to be significant.

5 Now when Verizon comes in as a co-applicant
6 with Homeland, they say, "Well, this tower doesn't
7 meet our coverage standards." What are those
8 coverage standards? They say "We want 98 percent.
9 We want 98 percent of our calls to go through, and it
10 doesn't, we find the coverage is a significant gap
11 because it doesn't meet our coverage objectives." I
12 don't care what their coverage objectives are. It
13 doesn't meet the standard for what constitutes a
14 significant gap. It is up to you whether or not the
15 significant gap exists or not.

16 Now in the submission I'm giving to you this
17 evening, you will see call logs, and people make
18 calls, and Mr. Gaudioso will attack it as anecdotal,
19 that's fine. But the bottom line is if you are able
20 to initiate, maintain, and conclude telephone calls
21 using Verizon and AT&T services in a precise area
22 where they claim a gap exists, it is direct evidence
23 that there is no such gap much less a significant
24 gap, period, end of story.

25 (APPLAUSE)

1 I'm just going to turn through their
2 submissions very quickly. I don't want to take too
3 much of your time.

4 CHAIRMAN RICE: Neither do we want to -- you
5 can start to summarize. A lot of what you've said
6 we've heard before, believe it or not, but --

7 MR. CAMPANELLI: Okay.

8 CHAIRMAN RICE: So --

9 MR. CAMPANELLI: Then they go with the in-
10 building coverage. This is known statewide as --
11 nationwide as the bait-and-switch, my favorite topic.

12 Very often when they don't have a gap of
13 coverage -- and by the way, just so the record is
14 clear, Homeland Towers does not and cannot as a
15 matter of law have a gap in coverage. Homeland
16 Towers doesn't provide any personal wireless
17 services. Homeland Towers is in the business of
18 building towers to make money. That's all they do.
19 That's what this application is about.

20 And so these days, applications such as this
21 really don't have anything to do with gaps in
22 coverage. They're about future capacity needs as is
23 mentioned in Purecon's report. And so what they'll
24 do is --

25 (APPLAUSE)

1 MR. CAMPANELLI: -- they'll do what's called
2 a bait-and-switch. Even if they do a drive test,
3 they'll do a drive test.

4 A drive test is very simple. You take a
5 cell phone. You attach it to a dashboard on a car,
6 and you drive through an area. And attached to the
7 cell phone is a little recording device and it will
8 take a signal strength recording every few
9 milliseconds, so in an hour-and-a-half drive, you get
10 a million readings.

11 And then they get the actual signal strengths
12 if you trust the person taking the test, which is not
13 necessarily the case here for me, but in any event,
14 what they then say is, "Well, the outside shows you
15 have substantial -- you have more than ample outside
16 coverage, but our gap is in in-building coverage."
17 What does that mean? Here's what it means to
18 laypersons.

19 They take the actual signal strengths and
20 they multiply them by an arbitrary figure to reduce
21 the number and they claim that that manipulation of
22 the number is necessary to account for the reduction
23 in signal strength that occurs when the signal passes
24 through the materials of which the buildings are
25 made. Here's the fine point of it.

1 If you want to know what the signal strength
2 is inside a building, go inside and test it, and they
3 don't. And when they don't, there's a reason for
4 that, is because they have sufficient (indiscernible)
5 in-building signal strength to maintain calls.
6 That's why they won't do it.

7 I forgot to mention, you talked -- you said
8 that you wanted a signal -- the drive test data for
9 AT&T. That's not what you should be asking for.
10 What you should be asking for is the actual dropped
11 call data. AT&T and Verizon have software. They can
12 punch in a few keys on the keyboard and they can give
13 you an exact number of the dropped calls for any area
14 for any time, and to show you what percentage of that
15 call that represents. So they can say on Smith
16 Street for December 31st between 1:00 and 2:00, 1,000
17 calls were tried and 300 failed. You won't see that
18 here, and the reason you won't see it is there is no
19 significant gap in service, which is why their own
20 website that both Verizon and AT&T publish show have
21 no gap in service in the precise areas they're
22 claiming they have here.

23 And I read their report and they said,
24 "Well, that's," you know, "that's kind of a marketing
25 thing." Really? Ask yourselves this question.

1 Verizon has published and AT&T has published to the
2 entire world that there's no gap in this specific
3 area which is the subject of this application. They
4 say it's not true. So who are they lying to, you or
5 the world? You figure it out.

6 (APPLAUSE)

7 MR. MARINO: I have to say one thing, and
8 we've talking about gaps in coverage and such since
9 the beginning of this process, and I have in no way
10 made up my mind how I'm going on this application.
11 There are a number of outstanding issues I'm still
12 concerned about. But I can tell you, my house on
13 Main Street, we have -- I have four children and my
14 wife are on Verizon. We have to go outside to take a
15 phone call. She cannot call from inside the house or
16 even receive a text, so --

17 MR. CAMPANELLI: I respect that.

18 MR. MARINO: -- any other issues that we may
19 have with this, and I don't like the look of the tree
20 and there's a lot of things that I'm concerned about,
21 we cannot make a call from my house on Main Street
22 from Verizon.

23 MR. CAMPANELLI: I understand.

24 MR. MARINO: So I just want to, you know --

25 MR. CAMPANELLI: I respect that.

1 MR. MARINO: -- all this talking and maps
2 and -- I'm telling you I can't make a call.

3 MR. CAMPANELLI: I understand. You live
4 here, right?

5 MR. MARINO: I do.

6 MR. CAMPANELLI: Okay. And you leave your
7 house and drive around, right? You drive places,
8 right? How large is the area of that gap? How large
9 do you have a problem?

10 MR. MARINO: How much time do I -- I'm not
11 going to debate this with you now. It's not really
12 an important issue.

13 CHAIRMAN RICE: He's just making a point.

14 MR. MARINO: You said that, you know, you
15 made a statement there is no gap.

16 MR. MARINO: There's a gap at my house.

17 CHAIRMAN RICE: (Indiscernible) know that,
18 but what Steve is saying there's a gap at his house.
19 Just take that, think about it --

20 MR. MARINO: That's anecdotal, too.

21 MR. CAMPANELLI: There's a significant
22 difference between a gap --

23 CHAIRMAN RICE: Right.

24 MR. CAMPANELLI: -- and a significant gap.
25 Here's the other fine point.

1 CHAIRMAN RICE: Right.

2 MR. CAMPANELLI: The law says, the federal
3 court says, have interpreted the Telecommunications
4 Act as saying this does not guarantee carriers
5 seamless coverage. In Purecon's own report, they
6 said they need this because they needed to get
7 seamless coverage, and the courts have specifically
8 said seamless coverage is not the standard.

9 CHAIRMAN RICE: Okay.

10 MR. CAMPANELLI: They have to prove a
11 significant gap.

12 CHAIRMAN RICE: Right. We're aware of that.
13 What do you got next?

14 (PAUSE)

15 MR. CAMPANELLI: You know what? I'm going
16 to finish and just submit -- can I give you a copy of
17 my submissions?

18 CHAIRMAN RICE: Yes.

19 MR. KEELEY: Can I ask one question before
20 he --

21 CHAIRMAN RICE: Yes. Yes, please do, Chris.

22 MR. KEELEY: Just as a representative of
23 some of the neighbors there, one of the issues that
24 was surfaced, it may have been by our Village
25 engineer, was whether or not a tower company would