

1 to meet." But if you look at the code, it clearly
2 says that the application must be based on actual
3 need.

4 Courts have -- this is an academic point.
5 Courts have held over and over that actual need
6 refers to a significant gap, so I'm not quite clear
7 where Counsel is coming from when he's saying they
8 don't have to show a significant gap.

9 So on all of these points, are you starting
10 to see a pattern? What Counsel is effectively doing
11 is coming to this Board and asking you to make a
12 decision by putting a gun to your head, but I submit
13 that his gun is loaded with blanks. A lot of this
14 has been a misrepresentation. It's been meant to
15 intimidate the Board, to browbeat you into making a
16 favorable decision sooner and perhaps more rash than
17 need be.

18 On that point, I would only say in light of
19 these what I would argue are misstatements of the
20 law, I wonder what else has been said that I haven't
21 seen or heard from the record where Counsel has done
22 the same.

23 And on that point, I'd be happy to take some
24 questions or I would defer to Mr. Comey (phonetic),
25 who is our expert that we would invite to speak at

1 this time.

2 CHAIRMAN RICE: Well, I just want to thank
3 you for -- unless the Board has questions.

4 (APPLAUSE)

5 CHAIRMAN RICE: Who's next?

6 FEMALE SPEAKER: Dick Comey.

7 FEMALE SPEAKER: Eleanor Chu is here.

8 FEMALE SPEAKER: Oh. Eleanor Chu?

9 FEMALE SPEAKER: Yeah.

10 FEMALE SPEAKER: Okay.

11 FEMALE SPEAKER: Okay.

12 CHAIRMAN RICE: Eleanor.

13 FEMALE SPEAKER: So she can go to bed.

14 CHAIRMAN RICE: Come on up.

15 MS. CHU: Am I supposed to stand here?

16 CHAIRMAN RICE: You can sit or you can just
17 speak to the Board, however you want.

18 MS. CHU: Okay.

19 CHAIRMAN RICE: Take your time.

20 MS. CHU: Hi, my name is Eleanor Chu and I
21 live on (indiscernible) Street and I'm on the
22 Holiday Inn Student Council. My mom has always told
23 me to stand up to bullies and to have my friend's
24 back, and I have all of your backs and you, sirs,
25 are bullies.

1 (APPLAUSE)

2 You're trying to put a cell tower in our
3 village that we don't want or need.

4 I know people who are very upset about the
5 cell tower that was going to be straight across from
6 Secra Street and they were worried over the fact
7 that there was going to be a cell tower looming over
8 the school, but thankfully people spoke up and Secra
9 Street is not going to have a cell tower next to it.

10 I was in the position of almost having a
11 cell tower across from my street, and now they want
12 to build it next to a graveyard, but it's not better
13 than it was before because now whenever someone
14 wants to go to the graveyard to think about their
15 loved ones, they will see, hear, and feel the noise
16 and vibrations of the ugly cell tower right next to
17 them.

18 I feel sorry for the people who may live
19 right next to an ugly cell tower, and for the
20 children at Manitou School. So please don't put an
21 eyesore of a cell tower in our lovely town.

22 Also, I have a letter from Senator Jill
23 Gillibrand saying that she's looking into this
24 matter with the FCC, and her office called my mom
25 today.

1 (APPLAUSE/CHEERING)

2 CHAIRMAN RICE: Eleanor, thanks for putting
3 that together and making a presentation. If you do
4 have a copy of that letter, we'd like to see it or
5 if you want to submit it, it's not required, but it
6 would be great to have. We don't want to take your
7 only copy.

8 MS. CHU: Here.

9 CHAIRMAN RICE: Thank you. We'll mark it as
10 part of the public record to share with everyone.

11 MR. HELLBOCK: That's the original, right?

12 MS. CHU: Yeah.

13 CHAIRMAN RICE: Would you like -- do you
14 want to give us a copy? You can drop it off at the
15 -- I want you to keep that for yourself. We can --
16 you can drop it off to the mailbox at any time at
17 the Village office, okay. Thank you.

18 MS. CHU: Okay.

19 CHAIRMAN RICE: Next, please.

20 FEMALE SPEAKER: Dick Comey.

21 MR. COMEY: Good evening, Members of the
22 Board. My name is Richard Comey. I am a partner in
23 the largest municipal wireless consulting firm in
24 the country. I've been retained, as it was
25 mentioned by the attorney that just spoke, to review

1 the application.

2 This process, since I got into it just a few
3 days ago on my behalf, is not complete; however, I
4 would like to simply mention a few items, some of
5 which came up this evening here in front of the
6 Board.

7 By the way, I do believe my resume is
8 included in the packet of information that has been
9 provided to you folks.

10 CHAIRMAN RICE: It's in the packets --

11 MR. COMEY: Yes, yes. It's in there, my
12 resume, my background. I have spoken in front of
13 hundreds of boards on this issue, reviewed several
14 thousand wireless applications, okay.

15 By the way, I'm very familiar with this
16 neighborhood. I've been in this building before
17 relevant to Phillipstown work quite a number of
18 years ago, and I spent four years at this rock town
19 Highland home across the river. I am a graduate of
20 West Point, so I am very familiar --

21 (APPLAUSE)

22 MR. COMEY: -- and you can see this area,
23 obviously not only from this direction going that
24 way, there were a number of hours I spent looking in
25 the other direction, folks.

1 Let me make comment on just a few things.
2 The shot clock issue, and your law very specifically
3 does state that an applicant must provide proof
4 of(indiscernible). That's the RF. That report for
5 Verizon was submitted on August 30th.

6 As it was discussed this evening, if both
7 AT&T and Verizon are carriers in this application,
8 the start date for the 150 days is not July 17th,
9 it's August 30th.

10 Now --

11 CHAIRMAN RICE: What's your opinion on the
12 30-day, the Board's responsibility to make a 30 --

13 MR. COMEY: Okay. Well, you have 30 days to
14 comment on that application.

15 CHAIRMAN RICE: Right.

16 MR. COMEY: In my opinion, it would be from
17 August 30th. It is my understanding, but as I said
18 I haven't reviewed everything --

19 CHAIRMAN RICE: Sure.

20 MR. COMEY: -- it's my understanding there
21 was a meeting on September 7th, at which time
22 information was requested of the Applicant.

23 CHAIRMAN RICE: Right.

24 MR. COMEY: That should have, again, stopped
25 the shot clock until they responded. Now once they

1 responded -- the second time you only have ten days,
2 folks, and I don't see -- I haven't seen anything
3 relevant to a second stopping of the clock, but the
4 first stopping of the clock, assuming you start on
5 8/30 and you did ask question of them and they said
6 they'd respond, is within 30 days, so until they
7 responded on those issues, whether they're complete
8 or not, that's not an issue. It's a matter of have
9 they responded, okay.

10 CHAIRMAN RICE: Okay.

11 MR. COMEY: So it's at least 150 days from
12 August 30th. I don't know because I haven't gone
13 that far yet, when they resounded to your questions.
14 So in my opinion, there's even days that will take
15 you beyond January, whatever the date is, 22nd or
16 whatever.

17 Second item, the issue of once a facility is
18 there if it's approved. This gentleman here talked
19 about 10 percent. Mr. Gaudioso is correct, all six
20 of the qualifications need to be met to say that
21 it's an eligible facility. If it's an eligible
22 facility, no proof of need can be asked for on
23 another app, and it must be approved.

24 Now, the only difference in what I heard
25 this evening, the requirement for height is 10

1 percent or 20 feet. Mr. Gaudioso mentioned it, but
2 it kind of got a little glazed over, so in essence,
3 your analogy of 10 percent if we've had it a 100, it
4 could go to 110 and that's where we want it. In
5 reality, if it was 90, it could go to 110 based on a
6 criteria of an eligible facility because it's the
7 greater of 10 percent or 20 feet puts it in that
8 criteria.

9 CHAIRMAN RICE: Could I ask you a question?
10 I don't mean to interrupt, but can the Board set a
11 condition where that could never happen or are you
12 saying this law trumps this?

13 MR. COMEY: I have had that discussion with
14 a number of attorneys that have worked for quite
15 some time in wireless applications and the answer
16 they have right now is they do not believe that a
17 local regulation can supersede federal government
18 regulations.

19 Now, there's no case law that I'm aware of
20 or that that attorney was aware of on this issue,
21 but that was the opinion of an attorney that does a
22 lot of this work in conjunction with us and has
23 elsewhere in communities, actually not that far from
24 you, over in Millbrook we were involved, and a
25 number of other places. So that's the opinion I've

1 -- it's a verbal issue. I don't think there's any
2 case law on it yet, sir.

3 MR. KEELEY: Thank you for clarifying on the
4 six criteria. That's very helpful.

5 From your initial read, knowing that you're
6 just beginning to look at it now, is it your
7 understanding that those six criteria would or would
8 not be met or is it too early for you to tell?

9 MR. COMEY: Everything that I've seen thus
10 far could obviously be met.

11 MR. KEELEY: They would be met. The 10
12 percent or 20 feet could be provided?

13 MR. COMEY: Yes. And the fact that it's
14 within the same compound and there would really be
15 no reason to disturb the ground outside the
16 compound, et cetera, et cetera.

17 The way this is being proposed, those six
18 criteria would be met. By the way, we're working on
19 just one of those issues in another state right now
20 where we had that same discussion of the first
21 carrier, and what the community wanted and to
22 guarantee that it wouldn't go above, the first
23 carrier backed down and agreed to a lower height.

24 Now, as part of that whole issue, you have a
25 proposal in front of you for a height that they've

1 said they require. It's a new tower. How do you
2 determine that's the minimum height necessary unless
3 you get information at a lower height at which they
4 then, in writing, explain to you what they're
5 missing by going down. Maybe they could go down the
6 10 more feet or 15 feet or whatever and not have a
7 significant gap.

8 Now, the next issue -- I'm sorry, I'm
9 jumping into things. I am going to preparing a
10 report. It's going to go to my clients, obviously.

11 I'm sure it will be provided to the Board, and it
12 will contain these things and a number more.

13 The issue of significant gap. What was
14 stated here tonight was very, very confusing, okay.

15 I have not seen anything that says the gap has to
16 be in all of the frequency bands. In other words,
17 you haven't received 850-megahertz band data from
18 either applicant. They have it. They both have it.

19 They've not known you any of it, okay.

20 Now, they can, and for years, did provide
21 data in the 850 band. It's not that they can't,
22 it's just that for capacity reasons too many
23 customers, customers wanting speed, et cetera -- by
24 the way, I'm not saying from a business standpoint
25 that's wrong. It's a good business criteria, but in

1 essence, if their 850 service covers this community,
2 I have not seen anything that says they have to have
3 ubiquitous service in the 1700, 1900 and 21.

4 By the way, and I don't know if they've
5 explained this to you, the way in which I just
6 talked the bands, the lower the band, the further it
7 goes at the same power, so 850 covers quite a bit
8 more distance than 19 or 21. Seven hundred, which
9 is where they put their data, okay, goes further
10 than all of them, but they've provided you nothing
11 in the 850 band.

12 There's also another thing that's available
13 in terms of proof of need, it's called a drive test.
14 The propagation maps that they provided are
15 modeling, folks, about 35 inputs into the model,
16 okay. That's what they provide. By the way, the
17 map can obviously then change based on what input
18 you put in. I'm not challenging what was put in
19 because I don't know yet. What I'm saying is there's
20 another thing that, to the best of my knowledge, all
21 of the carriers do it at least once a year and many
22 twice a year, it's a thing called the drive test.
23 They have a vehicle with antennas on top. They hire
24 a third party, generally, and they go around and
25 every second they test the strength of the signal on

1 the main roads. Now that doesn't mean they're going
2 to do every road in the Village or whatever, but
3 that information should be available if requested.
4 And that is something we've always looked at in the
5 case of a new tower, okay.

6 Hang on just a second, please. The only
7 other item that -- oh, I have two other items.

8 CHAIRMAN RICE: Certainly.

9 MR. COMEY: The issue of the State Historic
10 Preservation Office, SHPO, and whether or not the
11 cemetery, which has been qualified, apparently, and
12 I'm going by what I've heard, qualified to be on the
13 register, but isn't there yet, does it have the same
14 conditions.

15 My strong suggestion to you would be that
16 you have the SHPO representative either send you a
17 letter or come in and testify.

18 By the way, I was personally involved in
19 going to SHPO about two, three years ago on just
20 such an issue in just such a cemetery, and I was
21 told by the SHPO individual the minute that it's
22 considered to be qualified, it's the same as if it's
23 on the register.

24 Now, I'm suggesting that you may want to
25 have SHPO give you that information. There is a

1 representative, I don't know who it is now, but
2 there is one down in this area that handles that,
3 and it would be very appropriate, I think.

4 The last thing that I heard tonight that's
5 kind of confusing to me is it's my understanding,
6 and this is relevant to AT&T and only AT&T, three
7 years ago or thereabouts, you had a hospital in Cold
8 Spring, not in the Village of Nelsonville. AT&T has
9 a site in -- had a site on that hospital. The
10 hospital came down. They couldn't replace the site.
11 They've gone without it for three years plus. And
12 the preponderance of the coverage from that site is
13 not for the community of Nelsonville.

14 Why should Nelsonville, because they lost
15 the site in a nearby community -- by the way, I also
16 heard a little bit about McKeel's Corner which I
17 know is up the hill, and that's the same kind of an
18 issue, but it's not in there yet. But AT&T actually
19 is stating that a good portion of what they need is
20 because they lost a site in the community outside of
21 yours.

22 Now, is there a reason, any reason that you
23 have to provide the site? I'm not saying that
24 service, when they had it, stopped at the boundary.

25 Don't misinterpret because it doesn't stop at a

1 town or village boundary, but there is nothing that
2 I'm aware of that says because you took down a site
3 in another community that this community has to give
4 you one.

5 Those are my comments. I will be preparing
6 a report, folks. I can answer any other questions
7 you may have now.

8 CHAIRMAN RICE: I have a question for you.

9 MR. COMEY: Yes, sir.

10 CHAIRMAN RICE: And I don't mean it to be a
11 trick question, but it sounds like you're in the
12 business. You do this -- the thing that's always
13 puzzled me, and maybe it's puzzled the Board, is why
14 does AT&T or Verizon, publicly traded companies,
15 building these cell towers they don't need? What's
16 the benefit?

17 MR. COMEY: I have not said --

18 (APPLAUSE)

19 MR. COMEY: I will explain that to you.

20 First of all, we, as an organization, are not anti-
21 wireless. This world is going to wireless, whatever
22 is going wireless, but --

23 CHAIRMAN RICE: I'll make up a number. Why
24 are they going to spend a million dollars of
25 Rockledge if they don't need it?

1 MR. COMEY: For capacity. People in those
2 homes in some cases have four and five individuals
3 with cell phones that are providing at 6 to 8 at
4 night, let's say, four or five individuals on the
5 phone, they need capacity for data. As far as what
6 I've seen thus far, this is not an issue of a
7 significant gap.

8 I agree that more likely than not they have
9 a gap in 700. They have a gap in 1900, but they're
10 covered in 850. What they want, and those are the
11 two bands or 2100, that they use for data. They
12 want capacity relief for data.

13 By the way, they're doing that everywhere.
14 That's exactly what the industry is doing all over
15 the place, and I'm not suggesting this, but I have
16 not seen any litigation on capacity anywhere.

17 CHAIRMAN RICE: Okay.

18 MR. COMEY: It is not --

19 CHAIRMAN RICE: Is the key word capacity?

20 MR. COMEY: I have not seen, and I'm not
21 suggesting you want to do that, but in essence, the
22 issue, as far as I'm concerned, is one of capacity,
23 and if it is, they provided you nothing on capacity.
24 They haven't said when they're going to exhaust
25 their data. They haven't said what they cover.

1 By the way, what they've provided you in the
2 two bands, the 700 may cover the whole area, but the
3 upper band still has many holes in what they
4 provided you. So there is no requirement and
5 they're not even planning a requirement to cover the
6 entire community with both of the bands. So how can
7 they say to you a significant gap is by band? It's
8 by carrier, to the best I'm aware of.

9 CHAIRMAN RICE: Well, we appreciate -- look
10 forward to getting (indiscernible).

11 (APPLAUSE)

12 MR. COMEY: Thank you very much.

13 FEMALE SPEAKER: Eliza, I can never say your
14 name right.

15 CHAIRMAN RICE: Yes, please.

16 MS. NAGEL: Hi. So I'm a member of the
17 Phillipstown Cell Solution, and I -- my job tonight
18 is to speak to the parts of the code that you have
19 to decide on whether the tower will not have a
20 significant adverse impact on scenic or historic
21 resources, and that they're able to minimize such
22 impacts to a level of insignificance, so it seems
23 like my job would be really easy to prove that if it
24 will have significant impact. As we know, we need
25 substantial evidence to prove that.

1 So what we've put in your packet is a lot of
2 expert testimony which you'll need to prove
3 substantial evidence that the Cold Spring Cemetery
4 is a treasured, scenic, and historic resource in our
5 community, and that a looming tower over this
6 cemetery would be significantly detrimental.

7 So who decides what is substantial evidence
8 in the long run? It's you guys, so that's why we
9 are giving you the tools, the expert opinions to let
10 you know, you know, what -- to give you that
11 substantial evidence. We include information on
12 what's been talked about tonight, the SASS, the
13 Scenic Area of Statewide Significance. That's a
14 public policy, and that can't be ignored.

15 I just wanted to give you a tiny summary of
16 it because I know it came up, what does that mean
17 and you hadn't read it, so this comes from the New
18 York State's Coastal Management Program and it
19 protects, as a policy, coastal landscapes that
20 possess inherent scenic qualities, including
21 dramatic shorelines, expansive views, and historic
22 landscapes -- historic landings and working
23 landscapes. So we've included in that package some
24 experts speaking about the impact of SASS. We've
25 also reached out to Environmental Design and

1 Research who told us that they said they reviewed
2 the material and said that it did raise questions
3 and methodology and the results and conclusions, and
4 they were -- they did offer to do an assessment of
5 that.

6 We also have information on SHPO and other
7 expert opinions in there that you can read through
8 as well as photos that, you know, we looked at the
9 angles at which they took the photos. We did
10 stipulations of ourselves. We, you know, did the
11 GPS mapping and the photos and the balloon test. We
12 were going to speak to the balloon test, but that's
13 also in there as well. And so please look at our
14 exhibits.

15 Finally, I wanted to say that -- I wanted to
16 thank the tower, actually, the tower, I want to
17 thank you because you have given me a new
18 appreciation for my neighbors and my town, and I've
19 spent several near all-nighters -- I'm an attorney
20 myself, and so I spent several nights reading case
21 law, several weeks reading case law, learning this
22 with my neighbors. And you've unified us. I've met
23 all of these people that I haven't met in the seven
24 years I've lived here. It's given me this renewed
25 sense of joy to live in this beautiful town because

1 that's all we talk about is how beautiful our town
2 is and how this can't destroy it, and so it won't
3 destroy it, so thank you for that.

4 (APPLAUSE)

5 CHAIRMAN RICE: (Indiscernible) earlier
6 today, so thank you for putting it together. I know
7 it's a lot of work. It was very professionally done
8 and we'll review it in more detail when we have a
9 little more time.

10 MR. GAUDIOSO: Mr. Chairman, may we have a
11 copy of that so that way we actually have a copy.

12 CHAIRMAN RICE: You can have my copy. I
13 have it on the internet.

14 MR. GAUDIOSO: Thank you.

15 CHAIRMAN RICE: I might not have all of it.
16 The attorney, is this in the internet yet?

17 MALE SPEAKER: Pardon me, Mr. Chairman?

18 CHAIRMAN RICE: Is your information --

19 MALE SPEAKER: The legal memo is part of the
20 package, I believe.

21 FEMALE SPEAKER: Also, sir, I printed those
22 out and that costs me, that one (indiscernible)
23 costs me 20-something dollars, so I don't have
24 another copy for each of you.

25 CHAIRMAN RICE: We'll make one.

1 FEMALE SPEAKER: Most of it is
2 electronically, so I would ask that maybe you can
3 provide them that and you keep the (indiscernible)
4 that I just spent my own money on.

5 (MULTIPLE SPEAKERS)

6 MALE SPEAKER: If I may, maybe we can
7 undertake to --

8 FEMALE SPEAKER: I could make another one,
9 that would be fine, but my priority was to get it to
10 the Board.

11 CHAIRMAN RICE: We did read it online today.

12 (MULTIPLE SPEAKERS)

13 MALE SPEAKER: Mr. Chairman, if I may, the
14 public, in general, and I'm here as a member of the
15 public, we've been limited to viewing the
16 Applicant's materials many days, sometimes weeks
17 after they've been submitted, and that's the
18 courtesy that we've been shown.

19 CHAIRMAN RICE: Right.

20 MALE SPEAKER: I understand that you need to
21 act in good faith, but I would submit, Mr. Chairman,
22 that at least the Board take a moment to review the
23 materials before they get into Counsel's hands.

24 We've just prepared this today. There's no
25 way you could have read my --

1 CHAIRMAN RICE: Right. No, we didn't read
2 it all, I understand, but we received the previews
3 of it via email.

4 MALE SPEAKER: Correct, but my - for
5 example, my --

6 FEMALE SPEAKER: You received a short
7 version.

8 CHAIRMAN RICE: Yeah, we did.

9 FEMALE SPEAKER: -- (indiscernible) at-a-
10 glance report.

11 CHAIRMAN RICE: Okay.

12 FEMALE SPEAKER: (Indiscernible) --

13 CHAIRMAN RICE: Okay. Can you send it?

14 FEMALE SPEAKER: -- and spent hundreds of
15 dollars (indiscernible).

16 CHAIRMAN RICE: Okay, we appreciate it.

17 FEMALE SPEAKER: And we'll give you the
18 electronic copy to provide to the attorneys.

19 MALE SPEAKER: Mr. Chairman, if I may, I
20 literally finished drafting the memo this afternoon,
21 so you haven't seen it, Mr. Chairman.

22 (MULTIPLE SPEAKERS)

23 (APPLAUSE)

24 MALE SPEAKER: Counsel will have his
25 opportunity to review it and I'm sure he'll have his

1 associates doing it no time, so --

2 CHAIRMAN RICE: Sorry, my mistake. I
3 thought we had received -- we did receive via email
4 multiple --

5 FEMALE SPEAKER: (Indiscernible)

6 CHAIRMAN RICE: No, but just to be clear, we
7 did receive it -- right, and we did receive an email
8 with some attachment. You're saying it's not all
9 (indiscernible).

10 FEMALE SPEAKER: No. That's about one --

11 CHAIRMAN RICE: One part of it.

12 FEMALE SPEAKER: -- tiny part of it.

13 CHAIRMAN RICE: Okay, perfect. Thank you.
14 I know we didn't receive the attorney's -- all
15 right, good. Who's next?

16 FEMALE SPEAKER: Mark Blanchard.

17 MR. BLANCHARD: Good evening.

18 CHAIRMAN RICE: Yes, Mark.

19 MR. BLANCHARD: Good evening, Chairman of
20 the Board, Chairman of the Planning Board, Members
21 of the Board, I'm here tonight -- my name is Mark
22 Blanchard from the firm Blanchard & Wilson. We are
23 located in White Plains, 235 Main Street, White
24 Plains, New York. And you'll have to excuse me, I'm
25 just getting over a cold, so --

1 CHAIRMAN RICE: No, no problem. You wrote
2 the letter we just gave to --

3 MR. BLANCHARD: Well, yes, and I've written
4 two letters to the Board, but I'd like tonight
5 specifically just to limit my comments to my letter
6 dated November 26.

7 CHAIRMAN RICE: The new one?

8 MR. BLANCHARD: Yes, the new letter, 27th of
9 2017. And I'd like to take a step back. We've been
10 hearing a lot tonight, some relevant information
11 regarding the tower, okay, but I want to take a step
12 back and talk about what to me is a very narrow
13 legal question, which I don't think has been decided
14 yet. There's been some testimony, some submissions
15 that perhaps this issue has been to rest, but the
16 issue I think that's still before this Board is
17 whether or not the mere beneficiary of a right-of-
18 way access privilege is entitled to go onto someone
19 else's property and make permanent improvements.

20 For example, does a right-of-way beneficiary
21 have the legal right to go in and dismantle a hand-
22 built rock wall? Does that right-of-way beneficiary
23 have the legal right to go and trench and install a
24 permanent utility corridor? Does that same person
25 have the right to remove old-growth trees? We heard

1 Counsel tonight agree that in that neighborhood
2 there are threes that are likely 60 to 80 years old.

3 MR. GAUDIOSO: I didn't say that.

4 CHAIRMAN RICE: 80 feet tall.

5 MR. BLANCHARD: Tall, okay, I'm sorry. I
6 apologize. I would not want to misstate.

7 Everything's on the record. I thank you for the
8 correction, but we're talking about old-growth
9 irreplaceable trees

10 Now, I represent the Villedella (phonetic)
11 family at 16 Rockledge Road. We're right next to
12 this parcel, and my clients own Rockledge Road,
13 okay, the narrow gravel lane. Does the right-of-way
14 beneficiary have the legal right to tear up that
15 gravel lane that is completely consistent with the
16 entire community, with the whole subdivision and the
17 entire community? Do they have the right to tear up
18 that road and install a -- it's been called a code-
19 compliant road?

20 Code-compliant, what does that mean, the
21 code-compliant road? That means that it's going to
22 be able to withstand construction equipment. That
23 means it's going to be able to withstand heavy-duty
24 utility maintenance trucks that have to be on site
25 for regular scheduled maintenance even if it's once

1 every three years or whenever the application
2 materials say, but that's regularly scheduled, okay.

3 That road is going to have to withstand those
4 maintenance trucks. That road is also going to have
5 to withstand the Village's emergency first-responder
6 apparatus.

7 So does this beneficiary, and I like to
8 quote from the deed, the Logan deed in 1975, it
9 states as it's doling out -- as this instrument gets
10 recorded in the Putnam County Clerk's Office, it
11 says -- it delineates the rights right to the deed
12 holder. It says "Together with a right-of-way in
13 common with others over lands now or formally of
14 O'Neil --," and it goes on to read and provides a
15 description of the right-of-way and of the property.

16 So at issue here is that the owner, the Logan owner
17 enjoys, without question, access to that land lot
18 parcel.

19 Okay, so you've heard tonight -- I once had
20 a judge tell me before he yelled at me for a long
21 time, he once said, "You know, Counselor, sometimes
22 in life you use butter knives, sometimes we use
23 scalpels." Tonight I'm asking you to remain with
24 the scalpel because you've been hearing a lot the
25 word "access," the word "access" as if that is the

1 full umbrella of the range of rights that are
2 contemplated here. But access is just that, it's
3 the ability to transfer the burden parcel, Lot 16,
4 not Lot 16, I'm sorry, 16 Rockledge Road. It's the
5 ability for the owner, the Logan owner, to get over
6 that land. They have an absolute right in unimpeded
7 travel to their land. No one is disputing that. No
8 one is disputing that.

9 But what I represent to you tonight is that
10 they do not have the right over the owner's
11 objection, without the owner's consent, they have no
12 right to stand in front of you say "We agree to
13 improve the right-of-way." No one, other than the
14 Logan parcel, is asking for that right-of-way to be
15 so-called improved. Quite frankly, the improvement
16 that they're talking about would take away the
17 entire character of that neighborhood. That is
18 something that you're not preempted from under the
19 federal law. You are allowed to consider that in
20 your deliberations. So that removal of the trees,
21 the removal of the rock wall, the paving of a code-
22 compliant road to handle heavy machinery is, from my
23 client's perspective, from my legal perspective, is
24 not an improvement at all.

25 And if you talk -- let's stay with the

1 question for a second. Forget about the question.
2 We'll come back to the question of the quality of
3 the improvement.

4 I provided my November 27th letter. I
5 provided case law that had stood for over 160 years
6 that the right -- the holder of a right-of-way does
7 not have physical -- does not have the legal right
8 into the physical aspect of that way, okay.

9 The Grafton case that I've cited goes back
10 to 1865 and we have cases that have spawn out of
11 that. I've cited to you cases from 2015, another
12 case from 2008, from the Appellate Division that
13 would overview that -- the Appellate Division within
14 this town this Board is located. They have affirmed
15 that holding that the easement holder or the right-
16 of-way access holder holds the right of travel, but
17 has no physical or legal right into the physicality
18 of that way.

19 So what you're hearing tonight, not tonight,
20 but what has been part of these application
21 materials are conditions that are ancillary to the -
22 - the conditions that are a part of this approval.
23 No one's got -- you look at the code, no one's
24 questioning that the cell tower under a special-use
25 permit would be permitted on that lot. That's in

1 the zoning code. That's in the zoning code. But
2 what hasn't been given the proper attention, what
3 I'm asking you now to slow down and think about and
4 get more research on, and Counsel just got my letter
5 tonight, I UPS-d it yesterday, he has a right to
6 respond. It's all part of the public record, but
7 what I'm asking you to slow down and deliberate upon
8 is a very narrow question. Does a right-of-way
9 access holder -- it says it right here. Look right
10 to the Logan deed.

11 And by the way, we have all the other deeds
12 for the rest of the property up there. They all say
13 the same thing. They refer and they reference, and
14 I'll supplement my submission tonight with copies of
15 these deeds, copies you can read, but copies of
16 these deeds, all -- every deed up there for that
17 subdivision says the same thing, a right-of-way. It
18 does not -- the deeds do not have other reservations
19 of any other use necessary or all other rights
20 reserved. It says when you subdivide, when they
21 created that subdivision, it said a right-of-way,
22 and that's important. It's a right-of-way. It is
23 not the right to go in and permanently alter that
24 gravel lane, something that I've put -- yes, sir,
25 please.

1 MR. MARINO: Is your implication then that
2 if that is a land lot parcel, the only access to
3 that parcel is a right-of-way to an existing public
4 road that the -- someone who comes in and wants to
5 build a house on that property can use that right-
6 of-way to get into the property as long as they
7 don't re-grade it, bring in gravel, make it
8 otherwise passable, to access that particular lot?

9 MR. BLANCHARD: Well, that's what the case
10 law supports. No one is saying that the Logan
11 ownership has to go onto that parcel and build a
12 shed or an above-ground pool. I mean, they have a
13 right to the use of that parcel, but the right --
14 when this was conveyed in 1975, okay, when these
15 rights were conveyed in 1975, these were rights for
16 a residential subdivision, not a commercial
17 corridor. You know, these weren't rights that were
18 created so that you could have -- you could create a
19 commercial use up there for financial benefit at the
20 expense of your neighbors.

21 FEMALE SPEAKER: That's right.

22 (APPLAUSE)

23 MR. BLANCHARD: That is not what was
24 intended. And, sir, to your question just staying
25 with that for a minute, if the court was to look at

1 this and say, "Well, what is the highest and best
2 use of that property?" It wouldn't necessarily be,
3 well, what's the highest and best use under the
4 code. It's what's the highest and best use in
5 relation to the character of the neighborhood, in
6 relation to the neighbors. The zoning has to make
7 sense. Not everything that's allowed fits on that
8 parcel. Not everything that is under a long list of
9 uses is appropriate in that location.

10 Here, no one is disputing that the Logan
11 parcel is -- would have a right to put a house or
12 something appropriate. I mean, it's premature and
13 speculative to say what would be allowed, but no one
14 is saying that the Logans only enjoy a right to go
15 walk the property and feed the squirrels, but this
16 use, this commercial use that requires such a heavy
17 impact over land to which they do not hold title,
18 over land to which they do not pay taxes, it
19 requires such a heavy impact that it is just simply
20 not appropriate at this time. It's not an
21 appropriate use for this (indiscernible).

22 (APPLAUSE)

23 CHAIRMAN RICE: (Indiscernible) your client
24 could give permission to a future homeowner or could
25 give permission to the applicant? Do they have the

1 right to give permission for utilities? You're
2 saying that's their right, they could do that, but
3 they're withholding it?

4 MR. BLANCHARD: No, no, I didn't go quite
5 that far, sir.

6 CHAIRMAN RICE: Okay.

7 MR. BLANCHARD: But let's stay on that legal
8 principle for a minute. The easements are recorded
9 instruments. Easements or rights-of-way, deeds,
10 evidence --

11 CHAIRMAN RICE: (Indiscernible)

12 MR. BLANCHARD: No, I'm giving you a list of
13 examples.

14 CHAIRMAN RICE: Oh, okay.

15 MR. BLANCHARD: Okay, a deed, a recorded
16 easement, right-of-way, the right -- these issues,
17 border agreements, access agreements, various things
18 that we use to record, to memorialize our property
19 rights.

20 To use your hypothetical, there's --
21 conceptually, the neighbors could enter into a
22 transaction for compensation, right, to alter the
23 rights that are given to them under these deeds,
24 under their own free will. They could possibly
25 enter into that transaction, but, sir, to grant this

1 approval under just what's provided here would be
2 really an approval that's altering the recorded --
3 the scope of the recorded instruments.

4 Stay with me for a second. That might have
5 been confusing. Granting this approval allows
6 someone who is not entitled, who only has the right-
7 of-way in common with others, it grants them the
8 authority to go outside the four corners of this
9 recorded instrument and start making permanent
10 changes to a lot to which they do not own title, to
11 which they do not pay taxes, and over the owner's
12 objection.

13 MR. KEELEY: If there were a house that were
14 to go there, there would just be above-ground wires
15 just as the other (indiscernible) on that street or
16 it's not that that lot is permanently undevelopable?

17 MR. BLANCHARD: Of course not. Of course
18 not.

19 MR. KEELEY: It's that it just can't be done
20 underground, according to your argument, it can't be
21 done. In this scenario, the tower's requirement
22 under the zoning code is that power lines shall be
23 underground.

24 MR. BLANCHARD: Exactly.

25 MR. KEELEY: Your argument is they could

1 have access to that portion of the road --

2 MR. BLANCHARD: No.

3 MR. KEELEY: -- so therefore, they can't
4 fulfill the requirements under the zoning?

5 MR. BLANCHARD: Exactly. I'm speaking to a
6 very narrow issue across Rockledge Road, okay.
7 Rockledge Road, the very narrow issue. The case law
8 is clear, okay. What I'm saying, we're not saying
9 at the TCA or the federal -- the Telecommunications
10 Act or the shot clock or any of that stuff. I'm not
11 there. What I'm saying is that under your code,
12 under this section, actually, under the
13 Telecommunications section, specifically in your
14 zoning code, you are allowed, as this is an organic
15 process and information becomes available as you
16 hear from lawyers and experts and concerned
17 community members, requests for information becomes
18 apparent. Under your code, you are allowed to ask
19 for reasonable -- additional and reasonable requests
20 for information.

21 I'm suggesting to you tonight that what has
22 been presented as a prima facie case for access is
23 limited to only that. I'm presenting to you tonight
24 that there has been no prima facie case of the Logan
25 ownership's right to enter upon 16 Rockledge Road

1 and destroy it, okay.

2 I have not seen access. Traversing is
3 different than having the authority to go lay down
4 permanent improvements, to walk on someone else's
5 land and cut their trees down. That's what I'm
6 saying.

7 I have other points in the letter that have
8 been covered this evening. I'd rather choose to
9 keep my remarks on the brief side. I'm happy to
10 answer questions if you have any questions.

11 CHAIRMAN RICE: I just have one quick
12 question. Last week we did address this and there
13 was some opinion that this Board has really nothing
14 to do with your dispute with the Applicant. Could
15 that be true? (Indiscernible) litigating with them
16 and why are we involved?

17 MR. BLANCHARD: Well, you're involved --
18 let's go --

19 CHAIRMAN RICE: I mean, we know why we're
20 involved.

21 MR. BLANCHARD: Because you're involved,
22 it's the very nature, it's the quality of your
23 approval. Let's think about when you're -- when
24 courts reviewed -- the standards that we look to
25 when we're putting applications together as

1 attorneys, we say, well, how would this undertake --
2 what's the judicial scrutiny that this has to
3 withstand, right?

4 CHAIRMAN RICE: Right.

5 MR. BLANCHARD: And, of course, we all know
6 the standards, arbitrary and capricious or an abuse
7 of discretion, so it would be, in my humble opinion,
8 and I'm presenting this to you, it would be both an
9 abuse of discretion and arbitrary and capricious
10 decision based on an incomplete record to agree to
11 endorse conditions the Applicant has no authority to
12 be bound to.

13 You can't endorse, you can't agree to
14 conditions that are absolutely vital. They're not
15 optional. The conditions to get to to improve the
16 Rockledge portion of this project, the Applicant has
17 no authority to make those agreements.

18 And that's why I put in my letter your
19 application calls for owner certification, right.
20 I'm presenting to you that that application based on
21 that, the application, as a matter of law, is
22 incomplete because the owners that should be
23 agreeing to be bound by those conditions are not
24 within this application.

25 CHAIRMAN RICE: Your client.

1 MR. BLANCHARD: Of course, yes, please,
2 let's make it clear, yes.

3 MR. KEELEY: Is a similar scenario putting
4 it in Zoning Board terms if an application were to
5 come before us, an appeal were to come before us,
6 and someone looking to build a shed ten feet over
7 the property line, we would say "You don't have
8 standing. You don't have ability to build a shed ten
9 feet over the property line, only up within your
10 property. Are they extending beyond the property
11 line? Is that the issue? You were saying that
12 they're allowed to have a particular use, a
13 particular right-of-way over top?

14 MR. BLANCHARD: Absolutely.

15 MR. KEELEY: But they're not allowed to do
16 anything to do anything --

17 MR. BLANCHARD: Absolutely. That's a great
18 distinction because this Board -- the whole State-
19 enabling legislation that made zoning boards is so
20 that you can look at codes and say if there's a
21 setback issue, you're too close to the setback. You
22 get to grant a variance or you get to allow a
23 departure from what's required. But to whom? To
24 the owner, to the owner.

25 Here, we're talking about an owner who is

1 not consenting, clearly, who is not going to
2 consent, who faces destruction of the property.
3 There's another issue, and so -- I hope I've
4 answered your question, but that's exactly what the
5 root of this issue is, is that the person who should
6 be in front of you, the owner of 16 Rockledge, is
7 not.

8 MS. BRANAGAN: So then if -- let's say they
9 take the trees, they improve the right-of-way, all
10 that; is that a taking?

11 MR. BLANCHARD: Well -- please.

12 CHAIRMAN RICE: Trespass, who are they
13 trespassing?

14 MS. BRANAGAN: Does it amount to that, the
15 taking of property?

16 MR. BLANCHARD: I think it's a nuance issue.
17 I think that you have -- number one, I don't want to
18 -- yes, I do think there's a partial taking, but I
19 also think it's more than that. I think that if you
20 have someone come on to your road, right, and you're
21 not in ownership, there might be a cause-of-action
22 nuance. There might be a continuing cause of action
23 in trespass. You might have a cause of action.
24 There could be a partial taking here because of
25 the --

1 When you look at the -- now look, the
2 partial-taking argument needs a lot to be developed.
3 There will be a lot of debate about that argument,
4 but I ask you to consider this, the character of the
5 neighborhood, which is very important, when you --
6 how many times have you gone through the five-point
7 test for an area variance, right? You're weighing
8 the -- this is not an area variance, but I'm just
9 saying within your jurisdiction, you are constantly
10 thinking about the character and quality of the
11 neighborhood, SEQRA, under SEQRA, under the impacts
12 now. It's a very big deal with cumulative impacts,
13 quality of the neighborhood.

14 Here, you're taking this -- one applicant
15 wants to take away one gravel lane, the whole
16 mountaintop up there. The mountain residents'
17 district is spider-webbed with these beautiful
18 gravel lanes. You're going to take one of those
19 away, install an asphalt or concrete road, and
20 completely change the character of that subdivision
21 over the owner's objection without the owner being
22 involved with only the right-of-way in common in
23 others.

24 CHAIRMAN RICE: Just to be cleared, I don't
25 think we asked the Applicant to make -- the Board

1 did not ask the Applicant to improve the roads. I
2 think there is a concern about public safety in
3 terms of the fire engine.

4 MR. BLANCHARD: Right.

5 CHAIRMAN RICE: There was a response to
6 that.

7 MR. BLANCHARD: Absolutely, but I'm saying
8 that that response --

9 CHAIRMAN RICE: I see your point.

10 MR. BLANCHARD: Right, but that response
11 would be invalid as a matter of law. The trenching
12 of the utility corridor would be invalid as a matter
13 of law. Any improvements, any industrial -- any
14 improvements to allow the equipment to get through
15 there, any taking down of the trees or the rock
16 wall --

17 CHAIRMAN RICE: Even though they're a public
18 utility? It seems to be the operative word.

19 MR. BLANCHARD: Well, I think we're getting
20 into -- we're getting into two -- I want to split
21 hairs for a second because we're not the -- again,
22 I'm not -- my arguments are not concerning the Logan
23 parcel, okay.

24 CHAIRMAN RICE: (Indiscernible)

25 MR. BLANCHARD: Right. If the public

1 utility -- a public utility like Con Ed from
2 Yonkers, sorry, I forget who's up here in Putnam
3 County, but the Con Ed utility --

4 CHAIRMAN RICE: Sure.

5 MR. BLANCHARD: -- they actually have the
6 power of condemnation, so if that's what we're
7 getting at, that's not what we have here.

8 Here, they have to site the tower
9 appropriately.

10 CHAIRMAN RICE: Right.

11 MR. BLANCHARD: If they site the tower
12 appropriately and the conditions that are related to
13 this particular approval as they affect Rockledge
14 Lane are -- make this application, in my opinion,
15 invalid as a matter of law because you never have
16 that permission to go on to the (indiscernible).

17 CHAIRMAN RICE: Okay.

18 (APPLAUSE)

19 MS. BRANAGAN: It seems like for maybe --
20 I'm not clear, but utilities are -- have two
21 meanings in this scenario. Utilities for putting
22 through lines, underground electrical, right, to get
23 access to bring in -- you would bring in for a
24 house, so that's one way, one type, right?

25 And then there's utility of -- the cell

1 tower qualifies as a utility, so it feels to me like
2 there's a difference in, I mean, yes, they would
3 have the ability to bring in lines through the
4 right-of-way where you want a residential house.
5 That would be not so much in terms of taking trees
6 and improving the road and whatnot, but the power of
7 the utility as in a tower, a cell tower company, has
8 a greater -- has some greater power to do all the
9 rest of it?

10 MR. BLANCHARD: That's a great question, and
11 I'm glad you landed on that distinction because it's
12 one that we can make easily.

13 We should be referring to, and I'm remiss,
14 this was my mistake, the way we should be describing
15 the cables and the ancillary equipment that would be
16 trenched across the private lane, I've been
17 referring to those as utilities. We often refer to
18 those kinds of wires and things of that nature as
19 utilities. You think no, utility easements, that
20 can refer to your domestic water, your sanitary,
21 your storm water. We can refer to those utilities.

22 We can just carve those out and refer to them
23 differently and distinguish them by just saying all
24 the electric support, all the electronic cables, the
25 electricity, the juice, any of that stuff going to

1 that pad or to service that tower would be requiring
2 a condition that the Applicant doesn't have the
3 authority to agree to.

4 CHAIRMAN RICE: Okay.

5 MR. MEEKINS: I have another question.
6 We've only recently got formal opinions on the
7 right-of-way issue.

8 MR. BLANCHARD: Sure.

9 MR. MEEKINS: We've heard comment about
10 before another earlier Planning Board or -- I assume
11 the Zoning Board heard it also. And Counsel had
12 pointed out to us that we don't have the authority
13 to rule on that, but we have asked, and we've asked
14 a few times, well, now that we know there's this
15 potential litigation, our role to protect the
16 Village from possible litigation if we were to allow
17 this in good faith do we say to all parties get that
18 resolved by whatever court does have the
19 jurisdiction before this application can go forward
20 in good faith?

21 MR. BLANCHARD: Well --

22 MR. MEEKINS: So is that the point -- and
23 you're saying that that has to be litigated or
24 resolved, however it's going to be resolved?

25 MR. BLANCHARD: I'm taking that a step back.

1 I'm going one step before that. I'm saying you
2 have the right to determine if the proper applicants
3 have signed on to an application. And if you feel
4 that they haven't or there's doubt, you're free to
5 ask an opinion of Counsel. I don't mean to put the
6 attorney on the spot, but you're free to go out
7 perhaps to get an expert opinion, a third-party
8 opinion, but I do think -- I'm trying to answer your
9 question. I'm doing a poor job of it, but I do
10 think that you --

11 MR. MEEKINS: I'm getting the same circular
12 answer I got (indiscernible).

13 MR. BLANCHARD: Well, I think you're
14 entitled to an answer. I think you're entitled to
15 an answer. I know it's been said, I don't want to
16 put words in anyone's mouth. I've heard secondhand
17 that a position has been presented to you that the
18 only way to stop this application, by my client, is
19 through an injunction. I think that's a tool to
20 stop the application, but I think that's an
21 incorrect statement under the law. I interpret it
22 differently. I think that you have -- you are
23 entitled to get an opinion and have an answer as to
24 whether or not the proper applicant is before you.

25 CHAIRMAN RICE: You're saying that -- I

1 think I see your point. You're saying not only is
2 Homeland the applicant, but your client is the
3 applicant and they're missing in this --

4 MR. BLANCHARD: Absolutely. They would have
5 to -- yeah, sorry, go ahead.

6 CHAIRMAN RICE: I'm just thinking out loud.

7 MR. BLANCHARD: Yeah.

8 CHAIRMAN RICE: It's kind of a novel
9 approach, I never thought about it. They're the
10 partner with Homeland.

11 MR. BLANCHARD: Well, but I mean --

12 MR. MARINO: As an order of at least that
13 portion.

14 (MULTIPLE SPEAKER)

15 MR. GAUDIOSO: I really have to interject.
16 I mean, I think the suggestion of having a third-
17 party opinion is a great one.

18 CHAIRMAN RICE: Okay.

19 MR. GAUDIOSO: I think you got it last month
20 by your own attorney. He clearly stated that he
21 agreed, and just to take a step back, he had
22 submitted a letter. The case law is clear. The
23 right-of-way includes the ability to put in
24 utilities.

25 To argue that, you can build a house and

1 bring in utilities, but you can't build something
2 else and bring in utilities. There's no distinction
3 in any of the case law.

4 We also included the case law, which I
5 believe your attorney agreed to last time as well,
6 that the dispute that we've made a prima facie case
7 showed access to the property. We've submitted the
8 deeds. It's very clear in the deeds. And that
9 you're authorized to proceed based on that, and if
10 someone wanted to challenge our right, that would be
11 a private action in another court, and that wouldn't
12 include the Town.

13 CHAIRMAN RICE: Okay.

14 MR. BLANCHARD: May I respond to that,
15 please?

16 CHAIRMAN RICE: Yeah. We don't want to do
17 this all night.

18 MR. BLANCHARD: No.

19 CHAIRMAN RICE: But just to get to the
20 point, yeah.

21 MR. BLANCHARD: Sure. Sure thing. I think
22 that I presented case law that's quite clear that
23 the right-of-way holder is not entitled to make
24 permanent physical changes to the property. I think
25 you've heard an opinion regarding access, not an

1 opinion regarding an encroachment onto someone
2 else's land. I don't think that the issue has been
3 settled in a prima facie way. And I think that
4 you're still entitled -- this Board is entitled to
5 deliberate, both Boards are entitled, but this
6 Board, the Zoning Board in particular, is entitled
7 to deliberate and make its own decision.

8 CHAIRMAN RICE: We did. That's why I put it
9 on the agenda. I got your letter. I read it. I
10 didn't realize the (indiscernible) didn't have it
11 yet. There's a lot of -- five pages. Your first
12 letter was two pages. You brought in some case law
13 from -- go ahead.

14 MS. BRANAGAN: I just want to suggest that
15 he's presenting an idea that makes us more liable
16 than what we have been told by -- in other
17 articles --

18 CHAIRMAN RICE: Liable in what, Article 78?

19 MR. BRANAGAN: Well, just that if we go
20 ahead or the Zoning Board goes ahead and grants it
21 and then does improvements and whatnot and then
22 there's a taking and then the government has kind of
23 authorized it, we have a liability in having made
24 that decision to approve it.

25 CHAIRMAN RICE: The Board has a liability.

1 MR. BRANAGAN: Yeah, we could be --

2 MR. BLANCHARD: Not a personal --

3 MS. BRANAGAN: I think -- yeah -- no, no,
4 no, right.

5 CHAIRMAN RICE: But in Article 78 --

6 MR. BLANCHARD: No, the Village. No, but
7 that would be an Article 78, but I don't want to
8 step away from this dais yet and concede. I'm not
9 conceding.

10 CHAIRMAN RICE: Oh, no, no, no. We're going
11 to talk about it (indiscernible).

12 MR. BLANCHARD: I mean, there's competing
13 case law regarding the --

14 CHAIRMAN RICE: Yes.

15 MR. BLANCHARD: -- the ability to put down
16 cables. I mean, there's conceding case law. I have
17 not conceded the point that they automatically have
18 the right to trench and put cables down.

19 CHAIRMAN RICE: Absolutely. And we're going
20 to follow up on this. We're going to give Robert a
21 chance --

22 MR. MARINO: We've heard -- as you know,
23 we've heard a number of opinions on this and --

24 CHAIRMAN RICE: Very interesting.

25 MR. MARINO: -- so I think at this point in

1 the proceedings it's already getting late. We'll
2 take a step back from this particular issue.

3 MR. BLANCHARD: Sure, sure, sure.

4 MR. MARINO: We'll consult with our attorney
5 (indiscernible) and we'll continue moving forward.

6 (APPLAUSE)

7 MR. BLANCHARD: I thank you for your time.

8 CHAIRMAN RICE: (Indiscernible), yes, sir.

9 MR. LEVINE: I just had a little thing
10 written down. Kenneth Levine, 103 Haley Road. Just
11 for the record, I agree with anyone that talked
12 about the character and integrity of a neighborhood,
13 a neighborhood where people live, where we have
14 young, two, three new families on the block just
15 moved in, little kids. Is that what they have to
16 deal with? Worrying about that, looking out, having
17 this whole situation in a neighborhood which does
18 have certain character that should not -- it can't
19 be replaced. Once you do something, it's a done
20 deal. Once you start digging up things, it's not
21 right. You start cutting down trees, you start
22 messing with the whole neighborhood, it's not right.
23 It's just not right, you know. It's not the right
24 place to put it a tower. That's it.

25 (APPLAUSE)

1 CHAIRMAN RICE: The gentleman right behind
2 you.

3 MALE SPEAKER: Oh, thank you. I have a
4 couple questions and you can decide to answer them
5 now or later and (indiscernible), but I also want to
6 say almost 20 years ago, I came --

7 CHAIRMAN RICE: Your name, sir, just --

8 MR. STERLING: Steve Sterling, sorry.

9 CHAIRMAN RICE: Oh, Steve, yes.

10 MR. STERLING: I live in (indiscernible)
11 Road. I frequent Moffitt all the time.

12 CHAIRMAN RICE: Okay.

13 MR. STERLING: I can't imagine -- this
14 gentleman's great presentation about Rockledge, I
15 can't imagine what they're going to do with what we
16 call the land bridge off Moffitt and how anybody can
17 get any vehicle (indiscernible).

18 Anyway, 20 years ago I came here, fell in
19 love with the place, just everything about it, the
20 esthetics of it and everything. Within a few years
21 of actually renovating an abandoned house, I fell in
22 love with the people here. It is so cool that these
23 people in this community can get it together so
24 quickly with so much detail against Homeland Towers,
25 Verizon, AT&T, to very, very experienced attorneys

1 and come in here and deliver the kinds of detail and
2 pull other people in to get this expertise. It's so
3 fantastic.

4 (APPLAUSE)

5 MR. STERLING: I (indiscernible) this, and
6 you can decide tonight to answer it now or later --

7 CHAIRMAN RICE: Yes, sir.

8 MR. STERLING: -- I do question how -- what
9 would be the plan to make Moffitt Road passable for
10 all the things in case the place caught on fire.

11 One question I have also, I actually want to
12 say this statement, thank you for taking into my
13 record my correction of Mr. Gaudioso's comment at
14 the last meeting the things I said were not true. I
15 was able to present the facts and we heard other
16 people talk about some of the mischaracterizations
17 and misleading information.

18 My other question is how can an application
19 be complete to start the shot clock when there are,
20 in fact, either errors, omissions, misleading
21 statements, whatever you want to call them, how can
22 anybody say it is complete and when does it get
23 considered complete at which time the shot clock
24 would start?

25 CHAIRMAN RICE: I guess that's not how it

1 works. That's why I was asking these experts about
2 the 30 days. The application, I would imagine,
3 still is not complete. That's why we're still here,
4 but it's substantially complete, but it's not quite
5 there. That's why we're still talking. We didn't
6 know about that 30-day thing. I don't think the
7 Application had any obligation to tell us. And so
8 we missed that, but here we are and we're a few
9 weeks away from the shot clock ending. We've asked
10 for an extension, and it sounds like we're going to
11 be granted one and maybe we'll get another one, but
12 we need to bring it to closure, but the great thing
13 for your point, you know, a lot more information
14 from the community and we need to review it. And
15 the details, it takes a long time to review it, so
16 we can extend it.

17 We don't know anything about -- personally,
18 the Board ourselves, don't know anything about the
19 vehicle access to --

20 FEMALE SPEAKER: It's one lane, Moffitt.

21 CHAIRMAN RICE: I mean, I've been up there,
22 but I'm just saying we can't really -- it's not
23 really under our purview to understand the -- maybe
24 the Planning Board may -- it's not really -- it's a
25 larger issue about vehicle access. The Zoning Board

1 doesn't deal -- the Zoning Board is dealing with
2 this particular issue at 15 Rockledge Road, and
3 looking outside of it really -- I can't really give
4 any good information to answer your question.

5 MR. STERLING: And I have to other questions
6 that --

7 CHAIRMAN RICE: Okay, two more.

8 MR. STERLING: We have heard much from Mr.
9 Xavier of Home and Towers, but I can't understand
10 why he just can't calmly whisper over to Mr.
11 Gaudioso and say "Give these good people the 60 days
12 they're looking for. What difference is it going to
13 make for us? Let them be more prepared and more
14 informed."

15 CHAIRMAN RICE: Okay.

16 MR. STERLING: And I'd like to know, Mr.
17 Xavier, why can't you just do that right here. It's
18 not big a deal.

19 FEMALE SPEAKER: Exactly.

20 CHAIRMAN RICE: Okay, but just for the
21 record, everything is addressed to us, not to --

22 MR. STERLING: Thank you, but if you could
23 ask him --

24 CHAIRMAN RICE: We did ask him. We'll get
25 to that.

1 MR. STERLING: My second question is this,
2 the appraisal, real estate appraisal --

3 CHAIRMAN RICE: Yes, sir.

4 MR. STERLING: -- I don't know if you had a
5 chance to look at it.

6 CHAIRMAN RICE: I did.

7 MR. STERLING: I just marvel at it. There's
8 12 different examples. There's only one of them
9 that indicates that any property near a cell tower
10 or a view of a cell tower actually has less value.

11 CHAIRMAN RICE: I do recognize that.

12 MR. STERLING: Their report shows, I think
13 it's 11, shows that every other property that is
14 within view of a cell tower --

15 CHAIRMAN RICE: Is worth more money.

16 MR. STERLING: -- actually has a higher --

17 (LAUGHTER)

18 MR. STERLING: I'd like to ask --

19 CHAIRMAN RICE: I don't need appraises, but
20 that's the first one I ever read that --

21 MR. STERLING: I'm not an expert. I
22 understand --

23 CHAIRMAN RICE: You have a cell tower, your
24 house is worth more money.

25 MR. STERLING: Let's all get cell towers

1 (indiscernible). But the crux of the question is,
2 as was indicated in other analyses and retainer
3 people they retained for things is --

4 CHAIRMAN RICE: Yeah.

5 MR. STERLING: -- my question ultimately is
6 can the Board find another independent, somebody to
7 do that or can these people tell us have they ever
8 run across a situation where the site of a cell
9 tower has reduced the value of a home. And I just
10 think it's extraordinary --

11 CHAIRMAN RICE: I don't know.

12 MR. STERLING: -- that if we find --
13 thankfully, Mr. Comey is here and said, "Hey, the
14 model that uses 35 data points is actually a fairly
15 flawed model, you got to question that real estate
16 model as well. And I'm just really curious,
17 ultimately, if we can find a way or --

18 The community has brought up so many good
19 experts now, maybe we can reach out and find
20 (indiscernible).

21 CHAIRMAN RICE: Please do it. If you'd like
22 to bring in a separate appraiser and criticize that,
23 please do.

24 MR. STERLING: Because ultimately, the
25 question is going to be as our real estate values go

1 down --

2 CHAIRMAN RICE: Yes.

3 MR. STERLING: -- we're going to
4 (indiscernible) and the taxes are going to go down,
5 and the Town is going to end up having a financial
6 burden as a result of the (indiscernible) real
7 estate values to all the rest of us.

8 CHAIRMAN RICE: Okay. All right, well,
9 thank you for your comments, sir.

10 MR. STERLING: Thank you very much for your
11 (indiscernible).

12 (APPLAUSE)

13 MS. BERKELEY: Thank you to the Boards.
14 Thank you to our amazing community and all the work
15 you're doing, all the collaboration that's
16 happening.

17 My name is Evelyn Berkeley. I'm a resident
18 of Phillipstown. I live very close to the Cold
19 Spring Cemetery. I'm a parent. I'm a coach. I'm a
20 mentor. I'm an outdoor educator. I'm an animal
21 tracker, a wild foods forger, a tree watcher, a
22 hiker, a star gazer. This site is at the center of
23 my ritual walk and run. I go up Moffitt, I turn
24 down Healy, I come down Name (phonetic), I go past
25 the cemetery on Peekskill. I don't do it just for

1 exercise.

2 I moved here, like a lot of other people,
3 for the scenic beauty, for the nature, for the
4 proximity of the wildness and wild things. This
5 cell tower is completely in opposition to my ritual
6 connection to this place, to the neighbors' ritual
7 connection to their land, to the Town's ritual
8 connection and to the visitors who come here. I
9 know you will do the right thing. Thank you for
10 this opportunity.

11 CHAIRMAN RICE: Thank you for sharing that
12 with us.

13 (APPLAUSE)

14 CHAIRMAN RICE: (Indiscernible) on the left.

15 MS. SHOFFETT: This is going to be really
16 short. I'm Jill Shoffett (phonetic). I live at 4
17 Division Street. I'm sitting here and I'm just
18 thinking about this and as an artist, an art
19 teacher, I do a lot of landscapes, and ever since my
20 daughter was one, we've gone walking in the
21 cemetery. She partially took some real first runs
22 on those gravel and pavement paths, and I've always
23 talked to her about the people buried there and, you
24 know, who's buried there, and we talked about it so
25 much. And when I heard the cemetery idea, I just

1 thought, oh, my God, because I drive to work on the
2 Hutch and I go -- I teach in the Merrineck
3 (phonetic). If you're familiar with the stealth
4 tree tower on the Hutch, it actually, if I'm falling
5 asleep on my commute, it wakes me up because it
6 makes me laugh. It looks so silly. It's like a big
7 stick with things sticking out of it.

8 And when I think of our cemetery with that
9 cell -- I don't want to laugh when I look at that
10 cemetery. I don't want to look out because I can
11 practically see it from our backyard. I don't want
12 to look out and crack up about this cell tower that
13 I have tremendous reservations about as a parent, a
14 nature lover, a hiker, an artist.

15 So I'm not an expert on any of these
16 wonderful things that were said tonight, but as a
17 mom, artist, nature lover, to echo Lynn, no, no.

18 (APPLAUSE)

19 CHAIRMAN RICE: One more (indiscernible) and
20 then we're going to let the Applicant --

21 MS. LEWELLYN: Thank you, guys, all for your
22 time. Thanks every one. I'm Caroline Lewellyn
23 (phonetic). I'm at 308 Main Street in Nelsonville,
24 and I just want to ask you guys, since I'm supposed
25 to ask you, to ask them, please -- well, I'll step

1 back a little.

2 I think we can all agree that a space, an
3 extension from December 17th to December 31st during
4 which fall most of the major holidays or most major
5 religions that are celebrated by people who live in
6 this region is meaningless. They might as well not
7 offer an extension. But there's a lot of space
8 between two weeks and 60 days, so why don't you guys
9 ask them, please, for 30 days or 45 days.

10 CHAIRMAN RICE: Well, we have, and we wrote
11 them a letter to that fact.

12 MS. LEWELLYN: Oh, you did? I only heard
13 discussion of two weeks or 60 days, so --

14 CHAIRMAN RICE: They're offering up --

15 MS. LEWELLYN: Hopefully, they'll be more
16 reasonable because we can all agree that two weeks
17 at the end of December is a ridiculous offer.

18 CHAIRMAN RICE: Well, we're not going to --
19 I don't think we're going to meet the last two weeks
20 of December. First, we're going to discuss that
21 after we -- the Applicant, do you have any comments
22 on what you've heard? And the public, is the public
23 done?

24 MALE SPEAKER: One last just very, very
25 brief.

1 CHAIRMAN RICE: Very brief, yes.

2 MALE SPEAKER: Just in response to Mr.
3 Sterling's assessment of the purported real estate
4 analysis.

5 CHAIRMAN RICE: Yes.

6 MALE SPEAKER: And this is in our brief.
7 The Board is fully free to choose between experts.
8 You don't have to rely on the experts, of course,
9 that are represented by --

10 CHAIRMAN RICE: We're aware of that.

11 MALE SPEAKER: -- the Applicant so long as
12 there is substantial evidence in support of the
13 experts you decide to choose.

14 I say this to everyone here, if you have an
15 opportunity to retain your own experts, by all means
16 get that information to the Board. As long as it's
17 substantial evidence, you can choose between those
18 experts.

19 And then just the very last point that was
20 raised about the shot clock, I forgot to be clear
21 about this in my prior presentation that this is a
22 presumption of unreasonable delay. So think about
23 that for a second.

24 Let's assume that December 17th is the
25 deadline, it doesn't get extended, and you just

1 can't make a decision. Do you really believe that
2 the Applicant is going to pursue judicial action and
3 declare this is unreasonable --

4 CHAIRMAN RICE: We don't believe that.

5 MALE SPEAKER: Exactly. And it's their
6 burden.

7 (APPLAUSE)

8 MALE SPEAKER: It is their burden to show
9 unreasonableness. I mentioned this before. You
10 folks have done everything that you possibly can.
11 You've bent over backwards in every respect, you
12 have acted reasonably. Counsel knows that, and for
13 him to come before you today and say "I'll give two
14 weeks," one week of which you're not going to be
15 doing anything, if at all for the full two weeks,
16 it's a joke. It's a joke. And I defy him to -- if
17 you allow this shot clock to expire, I defy him to
18 pursue judicial action and claim that your actions
19 have been unreasonable. It's a joke.

20 CHAIRMAN RICE: I don't understand. We
21 disagreed that we are going to extent the shot
22 clock.

23 (MULTIPLE SPEAKERS)

24 MALE SPEAKER: Mr. Chairman, it might as
25 well be December 17th.

1 FEMALE SPEAKER: It's insulting.

2 MALE SPEAKER: It is no different. That's
3 my point. It doesn't make a difference, the 17th,
4 the 31st. It's a joke.

5 CHAIRMAN RICE: Why is it? Why is it a
6 joke?

7 FEMALE SPEAKER: Because of the holiday.

8 MALE SPEAKER: What is going to be
9 accomplished in those two weeks, sir? Nothing, over
10 the holidays.

11 CHAIRMAN RICE: What I'm saying, though, I
12 believe (indiscernible) that we may have another
13 opportunity to do it.

14 MALE SPEAKER: I'm saying hypothetically.

15 CHAIRMAN RICE: Yes.

16 MALE SPEAKER: Again, just to reemphasize my
17 point, the burden is on the Applicant to go to the
18 court and say this Board --

19 CHAIRMAN RICE: We know that.

20 MALE SPEAKER: Okay.

21 CHAIRMAN RICE: Yeah.

22 MALE SPEAKER: So --

23 CHAIRMAN RICE: What is the -- I'm missing
24 the point.

25 MALE SPEAKER: What I'm saying is if --

1 CHAIRMAN RICE: We've asked for an
2 extension. It's in writing.

3 MALE SPEAKER: Right, and they've --

4 MALE SPEAKER: It would be unreasonable.

5 CHAIRMAN RICE: Congressman Maloney asked
6 for an extension.

7 MALE SPEAKER: Correct.

8 CHAIRMAN RICE: So has (indiscernible) to
9 trustees and we're discussing it, so --

10 MR. KEELEY: Is the distinction you're
11 making that even if we settle tonight, which I would
12 not like to, but if we settle tonight on an
13 extension only to the end of December, that there's
14 no reasonable expectation in your opinion that we
15 would be taken to court on January 1st.

16 MALE SPEAKER: Absolutely not.

17 MR. KEELEY: And even if we were, we have
18 shown good faith through this process --

19 MALE SPEAKER: Absolutely.

20 MR. KEELEY: -- throughout that process --

21 MALE SPEAKER: Thank you for clarifying.

22 MR. KEELEY: -- and that's why it would not
23 be taken (indiscernible).

24 MALE SPEAKER: Thank you for clarifying.

25 (APPLAUSE)

1 MALE SPEAKER: I would go so far as to say
2 if no action -- and I'm, you know, of course you're
3 free to pursue your own advice, but even if it went
4 into January, that's -- you have in no way engaged
5 in unreasonable conduct.

6 CHAIRMAN RICE: We agree with you. That's
7 what we've asked for.

8 MR. GAUDIOSO: I don't want to belabor the
9 point, but when other counsel tell me what I'm
10 thinking, it's a little bit silly. The thing to
11 keep in mind is that there's a 30-day statute of
12 limitations. It's not a matter of whether we would
13 want to. It's a matter of we would have to.

14 MS. BRANAGAN: Thirty-day statute of
15 limitations --

16 MR. GAUDIOSO: At the end of the shot clock.

17 MS. BRANAGAN: Thirty days after December
18 17th, 30 days of the statute of limitations and then
19 what?

20 MR. GAUDIOSO: If we didn't extend it,
21 correct it.

22 MS. BRANAGAN: So the statute of limitations
23 (indiscernible).

24 MR. GAUDIOSO: Then we would waive our
25 unreasonable delay claim under the shot clock which

1 obviously, I think you could appreciate. We
2 wouldn't be in the position to do so. So to say
3 that we wouldn't --

4 (MULTIPLE SPEAKERS)

5 MR. MARINO: Please, please, we hear him,
6 too.

7 MR. GAUDIOSO: I'm just trying to put some
8 context on it. From a legal standpoint, that's the
9 reality. There's a 30-day statute of limitations.

10 MS. BRANAGAN: So Peggy wanted to say
11 something.

12 MS. CLEMENTS: There are a few things I want
13 to say. I mean, one, I, I mean, as a member of the
14 Zoning Board of Appeals, I am not unconvinced about
15 the argument that Mr. Comey said about whether or
16 not the shot clock actually even started. I mean, I
17 wanted to make sure that as a member of the Zoning
18 Board of Appeals, because I know when you -- the way
19 I've interpreted some of what you're saying is maybe
20 being more accepting of that July 18th date as being
21 the start of the shot clock. I don't accept it at
22 this point, not that we need to belabor it, but I
23 wanted to make sure that as a member of the ZBA,
24 (indiscernible) that was one thing.

25 Then my other question is actually a request

1 for you to talk a little bit about the role of the
2 DEC. I've never heard -- some of the information
3 that has been presented to the Board most recently
4 that I've actually found quite compelling is this --
5 is the SASS stuff, the Scenic Area, and I'm not
6 remembering --

7 MALE SPEAKER: Statewide Significance --

8 MS. CLEMENTS: Yeah. And you're saying,
9 "Well, that's not relevant, nor is the coastal
10 waterfront relevant because the DEC isn't reviewing
11 our application." So tonight, this is the first
12 mention I've ever heard of having a cell tower
13 application that the DEC would review.

14 MR. GAUDIOSO: Sure.

15 MS. CLEMENTS: And so I know there are other
16 interpretations of why that might be the case, but
17 even having your initial --

18 MR. GAUDIOSO: Sure.

19 MS. CLEMENTS: -- explanation about why the
20 DEC would or wouldn't -- I just wanted to ask him to
21 address that in his --

22 MR. GAUDIOSO: Sure. So --

23 MR. KEELEY: And to tack on to the final
24 comments or did you want to hear that first?

25 MS. CLEMENTS: No, no, no, just as part of

1 his final comment, then also --

2 MR. KEELEY: Right. This is becoming our --

3 MS. CLEMENTS: -- our own attorney to be
4 considering as well.

5 MR. GAUDIOSO: So --

6 MR. KEELEY: And just so that we can put
7 them all on the table and that way it will help you
8 to run through it quicker rather than doing back-
9 and-forths.

10 MR. GAUDIOSO: Sure.

11 MR. KEELEY: A couple other questions I
12 don't know if you can on in your final comments
13 here. I think we heard from some of the experts in
14 the room that it would be useful, and I think it
15 would be for us to understand the analysis of what
16 it would like at 100 feet, 90 feet, 80 feet, to
17 understand where really does that gap get filled or
18 not filled, and we're accepting that there is a gap.

19 So if we can look at those propagations and with
20 the various methodologies at various heights, I
21 think that would be beneficial. If we can
22 understand the propagation of the 850 in the region,
23 I think that that would be understandable or that
24 would be beneficial to us.

25 The drive test was something that was

1 surfaced. I'd like to understand what the drive
2 test results were.

3 And then a suggestion that was made by the
4 attorney of the neighbor on Rockledge, which I think
5 is a useful one is has the utility -- striking
6 utility, has the power company been approached about
7 actually laying that power underneath that right-of-
8 way as was requested by one of the -- as was
9 suggested, I should say. I think that would be
10 helpful for us to understand, would the power
11 company even be willing to dig up that road and
12 provide that power. So I'd be interested in the
13 communications with the power company in that
14 respect. Thanks.

15 MR. GAUDIOSO: So I'll try and take them in
16 order.

17 MS. WORK (phonetic): I'm sorry, is public
18 comment closed --

19 CHAIRMAN RICE: Yes, it is.

20 MS. WORK: -- because I didn't get a chance
21 to make my statement. No one -- it was very
22 confusing.

23 CHAIRMAN RICE: Well, we're flexible. You
24 want to make a quick statement?

25 MS. WORK: Yeah, I do. Is that okay?

1 CHAIRMAN RICE: Is it brief?

2 MS. WORK: Yes. Sorry. I'm Jen Work and I
3 am a resident of Cold Spring and also a neighbor of
4 most people in this room.

5 I just wanted to speak to the point -- I
6 spent a lot of time along with others preparing the
7 sort of summary of SASS to you guys and I'm sure
8 he's about to say this to you, but, Peggy, to answer
9 your question, which happens to gel with what I was
10 going to say, the -- I was the one that made the
11 local waterfront revitalization program comment in
12 the meeting of the Village Board. Some of you were
13 there.

14 It's very simple. The State is not going to
15 read this application because you don't have LWRP,
16 this planning document. They're not going to do it.
17 That doesn't mean that you, as a board, can't use
18 these guidelines which were intended to protect our
19 area in your decision-making process. In fact, we
20 argue in our document that we gave you that it's
21 your obligation, we feel, the community feels, that
22 you should use these guidelines, the SASS
23 guidelines. The State doesn't have to be your
24 mother and father and they could do it. You should
25 do it. It's your obligation to do it, and it's well

1 within your
2 rights --

3 Counsel, sorry, lawyer, this gentleman has
4 already told you that in the last public hearing
5 that it's in your discretion, I think was his quote,
6 I could be wrong about that, it's up to you whether
7 you'd like to use these guidelines or not. And I
8 think it's very clear as we've presented the
9 evidence that this is a protected zone for a lot of
10 reasons and you should use those guidelines in your
11 deliberations.

12 CHAIRMAN RICE: Thank you.

13 (APPLAUSE)

14 MR. GAUDIOSO: I'll try and hit on all of
15 them. I'll work backwards just because they're
16 fresh in my mind.

17 The coastal management program, I agree,
18 there is no LWRP, so therefore, it doesn't apply.
19 And to apply -- the concept of applying regulations
20 that don't apply I think any court would find
21 arbitrary and capricious.

22 MS. BRANAGAN: I thought (indiscernible) was
23 a guideline. So a guideline is -- we can use it to
24 consider it as a guideline.

25 MR. GAUDIOSO: I think that the way the

1 cases read is that --

2 MS. BRANAGAN: What cases?

3 MR. GAUDIOSO: Any case -- to say that you
4 have -- let me make this real simple. It's cited in
5 my papers. It's a special-use permit. It's an
6 application permitted as a right provided we meet
7 the criteria that are in the code. That's back
8 letter in New York State zoning law. If you go
9 outside of the criteria and want to deny the
10 application on a criteria that's not in your code, I
11 would consider, and I think any court would consider
12 that to be arbitrary and capricious, but that's my
13 opinion, you know. I encourage you to get advice of
14 your own counsel on that.

15 So because there is no LWRP, those
16 guidelines, rules, regulations, whatever you want to
17 call them, are not applicable to the review of this
18 application.

19 And I think the same thing goes for the
20 concept of it being in the Hudson Highlands, and the
21 question was in what case would the DEC be involved.
22 Well, let's say the DEC had a wetland permit
23 application by way of example, which they don't
24 because there are now wetlands impacted here, so
25 that would be an example of the DEC being involved

1 and applying those type of regulations. Maybe the
2 project would be on DEC-owned property. That would
3 be another situation where the DEC would be
4 involved. So those are some examples. So that's
5 why we don't believe that either one of those
6 criteria guidelines, whatever you want to call them,
7 would apply.

8 Going back to the shot clock, it is
9 literally black-letter law. There was an FCC report
10 in order. If a municipality after receiving the
11 application does not send comments deeming it
12 incomplete, the shot clock can no longer be tolled.

13 It doesn't matter if anything is submitted at a
14 later date. That is a matter of black-letter law
15 from the FCC. Reports and order. It makes common
16 sense --

17 MS. BRANAGAN: Do we have that? Do we have
18 that report?

19 MR. GAUDIOSO: I can certainly send the
20 citation, you know. It's on the FCC website, but
21 the fact is --

22 MS. BRANAGAN: So please do.

23 MR. GAUDIOSO: Sure. We can certainly send
24 you the FCC report and order. And it's just a
25 matter of common sense because, otherwise, if you

1 think about it, we submitted something last week and
2 then, theoretically, the shot clock would be 150
3 days from last week. The whole point of the shot
4 clock was that the FCC and Congress wanted to move
5 these types of applications along, so that was the
6 point of that.

7 I think you mentioned the expert before.
8 We'll disagree with that characterization, and we'll
9 submit some documentation showing that Mr. Comey is
10 an expert in this field. In fact, he's testified in
11 Federal Court that he's not a radio frequency
12 engineer. In fact, you did hire -- and we'll submit
13 those documents. In fact, you did hire a
14 professional engineer to review our application. He
15 did submit reports. He did come to the meeting. He
16 did testify that the carriers had significant gaps
17 in service. He did testify about the difference
18 between the 850 and the 700 megahertz.

19 As Mr. Comey mentioned, the lower the band,
20 the further it goes. We showed the lowest band,
21 which would be the smallest gap that would be
22 available. So at 700, we're showing you the worst-
23 case scenario. Eight fifty would only be a bigger
24 existing gap rather than a smaller existing gap, and
25 that's just a matter of common sense.

1 And, in fact, I believe Mr. Grafe tackled
2 that question as well. He also tackled the question
3 about the drive-test data. He didn't believe it was
4 necessary based on other drive-test data he's seen,
5 and his belief that the propagation model was
6 completely accurate.

7 Keep in mind, drive-test data has an
8 inherent limitation. It only collects data on the
9 roadways. It does not collect data inside
10 buildings.

11 MR. KEELEY: Can you submit that?

12 MR. GAUDIOSO: We'll take that under
13 advisement. I don't know if we actually have it for
14 this area, something that's recent or not recent, so
15 we'll have to --

16 MR. KEELEY: Submitted in the last three
17 years.

18 MR. GAUDIOSO: We'll take it under
19 advisement. I don't believe there's, you know, a
20 necessity for it, but I'm not going to commit
21 tonight to submit drafting statements, is what I'm
22 saying.

23 MR. KEELEY: So you're saying no?

24 MR. GAUDIOSO: I'm saying I'm not going to
25 commit tonight to submit it. I'm saying we'll take

1 it under --

2 MR. KEELEY: What is the consideration under
3 which you would --

4 MR. GAUDIOSO: I want to see what data we
5 have and what data we don't have and whether it's
6 necessary or not necessary from our engineering
7 standpoint.

8 MR. KEELEY: Okay. Bob, can you help me get
9 clarity later in terms of if this exists and it's
10 not being submitted, what does that mean in terms of
11 the dynamics here and the relationship?

12 MR. GAUDIOSO: I mean, your code doesn't
13 require it, and your own expert said that he didn't
14 need it to make his analysis.

15 MR. KEELEY: I understand. I'm requesting
16 it.

17 MR. GAUDIOSO: Sure. Again, on the same
18 line, voice verse data, again, this is a red-herring
19 issue. LTE carries voice calls. If I call on an
20 LTE-enabled phone, it goes through the internet,
21 eventually goes through the public telephone
22 switching network to be able to connect to someone
23 that is at home on a landline. So it is a personal
24 wireless service. Personal wireless services are
25 not limited to cellular as was stated. That's

1 clearly a mischaracterization, and that's a matter
2 of definitions in the federal regulations.

3 These are not capacity sites. I'm going to
4 state that for the record. Again, I believe your
5 consultant looked at our data and agreed with that,
6 that these are coverage gaps. This has nothing to
7 do with capacity.

8 Regarding the road, and I'm glad it was
9 stated. Counsel numerous times stated it's
10 Rockledge Road, okay. And the case law is clear, we
11 have the ability to put in the utilities, that this
12 is not an issue for the Zoning Board or the Planning
13 Board to get involved with, that there's a private
14 course of action. This is not a taking. Under no
15 case would this be a taking because a taking is
16 government action of taking someone else's property.

17 MS. BRANAGAN: What about we have a lot of
18 public roads and private roads (indiscernible). I
19 think one way to tell the difference is there's no
20 white sign or green sign or a blue sign, so lots of
21 private roads have (indiscernible) on them.

22 MR. HELLBOCK: The County made them do that.

23 MS. BRANAGAN: So are you suggesting that,
24 therefore, it's a road, it's a private road --

25 MR. GAUDIOSO: To be a road it has to be on

1 your map. I don't know if your map's been updated
2 or is not updated. Again, before I noted that
3 there's been applications approved in the Village
4 for homies on this, whatever you want to call it,
5 Rockledge Road, where it's been approved as being
6 frontage on a road, so I think that's relevant, at a
7 minimum.

8 But I think the more important thing is is
9 that we are willing or unwilling at your discretion
10 whether we should make improvements and, if so, how
11 much of an improvement to the access way. We have
12 looked at it. We believe we can build the site and
13 maintain the site without making any improvements to
14 the Rockledge Road portion of the facility, of the
15 access, and we're happy to stay with that.

16 We've offered to improve it to a standard
17 which I think was based on emergency access, and if
18 you think about it, again, there are a number of
19 houses with residents utilizing that existing right-
20 of-way road, whatever you want to call it, Rockledge
21 Road, for access, and that would include emergency
22 services.

23 So I think it's within your discretion about
24 how much, if at all, you would like us to improve
25 that access way and we're happy to do it at your

1 discretion. And that's the type of feedback that
2 we'd like to have so we can move this application
3 forward.

4 If you say to us "We'd like you not to cut
5 down the trees. We'd like you to maybe only have it
6 gravel," and I think there was a statement about
7 asphalt and concrete, we wouldn't propose asphalt or
8 concrete. We're not proposing it on the access
9 drive on the property at 15 Rockledge, so we can
10 certainly do gravel. That would be our preference,
11 actually. We believe it's a better option. And,
12 again, I think that's in the Planning Board's
13 expertise, and we're happy to present something as
14 an initial and with the, you know, recommendations
15 and comments from the Planning Board or your
16 engineers and so forth and so on, you know, to
17 improve it or not improve to whatever extent you
18 believe is reasonable.

19 And finally, you know, regarding the date.
20 If the Board intends to meet in December, great. If
21 you say to me "We'd like to have a meeting the first
22 week of January or something like that," we're
23 flexible on the shot clock date with respect to that
24 to your next meeting. I think that's what we really
25 want to get to. We want to get to your next

1 meeting, so I know everyone's schedule is busy in
2 December. We're not trying to put you under
3 pressure if you say to me, "Rob, we'd like to have
4 the meeting," you know, "don't pick January 5th, but
5 we'd like to have a meeting that week instead of the
6 week before Christmas. We're happy to extend the
7 shot clock in that timeframe."

8 Again, we'd like to be part of any
9 discussions with SHPO. I think it's appropriate. I
10 don't see any downside to that, and we'd be happy to
11 make that accommodation.

12 CHAIRMAN RICE: I'll let the Board discuss
13 that and we'll let you know.

14 MR. GAUDIOSO: Thank you.

15 MR. KEELEY: Can I ask a question?

16 CHAIRMAN RICE: Yes.

17 MR. KEELEY: To the DEC question, so a
18 wetland, in that example --

19 MR. GAUDIOSO: Sure.

20 MR. KEELEY: -- Would go before DEC? Would
21 an aquifer? Maybe that's a question, actually, to --
22 - would an aquifer go before the DEC?

23 MR. GAUDIOSO: I think actually -- I know
24 reservoirs and reservoir stems and that's more of a
25 DEP issue depending on what the setback was from

1 that, and then depending on the setback from that
2 could possibly go to a DC (sic) water course permit,
3 but I've never heard of an aquifer going.

4 MR. KEELEY: So, Bob, maybe you can help us
5 look into that. I mean, the submission of the full
6 EAF from July, I guess it was, indicated that
7 there's a principal aquifer. It says aquifers, yes,
8 according to the State mapping --

9 MR. GAUDIOSO: Sure.

10 MR. KEELEY: -- and then it says principal
11 aquifer.

12 MR. GAUDIOSO: Yeah, I'm fairly confident
13 DEC doesn't have jurisdiction over aquifers. And
14 just way of example, DC doesn't have jurisdiction
15 over every project on Long Island, so I'm fairly
16 confident that's the case.

17 MR. KEELEY: I appreciate (indiscernible).
18 Can you (indiscernible)?

19 MALE SPEAKER: Absolutely.

20 MR. KEELEY: Thank you.

21 MR. GAUDIOSO: That's all I have, Mr.
22 Chairman.

23 CHAIRMAN RICE: All right, thank you.

24 We have a couple more things to do here.

25 Well, we have to decide if you guys want to decide

1 now when the next meeting is or do you want to think
2 about it and get back to Pauline?

3 MS. CLEMENTS: My calendar already is so
4 full with (indiscernible) over the next --

5 CHAIRMAN RICE: You'd rather do it the first
6 weeks of January?

7 MS. CLEMENTS: Well, I am gone between Board
8 of Ed meeting. I'm gone two days next week. I'm
9 gone the entire week of the 18th.

10 CHAIRMAN RICE: Right. How about in
11 January? Is that better?

12 MS. CLEMENTS: January for now, I guess.

13 MR. MERANDO: January is better for me.

14 MR. GAUDIOSO: I'm looking at my calendar.
15 January 4th is that Thursday.

16 MR. MERANDO: (Indiscernible) Friday night.

17 MR. KEELEY: I'll trade it for the drive-
18 testing.

19 MR. GAUDIOSO: The 5th is my birthday. The
20 5th is my birthday and it's a big one this, year, so
21 -- but if you want to do the 5th, we'll do the 5th.

22
23 CHAIRMAN RICE: No, I don't want to do the
24 5th.

25 MR. GAUDIOSO: You saw, I came in a day

1 after an operation, so I'll certainly do my
2 birthday.

3 MR. MARINO: We don't have meetings on
4 Fridays.

5 MR. GAUDIOSO: No.

6 MS. CLEMENTS: How about the 3rd?

7 CHAIRMAN RICE: We're looking like January
8 4th, all right.

9 MR. MERANDO: Yeah, I'm good on that one.

10 MR. MARINO: Now the question there is are
11 -- is that a continuation of the public hearing on
12 January 4th? Is that still a joint meeting on
13 January 4th?

14 MS. CLEMENTS: Yes.

15 MALE SPEAKER: I think you have to continue
16 the hearing.

17 CHAIRMAN RICE: I think we'd like to
18 continue it. We were thinking about -- given all
19 the new information that we have, it would be an
20 opportunity for people to continue to share
21 information with the Board. It seems like there's a
22 lot of people working privately on some of the
23 issues, and it would give you plenty of time to put
24 it in writing, email it to Pauline.

25 MR. MARINO: When you get public hearings

1 every two weeks --

2 MR. GAUDIOSO: It's too much. I understand.

3 MR. MARINO: -- the information really
4 starts to pile up.

5 MR. GAUDIOSO: Yeah, yeah, so -- and the
6 only thing I would suggest on the shot clock is,
7 because I've seen this happen, so in case there was
8 inclement weather, and for some reason the meeting
9 was canceled, I wouldn't want to extend the shot
10 clock to January 4th. I think it would be safer if
11 we extended it to that following Monday just in case
12 there was a snowstorm or something and then at least
13 we could get with your counsel and -- we don't have
14 to mutually extend it at a meeting, but we can
15 mutually extend it and just God forbid something
16 happened, I think that would be prudent to do.

17 CHAIRMAN RICE: Okay.

18 MR. MARINO: Well, do we then need a motion
19 to adjourn the public hearing, continue on the 4th
20 just to make the motion?

21 MALE SPEAKER: Yeah, but I mean practically
22 speaking, you can't -- if you're still taking
23 information in a public hearing, how are you
24 supposed to formulate a resolution and vote on a
25 resolution? You can't do it. (Indiscernible-two

1 speaking at the same time) -

2 MR. MARINO: That's been my problem with
3 this discussion about the shot clock waiting until
4 the next meeting to decide if we're going to extend
5 it or not. There's no way we're going to be ready
6 to make a decision at the next meeting.

7 MR. GAUDIOSO: And I think -- and look --
8 and we appreciate that, and we understand that. And
9 what I've -- I've said it since August, we're
10 willing to work with you on that. What will, you
11 know, make us nervous is if something goes sideways
12 with respect to some type of, you know, odd
13 consultant or some type of, you know, something that
14 is unforeseen that would cause us a big problem.

15 And, again, it only is a presumption of an
16 unreasonable delay, but it does put us on a 30-day
17 statute of limitations to go to court, which again,
18 we're not keen on doing, but that's the reality.

19 MR. MARINO: What's the shot clock whether
20 it's mutually agreed to or --

21 MR. GAUDIOSO: Once it expires, we have only
22 30 days to bring a court action. So that's why --
23 it's not a matter of our choice. At that point it
24 would, you know, it would almost be malpractice if
25 we didn't bring it.

1 MALE SPEAKER: Can I just speak to that for
2 just two seconds?

3 MR. MARINO: I think we're done.

4 CHAIRMAN RICE: I think we're done with the
5 public for right now.

6 MR. MEEKINS: Is that with an extension,
7 though, or without?

8 MR. GAUDIOSO: On January 8th --

9 MR. MEEKINS: Thirty days is only from --

10 MR. GAUDIOSO: From the last day of the shot
11 clock whether we mutually -- if we mutually extended
12 it --

13 MR. MEEKINS: When we mutually extend it,
14 yes.

15 MR. GAUDIOSO: -- yeah, so now we're
16 agreeing to mutually extend it to January 8th, I
17 believe.

18 MS. CLEMENTS: January 8th.

19 MR. MARINO: The meeting is the 4th, but the
20 shot clock is extended to January 8th.

21 MR. GAUDIOSO: Correct.

22 CHAIRMAN RICE: Okay. So good, we've talked
23 about that. We also wanted to --

24 MR. MARINO: I think we have to have a
25 motion for that, right, Bob?

1 MALE SPEAKER: Right.

2 MR. MARINO: We need a motion then to
3 adjourn the public hearing.

4 MALE SPEAKER: Make a motion to adjourn the
5 public hearing and I think you also have some SEQRA
6 business to deal with tonight, too.

7 MALE SPEAKER: You mean the retaining of --

8 CHAIRMAN RICE: Yeah, we're going to vote on
9 that.

10 MALE SPEAKER: Well, that plus the -- you're
11 going to -- there is a Type 1 action.

12 CHAIRMAN RICE: (Indiscernible) to a Type 1
13 action. Thank you.

14 Make a motion to adjourn the meeting? I'm
15 making a motion. Second?

16 MR. HELLBOCK: I'll second it.

17 MR. MARINO: One from each Board.

18 CHAIRMAN RICE: Okay. All in favor?

19 MR. GAUDIOSO: And is that 7:30 here again
20 so everyone knows.

21 FEMALE SPEAKER: Well, I have to find out if
22 I can get the room again.

23 CHAIRMAN RICE: We'll have to find out.
24 We'll do it at 7:30 again.

25 MR. GAUDIOSO: 7:30 here unless otherwise --

1 MR. MARINO: I think we have to say
2 all in favor?

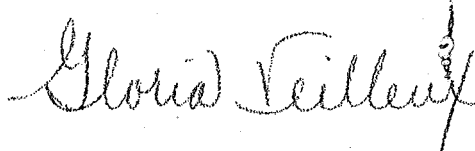
3 (ALL SAY AYE)

4 CHAIRMAN RICE: Okay. And then we want to
5 talk about two other things.

6
7 (Whereupon, the proceedings concluded.)

C E R T I F I C A T E

I, Gloria Veilleux, certify that the foregoing transcript of proceedings of the Village of Nelsonville Combined Public Hearing held on November 28, 2017, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Gloria Veilleux

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