

ORIGINAL

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VILLAGE OF NELSONVILLE  
COMBINED PUBLIC HEARING  
PLANNING BOARD AND ZONING BOARD OF APPEALS  
NOVEMBER 28, 2017

DISCUSSION OF PROPOSED CELL TOWER

TRANSCRIBED BY: GLORIA VEILLEUX  
Schmieder & Meister, Inc.

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Proceedings recorded by electronic recording and  
transcribed by transcription service.

1 CHAIRMAN RICE: All right, I think we're  
2 going to open the meeting. And this is a joint  
3 meeting of the Zoning Board of Appeals and the  
4 Planning Board of the Village of Nelsonville. This  
5 is a public hearing, and the public hearing is for  
6 the Homeland Towers Rockledge Road cell tower  
7 application for a special permit and variance of New  
8 York State Village Law Section 7736 and site plan  
9 approval.

10 We'd like to thank Phillipstown for the use  
11 of their hall tonight. We are going to have a  
12 public hearing, of course. We're going to have  
13 everybody speak, but that will be at the end of the  
14 meeting. We'd like to keep your comments three to  
15 five minutes. Please don't interrupt anybody giving  
16 testimony. Everyone will have a chance to speak  
17 even if you didn't use the sign-up sheet.

18 I'm going to change up the agenda just a  
19 little bit. I'd like the Planning Board and Zoning  
20 Board members to identify themselves first starting  
21 to our left.

22 MR. HELLBOCK: Paul Hellbock, Planning  
23 Board.

24 MR. MEEKINS: Dennis Meekins, Planning  
25 Board.

1 MS. CLEMENTS: Peggy Clements, Zoning Board  
2 of Appeals.

3 MS. BRANAGAN: Susan Branagan, Planning  
4 Board.

5 MR. MARINO: Steve Marino, Planning Board.

6 CHAIRMAN RICE: William Rice, Zoning Board.

7 MR. KEELEY: Chris Keeley, Zoning Board.

8 MS. MEYER: Judy Meyer, Zoning Board.

9 MR. MERANDO: Steve Merando, Zoning Board.

10 MR. MARINO: We are missing one member of  
11 the Planning Board, John Bradley.

12 CHAIRMAN RICE: Okay, thank you.

13 I, at this time, would like the Applicants  
14 to identify themselves starting with Homeland Tower.

15 MR. GAUDIOSO: Good evening, Chairman and  
16 members of the Board, Robert Gaudioso with the law  
17 firm of Snyder & Snyder. I'm jointed by Manuel  
18 Vicente, President of the Homeland Towers, and James  
19 Caris, our engineer from JMC, my colleagues from  
20 AT&T, Dan Laub from Cuddy & Feder, and Dan Pinesso,  
21 RF Engineer from AT&T.

22 CHAIRMAN RICE: Thank you.

23 I'd also like to identify the Village of  
24 Nelsonville consultants, Attorney Bob Lusardi, and  
25 Ron Gaynor (phonetic), our Village engineer. Thank

1 you both for coming.

2 Now, as we do at every meeting, we'd like to  
3 introduce correspondence that we received since the  
4 last meeting. It's important for you to know. It's  
5 a very transparent process. I'm not going to  
6 introduce every email that we've received. A lot of  
7 people have sent us emails, but I will introduce  
8 some. And I know that you -- if someone has sent us  
9 an email, you can speak to it in the meeting. You  
10 can bring it up and there will be a public comment,  
11 but we have a tremendous amount of correspondence.  
12 I'm going to briefly introduce it for the record.

13 And I don't think we got a chance to  
14 introduce this first letter. It's from Shawn  
15 Patrick Maloney requesting from Homeland Towers.  
16 It's dated November 14th, excuse me, requesting a  
17 60-day extension of the shot clock. Must have come  
18 in right before our other meeting.

19 At our previous meeting on November 15th,  
20 Snyder & Snyder introduced a number of pieces of  
21 correspondence which we look at it as a board, but  
22 just so you know, we have a letter from Snyder &  
23 Snyder that deals with the right-of-way, and we did  
24 discuss it in the previous meeting. It will come up  
25 again tonight.

1           We have a letter from CBRE and the subject  
2 matter, in brief, was the Laura Mancuso, who's the  
3 director of Cultural Resources at CBRE, wanted the  
4 Board to know that the project was reviewed under  
5 Section 106 of the National Historic Preservation  
6 Act as required by the Federal Communications  
7 Commission.

8           On that same evening we received another  
9 report from Purecon Solutions. This was in response  
10 to Ron Grafe (phonetic), our RF consultant, about  
11 the alternate highway garage Verizon. Ron had  
12 requested some additional information, so we  
13 received it.

14           There was also information on the SEQRA and  
15 Cedar site, which is no longer in the running.

16           At that time, Saratoga Associates provided  
17 additional photographs regarding the November 4th  
18 balloon test and also the Cedar Street site, which  
19 is no longer under discussion. And I believe all  
20 these had been posted on the Village of Nelsonville  
21 website for everybody to see.

22           And there are -- I'm going to continue.  
23 There's a -- I'm sorry if I don't pronounce your  
24 name properly, from Dove Palowski (phonetic). He  
25 has an email, the main subject is inaccuracies and

1 revised EAF, and he can speak to that if he's here,  
2 or she, I don't know. She, I'm sorry, it's a she.

3 We also have a letter from Ethan Kerr in  
4 response to a Board member's request for additional  
5 information on scientific studies. He has an 11-  
6 page index on the dangers of radio frequency waves  
7 and cell phone use. There is a tremendous amount of  
8 information in that. Ethan, thanks for sending that  
9 to us.

10 Also from Corinne Rester (phonetic) on  
11 November 19th, Corinne sent a letter with a  
12 tremendous amount of information on historical  
13 documentation for the Board's review about  
14 Phillipstown, Nelsonville, and Cold Spring.

15 We also received a letter from the Manitou  
16 School Maria Stein-Marrison on November 21st as  
17 opposed to the tower. She's a director and the co-  
18 owner of the Manitou School. Attached to that was a  
19 number of letters from students. Students were also  
20 opposed to the cell tower.

21 We have a letter from Dave McCarthy who told  
22 the Board that he was getting the SUNY College of  
23 Environmental Science and Forestry involved in this  
24 for free to provide supplemental information to the  
25 Board. And I believe they're working on some

1 information for the Zoning and Planning Board.

2 On November 22nd we received a letter from  
3 Snyder & Snyder on a number of different topics.  
4 One was related to asking the -- responding to the  
5 Village engineers memo dated October 30, 2017  
6 talking about which site plan, what we'd like to  
7 consider. There's two different roads. They also  
8 talked about the Saunders property. At the last  
9 meeting Mr. Saunders offered his property as an  
10 alternate to both the Cedar Street site and the  
11 Rockledge site. And we've got some response from  
12 the Applicant, and that site is not feasible. It  
13 also needs a use variant. It's in a commercial  
14 zone, and there's a bunch of wetlands issues and  
15 setback issues, et cetera. You guys can read that.

16 It's posted on the Village website. They  
17 acknowledge that the Secra (phonetic) Street site is  
18 no longer available.

19 In response to the Board's questions, they  
20 talk about (indiscernible) consultation.

21 (Indiscernible) number of American Indian tribes  
22 have been consulted as per the FCC.

23 They also discuss a removal agreement.  
24 There were concerns from the Board what would happen  
25 if the cell tower stops functioning or they don't

1 need it anymore. As per the Village code, they have  
2 to remove it and they also have to keep it in good  
3 order.

4 In response to the Board, they provided us  
5 with a property value report, and I'll tell you it's  
6 from Lane Appraisals. I believe this is on the  
7 website.

8 FEMALE SPEAKER: The filing.

9 CHAIRMAN RICE: The Lane Appraisals. It has  
10 15 different exhibits talking about not only  
11 Phillipstown, but other towns in West District  
12 County trying to assess the impact of the cell tower  
13 in your neighborhood to adjacent -- does it diminish  
14 the property value. I suggest everyone read this.  
15 I can't go into the whole exhibit, but it's probably  
16 on -- is that on the website?

17 FEMALE SPEAKER: I don't know. I'd have to  
18 look.

19 CHAIRMAN RICE: Okay.

20 FEMALE SPEAKER: I don't think that's on the  
21 website yet.

22 CHAIRMAN RICE: Okay. We'd like to put it  
23 on it so you can read it. It's a little bit too  
24 much to read in this meeting.

25 Now along with that, we had talked about



1 case law last time and it was suggested people start  
2 reading case law about cell towers. Snyder & Snyder  
3 has provided three different case laws for the Board  
4 to take a look at, which was useful, and I hope we  
5 will have this on the website also.

6 In (indiscernible), what year, 2000,  
7 Phillipstown rejected a cell tower. It was  
8 overturned in Federal Court. You can read about  
9 that. It's interesting.

10 In 2014 the Town Board of Kent built a cell  
11 tower on municipal land similar to what we thought  
12 about doing on Secra. Without Zoning Board review,  
13 the court upheld Kent's right to build a cell tower  
14 without zoning review. And there's some other  
15 Article 78 appeals that they provided to us to read  
16 also.

17 We have a November 24th letter from myself  
18 sent to Ron Gaynor to have asked the Applicant for a  
19 shot clock extension to January 31, 2018 based on  
20 the new letters we have gotten from SHPO and the  
21 volume of information we received from the public.  
22 We'll talk about that later in the agenda.

23 We also have a letter from Blanchard &  
24 Wilson dated November 27, 2017 who says the Zoning  
25 Board has no business reviewing this application.

1 Rob, I don't know if you'd have a chance to read  
2 this.

3 MR. GAUDIOSO: I did.

4 CHAIRMAN RICE: It's pretty -- it's a little  
5 bit more in detail than the previous letter we  
6 received. We'll revisit this issue. I know we've  
7 tried to put it to bed at the last meeting, but it's  
8 come up again.

9 And finally, (indiscernible), we have a  
10 letter from Steve Smith, and he has concern about  
11 dirt roads and the access areas. Oh, I know Steve.  
12 Steve Smith's the fire chief.

13 MR. MARINO: He's the chief of the fire  
14 company.

15 CHAIRMAN RICE: Right. I don't know if  
16 (indiscernible). He had some concerns. He went to  
17 the site and I think we might have missed this memo.

18 MR. MARINO: It did come up at the last  
19 meeting.

20 CHAIRMAN RICE: Okay.

21 MR. MARINO: We asked for Planning Board --

22 CHAIRMAN RICE: We have a great letter from  
23 Kathleen Foley who's an historic expert, who also, I  
24 believe, works for Cold Spring or is one of the Cold  
25 Spring boards (indiscernible). And, hopefully,

1 we'll put this on the website. It talks about all  
2 the different criteria for the scenic area statewide  
3 significance (indiscernible). We received a lot of  
4 information about (indiscernible) in the last couple  
5 weeks. We discussed (indiscernible).

6 We have an email from Jennifer Sarwick  
7 (phonetic), and I think a representative or Jennifer  
8 herself has passed out these yellow binders which  
9 were introduced (indiscernible).

10 There's a citizens group now in Phillipstown  
11 opposing the cell tower, and based on a number of  
12 different criteria, trying to get expert testimony  
13 on why the cell tower shouldn't be built.

14 We also have a letter dated 11/28 from a Mr.  
15 Steve Serling who challenges a number of statements,  
16 not so much related to our Rockledge cell tower, but  
17 from other cell towers that are under consideration  
18 by other boards, Phillipstown board.

19 We just received a note from Joe Hirsch and  
20 Heidi Windell. They want to make some public  
21 testimony and they will do that after we're done.

22 And the last two pieces of information are  
23 from -- are the opposition reports, and we can speak  
24 -- they can speak to that later on. It's two  
25 pieces. One is -- we just got this, Statement in

1 Opposition to the Homeland Towers Application of 15  
2 Rockledge Road, and it's submitted to the  
3 Nelsonville Zoning Board of Appeals.

4 And the second piece, again, it's back to  
5 SASS, Scenic Areas of Statewide Significance, and  
6 they talk about the various districts. And we  
7 didn't print it. SASS is about a 400-page document  
8 and it's, again, on their website and extracted to  
9 six pages that deal with Cold Spring.

10 So there you have it. We have a lot of  
11 information. We read it all and entered it into the  
12 public record, and most of it will be available for  
13 you to read on the website.

14 Next, why are we here? We're here because  
15 Homeland Towers wants to, obviously, build a cell  
16 tower. The Village of Nelsonville permits cell  
17 towers to be built in residential districts, but  
18 they must have a special permit.

19 The duty of the Zoning Board, not so much  
20 the Planning Board, but the Zoning Board, since  
21 we're taking the lead on this, is that we review the  
22 application for its completeness, and we have some  
23 narrow opportunity to look at the esthetic impact on  
24 the Village. So that's what we've been doing.

25 15 Rockledge Road is a, as you see on the

1 agenda, is a 9.6-acre wooded site, and if I more or  
2 less (indiscernible) to the 30-plus acre Cold Spring  
3 Cemetery. I believe everybody knows the site. This  
4 is our fourth or fifth meeting. And I quote the  
5 sections if anybody wants to look it up and read the  
6 zoning section, 188.68, "The application for a  
7 special permit to place a new tower in addition to  
8 seeking site plan approval from the Planning Board,  
9 the Applicant proposes to construct a new commercial  
10 cell tower. As permitted in the use schedules, the  
11 Applicant shall apply to the Zoning Board for a  
12 special use permits." So that's what we're  
13 considering.

14 We're also considering a variance should we  
15 grant cell tower near our state village law, Section  
16 7736, which talks about access to public utilities.

17 This particular site has no street frontage. The  
18 only access to it is from a right-of-way. You've  
19 heard us talk about that before, and there's some  
20 discussion about does the Applicant have the ability  
21 to use the right-of-way to (indiscernible) utility  
22 (indiscernible).

23 So from the Zoning Board perspective, that's  
24 why we're here. And Steve is -- if you were to get  
25 this, your responsibilities are somewhat different

1 than ours.

2 MR. MARINO: If the Zoning Board of Appeals  
3 finds that the application has met the requirements  
4 of the special permit application, it would then  
5 come to the Planning Board for site plan approval.  
6 Site plan approval include issues like access to the  
7 site, safety and emergency services to the site, are  
8 they available, will it work, the amount of site  
9 disturbance, and the effects on neighbors and other  
10 properties, landscaping, if necessary, fencing, that  
11 kind of thing, any kind of esthetic issues that  
12 might come up as well as part of the site plan  
13 approval.

14 CHAIRMAN RICE: Okay. So that's why the  
15 Planning Board is here. The reason I'm doing all  
16 the talking is because the Zoning Board is taking  
17 the lead on this on SEQRA, and which is the State  
18 Environmental Quality Review Act because it's really  
19 an environmental assessment.

20 Now, of course, the Applicant, like we said  
21 at the last meeting without going through it again,  
22 the Applicant has numerous submissions they have to  
23 make to us. When we review them we hire outside  
24 consultants to review them for accuracy and for  
25 deficiencies. And one of them is an environmental

1 impact statement, which we reviewed. Some people  
2 have made comments on. There's been some  
3 corrections to it along with the regular frequency  
4 reports, along with approving that the radio  
5 frequencies show no harm to the residents. I know  
6 there's a lot of questions about that. And also  
7 that -- a whole number of things (indiscernible).  
8 I'm trying to think of (indiscernible) analysis,  
9 archaeological review, (indiscernible) and a balloon  
10 test which a lot of people saw (indiscernible).  
11 It's all out there and it's on the website.

12 Now, Robert, I was going to ask you if you  
13 had any new information you wanted to present to the  
14 Board or just summarize where we've been or -- I  
15 know a lot of -- some people are probably new in the  
16 audience, and so give you the opportunity to speak.

17 MR. GAUDIOSO: Thank you. I think you did  
18 outline a lot of the materials that we did submit  
19 from the last meeting, which I got that in a week  
20 before as was requested. Just to highlight some of  
21 it.

22 We did look at that Saunders property. We  
23 highlighted the zoning problems with it and the  
24 wetland problems. If the Board felt that  
25 nevertheless despite the fact for either the

1 variances or the other requirements that are non-  
2 compliant with the code that you felt it was a  
3 (indiscernible) of site we would continue to review  
4 of it, but we did, I think, make, you know, at least  
5 a prima facie case that from a zoning standpoint at  
6 least it's not a permitted use.

7 We also submitted the email from the Village  
8 mayor confirming that the Village is no longer  
9 offering the 2 Secra Street site.

10 We also looked at the adjacent property or  
11 two properties down from Masonic Lodge and just want  
12 to inform the Board that today they also indicated  
13 to us that they were not willing to lease that  
14 property, so that's another site that's not a  
15 feasible alternative and we'll submit the email that  
16 they sent us to the record just so you have it.

17 There was a question on the tribal  
18 consultation. I know it seemed strange, there were  
19 tribes that you may not think have an interest in  
20 the area, but the believe they do and we're required  
21 to provide certain notice to them and applications  
22 and so forth and so on. And we documented some of  
23 that in the letter that we submitted.

24 There's a code requirement, as you  
25 mentioned, for the removal agreement. We did



1 provide a copy of that agreement.

2           There's been a lot of questions about  
3 property value and potential impacts. We submitted  
4 a report from an MAI certified appraiser that looks  
5 at 12 different studies over basically a ten-year  
6 period, does a paired sales analysis, which is a  
7 methodology that's been held up by numerous courts,  
8 including the two that I cited, including one really  
9 in the adjacent municipality in Phillipstown, so we  
10 did submit that report and that does have a lot of  
11 data within the report.

12           There was a lot of questions about, you  
13 know, what's the prohibition standard, and as I  
14 opined last time, I don't believe that it's an issue  
15 for this Board, although if there was a denial, it  
16 would be an issue for a federal court. And there's  
17 oftentimes confusion about whether certain  
18 requirements are the applicant's burden of proof,  
19 and I submitted a case that's very recent that talks  
20 about that exact same issue, that it's not the  
21 applicant's burden of proof to show that there is a  
22 significant gap or that it's the least-intrusive  
23 means. But if we did and there were a denial, a  
24 federal court could issue the permit nonetheless.

25           We did receive the Blanchard letter. We

1 didn't receive it by email as was stated on the  
2 letter. We did receive it from Pauline. We thank  
3 her for that. Again, similar to the prior letter, I  
4 don't think it raises any new issues. It doesn't  
5 have any case law cited in it. I don't think it  
6 changes anything that we had opined in our November  
7 15th letter or the Village attorney had agreed with  
8 us on with respect to the case law with respect to  
9 the issue that we're allowed to bring utilities to  
10 the property.

11 The EAF comments, we did receive the  
12 November 16th email. Question C(2)(b) asks where  
13 the site is within a local or regional special  
14 planning district. We agree that it is in the  
15 coastal management program area, but because the  
16 Village has not adopted a local waterfront  
17 redevelopment plan, there's really no impact from  
18 that district, so to the extent we think you should  
19 check the box on the EAF or the extent that  
20 (indiscernible) document now you'd like to check it,  
21 we don't object, but we do point out that there is  
22 no, and I think we discussed this last time, no  
23 local waterfront redevelopment plan, so there's no  
24 impact from being in that coastal management program  
25 area.

1           Also with respect to question E(3).h, we  
2 had, again, noted in the EAF and it was within the  
3 Hudson Highlands, but again, in the email that was  
4 submitted to the Boards, there was correspondence  
5 particularly with DEC, and they confirmed the fact  
6 that if the DEC or the federal government doesn't  
7 have a specific permit, approval authority, then  
8 those criteria do not apply. So basically, you're  
9 not applying those criteria. If the DEC was  
10 reviewing the application, it would apply to those  
11 criteria, but the DEC is not reviewing the  
12 application because there is not DEC jurisdiction  
13 here. And we submitted actually the letter from the  
14 DEC that had been copied to the Board back in  
15 September that confirmed that there's no DEC  
16 jurisdiction with respect to many items on their  
17 potential list of items that they could have  
18 jurisdiction over.

19           CHAIRMAN RICE: Yeah, we did receive that.

20           MR. GAUDIOSO: So again, you know, we did  
21 note that it's in the Hudson Highlands and in the  
22 EAF, but again, it's our position that there's no  
23 consequence of that based on the fact that those  
24 regulations are applied by the DEC or the federal  
25 government, in this case they're not approving this

1 particular application.

2           Finally, with respect to Village Law 7-736,  
3 and we're asking for an interpretation that it does  
4 not apply and we do not need a variance or, in the  
5 alternative, we're asking for the variance. And as  
6 far as the interpretation, we highlighted Subsection  
7 C which is basically an exemption. If the  
8 (indiscernible) of the plat was duly filed in the  
9 Office of the County Clerk, prior to the Planning  
10 Board having authority over the plats, and we heard  
11 last meeting the zoning came into effect in 1972.  
12 The deed that we submitted and the subdivision map  
13 that was created at the time, the deed was filed in  
14 1971 and had a description of that road, which is  
15 the right-of-way that we've been talking about.

16           In addition to that, we did a little bit of  
17 research. This is not the only landlocked parcel on  
18 that right-of-way. There's actually another lot.  
19 We call it Lot 6 on the survey that we submitted,  
20 and what I'd like to submit tonight is there's  
21 actually some documentation in the Village's records  
22 that show that building permits were actually issued  
23 for structures on that lot in approximately 1975  
24 without, presumably, without a variance. So either  
25 a variance was granted, which we haven't been able

1 to document, maybe the Village has documentation,  
2 but if the variance was granted, then we wouldn't  
3 need a variance. But I think this goes to the point  
4 that the Village has recognized it as a road that  
5 was prior to the creation of zoning. So I'd like to  
6 hand that in as part of the record.

7 CHAIRMAN RICE: Okay. Are you saying it was  
8 a building permit (indiscernible)?

9 MR. GAUDIOSO: They were constructed,  
10 apparently, back in -- because it includes the C of  
11 O, I believe.

12 CHAIRMAN RICE: Oh, okay.

13 MR. GAUDIOSO: So I assume it was  
14 constructed.

15 In the alternative, we are asking for the  
16 variance, and what we did if you read my cover  
17 letter is a full description of the public utility  
18 variance exception in New York State with AT&T and  
19 Verizon Wireless are deemed public utilities for  
20 zoning purposes. And although the standard is very  
21 close to the prohibition standard that we talked  
22 about before, it is different and it's basically the  
23 benefit to the Applicant. So rather than proving  
24 the traditional area variance standard that would  
25 normally be required, an applicant that's deemed a

1 public utility is entitled to deferential treatment  
2 in zoning and is a different standard that we  
3 outline and we cited to the cases going back to the  
4 Rosenberg decision regarding wireless facilities.  
5 So that's in my cover letter and goes into detail on  
6 that.

7 CHAIRMAN RICE: As a public utility?

8 MR. GAUDIOSO: As a public utility, correct.

9 CHAIRMAN RICE: Could you confirm you  
10 received this letter? It came in yesterday. I  
11 thought you were copied on it. You mentioned  
12 there's a --

13 MR. GAUDIOSO: No, so I did not receive this  
14 letter.

15 CHAIRMAN RICE: Okay. I know you can't read  
16 it now.

17 MR. GAUDIOSO: Hold on, let me just make  
18 sure, November 27th, no.

19 CHAIRMAN RICE: I thought you were copied on  
20 that, but maybe not, but that has more case law.

21 MR. GAUDIOSO: No, I have not received this.  
22 If I could have a copy.

23 CHAIRMAN RICE: You can have mine.

24 MR. GAUDIOSO: Thank you. And I'll reserve  
25 my comments until I have an opportunity --

1 CHAIRMAN RICE: Yeah, you'll have -- okay.

2 MR. GAUDIOSO: Thank you, Mr. Chairman.

3 FEMALE SPEAKER: Is that -- do you want --  
4 you can give him the highlighted --

5 MR. MEEKINS: I just have a question on the  
6 document you gave us? This looks like it's an  
7 permit for a pool.

8 MR. GAUDIOSO: Correct.

9 MR. MEEKINS: So what C of O would you say  
10 would be given for a pool.

11 MR. GAUDIOSO: Typically, there is a C of O  
12 or a C of C.

13 MR. MEEKINS: For an above-ground pool?

14 MR. GAUDIOSO: Usually -- my understanding -  
15 - if there's a building permit, there's usually a C  
16 of O or a C of C.

17 MR. MEEKINS: But there's already an  
18 existing building on the property.

19 MR. GAUDIOSO: I guess that's my point. My  
20 point is is that the property was granted -- the way  
21 7-736 reads is that "No permit for the erection of  
22 any building shall be issued unless a street or  
23 highway giving access to such proposed structure has  
24 been duly placed on the official map or plan." So I  
25 guess the question is why that property is

1 landlocked similar to this property, I guess would  
2 be the correlation.

3 MR. MEEKINS: But the date of the building  
4 is not the date you're talking about for this  
5 permit. This permit is only related to the pool?

6 MR. GAUDIOSO: So the pool was permitted as  
7 a use on the property after zoning was in place  
8 either with or without a variance. And our point is  
9 is that the Village has issued permits for uses on  
10 landlocked parcels off of that right-of-way since  
11 zoning has been created.

12 MR. MEEKINS: But didn't you just say for a  
13 building, though? I thought when you read --

14 MR. MERANDO: A pool is not a building.

15 MR. MEEKINS: Yeah, so when you read the  
16 rule, it sounded like for a building.

17 MR. GAUDIOSO: It goes on to say for that  
18 structure, so it refers to the word "building" and  
19 "structure" in the same first sentence.

20 So in either event, I guess my argument is  
21 this, is that either it supports our argument that  
22 there is already a recognized right-of-way/road to  
23 access landlocked parcels in that particular area.  
24 And if that interpretation is denied by the Zoning  
25 Board, and this is really a Zoning Board issue, then



1 I think it's further evidence that if there are  
2 residences and pools and things of that nature using  
3 that existing access way, that it's sufficient,  
4 obviously, for those residential uses, it would  
5 certainly be sufficient for an unmanned facility,  
6 keeping in mind we have already committed to  
7 increasing and basically bringing that right-of-way  
8 up to the specification as requested by the Planning  
9 Board.

10 One of the things that we've asked for in  
11 our letter and we think is important tonight to  
12 decide is from that point onto our property, then  
13 which proposed access alternative do the Boards  
14 prefer so that way we can fully engineer it in  
15 response to your engineer's comments. And we've  
16 gone through that I know at prior meetings that  
17 there's two different alternatives. I think there  
18 are pros and cons to either one, and I think that  
19 really lands on your discretion at this stage.

20 MR. HELLBOCK: This permit, are they doing  
21 any construction on the existing road, right-of-way,  
22 whatever you want to call it at that time, or is it  
23 they're just using it to get back there to put the  
24 pool in?

25 MR. GAUDIOSO: The building department --

1 the property is landlocked, so they get to the  
2 property on this same right-of-way, okay.

3 MR. HELLBOCK: Right, but did alter the road  
4 in any way in order to do that? I don't see that on  
5 here.

6 MR. GAUDIOSO: I don't know if they altered  
7 the road or not. I have no way of knowing because  
8 it was, you know, 35, 40 years ago, but the point  
9 being is that the Village deemed it sufficient to  
10 issue permits on the landlocked parcel over this  
11 right-of-way.

12 MR. KEELEY: And if they were to build a  
13 shed without power, they may have needed a similar  
14 application, but it would have had no implications  
15 for the gravel road versus a concrete road. You  
16 would have had no implications for underground  
17 electricity, digging up that right-of-way.

18 MR. GAUDIOSO: Yeah. I don't know whether  
19 they built a shed or not. I don't know if they put  
20 in electricity.

21 MR. KEELEY: But if they did, are you  
22 suggesting that maybe they didn't need it  
23 (indiscernible) road instead of taking  
24 (indiscernible) power?

25 MR. GAUDIOSO: Sure, sure. No, I

1 understand. I think the bigger fact is that it's a  
2 landlocked parcel similar to ours. It has a  
3 residential use on it. It's gaining access for  
4 residences which, as we discussed last time, you  
5 know, certainly has a public safety element as well.  
6 And nevertheless, we're willing to upgrade that  
7 road, which I think would be a benefit.

8 CHAIRMAN RICE: Okay. Go ahead.

9 MS. BRANAGAN: When you said "road," do you  
10 mean right-of-way or --

11 MR. GAUDIOSO: Well, I'm using it somewhat  
12 interchangeably because it's a right-of-way, and my  
13 point is is that if it was in the County Clerk's  
14 Office prior to your zoning, then it does not need a  
15 7-736 variance as a road to a landlocked parcel.

16 And, in fact, if you look at the  
17 application, it was checked as having access and  
18 front -- as having frontage on a road, so --

19 MS. BRANAGAN: I just wanted to be sure that  
20 when you're talking about the road, it's the actual  
21 land that is the right-of-way, not like the road  
22 leading to the right-of-way, the road after the  
23 right-of-way.

24 MR. GAUDIOSO: In this discussion I'm  
25 talking about the right-of-way that leads from

1 Moffitt Road to the property that's in question.

2 MS. BRANAGAN: Right.

3 MR. GAUDIOSO: So I think that what I just  
4 submitted actually deemed it a road, checked the box  
5 that it was on a road, and I think that's relevant  
6 to whether it is a road under the interpretation of  
7 whether we need a variance under 7-736.

8 If you look at the application right on the  
9 first page, it checks under item number 7 that it's  
10 on a state, county, or town highway. It does not  
11 check the other items including right-of-way or  
12 easement, so that property owner specifically took  
13 the position at that time as part of getting this  
14 permit issued by the Village that it was a road.

15 CHAIRMAN RICE: All right, so we'll look at  
16 this in a little more detail. Thank you for  
17 submitting this.

18 MR. GAUDIOSO: Thank you. And we'll be  
19 happy to answer questions after the comments.

20 CHAIRMAN RICE: Thank you. There's a couple  
21 of things that we, as a board, wanted to bring up,  
22 collectively, and this whole idea of this shot-clock  
23 extension, has Homeland thought about that or is  
24 there a -- do you have a position on that? I know  
25 Congressman Maloney wrote about it.

1 MR. GAUDIOSO: Sure.

2 CHAIRMAN RICE: I think (indiscernible) you  
3 and I've asked you.

4 MR. GAUDIOSO: So the letter that you wrote  
5 us was in the context of the letter from SHPO.

6 CHAIRMAN RICE: Yes.

7 MR. GAUDIOSO: And in that context, I don't  
8 believe a lengthy extension is appropriate because  
9 the letter from SHPO specifically and expressly says  
10 "At this point in time, our office is not prepared  
11 to seek to reopen the review process." And, again,  
12 keeping in mind that it would not be a unilateral  
13 decision even if they were prepared to seek to  
14 reopen. That would have to go through a very  
15 specific process including the FCC, and that  
16 wouldn't happen, obviously, between now and January  
17 in any event. So in that context, I don't believe a  
18 lengthy extension is warranted.

19 In the context of, I think we're all working  
20 hard and we want to give you the opportunity to have  
21 a complete record, and we want to ask you about that  
22 alternative access drive and be able to revise the  
23 plans to provide the engineering data that your  
24 consultant has asked for. I think that's  
25 reasonable. I also think it would be reasonable

1 because we're not even at the shot clock yet that  
2 maybe the proper scope would be extend it to maybe  
3 the end of December and see where we are at that  
4 point because that's still a month out.

5 One of the things in your letter you had  
6 indicated that you wanted to speak with SHPO, we  
7 would just ask that it wouldn't be appropriate to  
8 have an ex parte communication, that it should be on  
9 the record, and if there were any discussions or any  
10 meetings, we would just ask to be a part of that,  
11 and we would be comfortable with that.

12 And also --

13 CHAIRMAN RICE: (Indiscernible) part of the  
14 correspondence.

15 MR. GAUDIOSO: Okay.

16 CHAIRMAN RICE: Whatever is -- I know that  
17 we -- I know that the Village Board has reached out  
18 to SHPO on occasions.

19 MR. GAUDIOSO: Okay. So, I mean, if it was  
20 with respect to 2 Secra Street, I mean I think  
21 that's fine. With respect to this application, they  
22 really have no jurisdiction over that. But in your  
23 letter it said it would give us time to personally  
24 speak with Mr. Bonafate (phonetic).

25 CHAIRMAN RICE: Yeah, if you'd like to

1 speak --

2 MR. GAUDIOSO: I don't have any objection to  
3 that as long as we're part of that conversation,  
4 would be my only request.

5 MR. KEELEY: My question regarding -- oh.

6 CHAIRMAN RICE: No, go ahead.

7 MR. KEELEY: My question regarding that is  
8 that I think in the original submission, there was  
9 communication that happened between you and SHPO  
10 originally that we were not a party to, so is this  
11 reciprocal? I don't understand the --

12 MR. GAUDIOSO: So we are required by federal  
13 law to file that documentation with SHPO through the  
14 Form 620.

15 MR. KEELEY: But we weren't a party to it is  
16 my point.

17 MR. GAUDIOSO: Correct.

18 MR. KEELEY: Okay. But we were able to have  
19 our own (indiscernible) conversation --

20 MR. GAUDIOSO: Correct, but we did -- but  
21 we've submitted it to you in full. You have  
22 everything we've submitted to them.

23 MR. KEELEY: We would surely share with you  
24 after we had the communications.

25 MR. GAUDIOSO: I'll just state for the

1 record, I don't believe in ex parte communication  
2 between an official board without the applicant  
3 being part of that. I think that's completely  
4 different than an applicant who's regulated,  
5 basically regulated by SHPO to file materials with  
6 SHPO pursuant to a regulatory process and another --  
7 I think that's apples to oranges to another official  
8 board having an ex parte communication off the  
9 record.

10 MR. KEELEY: In a similar way that an above-  
11 ground pool and a cell tower are apples to oranges.

12 MR. GAUDIOSO: I think the use of the road  
13 and whether it's a road or not a road in a  
14 determination I think is really the key issue there.

15 MR. KEELEY: In the letter that you were  
16 citing, I think -- and I don't have it in front of  
17 me, but I think what they were saying they're not  
18 ready to reopen it with the FCC. It wasn't specific  
19 to the SEQRA consideration. I believe in the  
20 document there that you have in your hand it'll say  
21 that it's --

22 MR. GAUDIOSO: Well, that's how they do it.

23 MR. KEELEY: -- (indiscernible-both speaking  
24 at the same time). SEQRA is what's before us today.

25 MR. GAUDIOSO: Sure. Sure.



1 MR. KEELEY: And so I think that right now  
2 we're sort of in this tough bind where we're either  
3 going to be in non-compliance with a shot-clock  
4 order with the FCC or we'd be in non-compliance by  
5 being able to take a hard look at substantially new  
6 information that's been submitted under SEQRA. So  
7 we're either going to be in non-compliance under New  
8 York State or we're going to be in non-compliance  
9 under the FCC without having an extension, and  
10 that's the part that I don't understand why --

11 MR. GAUDIOSO: Sure.

12 MR. KEELEY: -- we can't in good faith, and  
13 this has been a very good-faith conversation since  
14 August, I think.

15 MR. GAUDIOSO: Sure, I agree.

16 MR. KEELEY: I don't understand why we're  
17 now trying to (indiscernible) the difference of  
18 these handful of weeks when we're requesting it in  
19 good faith.

20 MR. GAUDIOSO: Sure. No, I understand your  
21 point.

22 I think there is no new information in the  
23 November 22nd letter to start with. They don't add  
24 anything new. They specifically say, in fact, "We  
25 don't intend to reopen the shot clock, reopen the --

1 MR. KEELEY: They do say that the cemetery  
2 is, in fact, going to be placed on the registry.  
3 That's moving forward with the historic registry.  
4 And that under SEQRA, it says that any historic area  
5 that is substantially contiguous to its historic  
6 site under 617.4, Section B(9), it says that  
7 anything can be substantially contiguous, needs to  
8 be a Type 1 application, that is substantially new  
9 information changing whether we're an unlisted  
10 application under SEQRA or a Type 1. I think that  
11 that's (indiscernible).

12 MR. GAUDIOSO: So to take one step back  
13 because I agree with you on the Type 1. I agree  
14 with you on the Type 1 issue. We have -- because we  
15 submitted a full EAF and because this has been a  
16 coordinated review, there's no change in process or  
17 required documentation whether it's Type 1 or  
18 unlisted. So we've been following since day one,  
19 since the day we filed, basically the process for a  
20 Type 1 action.

21 The letter also specifically talks about how  
22 -- that the cemetery was considered, and this is  
23 from Mr. Bonafate, "We also note that you," meaning  
24 the Applicant's consultant here, "had already  
25 considered this resource," meaning the cemetery, "in

1 your visual analysis," so --

2 MR. KEELEY: But I don't understand how you  
3 can say there's no new information when we both just  
4 agreed that this should transition from an unlisted  
5 SEQRA to (indiscernible) application. There's new  
6 information that triggers that transition. How can  
7 you say that there's nothing different?

8 MR. GAUDIOSO: I'm saying that there's  
9 nothing new with respect to the actual information  
10 that you have other than --

11 MR. KEELEY: Why are we agreeing that it's  
12 now a Type 1 application?

13 MR. GAUDIOSO: Because it's a --

14 MR. KEELEY: There's new substantive  
15 information.

16 MR. GAUDIOSO: Because the -- but it doesn't  
17 change -- but it only changes procedurally the  
18 review that has to occur. And what I'm saying is  
19 that that has been the same since day one.

20 MR. KEELEY: I hear your argument.

21 MR. GAUDIOSO: I'm not opposed to grating  
22 the extension, but let me finish where I was going  
23 to go with this.

24 So, number one, we'd like to be a part of  
25 those discussions, and if the answer is we're not

1 allowed to -- you're not willing to make us part of  
2 those discussions, that puts us in a difficult  
3 position, number one.

4 Number two, I see on your agenda that you're  
5 considering to hire another new consultant, and we  
6 would just like to understand the scope of that  
7 review to understand how long that's going to take.

8 MR. KEELEY: Correct.

9 MR. MARINO: That doesn't seem unreasonable.

10 MR. GAUDIOSO: And the reason we ask that  
11 specifically is because we know Mr. Gaynor has been  
12 doing a lot of this work, so number one, we've been  
13 asked to provide additional escrow which we have no  
14 objection to. We'll review the invoices. We'll  
15 provide the escrow.

16 And, number two, just understanding that  
17 there's no overlap in the duties of the different  
18 consultants.

19 CHAIRMAN RICE: I think that, like Chris  
20 said, with all the new information that's come over  
21 the last couple weeks, there's a tremendous burden  
22 on everybody to review the completeness of the  
23 application, simply AKRF's expertise in cell towers  
24 that might be able to aid the Board in reviewing the  
25 application. Rob, I think you know the --

1 MALE SPEAKER: Well, again, the AKRF has  
2 provided a proposal to the Village. It's the  
3 delineated scope to look at historic -- potential  
4 impacts for historic and esthetic resources. And  
5 it's certainly available to you to understand their  
6 intent.

7 MR. GAUDIOSO: Sure. Do you have that that  
8 I could review this evening?

9 CHAIRMAN RICE: I don't have that proposal  
10 with me.

11 MALE SPEAKER: I do not as well.

12 CHAIRMAN RICE: But it's -- we can send it  
13 to you first thing in the morning.

14 MR. GAUDIOSO: Sure.

15 CHAIRMAN RICE: We're going to vote on it  
16 tonight.

17 MR. GAUDIOSO: I mean in conclusion, we  
18 would be willing to mutually extend the shot clock  
19 to the end of December to give you an opportunity to  
20 come back. We don't want to interfere with anyone's  
21 holiday, obviously, but we'd like to understand  
22 where the discussion with Mr. Bonafate goes. We'd  
23 like to understand where AKRF's scope of work is.

24 We'd like to review the materials that were  
25 just submitted tonight and the other materials that

1 were just handed to us.

2 CHAIRMAN RICE: Yeah, sure.

3 MR. GAUDIOSO: And also hear the testimony.  
4 And then in December, obviously, we're not going to  
5 put in a position to, and I think to your point,  
6 less than we would want would be an approval that  
7 didn't take a hard look at the impacts that could be  
8 subject to a third-party challenge, and we're  
9 sensitive to that, obviously.

10 MR. KEELEY: And right now we're not able to  
11 do that.

12 MR. GAUDIOSO: I understand that and --

13 MR. KEELEY: We're not able to do that, and  
14 to say that you're looking to protect our holidays  
15 when you're extending it right into the heart of the  
16 holidays, it just doesn't make sense to me.

17 MR. GAUDIOSO: Well, I mean, if we could  
18 have a meeting prior to the holidays, maybe the  
19 third week of December, the 21st or 22nd --

20 MR. KEELEY: The current shot clock  
21 (indiscernible).

22 MR. GAUDIOSO: I'm saying, well, we could  
23 extend it. We'll extend it to that period of time  
24 with the understanding that if we're not in a  
25 position to extend it beyond -- if we're not in a

1 position -- if you're not in a position to make a  
2 decision that evening, we would extend it again, you  
3 know, for another month at a time just to be able to  
4 take small bites and keep the process moving in that  
5 direction.

6 MR. KEELEY: Can I say (indiscernible)? I'd  
7 like to suggest that maybe we table this and revisit  
8 the shot clock later in the meeting? I have a  
9 feeling there's a lot of new information that's  
10 going to be brought to light tonight. Right now  
11 we're talking about very discreet pieces of things,  
12 and making a decision this big with only the  
13 information that's in front of I think might --

14 CHAIRMAN RICE: I think what Robert is  
15 saying is we can extend the shot clock, certainly  
16 not indefinitely, but --

17 MR. GAUDIOSO: Multiple times.

18 MS. BRANAGAN: (Indiscernible-both speaking  
19 at the same time) negotiation and not making a  
20 decision (indiscernible) that you will grant it or  
21 not grant it, aren't you actually in negotiation  
22 between the Board and you?

23 MR. GAUDIOSO: Well, it has to be a mutual  
24 agreement to extend. And we're --

25 MS. BRANAGAN: (Indiscernible) granting the

1 extension. You're discussing it as a negotiated --

2 MR. GAUDIOSO: A mutual agreement to extend  
3 the shot clock, and what we typically do is we  
4 extend it, you know, a small period of time just to  
5 make sure that things move along during that period  
6 of time.

7 And, again, all the expiration of the shot  
8 clock gets us is the ability to go to Federal Court  
9 on a presumption of an unreasonable delay. And  
10 we've said this -- I've said this since August that  
11 that's not our intention.

12 MS. BRANAGAN: (Indiscernible-speaking very  
13 softly)

14 MR. GAUDIOSO: Again, I think the point  
15 being, though, to extend the shot clock three weeks  
16 before it's up for a period of time that amounts to  
17 about 40 percent of the overall shot clock period I  
18 think is a bit too long, and what we're saying is  
19 we're willing to agree to --

20 MR. MEEKINS: What percent is reasonable?  
21 Because I don't understand what is -- what word did  
22 you use, "significant" or "substantial," I forget?

23 MR. GAUDIOSO: I'm saying -- what I'm saying  
24 is that --

25 MR. MEEKINS: You couldn't give us a



1 substantial extension or a --

2 MR. GAUDIOSO: What I'm saying is that from  
3 a practical standpoint --

4 MR. MEEKINS: Right.

5 MR. GAUDIOSO: -- there's no legal standing  
6 on this.

7 MR. MEEKINS: So is 60 days practical to  
8 you?

9 MR. GAUDIOSO: Yeah. I think that without  
10 knowing, you know -- quite frankly, today I received  
11 an agenda and it had a new consultant on it and we  
12 go a request for another \$7,000 in extra fees. That  
13 gives us support. So all I'm saying is that we're  
14 willing to extend it to the end of December. Let's  
15 have a December meeting, see where we are, see where  
16 the issues are, and most likely we'll be extending  
17 it again because that's my gut instinct.

18 MR. MEEKINS: Okay.

19 MR. GAUDIOSO: But just to extend it out for  
20 another 60 days --

21 CHAIRMAN RICE: That sounds reasonable.

22 MR. GAUDIOSO: -- we seem -- we just think  
23 that that's a little long.

24 CHAIRMAN RICE: We can bring it up again  
25 (indiscernible). It sounds like you have some

1 incremental extensions. Let's bring it -- we'll  
2 talk about it again at the -- all right, so that was  
3 a shot-clock discussion. We can circle that and  
4 talk about it again.

5 Looks like we just talked about SEQRA,  
6 whether it's a Type 1 or an unlisted status. Chris,  
7 are you satisfied with that --

8 MR. KEELEY: I don't know if this a request  
9 to Ron or to Bob if we need to actually formally  
10 undertake anything if we understand, and it sounds  
11 like we're in agreement with the Applicant that  
12 there is no substantial new information that's come  
13 to light in terms of the cemetery now being eligible  
14 for listing. It's substantially contiguous. The  
15 application site is substantially contiguous to that  
16 historic site. That would trigger that Type 1  
17 application.

18 Is there a formal process that we need to go  
19 through?

20 MALE SPEAKER: Again, the Board had  
21 previously identified it as an unlisted action. It  
22 would be appropriate for you tonight in light of  
23 this latest information to formally for the record  
24 now acknowledge it to be a Type 1 action.

25 CHAIRMAN RICE: All right. We'll do that at

1 the end of the meeting.

2 I think what Snyder & Snyder is saying they  
3 recognize it already as Type 1, so --

4 MR. GAUDIOSO: What I'm saying is a process  
5 perspective. We've had the full EAF. You've done a  
6 coordinated review.

7 CHAIRMAN RICE: Okay.

8 MR. GAUDIOSO: Those are two things that you  
9 didn't have to do as an unlisted action, but you  
10 would have to do as a Type 1 action.

11 CHAIRMAN RICE: Okay, perfect.

12 MR. MARINO: And I think, honestly, part of  
13 bringing AKRF in with their expertise in historic  
14 issues is -- I'm not clear in my mind what eligible  
15 -- what the real impact of eligible for listing  
16 means. Is that the same as saying it's on the list  
17 or is it not or it could be. They have to review it  
18 to see if it should be, and I think that kind of  
19 expertise from them would answer that question.  
20 That's part of your answer as to why we're bringing  
21 another consultant in on specific issues.

22 MR. GAUDIOSO: Sure.

23 CHAIRMAN RICE: I think you're going to  
24 prepare a very focused report for us. According to  
25 -- we had an interview with a gentleman from AKRF.

1           Looks like, Robert, since you haven't had a  
2 chance to look at the letter from Blanchard &  
3 Wilson, why don't we put that aside. I'm sure  
4 you're going to respond to it in writing, but  
5 there's a lot more information in that, so we'll  
6 skip this right-of-way issue because we've talked  
7 about it the last time and you're not prepared to  
8 discuss it at this time.

9           The Hudson Highland Scenic Areas of  
10 Statewide Significance, SASS is a big issue that  
11 came up from the public and Dave McCarthy brought it  
12 up, brought it to our attention, and I just want to  
13 acknowledge that. I think there's some people that  
14 are going to talk about it tonight. Does the Board  
15 have any comment on that or were you guys able to  
16 read up on that a little bit?

17           MR. MEEKINS: I had a question --

18           CHAIRMAN RICE: Yes.

19           MR. MEEKINS: -- based on -- and I read the  
20 sections that Dave presented and are very helpful,  
21 but even in his cover letter he made a mention some  
22 -- I'm just wondering, and Counsel hasn't had a  
23 chance to see this yet. I can understand why you  
24 can't answer, but in his correspondence Dave said to  
25 us that he was discussing it with Dr. Robert Hoffman

1 at SUNY (indiscernible), and she asked how Homeland  
2 Towers could even consider this location. It got me  
3 to thinking does Homeland Towers have any other  
4 towers in this scenic corridor?

5 MR. GAUDIOSO: I would have to look at the  
6 maps. I don't know --

7 MR. MEEKINS: My second question would be  
8 have you had any applications that you had to  
9 abandon because they were in the scenic corridor?

10 MR. GAUDIOSO: No. Again, if it's -- and I  
11 don't want to misspeak because I haven't had a  
12 chance to look at this, but --

13 MR. MEEKINS: No, I realize that.

14 MR. GAUDIOSO: -- my instinct is is that we  
15 had addressed this last week in that letter is that  
16 those criteria apply if the DEC was approving an  
17 application. And if you can tell me the -- if you  
18 can tell me what exactly the scenic corridor is,  
19 that would help me because I don't have the maps and  
20 I haven't studied them, but if you go up and down  
21 Route 301, I mean, in Fahnestock Park there's a  
22 gigantic lattice tower that's been there for  
23 probably 50 or 60 years if not more.

24 There's also an Achilles Tower that's right  
25 along that corridor, so just if they fall, and I

1 don't have the map in front of me, if they fall in  
2 that area, you know, those are applications that,  
3 obviously, this applicant, Homeland Towers didn't  
4 do, but would be in those areas.

5 CHAIRMAN RICE: Kathleen Foley addresses  
6 that in her letter to the Board. I believe she says  
7 that there are -- none of the other 15 SASS  
8 districts have cell towers placed in them.  
9 Phillipstown, obviously, has a number of them, so  
10 she thought it was unusual somehow we bear the  
11 burden of a lot of cell towers in our particular  
12 district.

13 There is one at West Point. Obviously, they  
14 need a cell tower there for security reasons and --  
15 but it was interesting. In no other SASS district  
16 is there a cell tower just to sort of answer your  
17 question, Dennis, but there's a lot here --

18 MR. MEEKINS: Closer to Route 9 is a lot  
19 different than closer to the river, I would say, you  
20 know, from the perspective of how this report is  
21 written about scenic areas. I'm not thinking too  
22 many of us think Route 9 is that scenic when we go  
23 up and down it.

24 MS. BRANAGAN: You still talking about the  
25 SASS?

1 MR. MEEKINS: Yes.

2 MR. HELLBOCK: I thought it went from the  
3 river to 9.

4 CHAIRMAN RICE: We have the maps.

5 MR. MARINO: I think we all have to look  
6 into that issue, which is --

7 CHAIRMAN RICE: That's come up. We need a  
8 little more time. That's a huge document. We did  
9 extract the piece that applied to Cold Spring.

10 MR. GAUDIOSO: Yeah, if we could just obtain  
11 a copy of that, we'd appreciate it.

12 CHAIRMAN RICE: Yeah. It's actually on the  
13 website, Rob. We'll give you -- the whole document  
14 is on the website.

15 FEMALE SPEAKER: I don't think it's on the  
16 website.

17 MR. GAUDIOSO: No, I mean the letter that  
18 you're referring to --

19 CHAIRMAN RICE: Oh, from Dave?

20 MR. GAUDIOSO: Yeah.

21 CHAIRMAN RICE: Sure.

22 MR. GAUDIOSO: It was the letter that I  
23 think you were referencing.

24 MR. MEEKINS: It's a cover letter with the  
25 report. I assumed it was already in the record. I

1 just note we only got it tonight.

2 MR. GAUDIOSO: I don't believe I have it.

3 MR. MEEKINS: Okay.

4 CHAIRMAN RICE: No, we may not have  
5 forwarded it to you. There's a lot of emails that  
6 we did not -- that are from citizens. A lot are  
7 talking about radio frequency waves and, again, we  
8 remind the public that the federal government  
9 doesn't recognize that it's a harmful effect.  
10 Notwithstanding, that could change. You're  
11 certainly welcome to your opinion, but the Board  
12 can't comment on that, so we got a lot of emails in  
13 that regard and we're sympathetic to that position,  
14 but for -- again, we cannot consider that in our  
15 review of the Applicant's information.

16 MR. GAUDIOSO: We would just ask for copies  
17 of those emails as well.

18 CHAIRMAN RICE: Sure.

19 FEMALE SPEAKER: Most of those, they've got  
20 those, most of those letters. There was just a few  
21 letters that came in that --

22 CHAIRMAN RICE: Oh, yeah, there's some  
23 miscellaneous emails that -- the ones I've read into  
24 the record tonight are ones with attachment,  
25 significant attachments.



1 Yes, let's talk about SASS and then we're  
2 going to open it up to the public for questions.

3 MR. KEELEY: Mr. Gaudio, under the SASS, I  
4 think one of the court considerations is the  
5 esthetic impacts, right? And SASS, not SASS,  
6 looking just at the Zoning Board considerations, you  
7 know, we have considerations around the esthetic  
8 impacts --

9 MR. GAUDIOSO: Sure.

10 MR. KEELEY: -- historic impacts, a range of  
11 criteria that need to be met.

12 One of the items that surfaced from a number  
13 of folks in the community in recent weeks, which, by  
14 the way, thank you to everyone that's been doing  
15 lots of good research and helping to hold this  
16 together because it is very complex for us to  
17 understand it, and so it's been helpful to just --  
18 helped to be able to sit through a lot. And I think  
19 one of the things that I've been curious about is  
20 right now there's an application for 110-foot  
21 (indiscernible). As I understand it, the Middle  
22 Class Tax Relief Act -- and Job Creation Act of  
23 2012, Section 6409(9) says that "A local government  
24 may not deny or shall approve modifications that are  
25 -- do not substantially change the physical

1 dimensions of a tower." Then they go on to say what  
2 is a tower, what is substantial change. And it says  
3 that the height can be changed up to 10 percent  
4 without -- and it shall be approved up to an  
5 addition of 10 percent of the existing height.

6 So if this were to go through and it were a  
7 110-foot, the maximum allowed under our zoning code,  
8 my read of the Middle Class Tax Relief and Child  
9 Creation Act of 2012 is that soon thereafter, it  
10 could jump from 110 plus 10 percent to be 121 feet.

11 So I'm curious, your thoughts on that from our own  
12 Village expert --

13 MR. GAUDIOSO: Yeah, I don't --

14 MR. KEELEY: -- but if that is the case and  
15 there is the ability to just extend an extra 10  
16 percent as of right, essentially, once it's up under  
17 this federal rule, and our intention as a zoning  
18 board, as a village, I should say, that wrote the  
19 zoning code, was that the max should be 110 feet.  
20 It seems to me then we should be talking about an  
21 application that's 100 feet tall because if the  
22 expectation is then it's going to be plus 10 percent  
23 later that would get you to the 110 because,  
24 otherwise, we're making an end run around the intent  
25 that was stated by the Village.

1           So I'm curious your thoughts on the Job  
2           Creation Act of 2012 and also if Ron or Bob had any  
3           thoughts has as well.

4           MR. GAUDIOSO: Sure. Sure. So I'll work my  
5           way backwards.

6           We should not be talking about an  
7           application for 100 feet because the application is  
8           for 120 feet, which is what the Applicants have  
9           shown that they need to provide there.

10          MR. KEELEY: 120 feet?

11          MR. GAUDIOSO: I'm sorry, 110 feet, 110 for  
12          Verizon and 100 for AT&T, so that's what the  
13          application is for based on the code, but also based  
14          on their needs.

15          With respect to the criteria you cited, I  
16          think you only cited a very small portion of it.  
17          There's actually six criteria to determine whether  
18          an application is an eligible facility's request.  
19          And one of the criteria is whether it defeats the  
20          stealth. And as part of this application, this  
21          is not a 110-foot monopole, per se. It's designed  
22          with a stealth treatment including, you know, some  
23          statements in your code that took it in that  
24          direction.

25          So I can't opine whether an application that

1 would come in the future would be deemed an eligible  
2 facility's request because I don't know what's going  
3 to be approved or not approved, but I can tell you  
4 that there are six criteria and one of those  
5 criteria is that it does not defeat the stealthing  
6 of the originally designed facility, and this  
7 facility is designed as a stealth facility.

8 MR. KEELEY: And I don't know if either of  
9 you have come across that or if you have any  
10 thoughts on that. If not, we can follow up later.

11 MALE SPEAKER: We got to take it under  
12 advisement. I would anticipate you do have a  
13 maximum height permitted in zoning. I mean, the  
14 Village attorney would have to weigh in on whether  
15 that trumps any request to get higher than that.

16 MALE SPEAKER: One of the considerations for  
17 SEQRA is, you know, (indiscernible) increase and if  
18 there's an intention to do that at this time, then  
19 that should be something that is addressed in the  
20 application and the SEQRA review.

21 MR. GAUDIOSO: And there is no intention at  
22 this time. I think any extension in the future  
23 would be speculative.

24 CHAIRMAN RICE: The towers can't be put up  
25 for future need. It has to be current need.

1 MR. KEELEY: And maybe the point I'm getting  
2 at is that what we consider as we go down the line  
3 if we're moving in a certain direction as one of the  
4 considerations that we try to work through with the  
5 Applicant in good faith is we're trying to continue  
6 working in good faith is that we come to an  
7 agreement that if 110 is the Village code's maximum,  
8 then that's where it stays. Regardless of what the  
9 federal rules may allow to make an end run around  
10 that zoning code, our zoning code says 110, so it  
11 would be capped at 110, and we discussed that.

12 I think we're nowhere near that  
13 conversation right now, but I wanted to make sure  
14 that we had it on the radar of our Village experts  
15 as well.

16 CHAIRMAN RICE: The Zoning Board may  
17 introduce conditions to re-grant the cell tower  
18 (indiscernible) granted with conditions. It's a  
19 good point.

20 Let's see, anything else? Anybody else on  
21 the Board have any other questions?

22 MR. MEEKINS: I have questions that were  
23 raised by some of the residents in some of their  
24 correspondence that I thought -- I know they haven't  
25 seen them, but I think some of them are so

1 conceptual they might have clear answers right away.

2 CHAIRMAN RICE: Let's bring it up.

3 MR. MEEKINS: One was do we know the  
4 definitive height of the proposed tower above the  
5 tree line because I've heard estimates of 30, but  
6 I've seen people in their correspondence to us quote  
7 60, so do we have a firmer estimate above the  
8 surrounding tree line?

9 MR. GAUDIOSO: I don't have a height of the  
10 tree line, per se. It generally varies. I think  
11 the bigger issue is individuals bear this out is  
12 from the perspective where the pole appears to be  
13 above the tree line, and I think that's important.  
14 I know we've talked about the cemetery and we took  
15 numerous photographs and we have renderings from the  
16 cemetery. And as you can see in those viewpoints,  
17 you can see, you know, basically the top 20 feet of  
18 the tower because that's the two carriers that you  
19 can see. And, again, remember the balloon was flown  
20 at 120 feet. It was not flown at 110 feet, which is  
21 the height of the application.

22 So my point being is depending on the  
23 perspective, it will appear like the trees are only  
24 20 feet to the top of the tower. I suspect they're  
25 probably a bit more than that.

1 MR. MEEKINS: But not 60 or it could go up  
2 to 60?

3 MR. GAUDIOSO: I highly doubt the trees are  
4 only 50 feet in height. I would suspect they're  
5 closer to 60 to 80 feet given my knowledge of trees  
6 in this area.

7 If you have a large (indiscernible) tree, it  
8 could be -- or a large spruce, it could be easily 80  
9 feet.

10 MR. MEEKINS: And second question, and I  
11 apologize to the resident, I didn't write down the  
12 name or where it came from, but one of the residents  
13 brought up, not that we want more towers, but if  
14 there were smaller towers, you know, is there a plan  
15 design that could have had, you know, more smaller  
16 towers, less intrusive, that could have gotten you  
17 your coverage, and when you're doing your planning  
18 to come into an area, is that part of your analysis  
19 and do you do a post-benefit and then determine that  
20 that's not a viable alternative or --

21 MR. GAUDIOSO: So our analysis includes what  
22 will provide the necessary coverage. Where can we  
23 get a lease, and so far we've shown really there's,  
24 you know, there's our site that we were able to get  
25 property rights to. We weren't able to get the

1 lodge. We weren't able to get 2 Secra Street.

2 Also, we look at zoning, so specifically, we  
3 came in with a tower that's relatively low in height  
4 compared to most other towers specifically because  
5 it meets the height limit and it also meets all the  
6 setback requirements of the code. So our code  
7 analysis is a very big part of our review.

8 And our very initial alternative cite  
9 analysis goes through the different zones where it's  
10 permitted, the 50-foot buffer setback, the minimum  
11 acreage size, setbacks to residences, and the height  
12 limitation. We went through all those different  
13 things and we were able to find property that was  
14 also available from a construction standpoint, from  
15 being able to obtain property rights, and also would  
16 provide the necessary service.

17 So that's the analysis as far as, you know,  
18 small or lower towers, I think what we've shown is  
19 that there are no other alternatives, let alone  
20 less-intrusive alternatives.

21 MR. MEEKINS: So is minimal number of sites  
22 one of your factors then? So you're trying to do it  
23 in the least amount of sites?

24 MR. GAUDIOSO: Sure. We're trying to cover  
25 an area without having to, you know, go for a height



1 variance or go for variances that will exceed the  
2 code. So in this case, the minimal number is one  
3 because we meet the code. We meet the code with a  
4 110-foot tower.

5 CHAIRMAN RICE: And if the code itself asks  
6 for a qualification, insists on qualification,  
7 that's when AT&T, Verizon, rather than spreading  
8 them out, instead of having a lot of cell towers, we  
9 insist they can go locate other cell towers.

10 There's always been a discussion about the  
11 smaller ones. They looked at the churches.

12 MR. MEEKINS: I want to go back to the  
13 question I raised at the last meeting where we had  
14 something on the hospital that wasn't that tall, and  
15 it seemed to give coverage, so if this is meant to  
16 replace that loss, I don't know why (indiscernible)  
17 so much higher.

18 CHAIRMAN RICE: The (indiscernible)  
19 question.

20 MR. GAUDIOSO: I think it replaces more than  
21 this loss. Let me Mr. Pinesso speak to that if  
22 you'd like. I mean, he's the RF engineer for AT&T.

23 CHAIRMAN RICE: Sure, thank you.

24 MR. PINESSO: Daniel Pinesso for the record,  
25 RF Engineer for AT&T.

1           The site that you were speaking about, the  
2 Butterfield Hospital that had been decommissioned,  
3 that was only providing a small footprint of  
4 coverage because of the height for AT&T. And so now  
5 that this site had been decommissioned and we are  
6 looking to fulfill the (indiscernible) coverage as  
7 well as north of the site where Butterfield Hospital  
8 was, so we are -- and the fact that this site, as  
9 was stated by Robert, does meet our -- does fulfill  
10 our coverage needs, that one singular site, instead  
11 of going possibly with two -- like a -- because if  
12 you look at the tree line, when we have a site  
13 that's below the tree line, the propagation, the  
14 signal doesn't propagate far, so we need to clear  
15 the tree line. And I don't know if that was spoke  
16 about in prior meetings, but that's the nature of  
17 the function of this technology.

18           MR. HELLBOCK: What's the average life of a  
19 cell tower?

20           MR. GAUDIOSO: I don't think there's -- I'm  
21 not aware of any study that has, you know, looked at  
22 the average life. I can tell you that, generally,  
23 there are more built than those being  
24 decommissioned.

25           MR. HELLBOCK: Well, (indiscernible) the

1 removal agreement, so at some point they're coming  
2 down.

3 MR. GAUDIOSO: No. We gave the removal  
4 agreement simply because it's strictly required by  
5 your code and was pointed out by your engineer as a  
6 requirement, and we put that in there. I'm not  
7 aware of it, and Mr. Vicente can correct me if I'm  
8 wrong, I'm not aware of any Homeland Towers that  
9 have actually ever been removed.

10 MR. VICENTE: No, it's never happened to any  
11 of our towers, and as someone who has been in the  
12 industry for a while, (indiscernible) is very  
13 reluctant to decommission any sites. The  
14 infrastructure need is substantial and the  
15 technology far outpaces our ability to keep up with  
16 it, so providing infrastructure to keep the networks  
17 running properly, we're always behind. We're never  
18 caught up. So the idea that there's an effort to  
19 decommission sites, none of our (indiscernible) have  
20 ever been decommissioned, and the effort is to  
21 increase the amount on infrastructure, not decrease  
22 it.

23 MR. HELLBOCK: All right. So as time goes  
24 on, you do regular maintenance, and then as  
25 technology advances, do those cell towers get the

1 new technology put onto them?

2 MR. VICENTE: Correct, they do. They do get  
3 modified with new technologies from time to time as  
4 the carriers feel the need to. So it's very  
5 important to consider.

6 We live in a wireless world, an increasingly  
7 wireless world, and that the technology where it is  
8 and our ability to keep up with that technology with  
9 infrastructure is a problem. And that's what we're  
10 trying to do here.

11 So answer your question, decommissioning  
12 sites very rarely happens.

13 MR. HELLBOCK: All right. I agree with that  
14 because I've never seen a cell tower come down, but  
15 now I hear McKeel's Corner, that one may come down  
16 and the new one go up. I'm just wondering why they  
17 would take one down that's right across the street  
18 from another, but barring that because that's not  
19 part of our coverage, you've quoted case law  
20 numerous times saying that Southern District of New  
21 York, you're going to go to them once -- if we ever  
22 say no or we decide not to do this. Is --

23 Our attorneys may differ from you on the  
24 answer, but are we looking at voice coverage is  
25 what's mandated by the federal government or does it

1 have to be data? Because if it's voice coverage, we  
2 have that already. If they update the cell towers  
3 in the area, we don't need a new cell tower because  
4 you can still get it all the way (indiscernible).

5 MR. GAUDIOSO: I don't know who's been  
6 espousing that theory, but Section 253 of the  
7 Telecommunications Act specifically and expressly  
8 says a municipality may not prohibit any  
9 telecommunication service. It doesn't distinguish  
10 between voice service, data service, so forth and so  
11 on.

12 If you read all of the FCC regulations, all  
13 of the competition reports, everything now is  
14 provided over broadband. Voice is provided as a  
15 data service over broadband now pursuant to VoLTE,  
16 Voice over LTE technology, so there is no  
17 distinction as far as the municipality's ability to  
18 deny an application about whether it's voice service  
19 or data service. I don't know where that's been  
20 coming from, and it's just not correct under the  
21 law.

22 MR. KEELEY: And I think -- again, I  
23 apologize, I don't have the document in front of me.  
24 We're looking at -- maybe this is a question,  
25 actually, for Mr. Pinesso. There's a 750 megahertz

1 band that we have looked at here, and 2100, right,  
2 those are the two bands --

3 MR. PINESSO: For AT&T, yes. And the 700, I  
4 could add -- 700 is -- that's allocated to AT&T and  
5 that spectrum, a block of spectrum is for FirstNet  
6 which would be in case there was an emergency of any  
7 type of emergency, that that block would be  
8 allocated to all municipal services and would not be  
9 utilized for the public sector. Would go for the  
10 emergency services.

11 MR. KEELEY: And there's also an 850 band,  
12 megahertz band; is that right?

13 MR. PINESSO: Yeah. AT&T has small blocks  
14 and multiple bands.

15 MR. KEELEY: And our evaluation here, I  
16 don't think, considered 850?

17 MR. PINESSO: Well, they don't -- whatever  
18 is licensed for this area. We have 7. We had 19  
19 and 2100. That's what will be deployed at this  
20 location.

21 MR. KEELEY: So there's no licenses  
22 available for 850?

23 MR. PINESSO: There is no plan for that  
24 spectrum to be utilized in this area.

25 MR. KEELEY: Has it been utilized in this

1 area previously?

2 MR. PINESSO: Not to my knowledge, no.

3 MR. KEELEY: Thank you.

4 MR. PINESSO: Yeah.

5 MS. BRANAGAN: I have a question probably  
6 for you, Robert. Somewhere in all of the materials  
7 I read today or recently, there was an application  
8 for a tower, and this is related to the earlier  
9 comment about the height, for a 132-foot, an  
10 application, so you -- is it (indiscernible) a bell  
11 at all because --

12 MR. GAUDIOSO: No.

13 MS. BRANAGAN: -- I'll find it, but I  
14 haven't been able to sitting here in the last ten  
15 minutes.

16 MR. GAUDIOSO: No. And I think -- I'm not  
17 sure if you were at the meeting, it is in one of my  
18 cover letters. I'll just run through it with you.

19 The application is for a 110-foot monopole,  
20 no higher, okay.

21 MS. BRANAGAN: Yeah, I knew that.

22 MR. GAUDIOSO: Demonstrated as a stealth  
23 tree. What we did is we ran the FAA analysis as  
24 more of a worst-case scenario sometimes during  
25 construction, sometimes if there was something

1 higher, we want to make sure that we run it at a  
2 higher level, so we ran it at 131 feet. That was  
3 the FAA analysis. So we showed that not only at 110  
4 feet will we not need lighting and marking, but even  
5 up to 131 feet we still won't need FAA lighting and  
6 marking, so that's why we ran that. We usually run  
7 those types of analyses worst-case scenario.

8 Same thing with our structural reports, we  
9 run our structural reports and show that we will  
10 build the tower for more capacity than there is  
11 currently existing. So, again, your code requires  
12 that we allow for colocation. We had to actually  
13 submit to you saying we would make the facility  
14 available for colocation, so what we don't want to  
15 do is build it structurally inadequate and then you  
16 say we didn't comply with your code. So we'll build  
17 it

18 -- we'll overdesign in our calculations, and that's  
19 where, I think, you're getting the 131 feet. It was  
20 in the FAA analysis, which is the worst-case  
21 scenario.

22 MS. BRANAGAN: Did you send that to us  
23 recently, the FAA analysis?

24 MR. GAUDIOSO: You've had that since we  
25 filed back in, I want to say June or July.



1 MS. BRANAGAN: I will get to the bottom of  
2 it --

3 MR. GAUDIOSO: Sure.

4 MS. BRANAGAN: -- but I just wondered  
5 (indiscernible).

6 MR. GAUDIOSO: Yeah. That's where it comes  
7 from, sure.

8 MR. KEELEY: And just one more  
9 clarification, I was going back to my notes on, what  
10 are we calling it here, the Middle Class Tax Relief  
11 and Job Creation Act of 2012.

12 MR. GAUDIOSO: Yes.

13 MR. KEELEY: Those six criteria, as I  
14 understand them, it's not that you need to meet all  
15 six, it's that any one of those six could allow  
16 for --

17 MR. GAUDIOSO: No.

18 MR. KEELEY: We'll get clarification.

19 MR. GAUDIOSO: And let me touch on two  
20 points because I think it's important. Number one,  
21 and this goes back to your point, and I submitted  
22 the case recently from the Third Department, I  
23 believe, the Third Circuit, no, Third Department,  
24 and there's other cases from this Department. We do  
25 not have the burden to prove that we need to cite a

1 voice for filling a significant gap. We don't have  
2 that burden. That's not the criteria that your Board  
3 analyzes this application.

4 MR. KEELEY: I'm just thinking about an  
5 esthetic burden, which is (indiscernible).

6 MR. GAUDIOSO: So the six criteria, what  
7 happened was is after the 2012 Act, what we call the  
8 TRA, the Tax Relief Act, Congress -- the FCC  
9 actually did a report and order and promulgated  
10 regulations. And they added additional defined  
11 terms from the Tax Relief Act. One of the defined  
12 terms was that what is a substantial change? And it  
13 is a substantial change if it triggers one of the  
14 six criteria. So it's the opposite of what you just  
15 suggested.

16 MR. KEELEY: So you could change it up to 10  
17 percent?

18 MR. GAUDIOSO: No. My point is is that if  
19 it goes more than 10 percent or 20 feet, that's a  
20 substantial change.

21 MR. KEELEY: So you could go (indiscernible-  
22 both speaking at the same time).

23 MR. GAUDIOSO: Or if you defeat the stealth  
24 approval aspect of it or if you add more than four  
25 equipment cabinets or (indiscernible).

1 MR. KEELEY: You added (indiscernible).

2 MR. GAUDIOSO: No.

3 MR. KEELEY: (Indiscernible) could change up  
4 to 10 percent.

5 MR. GAUDIOSO: No. Actually, that wasn't  
6 the distinction I was trying to make. You had said  
7 that -- the way you had phrased it was that we would  
8 only have to meet one of the six. My point is that  
9 if we don't meet all of the six, it doesn't -- when  
10 I say "we," future applicant, possibly, if it  
11 doesn't meet all of the six, meaning that it fails  
12 on any one of the six, it is not an eligible  
13 facility's request that's given that  
14 (indiscernible).

15 MR. KEELEY: (Indiscernible)

16 CHAIRMAN RICE: Okay, thanks, Robert.

17 Any other questions from the Board before we  
18 open up the public comments?

19 (No audible response)

20 Okay, we'd like to open the floor for public  
21 comment. We're going to go in order as to how  
22 people signed up, but at the same time everybody  
23 will be allowed to speak. So it sounds like we were  
24 going to start with the first person that got here  
25 tonight

1 was --

2 FEMALE SPEAKER: Heidi Wendell and Joe  
3 Hirsch.

4 CHAIRMAN RICE: Yes, and Joe Hirsch and  
5 Heidi Wendell.

6 MR. HIRSCH: Do you want us to come in  
7 front?

8 CHAIRMAN RICE: Please step up to the -- you  
9 just have to try to speak loudly because we are not  
10 mic'd. Yes, sir.

11 MR. HIRSCH: First, thank you for your  
12 service to the community and for giving us a chance  
13 to speak. My wife and daughter and I are recent  
14 arrivals in Nelsonville. We just bought a house on  
15 Secra Street in September, so the first thing is we  
16 want to -- we're hugely relieved that the Secra  
17 Street proposal is off the table, but at the same  
18 time we wanted to register our extreme opposition to  
19 the proposal to build this tower anywhere in town.

20 We specifically bought the house for the  
21 hiking, the beauty of the area's architecture and  
22 its history, and its natural surroundings. We have  
23 been coming here for more than 20 years to enjoy  
24 hiking in the woods and strolling in the beautiful  
25 town.

1           When a house was listed near the hiking  
2 trail, we bought it as soon as we could while  
3 scouring real estate ads for months in search of a  
4 place where we wanted to move to in the Valley. It  
5 became clear that the reason that prices are higher  
6 here than elsewhere is because of the  
7 extraordinarily beautiful area and because of the  
8 attention that's been paid to conserving it and  
9 because of -- the (indiscernible) field that  
10 surrounds us everywhere. I don't think the same can  
11 be said for cell towers.

12           No matter what the cell tower company says  
13 about camouflaging the proposed tower, if they're  
14 allowed to build in the Village, let's face it, it  
15 will be an eyesore, a major intrusion visually,  
16 esthetically, and psychologically for those of us  
17 who live here and anyone looking to buy.

18           A cell tower is inconsistent with the  
19 esthetics of the Village as the hiker's haven  
20 studies, some of which are attached to our testimony  
21 show that cell towers negatively impact property  
22 values. And I would also like to say that I heard  
23 the representatives of the company saying that, in  
24 fact, they have studies proving the contrary, but I  
25 think that once you delve, as I'm sure you have

1 already, in the 100 or so people that I'd go out on  
2 a limb to say all of whom oppose this, probably also  
3 have looked and seen that probably most of the  
4 testimony that supports cell phone towers is, in  
5 fact, has been financed by the towers and the  
6 (indiscernible).

7 (APPLAUSE)

8 The pass in town, including the one that  
9 crosses through the historic cemetery, are symbolic  
10 of what's special about this town, and the reason  
11 that so many of us are interested in living here and  
12 being part of this special place. A cell tower  
13 would, obviously, detract from that quality in a  
14 major way. If built, it will inevitably hurt the  
15 esthetics of the Village and will bring down  
16 property values.

17 And from the language of the representative,  
18 one thing struck me in particular was that, and  
19 maybe this was just a legal term of art, but he was  
20 talking about the -- he was urging the Board to  
21 proffer deferential treatment to the utility. Well,  
22 I think in this case if anyone deserves preferential  
23 treatment I think it's those of us who live here,  
24 who are invested, here, rather than some FCC  
25 gunslingers. Thank you.

1 CHAIRMAN RICE: Thanks.

2 (APPLAUSE)

3 FEMALE SPEAKER: Bonnie Dorsey.

4 CHAIRMAN RICE: Next. Thank you.

5 MS. DORSEY: I wanted to thank the Zoning  
6 Board and the Board. This is my first meeting about  
7 our problem and I'm very impressed with all the  
8 research my neighbors have done.

9 (APPLAUSE)

10 I just want to -- I wanted a chance to read  
11 it all, but I did want to voice my opinion. I live  
12 on Lane Gate Road very close to Moffitt, and I am  
13 very concerned also about the historic and the  
14 bucolic nature of our town.

15 My husband gave me \$300,000 31 years ago and  
16 said "Find a place." He gave me a two-hour radius  
17 from New York City that I could look for a place.  
18 Well, I did, and I -- we loved Cold Spring because  
19 it's an un-Hampton, you know. This is a town of  
20 real people, and I don't want to lose it with some  
21 ugly cell phone tower so that when I'm kayaking in  
22 the Hudson that I have to look at some monstrosity  
23 or that when I'm in the mountains hiking, then I'm  
24 also looking on something ugly. So I'm going to  
25 read all of your research. Thank you, all, and

1 thank you, Board.

2 (APPLAUSE)

3 CHAIRMAN RICE: Next.

4 FEMALE SPEAKER: Eleanor Chu (phonetic).

5 CHAIRMAN RICE: Eleanor.

6 FEMALE SPEAKER: She had to go home.

7 FEMALE SPEAKER: Oh.

8 CHAIRMAN RICE: Oh, all right.

9 FEMALE SPEAKER: Sorry.

10 CHAIRMAN RICE: Next.

11 FEMALE SPEAKER: Jason Biafore.

12 CHAIRMAN RICE: Jason, thank you.

13 MR. BIAFORE: If I may, thank you. My name  
14 is Jason Biafore. I'm a practicing attorney in New  
15 York, and I appear tonight to speak on behalf of the  
16 Phillipstown Cell Solutions Group, PCS.

17 I want to first thank the Board obviously  
18 for your efforts. We acknowledge the sacrifice of  
19 your time as volunteers, and we thank you for your  
20 dedication to this proceeding and especially for  
21 showing all parties, including the Applicants, a  
22 high degree of respect, accommodation, and  
23 professionalism.

24 (APPLAUSE)

25 I'd also like to state for the record, and



1 this is also very important, that PCS is not an  
2 anti-cellular group. We are not hostile towards the  
3 cellular industry. We welcome dialogue and  
4 consideration of all alternatives for provision of  
5 cell service, but we do stand in strict opposition  
6 to this application.

7 And in support of this opposition, PCS has  
8 submitted to the Board a comprehensive statement  
9 including an exhaustive memorandum of law, which I  
10 have prepared, on all legal issues the Board now  
11 faces.

12 So you know where I'm coming from, I've been  
13 practicing for over 15 years. I started out in  
14 zoning, municipal law, and I've since been  
15 litigating in New York for the last decade.

16 Now, my goal this evening is to help ease  
17 your burden a bit as much as I can. We understand  
18 that you've been under a tremendous amount of  
19 pressure and a lot has been asked of you in recent  
20 weeks. Now to a large part, however, this has been  
21 the result of some misconceptions put forth by the  
22 Applicant. In addressing and, hopefully, correcting  
23 some of these issues, I hope to help you understand  
24 that the situation before you is not quite as  
25 critical as you have been led to believe.

1           Now, the elephant in the room that I'd like  
2 to address first, and we touched on it here tonight  
3 is the shot clock. So I did touch on this in the  
4 last hearing on the 15th to put forth this is not a  
5 hard deadline. This is a presumption.

6           Now, I'm encouraged because from the  
7 testimony that I've heard and seen wherever  
8 possible, tonight is the first time that I've heard  
9 counsel for the Applicant reference that. Maybe I  
10 missed it somewhere.

11           CHAIRMAN RICE: Yeah, they've said it  
12 before.

13           MR. BIAFORE: They have? Okay. I will say,  
14 however, in spite of that, there seems to be an  
15 impression here put forth by the Applicant that if  
16 the shot clock runs out, the tower goes up. I'm not  
17 saying that that's what they've said, but that seems  
18 to be the impression. If it's not the impression  
19 before that the Board had, it's certainly the  
20 impression that the community has. So if nothing  
21 else, I want to clear the air on that point.

22           Now, PCS has retained the services of an  
23 expert who can speak more to this issue, and he will  
24 be speaking in a moment, but what I would like to  
25 first say, and this actually is in contradiction to

1 what Counsel for the Applicant has submitted  
2 tonight, and that's whether the shot clock even  
3 applies to this proceeding.

4 Now bear with me here, this could be a  
5 surprise. The case law that I've researched at  
6 length, and I understand Counsel in his letter of  
7 11/22, if I'm not mistaken, says, I quote, "There is  
8 no legal authority when discussing the difference  
9 between voice and data," and we touched on it  
10 tonight. But the case law that I've researched  
11 indicates that the Telecommunications Act applies  
12 only to personal wireless services.

13 Counsel indicated that, or  
14 Telecommunications Services, if you look at the  
15 definition of that in the Act, it says clearly that  
16 this is -- that this means cellular. Now, to be  
17 fair, and I do -- this may have been missed in the  
18 memo that we submitted today, I suspect that what  
19 Counsel is getting at, although he's not being  
20 clear, is that there was the 2015 ruling that I  
21 think we commonly understand to be net neutrality,  
22 and that ruling held was that they are to be treated  
23 the same, voice over data. However, this has not  
24 been litigated. There is no case law that I could  
25 find that discussed this issue. The case law that I

1 have found, however, and that is in the memo of law  
2 that you now have, indicates clearly that broadband  
3 wireless services do not have the same treatment as  
4 voice cellular, personal wireless communications  
5 and, as such, are not regulated by the  
6 Telecommunications Act.

7 If that is the case, seeing as the shot  
8 clocks flows from the Telecommunications Act, it  
9 simply does not apply, so that argument is set out  
10 in more detail than our brief.

11 Let's assume for the moment that I'm  
12 incorrect and that the shot clock does apply. There  
13 is good authority out of New York, there is a case  
14 from upstate that discusses a similar situation that  
15 we find here, and I'll start with the requirements  
16 under the code. The code, the Nelsonville Zoning  
17 Code, indicates, clearly, that "An application shall  
18 include," and it lists all the things that shall be  
19 included. One of the things that should be included  
20 or shall be included is a radio frequency data  
21 report, propagation report. I believe it's referred  
22 to as a plot in the code itself.

23 In the case that I'm referring to, an  
24 application was filed, date certain in July, without  
25 the propagation data, which was submitted later.

1 The court in that decision reasoned that the  
2 application was deemed complete upon the filing of  
3 the propagation data because that's what the code  
4 required.

5 Now in this case, we have an application  
6 that lists Homeland Towers, AT&T, Verizon. If you  
7 look at the application materials submitted on July  
8 17th, you do not find a radio frequency propagation  
9 data report from Verizon, only AT&T. You look at  
10 the 8/30, August 30 submission, and that's where you  
11 see the propagation report from Verizon.

12 So let's say then that if we follow this  
13 jurisprudence, the shot clock should commence upon  
14 completion of the application which, in this  
15 instance, was August 30th. That takes us, by my  
16 calculation, to January 27, so there's not even a  
17 need to engage in negotiations such as they are with  
18 counsel.

19 CHAIRMAN RICE: Sorry to interrupt, are you  
20 familiar with this 30-day period we have to decide  
21 if the application is (indiscernible) --

22 MR. BIAFORE: Yes. Yes.

23 CHAIRMAN RICE: -- since you're  
24 investigating (indiscernible)?

25 MR. BIAFORE: Yes. My understanding is that

1 upon completion of the application or when it's  
2 deemed complete, the Board has 30 days to respond in  
3 writing, if I'm not mistaken that is the  
4 requirement --

5 CHAIRMAN RICE: The Board didn't do that --

6 MR. BIAFORE: At all, ever.

7 CHAIRMAN RICE: I think it's public  
8 knowledge the Board didn't comment after 30 days.  
9 The application came in. We all got together and  
10 then realized that it said 30 days.

11 MR. BIAFORE: Is that following the July  
12 17th submission or --

13 CHAIRMAN RICE: It's following the date of  
14 submission to the Village --

15 MR. BIAFORE: But I believe there was some  
16 communication between the Board and the Applicant  
17 shortly after the 8/30 filing, if I'm not mistaken.

18  
19 CHAIRMAN RICE: 8/30, I think the 30 days  
20 was up, but that as it may, I'm just curious if you  
21 had a new angle on it --

22 MR. BIAFORE: I wouldn't call it an angle,  
23 with respect, Chairman. I would -- what I would  
24 call it is a jurisprudence.

25 CHAIRMAN RICE: Sure.

1 MR. BIAFORE: It says "The application is  
2 deemed complete upon filing of all the required  
3 materials in the application, which includes the  
4 radio frequency propagation data."

5 CHAIRMAN RICE: Sure.

6 MR. BIAFORE: Which, in this case, is 8/30,  
7 gets us to January 27th. I don't want to belabor on  
8 this point --

9 CHAIRMAN RICE: Okay.

10 MR. BIAFORE: -- because I'm sure Counsel  
11 will oppose it, but that's my reading of the case  
12 law. It's the only case that I could find that was  
13 specifically on point. I found it interesting that  
14 it actually dealt with a radio frequency propagation  
15 report which is at issue here.

16 And by the way, I do recall from the prior  
17 meeting that Counsel said in the record, "No,  
18 application was completed July 17th." Well, if  
19 that's the case, then we can just discount Verizon  
20 right off the bat because their application was  
21 incomplete. I'm curious what counsel for Verizon  
22 might say about that.

23 Now, I've heard some comments by the  
24 Applicant's representative regarding the prohibition  
25 of service claim. I don't want to get into the

1 weeds. We've analyzed it extensively in the brief.

2 One thing that I will say I have some  
3 concerns with Counsel's contention that the burden  
4 isn't on the applicant to show a significant gap.  
5 My understanding of the review process, and this is,  
6 presumably, following a denial, that the court will  
7 review -- if there's substantial evidence on the  
8 record that in spite of there being a gap there was  
9 a denial. And then there's also the second prong to  
10 the test which is, of course, the least intrusive  
11 aspect of that. And, again, I don't want to get  
12 into it too much here at the moment, but I do submit  
13 that Counsel has made some misstatements of the law  
14 on that point, and you'll find my response in our  
15 brief.

16 CHAIRMAN RICE: Okay.

17 MR. BIAFORE: The last thing I want to get  
18 into is with the actual need. I found this very  
19 curious, and I was reading the Highlands Current  
20 and, you know, it's the media. I don't know if it  
21 was an accurate quote or not, but it does quote that  
22 Counsel for the Applicant claimed that denying a  
23 tower application because Nelsonville thinks no gap  
24 exists, "would be a real bad reason because it's not  
25 a criterion in your code and not a criterion we have