

APPROVED

CRAIG PAEPRER
Chairman

ANTHONY GIANNICO
Vice Chairman

BOARD MEMBERS

RAYMOND COTE
ROBERT FRENKEL
VICTORIA CAUSA
JOHN NUCULOVIC

TOWN OF CARMEL **PLANNING BOARD**



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PLANNING BOARD MINUTES **FEBRUARY 9, 2023**

**PRESENT: CHAIRMAN, CRAIG PAEPRER, VICE CHAIRMAN, ANTHONY GIANNICO;
VICTORIA CAUSA, RAYMOND COTE, ROBERT FRENKEL & JOHN NUCULOVIC**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>TYPE</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Town of Carmel Comprehensive Master Plan & Zoning Code			1	Discussion.
Kiwi Country Day School	77.17-1-31 & 32 A.	Site Plan	1	Public Hearing Scheduled.
Glenacom Lake Cell Tower	87.5-1-90	Site Plan	2-17	Public Hearing Scheduled.
MK Realty	55.6-1-44 & 45	Extension	17-18	1 Year Extension Granted.
Carmel Centre Senior Hsg. Pulte Homes – Lot 3	55.14-1-11.1	Bond Return	18	Motion to Return the Bond.
Minutes:	1/12/23		18	Approved.
Town of Carmel Comprehensive Master Plan & Zoning Code			18	Discussion.

The meeting was adjourned at 8:43 p.m.

Respectfully submitted,

Rose Trombetta

TOWN OF CARMEL COMPREHENSIVE MASTER PLAN AND ZONING CODE DRAFT – DISCUSSION

Mr. Carnazza reviewed and amended the signs and off-street parking sections and has given it to the board members.

Mr. Cleary, Mr. Carnazza and the board members reviewed Section 156-44 (Historic Buildings) to Section 156-70 (Fees).

KIWI COUNTRY DAY CAMP – 825 UNION VALLEY ROAD - TM: 77.17-1-31 & 32; AMENDED SITE PLAN

Mr. Carnazza said Kiwi got their necessary variance last month and it is noted on the plan.

Mr. Franzetti said all engineering comments have been addressed; applicant's requesting a public hearing.

Mr. Cleary said all planning issues have been addressed on this as well.

Mr. Cote moved to schedule a public hearing on this application; seconded by Mr. Frenkel with all in favor.

Chairman Paeprer said we've reviewed this; we've spoken with you several times on this. You've received your variance. You gave us a little education on yurts.

Mr. Thyberg (Adam Thyberg of Insite Engineering) said I did want to request, just as winter is still upon us but from the applicant's perspective, the summer season is fast approaching and the tremendous amount of prep work they do for the start of camp. So, anything we can do to potentially help expedite the process would be appreciated. If we could schedule a public hearing for your next meeting on the 22nd, that would be greatly appreciated. Then, if the Board were comfortable with having Mr. Cleary prepare a resolution for that meeting in the event that the public hearing is open and closed for that meeting, then you'll have something to vote on.

Chairman Paeprer said speak to Mrs. Trombetta and leave a message and she'll put it on the next agenda.

Mr. Thyberg said perfect.

Mr. Carnazza said (to the Chairman) I don't know if that's going to happen. There's a deadline issue with getting to the newspapers.

Mr. Thyberg said I spoke with Rose about that ahead of time. We've got a game plan and we're ready to go.

Mr. Charbonneau but she's going to have to know that by 9:00 tomorrow morning.

Mr. Cleary said Dawn [Andren] will take care of it.

Chairman Paeprer said I spoke with Rose a few times too. The schedule with the newspaper – Dawn was going to take care of this.

Mr. Thyberg said yes. I'll be in touch with Dawn tomorrow and we'll take care of it.

GLENACOM LAKE CELL TOWER – WALTON DRIVE – TM: 87.5-1-90; SITE PLAN

Mr. Carnazza said the applicant made application to the Zoning Board of Appeals. We do not have a decision yet from that Board. There's only one dark sky compliant fixture in the compound, and that is the only lighting for the site. They put a note on the plat that it was requested and a detail of the sign that's going to be on the site. I have a question. I was looking at the Dewberry Report, and I don't necessarily understand where the closest house is on this with the three separate locations. So, I put it where I thought it was and it looked like you said that [the locations for] tower #1 and tower #2 are both the same height – 140', but according to my calculation, it looks like it's about 25' lower on the mount. Is that the case?

Mr. Robert Gaudioso, Esq. (Snyder & Snyder) said yes. If you take a look at the chart on the bottom left hand corner, we show that we'd have to raise the ground elevation, in location #2, 20'-30'. Then you would have the 140' tower. You, literally, would have to fill-in that entire area. This isn't designed or engineered. This was an example of why we're requesting the variance. This is the basis for the variance. What we've showed is that at location #1, for example, the number of trees to be removed would be 36. The amount of cut/fill would be approximately 90,000 cubic feet. The amount of disturbance would be just under 20,000 square feet and that would be the 140' tower with the 750' base elevation. If you look at hypothetical location #2, we maintain the base elevation in order to maintain the height of the tower because otherwise, the setback wouldn't be met even at that location. Remember that the setback is two times the height of the tower. So, you would have to maintain the 140' tower to eliminate the setback in hypothetical location #2, but in order to do that, the amount of ground disturbance would be well over 50% more at 33,804 square feet. The amount of cut/fill just skyrockets to 169,000 cubic feet and the number of trees skyrockets to, almost triple, 88 that would have to be removed. That would also include raising the ground elevation 30 feet.

Mr. Carnazza said can you give us this map with the nearest house shown on it so that we can.....

Mr. Gaudioso said the nearest house is shown down in the bottom right hand corner. What we did is show the arc of the two closest houses and that's why.....

Mr. Carnazza said now I see it.

Mr. Gaudioso said you see the arc?

Mr. Carnazza said yes.

Mr. Gaudioso said we showed the arc of the setback based on a 140' tower. Again; that would assume the ground elevation would have to be raised up 30'.

Mr. Carnazza said so option #2 & #3 comply with the two times the height of the tower distance from the house?

Mr. Gaudioso said no. Option #2 wouldn't because it would be a change of the ground elevation of approximately 30'. So, really what you need there is a 170' tower. If you have 170' tower, then you would need two times that; the height of the setback and the setback wouldn't apply. That's why we showed hypothetically option #3 which is 199' which is just below the height of the lighting and if you used 199' tower and you didn't fill, you'd have a base elevation of 684' plus the 199' tower would give you 875' which would be 15' lower in overall height which wouldn't work from an RF standpoint which was the whole purpose of

the PierCon report. So, the purpose of this map, this alternatives map, was for the Zoning Board to show the justification why we picked the proposed location and why, under the Public Utilities Standard, the variance ought to be granted for the proposed location #1. This map was not designed, nor this letter or report, to say these are alternatives. It was to show why other locations on the property weren't feasible based on the Code Requirements and based on the environmental impact.

Chairman Paerprer said I misunderstood that. I thought they were all alternatives.

Mr. Gaudioso said no. We were just showing that, even with these different alternatives, as you go back further on the property, they don't work from an environmental standpoint. They don't work from the Zoning Code standpoint. They certainly don't work from a construction standpoint to get back there if you're familiar with the property.

Mr. Carnazza said so what size pad would you need for the option #2? You said you would have to build it up 50'?

Mr. Gaudioso said no; to make up the ground elevation, it's a 30' difference in ground elevation.

Mr. Carnazza said correct.

Mr. Gaudioso said so you would need 170' tower. That setback line would move another 60' because it would be another 30' of tower: 140' to 170' is 30' and the setback is two times the height. So, it would be another 60'. Those intersecting arches would put you someplace further back on the property. The problem is as you go further back on the property, you keep dropping down which means you need a higher tower which means you keep going back. You're never able to meet the setback because of the fact that the setback is two times the height of the tower and the property drops off.

Mr. Carnazza said but you're bringing in 20' of fill for tower #1?

Mr. Gaudioso said no. For tower #1, we're maintaining the base elevation. We're cutting and filling for the access drive to get in there.

Mr. Carnazza said got it; okay.

Mr. Frenkel said can I ask a question about that. In option #1 & #2, in my own vernacular, the altitude remains the same; it's just that the dimensions of the tower change and the dimensions of the fill change but ultimately, it's at the same level?

Mr. Gaudioso said yes but let me just clarify a couple of things. There's no option #1 or #2. There's the proposal.....

Mr. Frenkel said whatever you want to label them.

Mr. Gaudioso said it's important because I want to make sure that we don't misrepresent that we were offering alternatives. We're showing a second and third location, hypothetically, on the plan. So, location #2 is 30' lower in ground elevation. So, it would need 170' tower to maintain the same, to your point and what I'll call, ASML.

Mr. Frenkel said just to put it into layman's terms, the tippy-top of the tower in location #1 and location #2 is the same.

Mr. Gaudioso said correct; with a 140' tower at location #1 and 170' tower at location #2.

Mr. Frenkel said I get it; but the difference is that in location #2, what is the distance from #53 Walton Drive?

Mr. Gaudioso said so what we showed is that would be approximately 280 feet which wouldn't meet the setback as well.

Mr. Frenkel said I understand it's not meeting the setback. What is the difference in distance between location #1 and location #2 as with regard to that house?

Mr. Gaudioso said right now, we've made application and the Zoning Board has had a public hearing and closed the public hearing; that location we have 174'. Location #2 is approximately 280'. So, it's approximately another 100 and some odd feet.

Chairman Paeprer said did you just mention that the Zoning Board closed their hearing?

Mr. Gaudioso said correct.

Chairman Paeprer said I did not know that.

Mr. Gaudioso said again; if you look on the plan and you look on the letter, the amount of fill, the amount of area of disturbance, the number of trees and what we showed on the plan was a sketched out building envelope or area of disturbance. You see the amount is a tremendous amount more to get back and down into that spot. Plus; we still wouldn't meet the setback.

Chairman Paeprer said I want to get to Rich's and Pat's comments.

Mr. Franzetti said we briefly discussed setbacks and variances so that has been to the Zoning Board of Appeals. The applicant has noted a comment that there should be a pre-construction meeting. We have requested a lighting spill plan but they noted that there was downward facing dark light compliance fixtures. A light spill plan wasn't provided but I don't think it's necessary because of the light fixtures. The big thing I have is the question of graphic representation of vehicle movements. They provided the information for typical technician vehicles, SUVs like a Chevrolet suburban but what about cranes; what about larger vehicles that are going to be going in there to lift up and put up new cell towers? That vehicle maneuverability, at least graphically, should be presented to make sure that the equipment can get in there. That's important. Public improvements, performance bond, anything regarding stormwater erosion sediment control, drainage features, landscaping, etc. is all bondable. I just want to make the applicant aware of that. That's in our Code.

Chairman Paeprer said can we add a bonding sentence on the roads? We can tour the roads ahead of time and they're going to have all this heavy equipment moving in, shouldn't they be responsible for leaving the roads in the same condition they were in?

Mr. Franzetti said typically that goes to the Highway Superintendent, Mike Simone. He does that for those larger projects when they come to him. So, this should be referred to him for that opinion on it. Logging trucks, when there's been logging or civil cultural activities; when they came in with the gas lines, Central Hudson Gas had some larger vehicles coming through, we did bond the road for them. It's just a bond. The superintendent would go in and inspect it and that would be the case on that.

Chairman Paeprer said is that reasonable?

Mr. Gaudioso said yes; just a couple of things. The crane doesn't really go in and out. What we would do is stage the crane during the short one-day construction or setting of the pole which comes in pieces actually. We'd stage the crane in the area of where the construction entrance is, and we can certainly show where that location is. The same thing when we pour the foundation. This all doesn't go on at the same time. It goes on sequentially because you have to pour the foundation, let it cure; weeks later, you come in and set the pole. That's usually a one-day event where you stack it in pieces. So, the cement trucks would stage right off of Walton Drive on the construction entrance and pipe the cement down to the foundation. That's the way we would do it so the crane wouldn't actually be going into the area where we showed the turning moment but we can certainly put on the plan the staging area and show that's the area where the crane would go.

Mr. Franzetti said I don't recall it, and I apologize that I don't. If that's part of your construction sequencing diagram, that should certainly be in there as part of the practice to move forward with this. So, you're talking about the staging area, it should at least be listed, construction sequence, that staging area – how it's going to be returned back if that's the case or if it's going to stay as a staging area. I think it's in there but if you could just confirm that, that would be great.

Mr. Gaudioso said we have no problem with those type of details. As far as the road [is concerned], the road is in good shape. We're not doing anything unusual but if the Board found fit to have a reasonable condition that we maintain or repair or bond anything, I don't think we would have an objection as long as the condition and the process was reasonable.

Mr. Carnazza said they're going to need a permit for their driveway cut anyway.

Mr. Cleary said at the last meeting, we'd asked for a number of additional information. The applicant has been responsive to those requests. The 5-year facility service plan has been clarified. That's now in the PierCon report. We'd asked for additional visual renderings from Teakettle Park and the trail way. That's now been included as well. It's in your package. They've included a map delineating the wetland boundaries which are now clarified. They've also clarified that 40 trees would be coming out. They will be providing a landscaping plan and replacing 40 trees. The driveway is going to be asphalt. Mr. Franzetti mentioned dark sky compliant light fixtures; I believe there's only two light fixtures. They've clarified their security measures. To Mr. Franzetti's point about the road and just to make you aware, they've indicated 3,346 cubic yards of fill materials required using 20-yard haul trucks; that's 334 truck trips down that road. So, in fact, that road that's in good condition now, may not be in good condition at the end of the job. The notion of providing a restoration bond is a prudent measure.

Mr. Gaudioso said the only thing I'd like to add on that is that we did submit the color samples in the Saratoga report but anytime you photograph a color sample, there's always a variation. We did some samples of a couple of colors for the record just so you have it. (*Mr. Gaudioso handed color slabs to Board.*) The 'thunder gray' is the one we'd recommend which is the one on top. The other one that we've used is 'pinecone brown' which is the one on the bottom. Those are a little more accurate than when you look at the photocopies from your package.

Mr. Cleary said that changed; wasn't it brown originally?

Mr. Gaudioso said we showed brown but we think the thunder gray is probably the better color. That's the one we've been using more often lately. That's with the tree or without the tree design. We showed the renderings with the tree design as well.

Mr. Cleary said is that thunder gray – the tower right there (*pointing to communications pole outside Carmel Town Hall*)?

Mr. Gaudioso said no; that's white.

Chairman Paeprer said I'd like to turn it over to the Board. Ray – at the last meeting, you mentioned that you had walked the property and had some concerns. I'd like for you to express some of those.

Mr. Cote said I will but Mr. Gaudioso, if we're standing on street level, how many feet down will it be for the tower foundation; what's the elevation difference?

Mr. Gaudioso said if I look at the plans, it looks like there's a spot elevation when you first come off Walton Drive – 763.4 is right there and then you have the tower in this location which is about 740 – 742; call it 741 in that range there.

Mr. Cote said so 21 feet. Pat – typically, deciduous trees: 100, 110 feet?

Mr. Cleary said less than that; 80 feet maybe.

Mr. Gaudioso said we have measured trees 210' in this region so I don't know about this particular area up there.

Mr. Cote said so here's my point. You gave us these nice photographs to show us what you think it'll look like afterwards. The reason I bring it up is look at the one from Walton Drive, you see a picture that's well obscured by the trees. Of the 140' tower, we take off 21', you're still taller than the trees yet, in this picture, it's well below the tree line which, in my mind, calls into question the other pictures. Are you being honest in your rendering in these pictures?

Mr. Gaudioso said with all due respect, we've submitted a full report that explained all the methodology of how it was done.

Mr. Cote asked how were the pictures taken?

Mr. Gaudioso said correct; how the pictures were taken, how the renderings were done. It's done with a computer graphic which includes all the perspectives. If you read the original Saratoga report, it goes into excruciating detail of how it's done. What you're not accounting for, is for the trees in the foreground which are at the higher elevation. What you're not accounting for is the hypotenuse from the viewer to the top of the tower, which is diagonal, which is their perspective. It's not going to be above the tree line, as the photograph shows, based on the perspective, based on the trees in the foreground, so forth and so on. I'll give you an example. If you go down Walton Drive and you look off to the west, what do you see. You see the tower up here overlooking on top of the hill, overlooking Mahopac Lake, sticking out like a sore thumb. It stands out. Go down Walton Drive, look off to the right and you'll see the lattice tower stands out like a sore thumb. That's because it's on top of a mountain above all the trees and above everything else. But; if you get closer to that tower, and when you're on the Lake, it actually doesn't stick out as much because now you're below it. It all depends on the perspective of where you are in the universe. So, with all due respect, that your unsupported opinion that the rendering is incorrect, I think in of itself is not correct. We stand by the rendering and the information in the report of how the rendering was prepared. I sat with Saratoga; a well-known entity; very respected in the field. This is what

they do. We believe the renderings are correct. If there's evidence that it's not correct, I'm happy to hear it.....

Mr. Frenkel said to your point, just to see if I can understand it: the further away I get from the tower, back toward Walton Drive, the lower the tower would appear. The closer I approach the tower, the higher it will appear. Is that correct?

Mr. Gaudioso said in a flat universe, correct.

Mr. Cote said the other thing that I wanted to point out is that in all the renderings, there's not one picture of what it would look like to the poor people who live across the street and right next to this tower. As a member of this community and part of this Planning Board, one of my concerns are those people and what it's going to do to their living conditions. Nothing in here really gives us that perspective.

Mr. Gaudioso said I think we gave the location, which is fair and accurate, of 29 different viewpoints. I think we've rendered multiple view points including right on Walton Drive. I think that we had also previously submitted the proposed viewpoints but didn't get back any feedback of any additional, so I think it's a fair and accurate report for purposes of.....

Mr. Cote said one of the things that you brought up about another location would be that you'd have to take down more trees – correct?

Mr. Gaudioso said I think I said more than that. I think I said that the number of trees significantly increases that have to be eliminated.

Mr. Cote said but the bottom line is that you're going to be cutting down trees to make a driveway to get to the.....

Mr. Gaudioso said less than forty.

Mr. Cote said okay but if you had to move it further away, you just have to cut more trees to make that driveway longer. Am I missing something?

Mr. Gaudioso said we have to cut down at least fifty more trees – more than double the number of trees plus all the other incremental area of disturbance, amount of fill being brought in. Everything, as shown on the plan, significantly goes up as far as the disturbance. Yes; it's the trees which, by the way, would be coming out are many of the trees that are buffering the houses and the view point going further north on Walton Drive. So, where we placed it, all those existing trees which I'll say are to the north, are basically staying. The trees that are coming out are essentially a few trees at the entrance which we could easily replace and mostly trees between the tower and the power line easement. Whereas if you go to location #2, if you look at the map, it's right on the map, the significance of the number of trees are between tower location #2 and the houses to the north along Walton Drive. So, all of those trees would be coming out. All of those trees that we're talking about the perspective that gives the blockage and that viewpoint that you were referring to, would be coming out. So, you think you're pushing the tower back; yes, you are pushing it back on the property but based on the way they'd be able to construct it because of the slope and the grade of that property, you're taking out approximately 88 trees. You're having an area of disturbance of over 33,000 square feet. When you look at where most of that disturbance is, because of the slope, that's the area buffering the other set of houses which are to the north which would be 48 Walton Drive which is the next closest house. The closest house is 53 Walton Drive which is near the access point. All of the rest of houses that are the closest ones are on the same side of the street as where the

tower would be and if you go back to location #2, you'll be taking out all of those trees up in here. That's where all of those trees are. Right now, we're taking the trees out down here. This is where the power lines are. This is where the closest residence is. The next closest residence is up here. If you go to location #2, you're taking out all of these trees which stand between the tower and that residence.

Mr. Frenkel said are you taking out the trees because that's where the tower is or you're taking out the trees because you need access....

Mr. Gaudioso said if you look at the plan, you have three trees right here where the construction entrance is coming in. You have a number of trees over here where there is grading. You have trees back in this location here because of the grading in order to construct it. When you go from 19,000 square feet of disturbance to over 33,000 square feet of area disturbance, the number of trees is significantly increased because the area of disturbance has increased. In fact, the problem is that in that location, the trees are between the house and the pole.

Mr. Frenkel said if you use location #2 and accessed it from Maple Hills rather than from Walton Drive area, would that change the number of trees being taken out.

Mr. Gaudioso said no. It would be far worse. It's a 66.7-acre property.

Mr. Frenkel said would it change the number of trees taken out between the houses on Walton Road versus the location to tower. I understand that you would have to take out more trees to get to the tower if you approached it from Maple Hill. I'm talking about simply the perspective of the residents on Walton Drive.

Mr. Gaudioso (approached the dais) and said here's the end of Maple Hill. Here's where the tower location is. Here's where the power lines are. I don't know how you're going to get anyplace here without cutting a swathe through heavy topography and forest to get to this location from anywhere even imaginable over at Maple Hills.

Mr. Cote said the question that I think we're getting at is why does it have to go here if you access it from over here?

Chairman Paeprer said that's my question as well. Maple Hill Estates is going to get the revenue from this project.

Mr. Gaudioso said it has nothing to do with this application.

Chairman Paeprer said have you looked at putting your tower closer to Maple Hill where you would access from Maple Hill rather than access from Walton Drive?

Mr. Gaudioso said yes. This is the location that Maple Hill made available for us. There is no access through those woods.

Chairman Paeprer said so Maple Hill said this is where you have to put it; you can't move closer to us.

Mr. Gaudioso said correct.

Vice-Chairman Giannico said I've got a question. I've been looking at this summary report. If you are capable of showing me on there; I'm looking at a photo and this particular photo was called Summit Circle Drive with the cul-de-sac....

Mr. Gaudioso said yes.

Vice-Chairman Giannico said that pole, whether it's with the fake foliage or not, is sitting in that home's back yard.

Mr. Gaudioso said it's not in the back yard. It's visible from the street. If you turn that photograph around and look in the opposite direction, you see the power line towers from that cul-de-sac – right? I don't know if you went up there but if you go up there, you'll see the power line towers from there too. So, everything is potentially visible. We've never said the pole is not visible.

Mr. Cote said if you look at aerial map, Z-1, you see Maple Hill Drive comes up and it abuts the wooded area where you want to put it but was there any consideration going to the end of that road and then going into the woods and putting the tower in that area?

Mr. Gaudioso said that wasn't made available to us. We can only go where we are able to get a lease. I think we've shown all the other different locations that we've looked at as well where we couldn't get a lease.

Mr. Cote said so Maple Hill said we want the money; we want you to put it here but we want you to put it next to those people's houses.

Mr. Gaudioso said I think there are a lot of characterizations that are completely unrelated to zoning. I think the comments like 'nice neighbor', want the money and so forth, I think that's irrelevant to zoning. You may find it relevant in your mind but that's not relevant to zoning.

Vice-Chairman Giannico said we're the Planning Board not the Zoning Board.

Mr. Gaudioso said I know but that's not a relevant criteria. I'm sorry; with all due respect. The criteria is our application based on your Code. We've made our application. What I've told you is this is the location on the property they were willing to make available to us that we were able to lease. If they let us go there, we would go there. We would go in a lot of places but we can't get landlord permission. We don't take property by eminent domain. So, we have to get a lease and an agreement from the property owner.

➤ Mr. Manny Vicente, President of Homeland Towers approached podium.

Mr. Vicente said as far as other locations, first off: the site needs to work technically and we're at an elevation where the site works. Down where the condos are, the elevation is extremely lower. We're not talking 20, 30, 40 feet; we're talking 100 feet. I'm not sure of the exact number but it is extremely low. We wouldn't be able to get the kind of coverage that we need. That's number one. Number two: if you've been on the property and you look down that hill, how are we going to build a road. How are we going to access it from there? It's virtually impossible.

Chairman Paepre said I think all of us have been on the property.

Mr. Vicente said so you've seen what I'm talking about.

Mr. Frenkel said if you're coming down, I agree with you. If you're coming up from Maple Hill, I don't agree with you.

Mr. Vicente said going up or going down, what difference does it make?

Mr. Frenkel said you cut a road from Maple Hill.....

Mr. Vicente said you have an extreme difference in elevation. You have, practically, a cliff. How are we going to build a road there? It won't work technically because the elevation's too low down there. That's number one. How are we going to build a road to access it? You really can't. You really can't; talk about planning – that's crazy. It's just crazy talk quite frankly. So, with all due respect, we're where we are for a good reason; not because we want to be disruptive, and when we talk about locations that are so low in elevations, so inaccessible to get to as far as an access drive, that's just not reasonable. If you want us to tell you exactly what the height elevation difference is between that point and where we're at, we'd be happy to investigate and let you know but it's way lower. Then, as far as building the road up that hill, up that mountain practically, that's just not feasible. Otherwise, we probably would have done it. It's just not feasible. We talk about impact of construction and clearing and trees, I don't think it's doable. Even if it was doable, it just doesn't make any sense. So, we're where we are because we need that elevation. We're at the spot we are, on the property as designed. What we tried to show you with the other examples is this is why we need to be here because doing any other location than here is going to clear the whole area and get rid of any screening we have. So, there's a lot of reasons why we're at where we're at. It's not thoughtless. It's not that we want to impose ourselves or be disruptive to any particular property owner or neighbor. There are reasons for it. If you look at the data that we've submitted and they've been on the property, I'd think you understand that.

Mr. Frenkel said I have been on the property.

Mr. Vicente said so you see what I'm talking about.

Mr. Frenkel said I'm very uncomfortable with the imposition on the residents on Walton.

Mr. Vicente said okay.

Mr. Nuculovic said thank you Mr. President. Mr. Chairman, if I could, to get to Mr. Gaudioso's point to try to stick to relevancy while I think we have, the two things that stick out thus far for the junior member of this panel of which I am and the least educated in the room which I am: Multiple times you've bombarded us, and I mean that politely, with a very nice packet and a lot of good information. Was there an FCC compliance report in there?

Mr. Gaudioso said yes.

Mr. Nuculovic said yes there was. The reason I ask that is because, to me, it may as well be written in Urdu, Pashto or Cyrillic. Was there a propagation map in there?

Mr. Gaudioso said yes.

Mr. Nuculovic said the answer is yes; obviously well informed; obviously well intended but I'll say that might as well be written in Swahili for me. What I mean to say Mr. Chairman is week after week, we hear if you read the report; if you would go onto the property. I think, more than one time, we have. So, if it helps, with the Telecommunications Act of 1996 - Mr. Gaudioso I know you're familiar and can help me with this – paragraph A, I would imagine gives us the power and subparagraph B then gives us some type of requirements imposed upon this panel. Am I correct in saying that?

Mr. Gaudioso said if you're talking about section 332c of the Telecommunications Act....

Mr. Nuculovic said correct; paragraph b which puts those five impositions upon us that we have to abide by?

Mr. Gaudioso said so, under Federal Law – correct. That section has five limitations.

Mr. Nuculovic said please correct me if I'm wrong. Number one is completely understandable. There can be no unreasonable discrimination against one carrier or one entity. I think I'm correct in saying that's understandable but not germane to the matter. Number two would say we make a determination in a reasonable time. Typically, they said 150 days but I'm not going to argue days because I know there are things that do stop the shot clock and things that don't. I also know that there are misconceptions on line such as 'if I give a moratorium, it'll stop'; no, it won't although rejecting an application, Mr. Chairman, as being incomplete, however, does.

Mr. Gaudioso said if I can just add to that..

Mr. Nuculovic said please do.

Mr. Gaudioso said you have to deem it incomplete based on something that's specifically required by the Code, and it would have to be done within the first 30 days. So, we filed on December 8th. Right now, that time to deem it incomplete has passed. So, right now, the FCC presumptively reasonable shot clock date is May 8th.

Mr. Nuculovic said I believe you're right. Number three is a written decision based on substantial evidence. If I'm right, Mr. Chairman, I believe that substantial evidence is put forth by us and weighted by us. Number four would be environmental concerns or health effects. This ties back to what I was saying before Mr. Gaudioso. Local governments cannot regulate this to the extent that the facility is FCC compliant or will be FCC compliant. In your years of service, have you seen the FCC ever test a tower post-build?

Mr. Gaudioso said yes, I have.

Mr. Nuculovic said and the percentage of that; how many times/installations?

Mr. Gaudioso said I've seen instances where they've tested rooftops. If you take a look at the report that we've submitted, even if you don't understand the math, we tried to have the consultant put it in layman's terms. It showed it would be forty times below the limit even with Verizon and three other carriers. The FCC also has a guide called the Local Government Guide which basically was a collaboration among local governments and FCC staff. The conclusion of that report is because these facilities operate at such low power and because of the standards and the way they're written, that anything over 10 meters – around 33 feet – is by definition going to be in compliance because the height of the antenna's above grade, no one can be within that area and, therefore, would be in compliance. As far as a tower of this height, because of pure physics, it will be in compliance.

Mr. Nuculovic said it will be in compliance but not tested. Here's what I'm getting at Mr. Gaudioso. Are we the only line of defense to make sure that our RF is going to be okay and we're basing that on a report that I can't read? That's what I think I'm getting at here.

Mr. Gaudioso said I think there are ways to possibly satisfy your concern with post installation testing or something like that as a condition of approval. That might be something that would be reasonable.

Mr. Nuculovic said and item number five, if I'm not wrong: we cannot prohibit or effectively prohibit the providing of personal wireless service. I agree with that. That's right out of the standard. That's understandable but I'm not sure, Mr. Chairman, if we're there just yet. The propagation maps, and I was the Highway Super for the County for years, the only three places that I know Verizon ever hurt me at all was on Route 301 West which is not germane to the instant case, Route 6 at Belden for a small dip in the terrain feature and on Bullet Hole Road with the same issue with the terrain feature for about 100 meters. I think those are the only three places. I heard testimony at the Zoning Board of Appeals. I've talked to many people on the street. I've talked with many people that say I don't have issues. Again, I have to go back to if it's a propagation map that I can't read and personal experience and testimony from the public says this isn't needed, I'm not sure what the next steps is Mr. Chairman.

Mr. Gaudioso said I think the next step is to actually have a public hearing because everything that you've described is not on the record here and quite frankly, you couldn't make a decision on the items that you've just mentioned because it's not on the record and that's prejudicial to the applicant. I appreciate your comments. What I'll say about the standards though is going back to the substantial evidence standard; the substantial evidence standard is applying the Town and State criteria to the evidence that's in the record.

Mr. Nuculovic said getting weighted by who?

Mr. Gaudioso said weighted by the Planning Board but it has to be criteria. The State Law makes this type of facility a public utility. So, there's a different type of standard. There's a reduced standard. If the Board approves the application, that's one thing. If the Board denies the application, then the question is, to a Federal Court most likely, was the denial based on substantial evidence contained in the written record and that denial has to be based on criteria in the Code. The Federal Court would look at whether the Board had substantial evidence to support its decision based on criteria in the Code. Pursuant to the State Law Standard. The prohibition claim though is not for you to decide. The prohibition claim is if, in fact, there was substantial evidence to deny an application. Let's say a municipality had a rule that said you can only have a 50-foot tower and it was shown that a 50-foot tower wouldn't satisfy the needs of the carrier, would materially inhibit the carrier's ability to provide its service, the Federal Court would look at that de novo meaning, and the Federal Court would look at that irrespective of what the Planning Board or Zoning Board said. That's the way that particular Federal limitation applies. I just hope that was helpful.

Mr. Nuculovic said it was. It was a very good review. To close, our denial of application if it was to be denied, would it not be based upon 1) there was a significant gap in personal wireless service?

Mr. Gaudioso said no because it's not a criteria of your Code. Your decision has to be made about whether we meet your Code or whether we don't meet your Code. What you're referring to is an outdated Federal Standard under the prohibition claim in which a Federal Court would look at de novo. Your decision as a Planning Board has to be do we meet the Town Code criteria for this particular application and there's nothing in your Code that says we have to prove a significant gap.

Mr. Frenkel said I'm looking at our Zoning Code §156-62 L(1)(d) which references "*The applicant's network of antenna locations is not adequate to properly serve its customers, and the use of facilities of other entities is not suitable for physical reasons.*" Isn't that what your propagation map or survey is intended to show?

Mr. Gaudioso said correct. What I'm telling you is that the standard that was being referenced, is the significant gap standard which is an old outdated standard under the Prohibition Standard which has nothing to do with your Code. The significant gap standard is different than what your Zoning Code says. What your Zoning Code says is something completely different and, quite frankly, it's a lower bar for us to prove as far as your special permit criteria. I believe we've clearly met that standard with the data that we've submitted to the administrative record.

Mr. Frenkel said I'm not sure that I agree with you but.....

Ms. Causa said I just want to make a comment. I've listened to everything you've said about this is the land that was leased to us and this is the land that you're able to use but we need to also think about the people there. I know in a certain part, you have. Many of these people probably moved from places where there were wires and different things that were obstructing views where they were living and they wanted to be in a place where they could look out their window and see trees and not something that looks like a tree. So, we just need to keep that in mind. I know there's a lot more that goes to it but I just am saying that I'm a homeowner up here in Carmel as well and I would hate to see this anywhere in my yard or where I could see it out of my house because I moved from a place that had this stuff and I want to be in a place where it's not there. With all of the other things we're talking about: Codes, the maps and everything, it still comes down to the people that live there. Whether or not these pictures that you showed are whatever level you're looking at, you can still see it. We understand the need for a tower. I get that but it's also the fact that these people live here for a certain reason and don't really want this in their yard. This one house that you're showing, you're saying there's wires in the back. They might have been there when they bought the house but they didn't expect to see this monstrosity in their yard either. That's the thing that gets me more than zoning and everything else that goes along with the decision to put it there.

Mr. Gaudioso said I agree with you that aesthetics is a fact under SEQRA but the criteria is not whether you can see something. That's not the criteria.

Ms. Causa said I get that.

Mr. Gaudioso said and everything is a balance. We have a lot of things - whether it's telephone poles, whether it's a large boat wrapped in a tarp right on the edge of the road, whether it's power lines nearby; there's a lot of different things that are visible. So, the visibility is not the standard. What we always try to do is we try and balance, as does your zoning code, many factors including the need, the technical factors and also the environmental factors and visibility. That's why when you look at the alternatives, we tried to pick a place that we could get, that would work and that we could construct but is also over 66 acres. That is fairly setback from a dense residential area. Is it at the end of a residential road - absolutely. So, that's a balance but it's not in a dense residential location like the prior Lake Casse location. That was much denser even though that was on a large parcel. The visibility there was more than the visibility here on an overall community aspect. There were different aspects of that based on the perspective. There were views from high up in the mountains looking down where you would see the tower other than through woods. So, it's all a balance. There's no place, anywhere in this region, that a

tower is going to be invisible. It's just not. The tower across the street is not invisible. The tower up on the hill is not invisible. The tower behind the Greek Diner is not invisible. They're just not. So, we're trying to do the same thing that you are and that your Code is, and that is going through the priority list. We tried to show, with our reports, about why we are at this particular location. Even within this priority location, we tried to show why other properties were or weren't available and why they worked or why they didn't work including the gun club and things of that nature. That's always the balance.

Ms. Causa said right and I get that. I appreciate that and I appreciate the work that's gone into it but also there's that element of what people really want to see when they look out their door. I understand what you're saying. There's not maybe the perfect location but that all has to be considered and I'm sure many people here are feeling the same way. That's why we're so diligent about where it is, what it is, what it looks like, all the elements that go to it. We just have to keep that in mind.

Mr. Gaudioso said absolutely.

Mr. Frenkel said when you were researching alternative locations and reached out to other property owners, what time frame did that occur in?

Mr. Gaudioso said we've been looking at this area for over five years.

Mr. Frenkel said I think you had informed us that you had reached out to five or six and five never responded and one you couldn't come to terms with.

Mr. Gaudioso said let me be precise. What we showed was that there are six priorities in the Code. What we showed is that Verizon is either on or adjacent to all of the existing tall structures of wireless telecommunications towers in non-residential zoning districts.

Mr. Frenkel said I think you're answering a different issue.

Mr. Gaudioso said no; I have to get there. We didn't just look at six locations. We looked at the entire area.

Mr. Frenkel said I'm saying that you made offers to five or six different property owners.

Mr. Gaudioso said no. You have to give me the opportunity to get there because that's not how it works. The Town has a Code and we come in, look at the Code and went through the priority list. Let's take a step back. Homeland Towers builds the infrastructure but the carriers are the ones that use the infrastructure and dictate where the sites are needed. So, Homeland Towers came in and looked and they confirmed where Verizon sites were and where their needs were. The first priority list is on existing tall structures or wireless telecommunications towers in non-residential zones. What we showed is that Verizon is either on those towers or directly adjacent to those towers. Then we showed that co-location on a site with an existing wireless telecommunication tower or structures in non-residential districts but not fronting on Route 6, Route 6N, Route 52 & Route 301. We showed again, those are generally the same places that were in that first priority when you look at our maps. Then co-location on a site with an existing telecommunication tower or structures in any other non-residential districts. Again, the same analysis, the same zoning map, the same location of the sites. Then; installation of a new wireless communications facility in a non-residential district. That's the one district that's just behind Route 6. What we showed is about 140' lower in ground elevation. That didn't work. So, then we fall into installation of a new telecommunications facility in any residential district. Then we looked at the

residential district and we identified six large properties that we thought might be feasible as an initial point.

Mr. Frenkel said that's what I'm talking about.

Mr. Gaudioso said three of them never responded. Two of them responded with initial interest and then weren't interested and then the sixth one was the gun club. We analyzed it from an RF standpoint and it was located too far to the east.

Mr. Frenkel said so let's stop there for a second. Three never responded. Two.....how many?

Mr. Gaudioso said two showed some initial interest and then stopped responding which is not uncommon.

Mr. Frenkel said when did all of this occur?

Mr. Gaudioso said that was in the initial phase of looking for this. That was the 2017 time frame.

Mr. Frenkel said so now, we're almost five years later.

Mr. Gaudioso said yes; it's taken too long; absolutely.

Mr. Frenkel said do you think it would be worth re-exploring with these same property owners who weren't interested or didn't respond last time.

Mr. Gaudioso said no because I think when you look at those properties, and we have them listed out and we show the locations, that this, on balance, is a better location. We were looking at all the properties at once. You don't just go sequentially. You don't just go to one property and then the next property and the next property, and hopefully you'll find one. You have to look at everything together.

Mr. Frenkel said so if one of those other property owners had said yes; I'm willing to do it....

Mr. Gaudioso said we would have looked at it. We would have taken the next step with it. We would have run the maps. We would have analyzed the wetlands. We would have ultimately gotten to a point where, out of the available locations, we would enter into a lease, perform due diligence.....

Mr. Frenkel said what if one of them said now, I've rethought it and I am interested.

Mr. Gaudioso said I think number one it would have to be a feasible alternative and I think it would have to be better than this location from a permitting standpoint. Right now; those facts aren't presented and that's a hypothetical. What if one now, changes their mind. You could always say that but if a real property came up that was a real alternative, that this Board believed was a far better location, we would certainly look at it.

Mr. Frenkel said it's just that something from 2017 seems pretty stale to me.

Mr. Gaudioso said we started this application process in 2020. It takes time to get through the process but I think we're at the stage now, based on what we've submitted, that we have a viable application at a viable site.

Ms. Causa said were any of those other three that you haven't heard from, were they residential areas?

Mr. Gaudioso said yes; that's my point. That's why I wanted to go through that list with you. It wasn't that we just picked six locations and five weren't interested and this is the only one we could get. We went first and looked at the priority list and then when we got into the residential area, again if you look at the zoning map which is in the Klaus Wimmer report that we submitted, this whole area is residential. The distance between our site and the next commercial site, and then from that site to the next Verizon tower, is about the same. So, we're right smack in the middle of the surrounding Verizon towers when you look at the map. That's why it makes sense. So, the gun club, which is much further to the east, was too far to the east. The other areas were in the same general vicinity – give or take but all in a residential zone. This is, by far, the least dense.

Chairman Paeprer said so our golf courses, aren't in the right area for you probably?

Mr. Gaudioso said no; and your golf courses are also park land which would require a special act of the New York State legislature.

Mr. Nuculovic said how did we reach out to them in 2017?

Mr. Gaudioso said certified mailers and then phone calls. It's all in the package.

Mr. Nuculovic said did you look at Somers at all?

Mr. Gaudioso said yes. It's all residential there as well in that location. In fact, right over the border, Somers has a site in Heritage Hills property up by the water tank.

Chairman Paeprer asked if there were any more questions from the Board Members of which there were none.

Chairman Paeprer said I'm anxious to hear from the public so we'll schedule a public hearing but just one final comment. You've really only submitted one option – not 3 alternatives – right?

Mr. Gaudioso said we submitted an application for the proposed site and we showed those other two locations as hypotheticals and the reasons why we didn't select those. They're not alternatives as in we're asking for approval of either A or B.

Chairman Paeprer said would you be willing to submit another alternative for the tower so that we could chew on it a little bit or is this set in stone?

Mr. Gaudioso said what I would say is this. I think that with all the materials that we've provided, I think we've made a good faith effort to look at the options and if someone were to say here's a much better option and we looked at it and it was feasible, we'd be happy to look at it even closer but we think that we picked the right spot. We're not going to guess on what might be a better spot. We're not going to create neighbor against neighbor by proposing another spot next to some other neighbor and create that situation. We tried that in the settlement of the litigation and it didn't work. We think we have the right site.

Chairman Paeprer said your submission was very good. You've covered everything. I just would have liked some alternatives for us to chew on, look at and talk about but I understand what you're saying. So, how about a motion for a public hearing. I would really like to hear from the public at this point.

Mrs. Causa moved to schedule the public hearing for this application; seconded by Vice Chairman Giannico with all in favor.

**MK REALTY – ROUTE 6 & OLD ROUTE 6, CARMEL – TM: 55.6-1-44 & 45;
REAPPROVAL OF FINAL SITE PLAN APPROVAL**

Chairman Paeprer introduced the application and asked the consultants for their input.

Mr. Carnazza said I have no objections but the question is why is this here for so many years?

Mr. Adam Thyberg of Insite Engineering said the property is on market. The applicant continues to seek a buyer. When a buyer is found, if the buyer of the property wants to do anything different from what's in the approved site plan, this will be back before you for an amended site plan. He's gotten some interest in the property but has not closed on a deal and continues to seek a buyer. All of the outside approvals are current. We've been keeping those going. The applicant's simply seeking to reapprove the previously approved project with no changes.

Mr. Franzetti said I have no objections to regranting the site plan. All the permits are in place. They've provided a summary for it. My memo had February 8, 2023 for the Putnam County DOH permit but they sent the document today renewing it. It's for five years I believe. So, it's good til 2028. Performance Bonds have been provided as were the engineering fees.

Mr. Cleary said no change to the plan; no objection to the reapproval. However, an issue is they're unable to sell the property. So, maybe there's an unrealistic financial expectation on part of the owner with respect to his property. This shouldn't be a perpetual renewal because the owner may not have a realistic expectation of the value of the property. At some point in time, you should cut this.

Chairman Paeprer said that's an excellent point. How long has this been going on?

Mr. Thyberg said it's been on for a very long time.

Mr. Carnazza said the problem is the zoning code is changing as well. So, at our next meeting, if they change the zoning code, when this comes up again, if they didn't grandfather things, you may have a problem with the site. Just something to think about.

Chairman Paeprer said this reapproval is for a year. Maybe you should put a note in the file "last & final" reapproval.

Mr. Cleary said just to revisit that issue: Mr. Carnazza's point is a good point. We shouldn't penalize an approved plan if, in fact, there are zoning changes underneath them that they have no control over. Let's let him make it through the amendments to the zoning code and then reassess the viability of the property. A year is probably fine but a note in the file is a good idea.

Vice-Chairman Giannico said which you should probably take back to the owner.

Mr. Thyberg said yes; I will express all of this back to the applicant.

Vice-Chairman Giannico moved to grant reapproval for one year; seconded by Mr. Frenkel with all in favor.

CARMEL CENTRE SENIOR HOUSING (PULTE HOMES) LOT 3 – TERRACE DRIVE – TM: 55.14-1-11.1; BOND RETURN

Chairman Paeprer introduced the application and asked the consultants for their input.

Mr. Carnazza said this is on for a bond return. I have no comments on bond returns.

Mr. Franzetti said as we discussed at the last meeting, we met with the applicant on February 1st after they had cleared out the basin. There were only three remaining stormwater basins that needed to be cleared out. It was determined that the areas in question were completed and based on that inspection and all the other inspections in the past, the bond can be recommended to be returned. You were there, Mr. Chairman, for the visit.

Chairman Paeprer said yes. Do you know, off the top of your head, what's the value of the bond at this point?

Mr. Franzetti said it is \$2.57 million.

Chairman Paeprer asked Mr. Paul Lynch (Putnam Engineering) if there were any comments of which he had none.

Mr. Cote moved to return the bond of \$2,579,959.00; seconded by Mrs. Causa with all in favor.

MINUTES: 01/12/23

Mr. Frenkel moved to approve the minutes of January 12th as revised; seconded by Mr. Nuculovic with all in favor.

TOWN OF CARMEL COMPREHENSIVE MASTER PLAN AND ZONING CODE DRAFT – DISCUSSION

Mr. Cleary, Mr. Carnazza and the board members continued their discussion of the Zoning Code draft – Article IX – Planning Board – Section 156-75 to Article XIV – Stormwater Control – Section 156-128.

Mr. Cote moved to adjourn the meeting at 8:43 p.m. The motion was seconded by Mr. Nuculovic with all in favor.

Respectfully submitted,

Rose Trombetta