

APPROVED

CRAIG PAEPRER
Chairman

ANTHONY GIANNICO
Vice Chairman

BOARD MEMBERS

CARL STONE
KIM KUGLER
RAYMOND COTE
ROBERT FRENKEL
MARK PORCELLI

TOWN OF CARMEL PLANNING BOARD



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*Director of Code
Enforcement*

RICHARD FRANZETTI, P.E.
Town Engineer

PATRICK CLEARY
AICP, CEP, PP, LEED AP
Town Planner

PLANNING BOARD MINUTES

SEPTEMBER 11, 2019

PRESENT: CHAIRMAN, CRAIG PAEPRER, VICE CHAIRMAN, ANTHONY GIANNICO, CARL STONE, KIM KUGLER, RAYMOND COTE, ROBERT FRENKEL, MARK PORCELLI

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>TYPE</u>	<u>ACTION OF THE BOARD</u>
Downtown Mahopac Properties	75.12-2-26	1-2	Resolution	No Board Action.
Longview School	52.-1-12	2-7	Site Plan	No Board Action.
Braemar at Carmel	55.10-1-3	7-9	Site Plan	No Board Action.
Yankee Land Development	76.15-1-12	9-10	Extension	180 Day Extension Granted.
Thimm, Karl	65.17-1-15	10-11	Bond Return	Public Hearing Scheduled.
Union Valley Cemetery	76.16-1-8	11-13	Regrading	Public Hearing Scheduled & Planner Prepare Resolution.
Taco Bell (Former Friendly's Site)	55.11-1-3	13	P.H.	Planner to Prepare Resolution.
Homeland Towers Lake Casse	65.19-1-43	See attached		Public Hearing Left Opened.
Homeland Towers Dixon Lake	54.-1-6	See attached		Public Hearing Left Opened.

The meeting was adjourned at 10:43 p.m.

Respectfully submitted,

Rose Trombetta

**DOWNTOWN MAHOPAC PROPERTIES – 559 ROUTE 6 – TM – 75.12-2-26 -
RESOLUTION**

Mr. Carnazza stated this is on for a resolution and all my comments have been addressed, but I believe something new came in.

Mr. Cleary stated you have resolutions of approval before you, there is an amended bond for this and since our last meeting conditions of approval that were provided to you from the DOT has been incorporated into this resolution.

Mr. Franzetti stated the resolution has an updated bond amount and it includes the cost associated with meeting the DOT requirements.

Mr. Joel Greenberg of Architectural Visions, representing the applicant stated we met with the NYSDOT several weeks ago, and they came up with a whole series of comments. He said they will not allow us to tie into their catch basin. They wanted us to do a complete drainage study from that catch basin up and down Route 6 all the way to the lake. DOT also wants them to replace the sidewalk with a 5 foot sidewalk and a 10 foot wide area in the middle of the sidewalk for the ADA. He said the study alone would have cost thousands and thousands of dollars. He said we met with the Town Engineer and we came up with a solution, whereby we kept all of our drainage on the site what are called infiltrators so no water would be going onto Route 6 except the little water in front of which has been going out there for all these years. He said we sent Mr. Franzetti and the DOT the calculations. You have their last memo dated from September 6th and they are reviewing the proposed drainage although the Town Engineer has the final say and he seems to feel that this adequate. I did get a copy of the bond and there is approximately under the New York State modifications close to \$30,000 worth of work that the state wants, it's my belief that the final say on something like this is up to you. If you read the memo that was sent by Mr. Gregory there's information that is totally inaccurate. It says here whenever a change or expansion of a business or other land use is expected to increase traffic flow on the state highway system to an existing driving it may be necessary for the owner to mitigate the impact of the increased traffic. Now, as you can see from the renderings we have here in the discussions we had over the last several months, the purpose of this building, there are no employees, there's no increase in traffic. He said there is no increase in traffic and that is totally false and therefore, based on that, the DOT's expectation that increased traffic requires all these changes I would question the fact that there is no increase in traffic therefore no changes to the use of a site for the amount of traffic going in and out of the site and years ago there was a moving van company with huge 18 wheelers going in and out that property. He said over the months, the board has complemented us on the design of the building. There is also a fair amount of landscaping that will go where the new addition is going, but it will also carry down to the existing buildings. It is a tremendous improvement to the site and to add \$30,000 of work that is absolutely unnecessary based on what the DOT says, increased traffic is expected that is not true. So, therefore we ask that the resolution being approved minus the \$30,000.

Mr. Cote asked Mr. Cleary can we pass a resolution considering what the DOT has said.

Mr. Cleary replied you have no authority to modify or waive the DOT's requirements. It's either the applicant's obligation to go back in and have this conversation with the DOT. It's not your call it's the DOT's call.

Mr. Greenberg said but based on the fact that this information is incorrect.

Chairman Paepre stated the burden is on you to go back to the DOT and then come back to us.

Mr. Cleary stated with any involved regulatory agencies you accept their comments and you impose as conditions of your approvals.

Mr. Greenberg said so you can't override whatever they ask?

Mr. Cleary said we certainly can't override the DOT.

Mr. Greenberg asked the board if we could holdover the resolution until we resolve this.

Chairman Paepre stated we will hold it over until you resolve it with the DOT.

LONGVIEW SCHOOL - 110 SCOUT HILL ROAD - TM 52.-1-12 - SITE PLAN

Mr. Frenkel recused himself and left the podium.

Mr. Carnazza read his memo which stated the applicant proposes to convert the existing one family dwelling into a Private School. The applicant is applying to the ZBA for interpretation of the code:

§ 156-23 Educational institutions.

E. A minimum of 10 parking spaces, plus three spaces per classroom shall be required for those schools with pupils of elementary and junior high school age. Schools with pupils of at least high school age shall provide at least 20 parking spaces, plus five per classroom. I interpret that to mean that the higher (twenty spaces plus five spaces/classroom) must be used for the entire building. The Engineer and the applicant disagree and are asking for an interpretation of the code. Until this is clarified, I have no comments.

Mr. Cleary stated to the board you should address the parking issue, because it's not as though there is insufficient space on the site to provide the parking. He said the applicant has proposed to improve a certain number of the spaces and then leave the balances as pervious spaces, but nevertheless, there is available area to provide for all of the required parking on the site. The applicant is also proposing to not construct the gym building that show the plan. They are proposing to build that a future stage. They would improve the foundation and use that as a recreational space until such time in the future where they propose to build the gym. Your board's policy with respect to phasing approvals would not

allow that. So it's really up to the applicant to develop a procedure that would allow them to do that sometime in the future, if they don't propose to do at moment. There is a new landscaping plan that's provided most of that is interior to the site; it really doesn't serve screening or buffering for a neighbor. He said it is a fairly thorough landscaping plan. There was some reference in the application materials about the clarification of the monument sign. He said there was a reference to a drawing and we didn't have that drawing in the package and it needs to be provided.

Mr. Franzetti read his memo which stated the proposal involves two (2) phases. Phase 1 - converting an existing residence to a school, widen the existing access drive, and add a handicap ramp. Phase 2 - add a 40' by 100' structure to house a gym. Based upon our review of this submittal, the Engineering Department offers the following **preliminary** comments:

I. General Comments

1. The following referrals would appear to be warranted:
 - a. Mahopac Falls Fire Department

Applicant has acknowledged this comment and has submitted drawing and letter to the MFVFD.

2. Permits from the following would appear necessary:
 - a. New York State Department of Environmental Conservation(NYSDEC) - Coverage under General Permit GP-0-15-002

Applicant has acknowledged this comment

3. The area of disturbance for the work as provided in the FEAF is 0.8 acres. The area of disturbance listed in the SWPPP is greater than 1 acre. These values need to be brought into conformance.

The 1 acre disturbance exceeds the threshold criteria of disturbance for the NYSDEC stormwater regulations. This project requires coverage under the NYSEC SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) and the development of Stormwater Pollution Prevention Plan (SWPPP) that includes permanent stormwater controls.

Review of the SWPPP and associated details is ongoing and comments will be provided to applicant.

The SWPPP needs to be updated to account for the change in the area of disturbance. The Notice of Intent must be signed/sealed.

4. The applicant will be required to supply a stormwater maintenance agreement and maintenance guarantee per Town Code (§156-85 and §156-87 B respectively) to assure long-term maintenance of all stormwater management practices (SWMP) proposed for the site.

Applicant has acknowledged this comment.

5. Should any public improvements be deemed necessary as part of the development of the tract, a Performance Bond and associated Engineering Fee must eventually be established for the work.

Applicant has acknowledged this comment and will submit estimate once SEQRA review is complete.

I. Detailed Comments

1. The applicant will need to provide a single set of completed documents for the file. This includes all drawings and reports.
2. The FEAF must be updated to account for proposed conditions.
3. The stormwater management document identifies drawings SY6 A and SY6 B. However only drawing SY6A has been provided.

Please provide an updated copy of the report

4. All retaining walls great than 6 foot must be certified by a NYS licensed structural engineer.

Applicant has noted this comment

5. Access for Fire Department around the rear of the buildings must be considered

Applicant has noted this comment and is working with the MFVD.

Mr. Peder Scott of Peder Scott Engineering, representing the applicant addressed the board and stated we are hoping to get a referral to the ZBA. Again, we have a mixed use educational facility where we have K to middle and high school students. The zoning regulations are different for high schools versus K to middle school students. He said we did look at various options on how to create more parking, but I think it's apropos for us because it impacts on drainage and overall disturbance. He said Mr. Schilling has written an opinion and we have also written one as well. We think it deserves a merit of review by the ZBA to work this interpretation out. As Mr. Cleary indicated we do have land to add additional parking spaces, but again, we are in a catch 22 situation. We have an area allocated but we don't want to develop it. If we don't develop it, we do not have to build a bigger detention structure and that's why we want to go to the ZBA, for them to interpret that and if necessary grant us a variance to that.

Mr. Cote stated in the letter from you indicate that the school consists of approximately 70% elementary and middle school and 30% high school. He said presumably these children will stay with you as they progress through the grades. So, at one point you may have completely reversed.

Mr. Scott stated historically they are running at much lower levels high school students versus K to middle school. We are anticipating about 15 high school students at a maximum which is about 30%. He said we based our analysis on that 15 out of 50 would be our distribution. The way we look at is if we have 15 students driving that would be 15 spaces. If we have 8 teachers and 6 associates that's 14 more spaces totaling 29 spaces.

He said we are providing 38 spaces. We are providing much more spaces then required. But the problem we have is if take 50 students and they are all driving, that's the interpretation.

Mr. Cote said but part of our responsibility is to anticipate things that will happen and to plan accordingly.

Mr. Carnazza stated and that's what the code says.

Mr. Scott said our premise would be to go to ZBA and get an interpretation of this potential use. Mr. Schilling indicated that the initial zoning for high school was based upon high school and older where all the people would be driving. We're looking at low percentage of drivers in our facility. He said we can provide a green space for overflow. It would be green a turf base and go with turf parking to give us extra capacity. I think the ZBA could answer a lot of questions and if we had a clear direction of what would be acceptable.

Chairman Paeprer stated I went to look at the property last week, he asked why there?

Mr. Scott stated it was picked for a couple reasons, it's somewhat isolated with a large parcel and it's a basically a geological location on a hillside with no adjacent neighbors. He said if you look down the hills from the property there are power lines. He said it's about the best location we could find with the acreage and where you don't really impact the neighbors that much. Our problem is if you want to put this in any other residential area, on flat land or in the middle of a big subdivision of existing homes, there could be a lot of noise, impacts, etc. He said because of the way the site is we are set much lower than everyone. He said the tree buffers around will remain. And we are working with an existing structure.....

Chairman Paeprer asked has the Fire department looked at this?

Mr. Scott replied we actually met with them. He said there request was a water tank which we're providing. He said I have been pleading for a letter for quite a while, but nothing yet. He said we also have a big K turn at the end of the property which meets the requirements of fire truck access.

Mr. Stone asked Mr. Scott if he received the letter from the neighbor?

Mr. Scott replied no.

Mr. Stone said it relates to the road, the traffic potential and so forth and notes that the end section of the road is not maintained by the town.

Mr. Carnazza said are you talking about the spur the last couple of feet high? He said I don't have the answer.

At which time a discussion ensued regarding the spur at the end of the driveway.

Mr. Scott stated the applicant owns the end of the roadway which is on his property and there is a split or spur right before the property itself. He said the driveway is owned by the applicant and we are also taking down one of the walls to create better access into the property as part of this proposal.

Chairman Paepre asked do we have documents stating what the maximum enrollment will be there?

Mr. Scott replied yes. The maximum number is 50 students and we could give you a written document from the owners to that affect.

Vice Chairman Giannico asked how many spaces can you provide?

Mr. Scott replied we are providing 38 but we could go up to 40 if we have to.

Vice Chairman Giannico stated per our town code it is 55.

Mr. Carnazza said according to my calculation, that's what it is.

Mr. Scott stated as you go down to the end of the property, it's steep and for us to make additional parking spaces we would have to blast and create more pad areas which would constitute y quite a hardship.

Mr. Cote asked for clarification. He asked if all 38 parking spaces will be on a hard surface.

Mr. Scott replied yes. He said we also did a plan where you take the parking spaces and extend them along where the hammerhead turning area is for the fire trucks and continue the parking along in the easterly direction to make additional spaces. He said we could make it gravel and hardscape or we could go turf if it's allowed.

Vice Chairman Giannico asked how many are on hardscape?

Mr. Scott stated currently on the plan we have 27 on hardscape.....

Mr. Carnazza asked what is hardscape and to explain it.

Mr. Scott replied pavement. There are 27 on pavement and 11 spaces on gravel.

Mr. Carnazza said you will need a variance for the gravel.

Mr. Scott replied that's correct.

Vice Chairman Giannico asked to show where the parking is on the site plan.

At which time, Mr. Scott points to the map showing all the parking spaces. He said most of our service of the children is by buses. The buses drop the children off and leave. When we need parking is when an assembly or some sort of event takes place and that is where the turf areas would come into play, because they are not being used all the time. He said we could show 55 spaces but we're in that gray area. We would rather not put them in initially, but we could definitely create some vehicle, where we could add them when necessary.

Vice Chairman Giannico asked Mr. Carnazza as our code reads the 55 spaces would have to be on blacktop, not a combination of blacktop and gravel.

Mr. Carnazza replied that's correct. The code reads permeably improved, which is blacktop or the semi-pervious pavers.

Chairman Paepre stated there are about four points that need to be addressed. The parking and feedback from the fire department. There are multiple comments from the Town Engineer that need to be addressed.

Mr. Carnazza said in the meantime, they could go for their interpretation of the code at the zoning board. They don't need a referral for that.

Mr. Frenkel returned to the podium.

BRAEMAR AT CARMEL - 49 SEMINARY HILL ROAD - TM - 55.10-1-3 - SITE PLAN

Mr. Carnazza read his memo which stated the applicant proposes to construct a 152 bed assisted living facility on the grounds of the former Guideposts property which previously has permission to construct an office building. Lot Depth and Lot Width lines are now provided. Signage complies with zoning. All zoning comments have been addressed.

Mr. Cleary stated we had asked the applicant to clarify how the facility was going to be used. They have provided you with a narrative clarifying the number of employees, hours of operation and so forth. The applicant has also clarified the facility will have 152 beds not 200 beds. There was confusion about the driveway access. This is a separate driveway, separate from the distillery driveway. A traffic assessment report was provided and we asked them to include the distillery with this facility and to compare it to the prior Guideposts/Paladin traffic study. He said the numbers are actually lower than the prior previous approval. They have provided a loading area in the rear of the building which will be sufficient for their facility. The applicant has provided a photometric plan which demonstrates appropriate lighting levels, particularly along the property lines. The applicant has indicated that grading details and the amounts of cut and fill will be provided in the future. The site plans have been revised to note the location of the wooded buffer to remain undisturbed.

Mr. Franzetti read his memo which stated this application is for Hinckley Holdings Subdivision Lot 2 (former Guideposts headquarters). The facility is currently served by Carmel Water District # 2 and Carmel Sewer District # 2. The applicant has submitted a water and wastewater use report submitted for review/approval. This is currently under review.

Applicant has noted this comment.

The following referrals would appear to be warranted:

- a. Carmel Fire Department
- b. Town of Carmel Highway Department

Applicant has noted this comment.

The following regulatory permits will be required for the application:

- c. New York State Department of Conservation (NYSDEC) Stormwater Permit;
- d. New York City Department of Environmental Conservation (NYCDEP) Stormwater Permit
- e. Town of Carmel Water Connection Permit
- f. Town of Carmel Sewer Connection Permit
- g. Town of Carmel Highway Permit

Applicant has noted this comment and agreed that these permits are required.

If necessary the applicant will be required to supply a stormwater maintenance agreement and maintenance guarantee per Town Code (§156-85 and §156-87 B respectively) to assure long-term maintenance of all stormwater management practices (SWMP) proposed for the site. Applicant has noted this comment.

The applicant has noted the need for coverage under the NYSDEC stormwater regulations. The project disturbs over 1 acre the project requires coverage under the NYSEC SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) and the development of Stormwater Pollution Prevention Plan (SWPPP) that includes the post stormwater controls. The applicant has noted the need for the SWPPP and will provide under separate cover. Performance Bond and associated Engineering Fee must be established for the work.

II. Detailed Comments

1. The applicant should meet with the Town Engineer to discuss the water system shutdown and the need for a water system work plan.
2. Available sight distances have been provided. Please provide backup calculations.
3. All sewers must meet the Town of Carmel Town Code § 120-29.
4. Sidewalks, manholes and guiderails should be installed per §128 of the Town of Carmel Town Code.
5. All water service connections must be K-copper. The response letter indicates that the material will be ductile iron however the drawing call out PVC. This should be clarified.

Mr. Jeff Contelmo of Insite Engineering, representing the applicant addressed the board and stated we have responded a number of comments both from the board and the consultants. We also received comments from your architectural consultant. Our architect is working on responses to them. They will be meeting with him to discuss some

of the details. Our goal is to be able to come back with slightly modified architectural slightly modified architectural elevations as well as material boards for the board. At this point we would like to request from the board is the scheduling of the public hearing. We are required to have a public hearing and we would like to make that next step if the board feels it's appropriate.

Mr. Cote asked Mr. Franzetti when does he think the report for water district #2 will be reviewed.

Mr. Franzetti stated I will meet with Mr. Contelmo to discuss any additions that we were talking about earlier. It should be done before the next meeting.

Chairman Paepre stated he was concerned with scheduling a public hearing without the issues of the architect being addressed yet.

Mr. Contelmo stated would it be possible to schedule a hearing and submit revised plans addressing what we can of those comments. He said some of the comments suggested for instance, was a more New England style. He said they were going to meet and talk about it. I think the massing of the building, the general elevations are not been changed drastically, but I do believe that between now and the next meeting we can take another crack at it.

Chairman Paepre stated Mr. Franzetti had quite a few comments.

Mr. Cleary stated some of those related utility capacities which may in fact alter the building somewhat. It could conceivably do that so typically you move to public hearing when the plan is fixed.

The board members were in agreement with the Chairman.

Chairman Paepre said our architect was asking for a rendered elevation with proposed color scheme and material samples.

Mr. Contelmo said we will correspond with your consultant architect and update the architectural plans and bring material sample boards to the next meeting.

YANKEE LAND DEVELOPMENT - PIGGOTT ROAD - TM - 76.15-1-12 - EXTENSION OF PRELIMINARY SUBDIVISION APPROVAL

Mr. Carnazza had no objection to the extension.

Mr. Cleary had no objection to the preliminary extension. He said there are no limits on preliminary extensions.

Mr. Franzetti had no objection to the extension.

Chairman Paepre asked why the extension?

Mr. Angelo Luppino, the applicant addressed the board and stated I have it on the market right now to sell. He said we have two cul-de-sacs coming into the 14 lot subdivision off of two roads. He asked is it possible to subdivide this into two separate parcels, making it easier to sell the property into two 7 lot subdivision instead of 14 lots since there will be two separate roads.

Mr. Carnazza said the only way to do that is do a 2 lot subdivision. You chop the big lot into two and divide each lot at separate times under a separate name and get approval on each one separately.

Mr. Cleary said you would lose all your approvals if you did that.

Mr. Luppino asked why is that?

Mr. Cleary said because you are not subdividing the 14 lots, you are abandoning the 14 lots creating 2 lots and then recreating 7 and 7. He said there is no other mechanism to do that.

Mr. Luppino said the 7 and 7 would still be there, all you're doing is creating a lot.....

Mr. Cleary said you would have to come to that. In order to get there you have to create two lots not 14 lots split in half. He said conceivably it's the same exact plan. It's a bit like semantics but there's no way to get to the 7 and 7 without going back to two.

Mr. Luppino said and there is no way to do.

Vice Chairman Giannico said it would have to be a new application.

At which time, the board members and Mr. Luppino continued to discuss whether or not the 14 lots could be subdivided into two lots without a new application and losing what they already have.

Mr. Cleary recommended that Mr. Luppino meet with the consultants to make sure he doesn't lose anything.

Mr. Cote moved to grant an extension of preliminary subdivision for 180 days for Yankee Land Development. The motion was seconded by Mr. Stone with all in favor.

THIMM, KARL - 232 EAST LAKE BLVD - TM - 65.17-1-15 - BOND RETURN

Mr. Carnazza had no objection on the bond return.

Mr. Cleary had no objection on the bond return.

Mr. Franzetti read his memo which stated in response to the attached request by the referenced applicant, a representative of the Engineering Department (Department) performed a field inspection of the referenced property in August 29, 2019 to evaluate the current status of the site construction, for the purpose of determining whether a bond return was warranted. The results of the site investigation are presented below. The applicant posted a bond in the amount of \$6,900.000 on April 10, 2019. Based upon our inspection all the site improvements required pursuant to the Board's Site Plan approval have now been completed. On this basis, this Department recommends that the bond of \$6,900.00 be released.

Vice Chairman Giannico moved to schedule a public hearing. The motion was seconded by Mr. Cote with all in favor.

**UNION VALLEY CEMETERY – 730 UNION VALLEY ROAD – TM – 76.16-1-8 –
REGRADING APPLICATION**

Mr. Carnazza read his memo which stated the applicant proposes to regrade a large "bowl" shaped property to make the property more usable for the cemetery. This project should be referred to the ECB for comments.

Mr. Cleary stated we don't have any concerns about this. It is adjacent to the existing cemetery. He said as long as the ECB is okay with what they are doing there are no planning issues.

Mr. Franzetti read his memo which stated the application involves the regrading of the northern portion of the Union Valley Cemetery as well as the removal of trees and vegetation located at 730 Union Valley Road TM 76.16-1-8. The overall disturbance for the project as submitted is 0.7 acres which is above the threshold criteria of disturbance for New York State Department of Environmental Conservation (NYSDEC) stormwater regulations. The development of Stormwater Pollution Prevention Plan (SWPPP) is required; however erosion and sediment controls are required for the site. This Department reviewed the documentation provided and offers the following comments:

1. All fill brought to the site must be certified per NYSDEC regulations and manifests/certification of the fill material being delivered should be provided.
2. The location of access for the how fill will be delivered must be provided.
3. Various plan information required pursuant to §156-43 ("Landfills, grading and excavations") is currently lacking. These include, but are not limited to:
 - Assessment of runoff from the site so as not cause erosion, landslides or increased runoff to abutting properties.
 - The estimated maximum quantity to be excavated and/or removed and the estimated part thereof that will be used for regrading or filling, computed from cross sections of a proposed excavation or disturbed area.

- The location of that portion proposed to be disturbed and its relation to natural watercourses, wells and sewage disposal systems if any, within 300 feet of the boundaries of said portion of said premises herein referred to shall be shown. An inset map at a reduced scale may be used, if necessary.
- Exiting and Final contours and show final slopes no steeper than one foot vertically for each two feet horizontally.
- The details of any drainage system proposed to be installed and maintained by the applicant, designed to provide for proper surface drainage of the land, both during the performance of the work applied for and after the completion thereof.

Mr. Jeff Contelmo of Insite Engineering, representing the applicant addressed the board and stated this is a "bowl" shape portion of the church and cemetery property on north end. He said the idea is to grade it off to reflect the contours of the approved part of the cemetery and prepare it for future gravesites. He said we are here for a regrading permit. We have provided a full erosion control plan which meets all requirements of the SWPPP. He said we request a referral to the ECB if it is necessary. He said I'm not sure your grading permit procedure requires a public hearing or not.

Mr. Cleary replied it doesn't. It's an option for the board to decide. It's not a requirement.

Mr. Contelmo stated if it's not required, we would like not to have one.

Mrs. Kugler asked if the site is behind the stonewall where the cemetery ends.

Mr. Contelmo replied yes. That's correct. At which time, Mr. Contelmo points to the location on the map.

Mrs. Kugler asked if it gets very marshy there.

Mr. Contelmo replied no. There are wetlands or soft soil that we came across.

Mrs. Kugler asked about tree removal.

Mr. Contelmo replied there will be tree removal. The eastern side of this fill is a very low brushy vegetation, whereas you start to climb the hill toward the back there are some trees there, but nothing significant my opinion.

Chairman Paepre asked if the regrading or tree removal will have any visual impact on the neighbors.

Mrs. Wendy Erickson, president of the Union Valley cemetery stated right now it doesn't look good. She said we need more burial sites eventually down the road. She said once you remove some of the brush and vegetation and get rid of the junk along the side of the walls and put in clean fill it will make the cemetery look much nicer it does now.

At which time, a discussion ensued regarding whether or not to have a public hearing on this application.

Mr. Cleary said what you can do is scheduled a public hearing for the next meeting and also have the approval resolution ready.

Chairman Paepre said I would rather do that. He said I don't like waiving public hearings.

Mr. Stone moved to schedule a public hearing. The motion was seconded by Mr. Cote with all in favor.

TACO BELL (FORMER FRIENDLY'S SITE) – 1081 STONELEIGH AVE – TM – 55.11-1-3 – AMENDED SITE PLAN

Mr. Carnazza said this is on for a public hearing. All my comments have addressed.

Mr. Cleary said all site planning issues have been addressed.

Mr. Franzetti said all engineering comments have been addressed.

Chairman Paepre asked if anyone in the audience wished to be heard on this application.

Hearing no comments from the audience, Mr. Stone moved to close the public hearing. The motion was seconded by Mr. Cote with all in favor.

Chairman Paepre asked the Planner to prepare a resolution.

HOMELAND TOWERS LAKE CASSE – 254 CROTON FALLS ROAD – TM – 65.19-1-43 – SITE PLAN (CELL TOWER)

See attached transcription.

HOMELAND TOWERS DIXON LAKE – 36 DIXON ROAD – TM – 54.-1-6 – SITE PLAN (CELL TOWER)

See attached transcription.

Mr. Frenkel moved to adjourn the meeting at 10:43 p.m. The motion was seconded by Mr. Stone with all in favor.

Respectfully submitted,

Rose Trombetta

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12 Town of Carmel Planning Board Meeting

13 September 11, 2019

14 Homeland Towers Lake Casse Application

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1 CHAIRMAN CRAIG PAEPRER: Homeland
2 Towers Lake Casse, 254 Croton Falls Road, site
3 plan. This application --

4 MAN 1: Excuse me. Would you keep it
5 down, please?

6 MAN 2: This application is still in
7 front of the Zoning Board of Appeals, so that is
8 open at the same time as this. I have no
9 additional comments at this time.

10 MAN 3: So this is before the Zoning
11 Board of Appeals. At the last meeting, several
12 issues were raised. The first was the board
13 requested that we retain independent consultant
14 to review the property appraisal report that had
15 been submitted by the applicant. We're in the
16 process of retaining a consultant. We should
17 have that secured this week.

18 The second issue related to the
19 information related to the State Historic
20 Preservation Office that was delivered to you
21 from a neighbor. We have been in contact and you
22 asked us to sort that out with SHPO. We have
23 been in contact with SHPO. In fact, they have --
24 they are in the process of designating that
25 adjacent property as -- for listing on the

1 federal and state Historic Preservation Register.

2 SHPO has indicated that a property that
3 is eligible gets treated the same way a listed
4 property does, so you are obligated to take that
5 into consideration in your evaluation of this
6 application. In regard to that, because the FCC
7 is involved in this application, there is a
8 federal historic preservation review process,
9 it's called Section 106, that the applicant must
10 comply with.

11 So he's now -- he now must go through
12 that process as well and he's undertaking that
13 process as we speak. So that has to be addressed
14 as well. And those are the two issues we were
15 addressing prior to the last meeting. No further
16 comments, Mr. Chair.

17 CHAIRMAN CRAIG PAEPRER: Thank you.
18 Rich?

19 RICHARD FRANZETTI: Applicant has not
20 acknowledged the need for referrals to Mahopac
21 Falls Fire Department, New York DEP, and New York
22 State DEC. The applicant should note that these
23 are referrals. The permit would be needed for
24 New York State DEC, general of the stormwater and
25 they have met with New York City DEP and per the

1 applicant, DEP would not require any permits.

2 The applicant will need to have this in
3 writing from the New York City DEP and the
4 applicant will need to meet with the town
5 Environmental Conservation Board. Just going
6 back to the New York State DEC, the DEP, they
7 provided a letter today dated September 10th
8 regarding the -- and I just have it here.

9 I don't know if the board had a chance
10 to see it, but based on the watershed rules and
11 regulations, the parcel involves the use of
12 existing right-of-way over New York City water
13 supply land that serves residential property and
14 is solely for the purpose of ingress and egress.
15 Based on aerial mapping and field investigation,
16 it appears two private properties are utilizing
17 the right-of-way.

18 The DEP has to do further research on
19 what property is served by the ROW, the right-of-
20 way. We need to determine if -- the DEP will
21 need to determine if commercial use by a third
22 party is acceptable use of the ROW and if the
23 current land owner has the right to grant such
24 use. So there was a letter out there. I don't
25 know if the board saw that -- had seen that.

1 just wanted to pass that along with regards to
2 dealing with the DEP and right-of-ways.

3 So area of disturbance, they know that
4 a SWPPP, a stormwater pollution prevention plan,
5 is needed. It's only 15,000 square feet, so it's
6 erosion (indiscernible) controls only. Some more
7 detailed comments, the proposed tower exceeds the
8 maximum height permitted under the code, which is
9 capped at feet. In accordance with the code, the
10 applicant must provide justification for
11 exceeding this cap.

12 Even with relief from it, the maximum
13 height is 50 percent more than the 50 feet which
14 would be 75 feet. The applicant is proposing a
15 tower of 140 feet. The application proposes a
16 tower at a Priority 5 site. The applicant must
17 provide an explanation as to why this priority
18 has -- why a higher priority has not been
19 selected. Requirements of 156-62 of the code
20 must be met. Requirements set forth in 156-62
21 all have not been provided.

22 These comments have been acknowledged
23 by the applicant and they should be -- the
24 information should be provided for planning board
25 counsel for review. And that's about it.

1 CHAIRMAN CRAIG PAEPRER: Thank you,
2 Rich. Mr. Gaudioso, you'd like to reply?

3 ROBERT GAUDIOSO: Good evening. Thank
4 you, Mr. Chairman, members of the board. Robert
5 Gaudioso with the law firm of Snyder and Snyder
6 on behalf of the applicants. This is a continued
7 public hearing. We did receive the DEP letter.
8 We'll provide a response to that as well as the
9 response to the SHPO issue and we'll look forward
10 to the appraisal report, hopefully, in due time.

11 CHAIRMAN CRAIG PAEPRER: Since this is
12 a public hearing, anyone wish to be heard
13 tonight, preferably new issues, but I'm happy to
14 address and listen to anyone. Please state your
15 name.

16 ANDREW CAMPANELLI: Good evening,
17 members of the board, Mr. Chairman. My name is
18 Andrew Campanelli. I'm an attorney. My office
19 address is 1757 Merrick, Suite 204, Merrick, New
20 York. Good evening.

21 I represent roughly between 30 and 40
22 homeowners who are opposed to this and the other
23 application. I've come to you this evening, even
24 though I've never been before this board, none of
25 you are familiar with me, I handle a substantial

1 number of cell tower cases, not just across the
2 entire state of New York, but across the entire
3 United States. It's kind of my forte, especially
4 the Telecommunications Act of 1996/

5 I'm admitted to federal Courts in 23
6 jurisdictions within which I handle these cases.
7 I come before you tonight with several objectives
8 in mind.

9 The first, of course, is to persuade
10 the board why, consistent with Article 8, Chapter
11 156-62 of your code, this application should be
12 denied because it would not only violate the
13 letter of the code, but the intent of the code,
14 meaning if this tower to be installed, it would
15 inflict upon the nearby homes the precise types
16 of adverse impacts which your code was adopted to
17 prevent.

18 It is not, unfortunately, enough to
19 simply persuade you to deny the application.
20 Given my background in the Federal
21 Telecommunications Act of 1996, it is of equal
22 import to me that it's denied for, number one, a
23 validly legal reason, meaning a reason that does
24 not run afoul of the Federal Telecommunications
25 Act and that it's denied in a manner which does

1 not violate the Telecommunications Act.

2 I apologize if I try to give some type
3 of instructions. It's habit.

4 At the request of representatives of
5 the State of New York and the New York State
6 Association of Towns, I lecture and give seminars
7 across the state to teach towns how to apply
8 their codes in a way that doesn't violate the
9 code and how to exercise maximum power to
10 regulate the placement of these facilities in
11 their jurisdictions without violating the code.
12 So I apologize if I go long, but I do invite any
13 questions about anything.

14 So for starters, I want to talk about
15 the adverse impacts which the irresponsible
16 placement of a 140-foot tower would affect -- how
17 it would affect the nearby properties. And I'm
18 going to start by saying that I'm going to assume
19 that it's going to be 140-foot tower, but as I'll
20 explain later, if you approve the application as
21 it stands, it is extremely unlikely that this
22 tower is going to be 140 feet.

23 At a minimum, I would suggest to you
24 the tower's going to be 160 feet and I'll explain
25 to you exactly why. So the first thing I'd like

1 to talk about is the adverse aesthetic impacts,
2 and that's a very important thing to analyze in
3 cases of this nature. Significantly, the United
4 States Court of Appeals for the Second Circuit,
5 which is the second highest Court that covers
6 these cases -- it's second only to the U.S.
7 Supreme Court.

8 The United States Court of Appeals for
9 the Second Circuit has explicitly and
10 consistently ruled that adverse aesthetic impacts
11 are a valid legal basis upon which to deny
12 applications of this type. Now, two days ago, I
13 submitted 18 copies of memorandums in opposition
14 and supporting exhibits to explain to the board -
15 - I hope you got them.

16 I don't know if you had a chance to see
17 them. I think they should've been uploaded on
18 the site as well, but explaining the adverse
19 impacts that would be sustained by the nearby
20 homes. In addition, I've included detailed
21 letters from the homeowners explicitly detailing
22 from their perspectives the precise types of
23 adverse impacts they would sustain.

24 There's a reason that I submitted these
25 letters, personalized letters, from the

1 homeowners. The reason is, according to the
2 United States Court of Appeals for the Second
3 Circuit, these letters should be accepted as
4 substantial evidence of the actual impact they
5 would sustain, because the federal judge ruled
6 that the persons in the best position to know and
7 understand the precise adverse aesthetic impact
8 they will sustain are the homeowners themselves.

9 And so there is caselaw and citations
10 provided in my brief saying this is evidence.
11 And I use the word substantial evidence for a
12 reason. To ensure that this board's decision
13 complies with the Federal Telecommunications Act
14 of 1996, whatever decision you make must satisfy
15 several criteria.

16 Number one, I'm going to ask you to
17 make factual determinations. The reason is, if
18 you fail to make factual determinations, then I
19 assure you Mr. Gaudioso won't hesitate to go into
20 federal Court and have a federal Court make those
21 determinations for you.

22 Second, to the extent that you make
23 those determinations, you must issue them in a
24 separate, written decision and those
25 determinations must be based upon substantial

1 evidence and you need to identify that evidence
2 in your decision.

3 I do not mean to lecture you, but in
4 case after case across the United States, I've
5 seen local governments render the right decision
6 and make a mistake and not meet these criteria
7 and next thing you know, I got a federal judge 90
8 days later ordering the town to give them the
9 permit, and so I'm trying to avoid that.

10 So you have both letters and you have
11 images. You have color images of the crane test
12 that was performed by the applicant at 140 feet.
13 I submit -- I ask you to look at those
14 photographic images and take a hard look and
15 recognize the severe adverse aesthetic impact it
16 would inflict upon these homes. The letters are
17 next to my brief as exhibit -- one is Exhibit B,
18 Exhibit C, and the photographs, color
19 photographs, are Exhibit D.

20 These are actual photo color graphs
21 taken from the crane test. Once again, this is
22 at 140 feet, but I would say the odds of that
23 tower ultimately being 160 feet or higher are
24 probably at least 85 percent, and I'll tell you
25 why in a little while.

1 Now, not surprisingly, Homeland has
2 submitted a visual impact analysis and as I've
3 seen in every single case when I've gone up
4 against Homeland Towers, it is inherently
5 defective. They're always defective. This is
6 slightly better than the garbage they usually
7 submit, but it's still defective and here's why.

8 If you read the Omnipoint case, the
9 federal judge is very clear. The whole purpose
10 of a visual impact analysis is to give this board
11 an accurate understanding of the actual adverse
12 aesthetic impacts that these homes are going to
13 sustain.

14 And so when a carrier did something
15 much like Homeland did in this case, the Court
16 said the board was free to discount their
17 analysis, because the only photographs included
18 in their analysis are taken from public roads,
19 okay. There is not a single photograph taken
20 from the actual homes which are going to sustain
21 those adverse impacts.

22 As the federal Court said, there's no
23 pictures from the second-story windows or their
24 back yards, okay. They deliberately omit taking
25 photographs because they want to minimize the

1 actual adverse aesthetic impact that they're
2 going to see, and this is defective as a matter
3 of law. You should ignore their study entirely.

4 Now, sometimes, carriers or site
5 developers like Homeland will say, well, we can't
6 trespass on property. That's nonsense, okay,
7 because I have three cases right now in New York
8 where it's very simple. The board said, you're
9 going to give us an aesthetic impact statement?
10 Go to the homeowners. Ask them to step on the
11 property. If they tell you you can't, that's
12 justification for not taking photos from their
13 property.

14 But if you don't ask, you simply go on
15 the front of the house and stand behind a tree or
16 a fence, like one of their photos has, it's
17 hogwash. This is an inherently defective visual
18 impact analysis. This board should not -- ignore
19 it in its entirety, just like the federal Court
20 of Appeals says you should, number one. And
21 again, that's at 140; 160 is going to be worse.

22 Second, a second perfectly valid
23 grounds -- by the way, that is entirely
24 consistent with your code. Your code
25 specifically says the very purpose for which

1 those requirements were imposed under the section
2 that pertains to wireless facilities is to
3 minimize the adverse aesthetic impacts.

4 In fact, whereas here, the applicant
5 wants to get more than 50 feet, they have to
6 prove -- it's their burden to prove by clear and
7 convincing evidence before this board that the
8 height proposed and the location proposed will
9 minimize the adverse aesthetic impact on the
10 community. There is no way they can meet that
11 standard given this location and this height.

12 With regard to property values, ask any
13 local real estate broker who'll tell you the
14 truth. They'll tell you what professional
15 experts have determined for years. When a cell
16 tower is placed unnecessarily close to a home, it
17 reduces the value of those homes, point blank.
18 As outlined in my brief, is an argument why and
19 how it will reduce the value of the homes and why
20 the application should be denied based upon same.

21 Now, once again, I need you to make a
22 decision based upon substantial evidence.
23 Federal Courts have ruled that professional
24 opinion letters from real estate brokers are
25 substantial evidence. Why? Number one, they're

1 licensed professionals. Number two, the letters
2 that I've submitted to you are not just from any
3 real estate brokers. They're real estate brokers
4 who are licensed professionals who have been
5 practicing here for years.

6 They not only have an understanding of
7 real estate markets in general, they have acute
8 understanding of this specific real estate market
9 here and their professional opinion, if this
10 tower goes up, it's going to reduce the value of
11 the nearby homes by up to 30 percent. That is a
12 substantial reduction in the property values and,
13 of equal import, federal judge say that's
14 evidence. You don't need appraisals.

15 You definitely don't want appraisers
16 like Lane Appraisal, which I'll get into a
17 minute. But according to federal Courts, the
18 exact type of letters that I've given you are
19 substantial evidence of the actual adverse
20 reduction in property values the nearby homes
21 will suffer.

22 Now, what has the applicant offered
23 you? The Lane appraisal. I don't need an expert
24 and nobody needs an expert to know that the Lane
25 appraisal is garbage. I haven't seen the one for

1 this tower. I wasn't aware until tonight that
2 Homeland submitted Lane appraisals. I've seen
3 these things before. If you look at the Lane
4 appraisal, it has zero probative value. Here's
5 why. What are they telling you?

6 They're allegedly telling you that they
7 looked at houses and here's the resale value and
8 this is what that breaks down to on a per square
9 foot basis. I don't even know if any of the
10 homes they cite are actually in Carmel. I
11 haven't looked. If they are, it's the first time
12 I've ever seen it. In every single one of these
13 appraisals, they cite houses that are not in your
14 town so you can't even go look at them.

15 You have no way of knowing if anybody
16 in these houses can actually see the tower if it
17 goes up. But, what do you know about the value
18 of a home based upon square footage? Nothing.
19 You have no idea of the nature of these homes.
20 Is this home a dilapidated shack that hasn't been
21 updated since 1954? And usually they give you
22 before and after. It -- they bought it for this
23 and they sold it for that.

24 They stopped doing that and the reason
25 they did that is because they used to object and

1 say, wait a minute, you have no idea why the
2 value went up. Was is a shack and a flipper?
3 Did the person who buy it strip it, put in all
4 brand new -- brand new roof, brand new furnace,
5 fireplace, kitchen, bathroom, built-in pool? You
6 have no idea.

7 You know absolutely nothing about the
8 homes in this appraisal except the square footage
9 and the price. This has the probative value of a
10 comic strip. It proves nothing. Don't take what
11 they give you as gospel because it's a joke.

12 So unlike them, we've provided
13 probative evidence, substantial evidence, of the
14 actual adverse impacts on property values and, of
15 greatest import, at 140 feet which is more
16 probably than not, not the height this tower is
17 going to be. So let's talk about what height the
18 tower is going to be.

19 One of the problems the board faces is
20 that if you approve a tower for 140 feet, the
21 Middle Class Tax Relief and Job Creation Act of
22 2012, once the tower is built, Homeland would, as
23 a matter of law, go in and increase the height of
24 that tower by at least 20 feet and this board
25 would be powerless to stop them. There's nothing

1 you can do. Now -- with one exception I'll get
2 into a minute.

3 How do you know how tall the tower's
4 going to be? If the tell you they want 140, what
5 can you -- you're not a mind reader. How can you
6 tell if they're going to go higher? There's two
7 indicia. First, look at what they came for.
8 They didn't come here to build a tower for 140
9 feet. They came here looking for a taller tower.
10 That's their intent. I didn't make it up. They
11 put in their papers.

12 That's what they want, no question
13 about it. Well, how do you know if that's still
14 their intent, if they've amended their
15 application to 140? The answer, look at the
16 base. Look at the base of the tower. The base
17 of a tower for 140-foot tower is substantially
18 different than the base of the tower for 180-foot
19 tower.

20 The only plans I've seen submitted to
21 the town show a structural base that's designed
22 to accommodate a much taller tower than 140. The
23 weight of a 180-foot tower and the wind
24 resistance it has to put up with is substantially
25 heavier, and I'll tell you this. In 27 years of

1 doing this, I've never seen a site developer --
2 and Homeland is a site developer. It's not a
3 wireless carrier. It doesn't provide any
4 wireless services.

5 In 27 years, I've never seen a site
6 developer pay for a base for a 180-foot tower if
7 they only intended to support a 140-foot tower.
8 They're not going to pay for that. So look at
9 the base.

10 Now, final issue on this is, can you
11 stop it. What happens if you approve a 140-foot
12 tower? Can you stop it? And there's only one
13 way to stop it. And the only way to stop it is
14 if the property owner themselves agrees to sign a
15 covenant running with the land that the tower
16 will never be higher than 140.

17 A restrictive covenant in your
18 decision, even if it's done on consent, will not
19 be enforceable, and the reason it won't be is
20 because if you do it that way, there is nothing
21 stopping Homeland from simply adding the 20 feet
22 and putting the burden upon you to then force
23 them to take it down. And when you do, the
24 argument will be that you had no right to do that
25 because your ability to make them consent to a

1 limit is preempted by the Middle Class Tax Relief
2 and Job Creation Act of 2012.

3 So they can't agree to a restrictive
4 covenant in whatever approval you grant them. It
5 has to be a covenant running with the deed. I'm
6 sorry I threw a lot of information at you. Any
7 questions by anybody so far? [APPLAUSE]. I wish
8 my mom was here. She said I wouldn't amount to
9 much. [LAUGHTER].

10 CHAIRMAN CRAIG PAEPRER: I think that
11 was very informative.

12 ANDREW CAMPANELLI: Thank you.

13 CHAIRMAN CRAIG PAEPRER: Questions from
14 the board?

15 VICE CHAIRMAN ANTHONY GIANNICO: Mr.
16 Campanelli, would you just restate what you
17 talked about with the covenant and the only way
18 to restrict it --

19 ANDREW CAMPANELLI: Okay.

20 VICE CHAIRMAN ANTHONY GIANNICO: --
21 that it wouldn't stand.

22 ANDREW CAMPANELLI: So there's many
23 cases where wireless infrastructure companies or
24 carriers agree to things, whether it's in a
25 contract for a limitation, whether it's restrictive

1 covenant. But when they do so, nothing is to
2 stop them from claiming that it's unenforceable
3 or prohibited. I'll give you a perfect example.

4 On Long Island, excuse me, in
5 Westchester, I think it was, the Sprint case.
6 Sprint went to a school district and wanted to
7 put a cell tower on top of a school district, and
8 they approached the school district and said,
9 okay, we're willing to lease space, but we spoke
10 to experts and we'll lease space for a cell tower
11 but we're going to put a restriction in the lease
12 that says the radiation level that comes off your
13 tower can't go above a certain level.

14 And Sprint said, fine. We'll sign the
15 contract, because it's on top of a school and so
16 the school district wanted to protect the
17 students. They signed the agreement. Sprint
18 build the tower with the specific provision that
19 says, no way can you allow this to have it expose
20 members of the public to high radiation levels.

21 Six months after it was installed,
22 Sprint came back and said, listen, we have to
23 update our equipment. That's not enforceable.
24 We're going to increase the power output. And
25 the school district said, we're going to sue you.

1 You're not going to do this. We're going to sue
2 you and this is going to be a public relations
3 disaster for you.

4 So Sprint didn't want to get sued
5 first, so Sprint sued the school district and
6 when before the Court and said, this is
7 preemptive, okay. The Federal Telecommunications
8 Act preempts local governments from telling us
9 what level of radiation come off of these towers,
10 even though we signed a contract agreeing to it.

11 And in that case, there was one
12 exception that the Court ruled. They said, wait
13 a minute. The difference here is when the school
14 district signed the lease, it wasn't acting in a
15 regulatory capacity, like this board. The Court
16 said -- federal Court -- that the board was
17 acting in a proprietary capacity just like a
18 regular commercial landlord and only because the
19 board was acting like a commercial landlord and
20 not a regulatory body, the covenant was
21 enforceable.

22 But if the covenant was entered by a
23 planning board, it would not be enforceable. And
24 it's the same way with restrictive covenants in
25 zoning approvals. You understand? So even if

1 they agree to it --

2 VICE CHAIRMAN ANTHONY GIANNICO: --
3 landowner would have to --

4 ANDREW CAMPANELLI: The only way it's
5 enforceable is if the landowner themselves signs
6 a restrictive covenant that runs with the deed
7 that says no tower is ever being built taller
8 than 140 feet. That's enforceable. But anything
9 in the context of the zoning signed by them, not
10 going to be enforceable. The worst part is, what
11 they do is they just build it and now you have to
12 sue them and spend money.

13 So I'm just telling you, I'm doing this
14 a long time. This is what happens. [APPLAUSE].

15 VICE CHAIRMAN ANTHONY GIANNICO: Do you
16 happen to know the case caption of that?

17 ANDREW CAMPANELLI: I can get you the
18 citation. I've cited it so many times, I just
19 don't remember off the top of my head.

20 VICE CHAIRMAN ANTHONY GIANNICO: Sprint
21 --

22 ANDREW CAMPANELLI: I'll send it to
23 you.

24 VICE CHAIRMAN ANTHONY GIANNICO: That's
25 be great. Thanks.

1 ANDREW CAMPANELLI: No problem. So the
2 next issue, of course, we come to is need, and
3 that's very important. There are several
4 different constraints which govern what local
5 governments can and cannot do if there's a need.
6 Not surprisingly, in most of the cases I
7 encounter when the applicant is a site developer
8 as opposed to a carrier, more often than not, the
9 need actually doesn't exist.

10 I can tell you in my experience if
11 Verizon had a substantial gap in its personal
12 wireless services, the application would be filed
13 by Verizon. Homeland Towers does not provide any
14 personal wireless services. It does not need any
15 tower of any kind to fill any gap in its services
16 simply because it doesn't provide any.

17 Now, Verizon does have its own
18 database. Verizon has a database for the world.
19 All of its coverage areas are compiled in a
20 database which is linked to a software program
21 which allows you to type in an address and to
22 analyze the coverage that exists at any precise
23 location.

24 Wonderfully for us, that database and
25 site is accessible to the public. All you have

1 to do is to go the internet, go to Verizon.com,
2 and go to its coverage map. When you go to its
3 coverage map, you can type in any address and
4 when you type in that address their software
5 program will access its database and it will show
6 you two very important pieces of information.

7 Number one, it's going to show you any
8 gaps in service -- when I say gaps, significant
9 gaps in service, because that's a legal term.
10 It'll show you any significant gaps in services
11 and number two, it'll show you the coverage
12 level. That's different than a gap. A gap is
13 where an area you drive through and your phone
14 call drops. Okay, you can't make any call.

15 Level of coverage often goes to
16 capacity. They may have an area covered, but the
17 equipment is such that during heavy traffic
18 times, they can't hold all the calls, okay. In
19 Verizon's functional system, it shows you gaps in
20 coverage and coverage by red and white colors and
21 the capacity and coverage quality is defined by
22 level. Its levels as defined by Verizon are no
23 coverage, fair, good, and excellent.

24 So six days ago, I logged into
25 Verizon's own database and ran an analysis of

1 Verizon's coverage, the precise types of coverage
2 they're talking about at the precise area where
3 they're claiming there's a significant gap. If
4 you look at Exhibit M, attached to the memorandum
5 I gave you with exhibits, I deliberately gave you
6 this in color.

7 This shows you at the precise location
8 where they're claiming that Verizon has a
9 significant gap in personal wireless services,
10 according to Verizon's own database, there are no
11 gaps in, at, or anywhere near this site. That's
12 Verizon. That's not PureCom. That's not
13 Homeland. That's Verizon.

14 Now, if you look on the lefthand
15 corner, you'll see this is for the right address
16 where the tower is proposed and it describes the
17 level of coverage as good. That's the level of
18 coverage at this site. It doesn't say fair, it
19 doesn't say gaps. So according to Verizon, they
20 have no gaps in {APPLAUSE}.

21 Consistent -- I should say, entirely
22 consistent with that, I've seen the PureCom
23 Solutions reports, who described themselves as
24 specialists in wireless systems. I don't think
25 there's a (indiscernible) for that, but they kind

1 of gave themselves that name. Remarkably absent
2 from both of PureCom's submissions, is one shred
3 of hard data, okay.

4 I would say in 27 years, in 90 percent
5 of the cases I've handled, I would say 90
6 percent, the applicant has always submitted false
7 or misleading information. I've seen applicants
8 come in with propagation maps which were as bad
9 as comic strips. They meant nothing. They can
10 make colored charts showing anything, okay. They
11 have no probative value, just as these PureCom
12 Solutions reports, okay.

13 For example, if you read them
14 carefully, you're going to read about modeling.
15 Everything they gave you is based upon modeling.
16 There is no hard data. What is hard data? It's
17 really very simple, okay. If an applicant wants
18 to show there's a significant gap in personal
19 wireless services, there's one very easy way to
20 do it and it's a drive past.

21 It's the simplest thing in the world.
22 They take a phone. They put a recording device
23 on the phone. They put it on the dashboard of a
24 car and they drive through the area for several
25 hours. That phone records signal strengths every

1 few milliseconds, and they have that recorded.
2 You take a two-hour drive, you'll have 300,000
3 recordings, okay. Those recordings show the
4 actual signal strengths. You don't have any of
5 them.

6 They claim a drive test was done. They
7 haven't given you one actual recorded signal
8 strength. What they did was modeling. That does
9 that mean? They take the actual signal strength
10 and they multiply it by various fractions to
11 reduce the number to any preconceived number they
12 want. They do it all the time.

13 In PureCom's reports, for example, they
14 say, you know, we had to make a reduction in the
15 signal because we had to account for foliage that
16 didn't exist yet, which is kind of interesting
17 because they don't explain how foliage -- I don't
18 know what foliage you get up here, but I'm not
19 sure what kind of foliage is going to block a
20 signal from a 140-foot tower.

21 I haven't seen any trees that tall
22 around here. I don't know if you have, okay.
23 there is no explanation nor is there an
24 explanation why they haven't given you the hard
25 data. If I were this board, I would demand to

1 see the actual hard data. That's number one.
2 What about capacity? Because even if you have
3 coverage, how do you know whether or not there's
4 a capacity issue? That one's even easier.

5 You see, Verizon and every carrier,
6 they have computer databases that have all of
7 this information. So when there's a gap in
8 coverage, all they have to do is hit a few
9 keystrokes and Verizon's own computer system will
10 print out a list of all your dropped calls. They
11 can tell you by location, chronological period,
12 date, time, exactly how many dropped calls they
13 have in any specific geographic area.

14 They haven't given you a shred of it.
15 None of it. What did they give you? Well, you
16 know, we have these capacity problems and there's
17 some dropped call rates. Between all of the
18 PureCom Solutions reports, they've gotten worse
19 rather than better. I'll tell you why. Usually,
20 what I'm accustomed to seeing is when they say,
21 well, Verizon needs this.

22 They really need it because Verizon --
23 Verizon's position is, anytime the dropped call
24 rate drops below 2 percent, that shows they need
25 this, and that's not true, okay. Dropped call

1 rates below 2 percent do not establish that
2 there's a significant gap in personal wireless
3 service.

4 Even worse on the other side, Dixon.
5 Some of their records show dropped call rates as
6 low as 0.05 percent or 1 percent. That, in no
7 way, reflects a significant gap in personal
8 wireless services. In fact, it shows nothing and
9 the reason is if 98 percent of your calls are
10 getting through, how do you know -- first of all,
11 that's good enough coverage for the
12 Telecommunications Act, I'll tell you right now.

13 But what do you think is causing the
14 other 2 percent? You have no way of knowing
15 whether the call was dropped because the coverage
16 from the other provider fell off. Why would 98
17 percent go through and the 2 percent not, unless
18 perhaps it's the coverage from the other person
19 on the other end of the phone?

20 In similar vein, you have no way of
21 knowing, perhaps, the person's cellphone died or
22 they inadvertently hit a button. You have --
23 right now before you, you have zero hard data.
24 You have fluff. And this, in no way, in no way,
25 proves that they have a significant gap in

1 service, much less that the only possible ways of
2 remedying that gap is to put up this tower at
3 this site for 140 feet. They haven't even come
4 close to meeting that requirement. Not even
5 close. So that's (indiscernible) -- yes.

6 MAN 4: do you have any Court cases --

7 MAN 5: Microphone, please?

8 BOARD MEMBER KIM KUGLER: Yeah, can you
9 use a microphone?

10 MAN 4: Do you have any Court cases
11 that focus on the quality of the hard data versus
12 modeling that you just articulated?

13 ANDREW CAMPANELLI: I couldn't name one
14 off the top of my head and most of my cases, most
15 of them, never go to Court. And the reason they
16 don't go to Court is when I go to the board, I
17 try to act as an advocate and an educator. I
18 make the record so solid that the applicant
19 doesn't file a federal lawsuit.

20 MAN 4: I wasn't asking about your
21 cases. I'm asking about reported cases, in
22 general.

23 ANDREW CAMPANELLI: I'd have to look.
24 I can't name any off the top of my head. There
25 have been cases on the other side where people

1 did call tests and it was ruled to anecdotal but
2 I've -- I mean, I've handled ---

3 MAN 4: It would be helpful if you
4 could --

5 ANDREW CAMPANELLI: I'll look for it.
6 So again, when I look at PureCom's report and I
7 see things like seamless communications or, for
8 example, it says on Page 3, purpose and scope, it
9 says, "PureCom Solutions obtained applicable
10 engineering data." They don't tell you what the
11 data is. They tell you that Verizon relied on
12 Atoll to give them data.

13 Atoll is a modeling tool. It gives
14 possible projections of a possible coverage, and
15 everybody knows that's inaccurate, and here's
16 why, okay. If someone in Michigan prepares
17 software and says, well, if the world was flat
18 and there were no trees and this was our tower,
19 this is how far it would go. You don't know.

20 Atoll is never accurate because it
21 doesn't account for changes in elevation,
22 obstructions, buildings, trees. You have no
23 idea. The only way to know if they have a
24 capacity problem is the dropped call records and
25 if they have a significant gap in service, the

1 actual hard data, which they should have. It's
2 easy for them to give it to you.

3 And then, even if they give you the
4 hard data, make them tell you what they consider
5 a significant gap in service to be because
6 federal Courts say, look, simply having a gap in
7 service doesn't force a town to grant an
8 application. If it's a small geographic area,
9 no. If it's a few people, no.

10 The gap has to be a significant gap in
11 service before the Telecommunications Act of 1996
12 can compel a board to grant the application.
13 That's the standard -- what's called the
14 prohibition of personal wireless services
15 standard, and this is what this means. There is
16 a constraint to the Telecommunications Act that
17 says, basically, even if it violates every facet
18 of your code, you must grant the application if
19 denying the application would be the equivalent
20 of prohibiting personal wireless services.

21 Now, for Homeland to prove that it
22 meets that standard, it has to prove two things
23 by clear and convincing evidence. First, that it
24 has a significant gap in its personal wireless
25 services, and two, that the proposed installation

1 is the least intrusive means of remedying that
2 gap in services. And based upon the submissions
3 I've seen, they haven't met either of those
4 criteria, neither of them.

5 I also see the notes in building
6 coverage. In-building coverage is the best bait
7 and switch in the world. In-building coverage
8 talks about coverage in a building. So what does
9 that mean? Very often, what they'll do is
10 they'll go and they'll do a drive past and record
11 the actual strengths and they may even give you
12 the signal strengths.

13 And then they say, well, yeah, there's
14 plenty of coverage outside, but our problem is we
15 have a gap in in-building coverage. And to
16 account for the reduction in signal strength, we
17 will lose when the signal passes through the
18 materials of which a building is made, we got to
19 account for that, so we do a reduction.

20 If they want to know what the coverage
21 is inside a building, all they have to do is walk
22 in and test it. I had a case where an RF
23 engineer testified, we have no coverage in
24 building. And so I asked him, by the way, did
25 you look at the site? Yeah, yeah, I looked at

1 the site. Did you go inside? Yeah. While you
2 were there, did you make any phone calls? And he
3 was dead silent. And he said, yeah.

4 Who'd you call? My wife in Virginia.
5 How long did you talk to her for? Twenty
6 minutes. Were you able to initiate, maintain,
7 and conclude that call without failure? Yes.
8 And that's in the building where you claim you
9 have a significant gap in in-building coverage
10 which precluded the ability of anyone from
11 maintaining a call.

12 So that's the kind of nonsense I see on
13 a regular basis. Which is why it's imperative
14 that you obtain hard data. I think I've covered
15 most of what I want to cover this evening. Of
16 course, the other issues with regard to the
17 historical status of the property, I'm not going
18 to get into. There is one other concern I have
19 which is far greater on the other site, but I
20 would touch on it here.

21 Among the many things I have to
22 acquaint zoning boards with is the risk of fire
23 with cell towers. The average person looks at a
24 cell tower and the last thing on their mind would
25 be a fire. You wouldn't think so. But almost

1 like clockwork, at least once a month a cell
2 tower in the United States goes up on fire.

3 There are multiple cases I've shown you
4 in the briefs I've submitted, especially in the
5 Dixon Road. I've shown you five color photos.
6 The most famous case was Wellingsley,
7 Massachusetts, where a monopole, not too
8 unsimilar from the ones they want to put up here,
9 ignited in flames and laid over in a burning
10 heap.

11 And what struck me about that case is,
12 first of all, there's all kinds of videos on
13 YouTube. Just go on YouTube and type cell tower
14 burns to the ground. What got me was, the cell
15 towers on a main road. There's hundreds of cars
16 passing by. And this thing went up so fast, and
17 collapsed so fast that the firefighters had no
18 chance to put it out.

19 Now, when I look at these locations, I
20 look at Croton Falls and I look at Dixon, Croton
21 Falls especially, and I think about the
22 possibility of a Wellsley fire like that, taking
23 place there, when a fire truck, if they wanted to
24 get there, they'd have to go over that easement,
25 past the brick wall. Forget it. They'll never

1 make it there, and you would definitely be
2 putting homes at risk, so I ask you to look at
3 the fire information.

4 And I'm not asking you to take my word
5 for it. The documentation you have before you,
6 there are dozens and dozens of cell tower fires.
7 Happens all the time.

8 Just real quick, I'll see if I can
9 finish up. Okay, so just finally again, I don't
10 want to beat a dead horse, but I would ask
11 specifically that the board remember at the end
12 of the day, whatever your decision is, please
13 make sure that you make a written -- separate
14 written decision, you make the factual
15 determinations I'm asking you to make because
16 speaking quite candidly, federal judges hate
17 these cases.

18 If you make a decision and it gets
19 challenged, as long as you cite the evidence upon
20 which you made your factual determination, a
21 federal judge doesn't want to be a Zoning Board
22 of Appeals. So they'll usually leave it intact,
23 as long as you cite the evidence based upon which
24 you made your conclusion.

25 And just one final note because I heard

1 somebody murmur this before, it's always a
2 concern. The applicant threatens, you know,
3 we'll have a federal Court decide this. If you
4 go against this, we'll file a suit. That is one
5 of the most hollow threats I've ever seen. I've
6 handled federal lawsuits across the entire United
7 States and by far, the cheapest federal lawsuit,
8 as weird as that sounds, is a Telecommunications
9 Act lawsuit.

10 Because even if you do something,
11 somehow that violates that act and even if
12 Homeland sues you in federal Court, the only
13 thing they get is a permit. They can't get
14 damages and they can't get attorney's fees. So
15 when people come in and they're suggestions that,
16 oh, Verizon's going to bankrupt the town, it's a
17 legal and factual impossibility.

18 The case is essentially decided as a
19 motion. It's -- there is a provision in the
20 Telecommunications Act which makes it an
21 expedited proceeding. The complaint is almost in
22 the form of a motion. The Court reviews it,
23 simply looks at the record you have before you,
24 see if there was a basis upon which you made your
25 decision, and if that decision violated the Act,

1 it's very fact, it's very inexpensive, and
2 Verizon gets nothing if they win. They get a
3 permit and nothing more.

4 So any threat of litigation is an
5 entirely hollow threat, and this is coming from
6 someone who's done it for more than two decades.
7 Thank you.

8 CHAIRMAN CRAIG PAEPRER: Thank you.
9 {APPLAUSE}.

10 ROBERT BUCKLEY: There's a list up
11 there. There's list up there.

12 MAN9: Yeah. I'd like the opportunity
13 to respond --

14 ROBERT BUCKLEY: There's a list up
15 there --

16 MAN9: -- Mr. Chairman.

17 ROBERT BUCKLEY: There's a list up
18 there we --

19 MAN9: I'd like to have the opportunity
20 to respond.

21 ROBERT BUCKLEY: Is he going to go
22 behind everybody? This is not right. This is
23 our hearing, public hearing.

24 MAN 6: I'd also say --

25 CHAIRMAN CRAIG PAEPRER: Use the

1 microphone.

2 ROBERT BUCKLEY: It's our turn to
3 speak.

4 MAN 6: We've listened -- a lot of
5 folks who have to get up at 4:00 in the morning
6 and go to work and listen to Mr. Gaudioso for
7 several months, this is a public hearing. People
8 are waiting to speak. This is not a debate.
9 We've listened to solo acts of Mr. Gaudioso for
10 quite some time. This is our turn to speak.
11 [APPLAUSE].

12 CHAIRMAN CRAIG PAEPRER: I opened the
13 meeting up before to the public. I plan on
14 continuing to the public, so the public can be
15 heard. You'll have your change (indiscernible).

16 MAN9: Thank you.

17 ROBERT BUCKLEY: He said you'll get a
18 chance --

19 MAN9: Not now.

20 CHAIRMAN CRAIG PAEPRER: I opened the
21 meeting up to the public. This is still the
22 public meeting. Our first speaker was there. I
23 want to know if anyone else from the public wants
24 to be heard tonight.

25 ROBERT BUCKLEY: I do.

1 MAN9: I'll just reserve my opportunity
2 to speak at the end. Thank you.

3 CHAIRMAN CRAIG PAEPRER: I'll come back
4 to you.

5 ROBERT BUCKLEY: Thank you.

6 CHAIRMAN CRAIG PAEPRER: Preferably for
7 the speakers, for everyone's benefit, if it
8 hasn't -- please do not repeat things throughout
9 the night. Bob, for everyone's benefit --

10 ROBERT BUCKLEY: I'm sorry, I didn't
11 hear you.

12 CHAIRMAN CRAIG PAEPRER: If it's not
13 new news, try to refrain --

14 ROBERT BUCKLEY: I'm not going to
15 repeat anything our attorney said, for the most
16 part.

17 CHAIRMAN CRAIG PAEPRER: I'm just
18 asking you as a courtesy to everyone --

19 ROBERT BUCKLEY: I respect the board
20 here for that.

21 CHAIRMAN CRAIG PAEPRER: Everyone in
22 the public will have a chance to speak tonight.

23 ROBERT BUCKLEY: I have three letters
24 that some of the residents were unable to submit
25 to you. I was unable to make copies, Mr.

1 Chairman, so I'm going to give you the three
2 letters and if you could possibly get copies to
3 the board members, I'd appreciate it.

4 CHAIRMAN CRAIG PAEPRER: Sure.

5 ROBERT BUCKLEY: -- of our position for
6 the cell tower.

7 CHAIRMAN CRAIG PAEPRER: Give these to
8 Rose.

9 ROBERT BUCKLEY: So my name is Robert
10 Buckley. I live on Eleanor Drive and almost all
11 the residents on Eleanor Drive get a direct view
12 of the proposed cell tower. Those pictures that
13 you see were taken by me. But before I move
14 forward about what I want to say about those
15 pictures or anything else, did the town hire a
16 consultant, a cell tower consultant to advise you
17 in any capacity? Do you guys have a cell tower -
18 -

19 CHAIRMAN CRAIG PAEPRER: Yeah. His
20 name is Graiff. Ron Graiff.

21 ROBERT BUCKLEY: Ron who? [BACKGROUND
22 REMARK]. All right, I did some research on Ron -
23 -

24 CHAIRMAN CRAIG PAEPRER: I think you
25 know that, by the way.

1 ROBERT BUCKLEY: I didn't know if you
2 hired him or not. Well, here's what I would like
3 to do. I would like our attorney at some point
4 to speak about that because I could speak about
5 it, but I can't articulate as good as our
6 attorney. So if someone's not going to speak, if
7 they could give him their three minutes, because
8 I'll go behind the attorney and speak, but I
9 think this is an important issue that needs to be
10 addressed. Can you speak about that?

11 ANDREW CAMPANELLI: Okay, Ronald
12 Graiff. If Ronald Graiff was hired by the town
13 and you agreed to pay him, then I think there's a
14 problem and the reason is, Ronald Graiff has been
15 fired by at least one previous municipality I'm
16 aware of for not disclosing his conflict of
17 interest.

18 You see, Ronald Graiff is a closely
19 held shareholder in a corporation which owns a
20 cell tower and one of their principle customers
21 for more than a decade that pays thousands of
22 dollars a month to his closely held corporation
23 is Verizon.

24 So every month for years, Mr. Graiff
25 has been receiving money from Verizon and the

1 odds of him now coming before a board and giving
2 a report which is going to say Verizon -- my
3 tenant is claiming they have a gap but doesn't, I
4 think is hard to swallow. Unfortunately, Mr.
5 Graiff has failed to disclosed this in the past
6 in other jurisdictions and I know of at least one
7 other jurisdiction when the minute they found out
8 this was the case, they fired him.

9 And I assure you, Mr. Gaudio is going
10 to jump to say Mr. Graiff did a wonderful job in
11 this case, acknowledging there is a significant
12 gap, but I think it's very problematic. Look, if
13 Mr. Graiff -- maybe I'm wrong. Maybe Mr. Graiff
14 disclosed to you that Verizon is his customer
15 paying him thousands of dollars a month. But if
16 he hasn't, that's a conflict of interest the size
17 of the Queen Mary, and I would ask you to
18 seriously take a look at -- consider Mr. Graiff's
19 opinion viewed against that backdrop. Thank you.

20 CHAIRMAN CRAIG PAEPRER: Thank you.

21 ROBERT BUCKLEY: So I guess my first
22 question would be is this board aware that Mr.
23 Graiff was in bed with Verizon and had a contract
24 with them?

25 MAN9: Mr. Chairman, I have --

1 ROBERT BUCKLEY: I've never interrupted
2 him. He can't do this. This is not Court. This
3 is a public hearing.

4 CHAIRMAN CRAIG PAEPRER: I'm not sure
5 your choice of words is correct. Bob, I'm not
6 sure your choice of words was most accurate
7 there.

8 ROBERT BUCKLEY: All right, I'll --

9 CHAIRMAN CRAIG PAEPRER: Let's keep it
10 --

11 ROBERT BUCKLEY: I'll rephrase the
12 question since the attorney got behind me. Is
13 this board aware of any way, shape, or form that
14 your consultant, Ron Graiff, has a relationship
15 with Verizon or any cell towers, that he's -- has
16 that been made aware to this board?

17 CHAIRMAN CRAIG PAEPRER: I don't think
18 I've even seen the contract from Mr. Graiff or
19 what --

20 ROBERT BUCKLEY: Being that it seems to
21 me that that was not disclosed to this board, for
22 starters, we have a major, major conflict of
23 interest here. We got the defense on the
24 baseball team playing for the other side. It's a
25 bad situation and you guys really need to look --

1 and ladies need to look into that and decide how
2 you want to handle it.

3 He's been fired once and I think you
4 might have to think about it again. I got some
5 other stuff I want to talk about, but the problem
6 with that is we're all aware of the shot clock
7 and I'm going to ask you about the shot clock and
8 I'm pretty sure everybody's aware of the shot
9 clock in here, but I'll say this quick because I
10 can.

11 There's a set amount of days that if
12 this board doesn't make a decision, within that
13 time period Homeland Towers basically is just
14 granted the permit, the okay to build their cell
15 tower. So when the timeframe comes up -- I
16 forget, how many days -- 150 days. So they
17 already reached 150 days. They got one
18 extension, maybe a second extension.

19 The question is, or the concern is, if
20 this -- if Homeland Towers, and by the way, when
21 our attorney who we have much respect for was
22 speaking, there was a lot of laughing going on
23 behind me. I didn't appreciate that. Our
24 attorney was doing a professional job of
25 representing us. Please don't laugh when our

1 residents are speaking or our attorney
2 [APPLAUSE].

3 This is not a joke. This is going to
4 cost us a lot of money. We're very concerned
5 about it. So back to the shot clock. Here's my
6 concern. They realize now that maybe this
7 board's going to take an action and they may see
8 the writing on the wall and if they're going to
9 not extend the shot clock, I would ask that you
10 reconvene and have a meeting and deny the
11 application. Do not allow the shot clock to run
12 out, please.

13 So with that, I'm going to move on to a
14 few of the things -- thank you. I'm not going to
15 reread my letter. I'm going to -- the attorney
16 pretty much said it all. Just going to touch on
17 a few other things. I'm not going to -- I was
18 reading the town code regarding the zoning and it
19 starts out very interesting.

20 "The town board finds that the
21 regulation of the wireless telecommunication
22 facility is necessary to protect the
23 predominantly suburban and rural residential
24 character of the town and the property values of
25 the community." So that's what the code says,

1 and that's what we're concerned about.

2 Those pictures that our attorney
3 submitted to you, I took them all. I'm a
4 photographer. None of them were edited. When I
5 look at my pictures, I went down to the house
6 where the entrance on 254 Croton Falls
7 (indiscernible). I was given permission to go
8 behind that house and I think that's owned by
9 Emily Borrelli.

10 I went to her back yard and I took a
11 shot through the house and I was in disbelief.
12 It was like a big middle finger sticking up at
13 me. But in front of the house, the pool. I was
14 like, wow, how could they live here with that
15 cell tower if it was ever to be accepted.

16 I went up on Eleanor Drive and you have
17 the pictures. And I didn't edit none of them.
18 But then when I looked at the pictures that were
19 submitted by Homeland Towers and because I do a
20 little photography, I noticed that they were
21 strategically placed to kind of -- if this was up
22 there, to kind of make it look like it was down
23 there.

24 They were flawed. A lot of the things
25 they do are flawed. They talk about so many

1 issue and I didn't realize they had a reputation
2 of being inconsistent and not always -- as our
3 attorney said, don't take what they say as
4 gospel. So I'm in agreement with that, so that
5 was the photographs.

6 Homeland Towers has stated, "A cell
7 tower can increase the value of your home." I
8 don't know where they came up with that. That's
9 pretty comical. I spoke to one of their
10 representatives on the phone for 45 minutes and
11 he actually said that to me. And then I heard
12 that they said it some more. Cell towers do not
13 increase the value of your home, especially in a
14 residential community with homeowners with
15 families.

16 Maybe they could statistically find
17 that in Brooklyn, downtown Manhattan where you
18 have millennials, but I can assure you, in rural
19 residential Mahopac and Carmel, we are not going
20 to get an increase in value of our home by having
21 a cell tower immediately behind or in front of a
22 home. That's not going to happen.

23 Let's talk about the values and the
24 adverse impacts of the cell tower sitting at 140
25 feet in the sky. Does it really impact the value

1 of your home? Let me give you an analogy and
2 tell you, if you actually believe this story.
3 I'm going to give you my example.

4 My example was, the top of my driveway.
5 My house is down in a valley. When I'm in my
6 house, you wouldn't see the cell tower too much
7 from down below. But as soon as you pull in my
8 driveway, you look downhill behind my house, it's
9 not a flagpole, but the thing looks like it's 250
10 feet in the sky because it's right behind my
11 house and I can guarantee you this, that if a
12 potential buyer comes to my house, the first
13 impression of my house will be, what the hell is
14 that behind your house.

15 That's going to impact the value of my
16 house. If I'm lucky enough to have that
17 potential buyer drive down to my driveway, go
18 into my house, sit down and discuss buying my
19 home, you can rest assured my negotiation ability
20 is going down because that cell tower's going to
21 come up for discussion. There's no question
22 about that. That's one analogy.

23 The second analogy is, if I go to the
24 top of that hill and I see that cell tower, I
25 make a U-turn. So maybe I do sell my house. And

1 even if I get the price that I put it up for,
2 maybe it would've took me one month, two months,
3 three months. It may take me six months, nine
4 months, 10 months to sell the house. That means
5 I lose six, seven, eight months of mortgage
6 payments. This is a real, real bad situation.

7 I went into some of these homes on
8 Eleanor Drive, the homeowners invited me in.
9 Carl (indiscernible), I hope you don't mind me
10 mentioning his name, this guy has got a bow
11 window and he put it right there because we look
12 at out towards Connecticut by the airport which
13 is 20-something miles. We have nothing but
14 beautiful skies and mountains.

15 We watch the sun come up. You can
16 close your eyes and you can look at that vision
17 and it's the most beautiful vision in the world.
18 It's like waking up on a beach somewhere in
19 Florida, Bermuda, or somewhere when you love the
20 sunset. It's not a beach, but it's the same
21 atmosphere. You got the -- you have the clouds
22 sitting in the valley in the morning.

23 You got the mist. You got the sun
24 coming up over Connecticut. And then I went up
25 there and it saddened me so much because I take a

1 lot of pictures. It saddened me so much to know
2 that here, you're going to put a cell tower,
3 right in the middle of not just my but
4 everybody's beautiful view. So a visually
5 aesthetic negative impact, absolutely.

6 When you come to (indiscernible) Carl,
7 I hate to keep (indiscernible) names, but yours
8 is the best. Carl (indiscernible) home and he
9 sits you in his living room and he gets you a
10 glass of wine and he's selling his house and he
11 points out that window and you see the sun and
12 you see the mountains and you see the sky, it's
13 so beautiful.

14 And now, when he sits them down and the
15 cell tower's sitting there, he's going to have to
16 pull his shade down because he's going to lose
17 money. It's going to definitely have an adverse
18 impact. So I do want you to know that this is
19 going to hurt the value of our homes. No
20 question.

21 I'm asking you not to allow the
22 Homeland Towers attorneys and representatives
23 come up here and use their bully tactics. They
24 talk about telecommunications, 1996. You can't
25 do that. You can do this. That woman's not

1 allowed to submit an application about the
2 historical nature of something on her property.
3 You can't -- who are they to tell you what you
4 can and can't do? Prove some documentation.

5 Don't come up here and just tell us
6 what we can and cannot do. You got to be
7 careful. You got a lot of bully mentality going
8 on here and it's a scary proposition. I'll be
9 done, just two or three minutes here, if you
10 don't mind.

11 I'm going to send this not only to the
12 town board, I'm going to ask the planning board
13 professionals to include attorneys, the planners,
14 the engineers, the building inspectors, and any
15 other consultants you may have. We know it's
16 much easier for all of you to say the following.
17 Let's just pass this damn resolution and get it
18 out of our way. Let's move on. Let's just bite
19 the bullet and not fight this.

20 CHAIRMAN CRAIG PAEPRER: I wouldn't
21 agree --

22 ROBERT BUCKLEY: I'm saying -- I said
23 it's easier.

24 BOARD MEMBER KIM KUGLER: Don't put
25 words in our mouth, Bob.

1 ROBERT BUCKLEY: No, no, no. No, I
2 said it's easier.

3 BOARD MEMBER KIM KUGLER: But don't put
4 words in --

5 ROBERT BUCKLEY: Okay. I'm not putting
6 -- I'm just saying it's easier.

7 CHAIRMAN CRAIG PAEPRER: That's the
8 wrong assumption.

9 ROBERT BUCKLEY: Okay, wrong
10 assumption. Okay.

11 BOARD MEMBER KIM KUGLER: Just stick to
12 your facts. That's what we're here for.

13 ROBERT BUCKLEY: So the facts are, I'll
14 skip that. I recall that. Thank you. But it's
15 harder to fight a fight sometimes, and I'm asking
16 you to do the following things. I'm asking you
17 to make sure the most important people -- we know
18 -- I'm going to skip that because you asked me to
19 skip that. I'm asking you to hold their feet to
20 the fire, then.

21 Follow the letter of the law. Follow
22 the town code. Follow -- look up what our
23 attorney told you. Please, value the impact
24 letter that you got. Please, review the pictures
25 and excuse me for saying it's easier. I didn't

1 mean to insult or imply, but thank you for
2 stopping me on that one.

3 The most important people in this room
4 tonight besides the planning board members,
5 obviously, are residents in this room right here.
6 Unfortunately, Homeland Towers, I look at them as
7 invading our community. They want to invade our
8 residential community with cell towers and if you
9 allowed this flawed application with
10 misinformation and half truths to move forward,
11 you're doing irreparable harm to the residents of
12 the town.

13 Now, I know you're going to do your due
14 diligence so I'm not saying you're going to do
15 that, I'm just asking you to be really careful.
16 We'll end up with cell towers in every
17 residential community in this town. And I ask
18 you respectfully to deny this application, not on
19 emotion, not on emotion, but on the facts of the
20 law, the town code, the legitimate concerns of
21 residents in your town who have clearly presented
22 the adverse effect of the proposed cell tower.
23 Thank you, respectfully. [APPLAUSE]

24 EMILY BARILE: Hi. My name is Emily
25 Barile. This is my husband, Michael Boccardi.

1 I unfortunately only have two copies of
2 a letter which I did not have a chance to submit
3 to you guys. I am going to give you guys the
4 copies of the pictures so you guys can look at
5 them.

6 Again, I apologize, as I only have two
7 copies. Maybe you guys can look at the pictures
8 as I get to them.

9 I'm just going to read you my letter.
10 I've been up here multiple times speaking. We
11 live at 250 Croton Falls Road. This is our
12 official letter of opposition to the proposed
13 cell tower to be located on my neighbor's
14 property, within feet from my property line.

15 We are coming up on our three-year
16 anniversary of living in our forever home. When
17 we first viewed our now-current home, we
18 immediately fell in love with the aesthetic
19 beautify of the property and the feel of the
20 home. The feel of a home is something that can
21 never be replaced or reproduced.

22 The old farmhouse charm with a
23 wraparound porch. Our house was originally built
24 in 1774, pre-America. Pre-America. That's the
25 truth. We had a sprawling backyard and pool.

1 Perfect for raising a family. House is enclosed
2 by windows. It's gorgeous. You could see -- the
3 entire side of my house is windows. I love
4 summer lightning storms. Perfect for looking at
5 everything. And the privacy. It's surrounded by
6 trees. I like the secluded feel, like I was
7 secluded from the outside world entirely.

8 Now it's disappointing to think that I
9 was only able to enjoy the beauty of this house
10 for one-and-a-half years of living there before
11 our excitement in raising a family was ripped
12 away. But what's even more disappointing is that
13 we'll never be able to enjoy this property ever
14 again once a 140 -- or dare I say 160-foot tower
15 is placed feet from our property line.

16 In the pictures attached, if you look
17 closely, there is a balloon floating in the air
18 right above the tree line. The balloon is from a
19 test in which a cell phone tower that our
20 neighbors, the Diehls, who conveniently sold us
21 the house, and who have conveniently never showed
22 their face at a single meeting, or has kind of
23 shied away from the public sphere now they know
24 how everyone feels since they're trying install
25 this on their property.

1 We were initially optimistic that all
2 parties involved would come to their senses and
3 the clearly adverse effects of this greatly would
4 outweigh the relatively small monetary
5 compensation generated from the installation of
6 this tower.

7 Unfortunately, as that balloon floated
8 higher and higher into the sky that morning, we
9 came to the unfortunate realization that's not
10 the case.

11 Once this cell tower is approved, we
12 will no longer have the very factor for which we
13 decided to purchase our house. Instead of seeing
14 a beautiful, historic farmhouse with a wraparound
15 porch, you'll pull into our driveway and see a
16 cell tower. The first picture is when you're
17 standing on my front porch and walking to the
18 front house what you will see. There will be a
19 cell tower. Instead of standing on our deck,
20 looking outside and seeing children playing ball
21 in the back yard or swimming in the pool, I'll
22 see a cell tower. Instead of looking out the
23 window of my bedroom, my living room, my kitchen,
24 and my dining room, I will see a cell tower in
25 every single window. Instead of the endless

1 trees that we all love that turn that magical
2 color in the fall, I'll see a cell tower.

3 The tower will be visible in almost
4 every single room and at every vantagepoint of
5 our house. It will destroy the essence of this
6 home; a home that was originally constructed,
7 again, in 1774. All based off of information
8 that our attorney greatly provided has not been
9 deemed, in our opinion, substantial.

10 What's most frustrating about this case
11 is that there are a number of alternatives that
12 have not been explored as required by law. You
13 guys are here to uphold the law and to protect
14 and represent the town of Carmel as the
15 taxpayers.

16 Now, not only will also the cell tower
17 destroy the essence of our home, but we also all
18 know that our taxes aren't going to go down from
19 this. So they're going to continue rising, even
20 though my home is essentially destroyed.

21 The major and singular motivation in
22 this case seems to be monetary; and it's not okay
23 anymore. We're not sure what this will do to
24 help our cause or our future family's cause, if
25 it does anything at all. The grim reality seems

1 to be that this is inevitable. In full
2 disclosure, we understand that in an increasingly
3 wireless world, these towers and other systems
4 are a necessary evil. But we ask in earnest; at
5 what cost? There are more viable public places
6 to put these things that must be explored.

7 Maintenance. We are the only
8 individuals here that will be directly impacted
9 by approval of this cell tower application,
10 because we share an easement with the Deals.
11 This easement will be used by Homeland Towers to
12 access the Diehl's property as well as install
13 and maintain the cell tower.

14 However, we are the only individuals
15 that maintain this easement. The Diehls do not
16 contribute to maintain the upkeep, and currently
17 the easement is riddled with potholes, as you can
18 see in the attached photos. In fact, one photo I
19 took about four hours ago. These potholes have
20 been repeatedly filled, then they continually
21 worsened due to the Diehl's illegal actions.

22 The Diehls installed, then removed
23 site-mandated drainage that was required to be
24 put in when they were first given approval by the
25 planning and zoning boards to construct their

1 home -- their, I'm sorry, retirement home.

2 Now with every rainstorm, the water
3 runs off their property, slowly and continuously
4 damaging the easement. And this is all before
5 Homeland decides to rip it all up, to install
6 their electrical, and then do nothing about it.

7 Now, I have some major factual issues
8 concerning comments made by Attorney Gaudio to
9 the taxpayers, myself, and the boards that need
10 clarification for public record. On separate
11 occasions, Homeland Towers, through their
12 attorney, have lied during the course of this
13 application.

14 I myself am an attorney. This letter
15 is not an attorney letter; this is a personal
16 letter. Maybe it's because I'm a younger
17 attorney and I still relatively remember the oath
18 I took, but never have I ever lied in the course
19 of representing a client in order to get
20 something for my client. Never have I ever done
21 that.

22 During the balloon test, a Homeland
23 Towers representative informed my father, Michael
24 Barile, and David Furfaro, that they intended to
25 pay the easement and fix the drainage issue.

1 Again, on July 31st, 2019, before this last
2 planning board meeting, myself, Attorney
3 Gaudioso, and that gentleman in the corner sat on
4 those three chairs, right there, right before you
5 guys, actually. You may have even heard some of
6 our conversation. He shook my hand, very nice.
7 Tried to make conversation, and said he was
8 planning on paving it. He wanted to do the right
9 thing. And I said that was my main concern. And
10 I don't think we have the law behind our backs,
11 that as long as you tried to do the right thing
12 and maintain the property and fix the issues that
13 you guys are going to create, maybe there can be
14 some sort of agreement here.

15 However, that's not the case. On
16 August 22nd, 2019, at the last Zoning Board
17 meeting, the attorney emphasized that Homeland
18 Towers did not intend to pay the easement and
19 that they had not told me that. Straight up lied
20 directly to the Zoning Board. In fact, after I
21 got up, the attorney jumped up awfully quickly to
22 rebut everything that I had said, similarly to
23 what he did just now.

24 The attorney continues to -- let me be
25 clear -- not misstate; he is lying. He has told

1 me one thing to my face and another thing to your
2 face and to the zoning board's face.

3 Now, not only has he lied, but I don't
4 know how he could lie when he's already addressed
5 the very issue of the easement being riddled with
6 potholes and the drainage issue. In fact, he had
7 to respond to them in your very comments in which
8 you guys provided, dated July 12th, 2019,
9 specifically comments 10 and 11, in which the
10 attorney acknowledged there was runoff in certain
11 conditions. However, he seemed to feel that in
12 front of the Zoning Board that that was not true.

13 There is a clear pattern of this
14 attorney making false statements to further
15 Homeland Towers' agenda, at whatever cost to the
16 taxpayers of the Town of Carmel. This is not
17 okay.

18 If you find that this cell tower
19 application has satisfied all legal requirements
20 and that there are no alternative sites available
21 and that you guys have completely done your due
22 diligence and you feel at the bottom of your
23 hearts that you guys are making the right
24 decisions and you approve this, the very least
25 that they should be required to do is maintain

1 the roadway access to the cell tower and repair
2 the damage that they will be doing in creating
3 this.

4 Now, I respectfully would like to
5 remind both you guys and the Zoning Board, once
6 Homeland Towers, as it's already been discussed
7 multiple times, is granted this one variance or
8 whatever permit approval for the 140-foot tower,
9 they don't have to come back here again. Our
10 attorneys made it clear. It's not going to be a
11 140-foot tower; it's going to be a 160-foot
12 tower, which will make everything a lot worse
13 than what I already told you.

14 And if you guys take the time to look
15 through those pictures, you'll see the massive
16 potholes taken throughout the entire easement in
17 which the attorney here has claimed do not exist,
18 as well as the blatant lies that he has told to
19 both you and the Zoning board.

20 We formally request that you guys deny
21 this application, or at the very least make sure
22 that everything is done according to law, the
23 town code, and that you are doing it as you guys
24 are required to do in the order of protecting and
25 looking out for the best interests of the Town of

1 Carmel taxpayers.

2 MAN: Please state your name.

3 JENNIFER SIMON: My name is Jennifer
4 Simon. I live at 2 Weber Hill Road. Emily
5 Barile is my neighbor. And all my other
6 neighbors on the surrounding property are here as
7 well. My property directly abuts the property
8 proposed for this tower on Croton Falls Road.

9 I submitted my letter through our
10 lawyer, which details the aesthetic impact on our
11 property, so I'll be brief. I won't go into
12 detail about my letter, as you have a copy of it.

13 But briefly, we moved here five years
14 ago and had never even heard of this town before.
15 We found our dream home here online, and the
16 beautiful views were the thing that drew us here
17 from many miles away.

18 I worked in corporate compliance and
19 fought in courtrooms. I am very familiar with
20 the approach Homeland is taking in regard to the
21 height of this tower. It's commonly referred to
22 in the industry as an accommodation clause, where
23 you propose more than you really want so you can
24 appear accommodating later on and use that as
25 leverage.

1 From the moment this tower was
2 proposed, and in fact in the very first meeting
3 that our community and our neighbors had together
4 to discuss this, I let them know that this was
5 probably the approach they would take, and that
6 ultimately they would amend their application and
7 make the tower 20 to 40 feet lower, even though
8 they knew they'd get close to that 180 feet
9 without anyone's permission.

10 In addition, I've been a Verizon
11 customer for five years here in this town on that
12 property. I work from home, and we have a smart
13 home. As such, we have on average 15 devices
14 running at any one time in our home. I have
15 never once experienced an issue with my signal,
16 dropped calls, or internet service. Not one
17 time.

18 In fact, I recently spoke to a Verizon
19 representative, and she was wildly impressed at
20 the number of devices we could run at one time
21 without entirely draining our service.

22 Lastly, on a personal note, as someone
23 who was raised in poverty, that worked extremely
24 hard for many years to put myself through school
25 to reach a level of success and purchase my dream

1 home in a perfect setting, a dream that
2 increasingly is rarely obtained by many
3 Americans, I am begging you to consider the
4 overwhelming evidence that our lawyer has
5 presented here today and that is present in many
6 of the letters you've received, and don't let
7 them ruin the aesthetic and bucolic environment
8 we've built in this town and that is ultimately
9 the defining hallmark of Mahopac. Thank you.

10 BRYCE FIERO: Hello, my name is Bryce
11 Fiero. I just want to thank the Board and
12 everybody for allowing me the opportunity to
13 speak. It's been a little bit difficult sitting
14 on the other side, here for almost a year and not
15 being able to speak about this.

16 First of all, I'd just like to take a
17 step back and just kind of bring up -- I was
18 brought up in Mahopac. I was born in 1974. And
19 my mother and father, who are both here, came to
20 Mahopac with the idea of a lot of people that are
21 in this room, to bring up a family in this small
22 town, in this residential community that we live
23 in, and to be on the countryside in a serene
24 community that's only 50 miles from New York
25 City.

1 Needless to say, it's been wonderful
2 for me to grow up here, being around nature,
3 around this family-oriented community. What I
4 also noticed here over the years is there's a lot
5 of small family businesses that thrive. Big
6 business isn't a popular thing here in Mahopac.
7 I guess you'd just call it a small town.

8 So when I see a company like Homeland
9 come into our town -- and frankly, I think Mr.
10 Gaudioso and his entourage should be ashamed of
11 themselves coming into this courtroom and
12 laughing as our concerns are being brought up and
13 represented by our lawyer.

14 I served in the United States Marine
15 Corps, and when I returned home, I decided I
16 wanted to hang my hat in the town that I grew up
17 in, in Mahopac. So that led me to purchase some
18 property with my father.

19 And that's going to lead my first
20 question. I'd like to ask everyone in this room;
21 how many people really believe that putting a
22 cell phone on your property is going to increase
23 the value? I don't think anybody believes that
24 here. But Mr. Gaudioso and Homeland have told us
25 that our property values will increase.

1 The other question I have is the
2 property that we reside on has been deemed
3 historical, or at least it's being considered.
4 And as Mr. Barile had mentioned, that her house
5 was built before this was even a country, before
6 we were the United States. So why wasn't that
7 found by Mr. Gaudio? Why did they ignore that?
8 It seems to me that they're not being honest.
9 And I just don't appreciate -- I'm a person that
10 likes integrity, and I just don't appreciate a
11 lawyer coming up here and not doing the right
12 thing.

13 After 45 years in this town, I find it
14 quite disappointing that the town would even
15 consider this cell tower application. The Town
16 of Carmel has strict laws regarding cell phone
17 towers, and they must be upheld. Placing a cell
18 phone tower next to my home and property is not
19 lawful. First of all, one thing I would like to
20 mention is the proposed property has been granted
21 a variance for not having the property frontage.
22 It's not lawful to grant a second variance, which
23 is going to make this already non-conforming lot
24 more non-conforming.

25 And our lawyer, thank you sir, has

1 outlined a number of reasons to deny this
2 application. Homeland Towers has not been honest
3 with the community, and they should be ashamed of
4 their unethical practices. I follow the town
5 meetings frequently, and I also watch what Taco
6 Bell has been told to do. They've been asked to
7 change the roofline, they've been told that they
8 want the building basically to look like our
9 community. They want to keep it so it looks
10 like, you know, it kind of fits in. And I just
11 would ask the Board if they can do their due
12 diligence also with this application. And I'm
13 not saying you're not, but let's make Homeland
14 step up to the plate and give us some solid
15 evidence; not just a dropped call list that
16 doesn't really prove anything.

17 One last thing I would like to say is
18 allowing a special exception for a use permit for
19 wireless telecommunications at 254 will increase
20 the already existing non-conformity of this
21 parcel. A variance was already granted by this
22 Board for construction of a single-family
23 residence on this parcel on 8/27/15. This is a
24 landlocked piece of property with multiple
25 easements for access. The variance granted was

1 to alleviate the hundred-foot frontage on a town,
2 country, or state road requirement.
3 Additionally, the variance was granted based on
4 the statement that no further subdivision was
5 planned. Granting a special exception use permit
6 for this address would be a violation of this
7 section.

8 I respectfully ask the Board to
9 reconsider and do their due diligence and
10 represent us and deny this application. I thank
11 you for your time.

12 [APPLAUSE]

13 GAIL FIERO: My name is Gail Fiero and I
14 live at 308 Croton Falls Road. I'm going to make
15 this as brief as possible, but my thing here is
16 the historic part of 292 to -- 294 and the well
17 house, as it's being considered for listing. It's
18 official, and this is on the website -- their
19 CRIS website, the two pieces, that means it's
20 officially being considered, which I'll read this
21 law that Mr. Crattinger wrote. I'll read it again
22 because at the last meeting, Mr. Gaudioso tried
23 to downplay this rule, this law. He tried -- I
24 know, you know because I gave you all the
25 letters.

1 The law is the State Historic
2 Preservation Act of 1980, and section 106 of the
3 National Historic Reservation Act of 1966 states,
4 "There is no distinction between a determination
5 of eligibility and the actual listing on the
6 registers.

7 And Mr. Crattinger further told me as
8 such, the eligibility of the Yates related
9 resources should be taken into consideration
10 relative to any action that triggers these
11 historic preservation laws.

12 At the last zoning board meeting when I
13 said this, Mr. Gaudioso couldn't wait to get up
14 and really say that this -- he only heard about
15 this last month, which is not true because I
16 started this November 11th in 2018, and he did
17 not do his due diligence because on -- I have the
18 FCC reports, I have everything that I've read,
19 and he -- his client, Richard Deal, knew about
20 all the historic sites that are there.

21 It used to be the Mahopac Playhouse.
22 It's in all the records of town and county. Yet,
23 on the FCC report and every report that they
24 submitted where it said about is it incontiguous,
25 is it anywhere near a historic property that not

1 only listed but even considered everyone's no,
2 no, no, no, no.

3 But in the FCC report, he did --
4 homeland -- did write specific letters to the
5 Native American community and to see if they
6 wanted to come forward and express any concerns
7 because it's so close to all the historic.

8 We were never given that opportunity to
9 come forward, my family would have definitely
10 come forward but Richard Deal knew all these
11 years that that was the site of the playhouse,
12 the Mahopac Playhouse. Albany Miller Bruin, her
13 husband at the time was Lawrence Bruin, it's all
14 in the records.

15 So they did not do due diligence where
16 they -- the whole town knew. Richard Deal knew.
17 He should have said to them yes, this should be
18 marked, yes. And it should've been looked into
19 and it wasn't, because my family would have come
20 to that meeting and expressed our disbelief in
21 all of this.

22 So he's not telling the truth about
23 things, they were hoping it would all get swept
24 under the rug and nobody would be maybe smart
25 enough to delve into this, well, I'm in this to

1 the end and it's very similar to the Abar case,
2 and I think he worked on that too.

3 They're not listed, but they are
4 considered for listing, and I'm in constant touch
5 with Mr. Crattinger and it's -- he has to do all
6 his applications over. I have copies to give you
7 just of some of them from FCC.

8 It needs to be -- if we're not going to
9 -- first of all, it should be no residential
10 areas. But if he wants to keep considering, he's
11 got to start from square one and redo these
12 applications because they weren't done fairly and
13 honestly. And it's gotta be corrected.

14 I think I'm pretty well finished. I
15 have -- these are copies of some of the
16 applications that he needs, FCC and stuff. I have
17 all copies. I just want to make sure that there's
18 nothing else making this -- you know, it was
19 Richard Yates who wrote Revolutionary Road, he
20 lived on number 294 house.

21 I have all these pictures of him at the
22 house, at the well house writing the book, and he
23 just -- Mr. Gaudioso wanted to emphasize that
24 it's just -- it's not listed, he was just saying
25 so that every day people who aren't familiar with

1 historical things, they'll say, oh, you know,
2 maybe he knows. He doesn't know what he's saying
3 with this. He's wrong, and I just want to put it
4 on record because that's what he said, he needed
5 that on record.

6 And I have copies of the Yates history
7 if I could give it all to you just so you know
8 how -- and that's all I have. And -- one last
9 thing, Emily Berelli, I'm glad she mentioned that
10 with the historical -- the house she's living in,
11 and that's -- even proves it more that Richard
12 Deal knew all about that place. He went to the
13 homeowner who was Jill Miller, he knew all about
14 it. So that's all. Thank you.

15 CHAIR: Anyone else from the public like
16 to be heard tonight?

17 STEPHEN ROWE: Hi, I'll make it quick.
18 My name is Stephen Rowe, I live on Dixon Road.
19 This is actually going to be in my backyard -- if
20 I look out my window it'll be right there. I
21 hadn't planned on saying anything tonight but I
22 wanted to just speak because hearing my community
23 has been kind of disturbing how similar a lot of
24 our stories are.

25 I moved into the house two years ago at

1 the end of October, same thing, it was the house
2 we always wanted. We fell in love with it. I
3 lived in Hell's Kitchen for about 10 years. I
4 moved to Carmel because it's like nothing I've
5 ever seen before. In Hell's Kitchen, you don't
6 make eye contact with your neighbors, you avoid
7 them, you don't like anyone. That's just how you
8 do it.

9 Since I've moved here, my neighbors
10 have welcomed me into their home, they have been
11 -- they've invited me over, we've had Christmas
12 cards. The night my son was born, just a couple
13 of days -- in June, a couple of days after my
14 wife and I were in the hospital I got a call from
15 one of my neighbors who found my dog who got out.

16 This is a beautiful community with
17 beautiful people, and this has been so upsetting
18 to see this happen, and I can't help but feel
19 that it's just because of money. We're not doing
20 -- the homeowners aren't putting this on their
21 land because they love giant towers. Homeland
22 isn't putting it here because they really love
23 building stuff.

24 I don't have the cash to fight this the
25 way I should or could, but there has to be a

1 better way that this community -- I couldn't do
2 this, I would never put this on my property, I
3 wouldn't want to do anything that would bring out
4 my neighbors like this. I couldn't do that to
5 them.

6 It's been a long night, I won't keep
7 any more of your time I just -- I owe it to my
8 son, I owe it to my community so when he is old
9 enough -- he's three months right now, you might
10 have heard him cooing outside -- is when he says,
11 Dad, what's that? And I say well, that's a
12 monument to cash, son. I -- I just had to say
13 that. I left Hell's Kitchen for Carmel and I'm
14 never going back because of these people, and
15 because of the trees. Not the fake, weird tree
16 they're going to try and put in my backyard.

17 Finally, the way this is going to be,
18 they're going to build a road that's behind a
19 hill, so at any point if anyone wants to go up
20 that road, you can look into my -- my bedroom
21 window. At any time. You can drive up on that
22 road to access this.

23 There are trees that are really tall
24 that might block some of my view of this, but
25 I've seen what Homeland's done, I've followed

1 this. They said when the balloon tests were
2 going to be. Weirdly it was a few days before
3 that, the day of my son's baby shower before he
4 was born. And I think that's because they didn't
5 want the photos taken.

6 They have no respect for the community,
7 they have no respect for the homeowners let alone
8 those around it. I just -- I can't shake the
9 feeling that one of those trees is going to get
10 knocked down or something because Homeland
11 doesn't respect my property, and I don't think
12 they respect this community either.

13 So I just wanted to say that, I owe it
14 to my neighbors. Appreciate it. Thank you.

15 WOMAN 1: Okay, I just want to -- yeah,
16 that's fine.

17 CHAIRMAN CRAIG PAEPRER: We're still on
18 -- we're still on Croton Falls Road. I stepped to
19 the (indiscernible), sorry. This is still Croton
20 Falls Road. Any other comments, people want to be
21 heard from on Croton Falls Road.

22 MAN 1: (indiscernible)

23 WOMAN 1: Can you come to the mic?

24 PAUL CONNOR: My apologies for my
25 appearance, I just came from Little League

1 practice. But on August 23rd, I moved into 334
2 Croton Falls Road.

3 CHAIRMAN CRAIG PAEPRER: I'm sorry --
4 your name, sir?

5 PAUL CONNOR: My name is Paul Connor,
6 sir. I blur the (indiscernible) as well as 310,
7 and you know, I just want to say one thing. Being
8 here since August 23rd, I lived in Lake Casse for
9 six years prior.

10 Being over there I'm pretty set back
11 with about a 250-foot driveway, and one thing I
12 can definitely say is I have absolutely no cell
13 phone issues at all, wireless issues. We have
14 perfect service. So with that being said, please
15 take that into consideration. We have no issues
16 at all back there. Thank you.

17 CHAIRMAN CRAIG PAEPRER: If there's no
18 one else on Croton Falls Road I'll -- Mr.
19 Gaudioso, you do have a chance to speak.

20 ROBERT GAUDIOSO: Thank you. I would
21 just like to correct some factual inaccuracies.
22 Starting with the attorney for the residents, I
23 think there was a comment that the crane test was
24 at 140 feet. That's incorrect, the crane test was
25 actually 180 feet.

1 WOMAN 2: At what location?

2 ROBERT GAUDIOSO: At the Lake Casse
3 property.

4 WOMAN 3: (indiscernible)

5 ROBERT GAUDIOSO: In addition to that --
6 in addition to the crane test, we also performed
7 six balloon tests, notice was provided for all
8 the balloon tests. We didn't receive one request
9 by anyone to take any additional photographs.

10 WOMAN 2: I'm sorry, can everyone hear
11 him?

12 WOMAN 4: No.

13 WOMAN 2: Can you step up?

14 ROBERT GAUDIOSO: Sure. We did not
15 receive one request at all to take any additional
16 photographs. Mr. Chairman, I'm going to -- I'm
17 not going to be able to talk to the board if --

18 CHAIRMAN CRAIG PAEPRER: Just speak loud
19 enough, sir, that everyone can hear you.

20 ROBERT GAUDIOSO: Sure, sure. So let me
21 reiterate. The crane test was done at 180 feet,
22 not 140 feet. In addition to that, we did six
23 balloon tests. Every balloon test was publicly
24 noticed. In addition to that, we also provided
25 viewpoint locations to be reviewed by the board

1 and staff, and staff added additional viewpoints.
2 We took photographs from every single viewpoint
3 that was requested by the town and by staff, and
4 we received no other requests to take any other
5 viewpoints.

6 As for the height, there was a question
7 about what the criteria is for the height. In
8 fact, the issue of height is an issue before the
9 zoning board of appeals, and that's an
10 application that's pending. Regarding the real
11 estate value report that we submitted, that
12 report simply provides the data. The data is 15
13 studies over five years from an MAI-certified
14 appraiser. The data shows what the data shows.

15 And in fact, the appraiser confirmed
16 that the data showed there was no diminution in
17 property values for properties with or without a
18 view of towers over 15 different studies,
19 including studies within the town of Carmel. I
20 believe the attorney had indicated he hadn't read
21 the report, but he assumed there were no towers
22 in Carmel, in fact that was incorrect.

23 In comparison, the broker letters have
24 absolutely no data whatsoever. Many different
25 courts, and we'll provide the case law on this,

1 have reviewed an identical methodology as
2 contained in the Lane Appraisals Report, and
3 upheld the Lane Appraisals Report in the face of
4 broker letters, including a case that Mr.
5 Campanelli represented the residents on, and it
6 ultimately went to litigation, and the applicant,
7 Homeland Towers, prevailed.

8 So Mr. Chairman, I'll keep my comments
9 directed to the board. But it was actually in the
10 town of Kent. What I would suggest, and what I
11 would encourage, is if the board intends to have
12 a third party appraiser review the Lane
13 Appraisals Report, you also have that appraiser
14 opine on the relevance of the broker letters,
15 particularly after we provide the relevant case
16 law.

17 With respect to the Sprint case in
18 Ossining, the citation is actually Sprint v.
19 Ossining, that case had nothing to do with a
20 municipal board reviewing a zoning application.
21 That was actually a private lease case, and that
22 is the citation Sprint v. Ossining. I know that
23 because we handled that case.

24 There was also another incorrect
25 comment that Homeland Towers was the only

1 applicant and it doesn't provide personal
2 wireless services. That's incorrect. Verizon
3 Wireless is also a co-applicant on this
4 application, and they do provide personal
5 wireless services.

6 There was also a statement that no data
7 was provided, again that's incorrect. The
8 applicant has provided both propagation maps,
9 drive test maps at multiple heights -- 180 feet,
10 160 feet, and 140 feet -- as well as KPI data,
11 key performance indicator data. That data
12 includes both access failure rates and dropped
13 call rates. That data was reviewed and confirmed
14 by your own consultant, Mr. Graiff, who happens
15 to be a New York state licensed professional
16 engineers.

17 Mr. Graiff confirmed there was no
18 capacity issue. In fact, he confirmed this was a
19 coverage gap issue. There was a statement that
20 the applicant has to prove there's a significant
21 gap in coverage. That's incorrect. That's not
22 required under your code. Only if this board
23 denied the application, would then the applicant
24 have to show whether there was a prohibition of
25 services to the federal court.

1 Recently, the FCC issued an order and
2 elaborated on the fact that the significant gap
3 test is not the correct test -- it's actually a
4 material inhibit test. In any event, we believe
5 we clearly showed there was a significant gap in
6 coverage.

7 But the whole explanation of how a core
8 process would go is completely inaccurate. Now, I
9 don't feel comfortable talking about litigation
10 because we're not in litigation, but I do want to
11 explain and correct the misstatements about what
12 type of case a federal litigation is. Federal
13 litigation comes in two basic courses of action
14 or claims.

15 One claim is does the board have
16 substantial evidence to deny the application. If
17 the board does have substantial evidence to deny
18 the application based on the written record, then
19 the court de novo -- we're meaning that the court
20 looks at new evidence, including expert reports,
21 depositions, and other factual evidence that's
22 submitted, and the court determines whether
23 there's been a prohibition of service. So the
24 explanation of how a federal court claim is
25 handled in this type of context by the prior

1 attorney was incorrect.

2 Regarding the size of the gap, the
3 documents have shown that 788 residents are
4 within the gap area, and that's the -- and I
5 think we discussed this previously -- that's the
6 worst case scenario from Verizon's point of view.
7 There's actually larger gaps at the higher
8 frequency levels. We've discussed that, your
9 consultant opined on that, and we submitted that
10 data.

11 Regarding the setback, I know there was
12 some discussion about setbacks and so forth and
13 so on. We meet the setbacks of the town code. The
14 property line setback is 25 feet, the closest
15 property line in this case is 299 feet. We also
16 meet the setback requirement for residences,
17 which is two times the height of the tower. We're
18 well beyond that, that's shown on the plans.

19 I want to state very clearly and
20 unequivocally -- I've never had a conversation
21 with Ms. Berelli in my life. She must be confused
22 about who she was speaking to. I suspect she was
23 speaking to one of my clients. My clients have
24 indicated, which we've indicated all along, that
25 we would be willing to pave the access drive. The

1 problem is, is the access drive is within 84 feet
2 of a wetland. And because of that, we did not
3 believe that the DEC, the DEP, and the
4 Conservation Board would allow that.

5 In fact, we have an application in
6 front of the Conservation Board now, and they
7 accepted the application last month. They
8 requested some additional details and we'll
9 continue to provide that.

10 The existing access drive is the
11 existing access drive. To the extent it's
12 damaged, that's obviously not something that was
13 caused by Homeland Towers. To the extent that
14 Homeland Towers does cause any disturbance to the
15 access drive, we would be responsible for
16 repairing that disturbance. We have no problem
17 with the condition of approval on that ground.

18 But if there are existing potholes,
19 those are obviously existing potholes,
20 nevertheless when the utilities are placed in,
21 we'll make sure the access drive is level and
22 safe, and will contain -- and we'll make sure
23 that we repair any damage that we cause to that
24 access drive.

25 As far as the statement that there's

1 not allowed to be a second variance on the
2 property and somehow that would increase some
3 type of nonconformity, quite frankly, that is not
4 the law and that is not correct.

5 I'd like to talk a little bit about the
6 historic preservation issue, and we'll document
7 this from our consultant, EBI. Now EBI is the
8 consulting company that specializes in this. In
9 fact, the lead consultant from EBI has the proper
10 qualifications according to the requirements
11 under the Historic Preservation Act, and that's a
12 Department of Interior qualification in this
13 particular instance.

14 They performed the Section 106, which
15 is the federal law, they performed that process
16 according to the federal programmatic agreement.
17 They followed the process, they did all of the
18 due diligence, that's in the 106 report that was
19 submitted to SHPO, and over a year ago, SHPO
20 concurred that there were no historic properties
21 within the area of potential effects in
22 accordance with the federal law.

23 That was documented in the EAF from day
24 one, and that was attached to the EAF in this
25 case. Apparently, after that document was

1 submitted, the neighboring property owner or a
2 property owner nearby commenced the process to
3 have their property listed as eligible for
4 listing on the state and federal register. We
5 were never aware of that.

6 In fact, I specifically requested
7 copies of all letters that were submitted to the
8 town and I never did receive the letter
9 indicating that they were undergoing that
10 process. We were never notified of that.

11 In any event, we became aware that the
12 property had become eligible for listing less
13 than a month ago, that was the first time that we
14 became aware of that. And we will put in a letter
15 explaining why this facility, under SEQR, and you
16 as the SEQR agency will make a determination
17 under SEQR based on the evidence, whether the
18 facility will have a significant adverse effect
19 on that property for the reasons why it was
20 listed as eligible for listing on the National
21 Register.

22 Another incorrect statement was that
23 Mr. Richard Deal is my client -- Mr. Richard Deal
24 is not my client. There has also been some
25 references to the Agra case, if you're not

1 familiar with what that was, the county had
2 proposed entering into a lease with Homeland
3 Towers. There was a nearby property that was
4 eligible for listing on the historic register.
5 Because of that process, the lease never went
6 forward. Has absolutely nothing to do with this
7 particular matter.

8 Finally, there was a statement that the
9 balloons were floated on days before they were
10 noticed. Again, that's entirely incorrect. The
11 balloons were floated on the days they were
12 noticed, the only deviation from that process at
13 all was we floated additional balloons on days
14 after they were noticed because there was a
15 request from town staff that there was a day that
16 was too foggy.

17 That was the only instance where the
18 balloon wasn't floated on the day that it was
19 noticed, but at all times there was no balloons
20 floated days prior to be able to take photographs
21 or not allow people to take photographs, that's
22 just simply untrue.

23 So I wanted to correct those
24 statements, I wanted to make that clear. I find
25 it insulting when people say that I've lied when

1 in fact their statements are just incorrect.

2 Thank you.

3 CHAIRMAN CRAIG PAEPRER: Thank you.
4 So, let me tell you what I'd like to do at this
5 point. We can go back and forth for hours. If
6 that's how it is, that's how it is. I'd like to
7 leave the public hearing open. I want to leave
8 it open. I need time to digest all this
9 information. I think I received about this much
10 data yesterday afternoon. And I'd like to ask
11 Homeland Security to extend the shot clock until
12 the end of October so that we have time to digest
13 everything we heard tonight and do our due
14 diligence.

15 ROBERT GAUDIOSO: Sure. So, would this
16 application be back on for October 9th? Would
17 that be the understanding?

18 CHAIRMAN CRAIG PAEPRER: Probably
19 before that. I didn't look at the calendar yet,
20 so...

21 MAN 2: (indiscernible)

22 MAN 3: The next available agenda.

23 CHAIRMAN CRAIG PAEPRER: And what's
24 that date?

25 MAN 4: Two weeks. Every two weeks--

1 CHAIRMAN CRAIG PAEPRER: And if it's
2 not two--you know, but we need to extend the shot
3 clock, we need time to do our due diligence.
4 You, likewise.

5 ROBERT GAUDIOSO: I think the limiting
6 factor -- I just want to check the calendar. I
7 think the limiting factor is I think you had
8 indicated that there is a request from the third
9 party appraiser?

10 CHAIRMAN CRAIG PAEPRER: Correct.

11 ROBERT GAUDIOSO: So, will they be
12 ready in two weeks?

13 CHAIRMAN CRAIG PAEPRER: We hope so.
14 We can't commit to that, no.

15 ROBERT GAUDIOSO: Sure.

16 CHAIRMAN CRAIG PAEPRER: We're shooting
17 to have that information provided as soon as
18 possible.

19 ROBERT GUADIOSO: Sure. So, as long as
20 we're on the agenda for the 25th and/or the 9th,
21 we'd be happy to extend the shot clock to get the
22 --

23 CHAIRMAN CRAIG PAEPRER: And we'll
24 decide that based on people being ready. Right?

25 MAN 5: Both the applicant and our

1 consultants.

2 CHAIRMAN CRAIG PAEPRER: And the shot
3 clock would be extended to the end of October?

4 ROBERT GUADIOSO: Correct.

5 CHAIRMAN CRAIG PAEPRER: Okay. And
6 this way with the public hearing left open, you
7 still have plenty of time to speak. I don't want
8 to close it. I think there's a lot of good
9 information still coming out. I think it's the
10 right thing to do. All right, this is all on
11 Croton Falls Road.

12 ROBERT GUADIOSO: Mr. Chairman, the
13 only other thing I would just say. It's Homeland
14 Towers, not Homeland Security. And I would just
15 suggest that possibly the board, if you are going
16 to adjourn the public hearing, just adjourn it to
17 that date certain on September 25th. And if it's
18 not ready at that night, you can adjourn it again
19 to October 9th, just so that everyone has fair
20 and adequate notice that that's the case.

21 CHAIRMAN CRAIG PAEPRER: That's fine.

22 ROBERT GUADIOSO: Thank you.

23 CHAIRMAN CRAIG PAEPRER: So, with that,
24 we'll move on to Dixon Road. Homeland Towers,
25 Dixon Road, 36. Mark, welcome to your first

1 night. I hope you come back in two weeks.

2 BOARD MEMBER MARK PORCELLI?: My
3 comments on 36 Dixon Road, Homeland Towers. Same
4 comment there in front of the Zoning Board of
5 Appeals for the height, the driveway width, and
6 one more thing...

7 MAN 6: Fence height.

8 BOARD MEMBER MARK PORCELLI?: Fence
9 height. So, I have no comments at this time.

10 CHAIRMAN CRAIG PAEPRER: Rich?

11 RICHARD FRANZETTI: Same comments as
12 last time. It's a proposed tower, exceeding
13 maximum height 50 feet, which is now at 110-foot
14 tall requirement. Requirements set forth at 156-
15 62 have not been provided. It's a Priority Site
16 5. The applicant must provide an explanation as
17 why a higher priority site wasn't selected. It's
18 located on a property adjacent to McKenna Park
19 off Angela Drive. As such, per Section 156-L,
20 the applicant must demonstrate that the proposed
21 tower will not unreasonably interfere with the
22 view from the town park.

23 They have acknowledged the fact that
24 they will need to develop and submit a storm
25 water pollution prevention plan due to the area

1 of disturbance which is 26,850 square feet.

2 CHAIRMAN CRAIG PAEPRER: Thank you.
3 Mr. Guadioso?

4 ROBERT GUADIOSO: Thank you, Mr.
5 Chairman. Again, I assume that the same comment
6 applies to the other case regarding the
7 appraisal. I know there's been some comments
8 about the location of the facility on the
9 property line. What we do have and what we've
10 looked into based on some of the prior comments
11 is actually relocating the facility on the
12 property to the actual opposite end of the
13 property, to the other property line. And if I
14 may just hand up -- these are just some
15 preliminary sketches.

16 So, as we discussed last month, there
17 was -- oh, it may have been at the Zoning Board
18 meeting. But there was a question why we were
19 not in the town park. We actually were not given
20 permission by the town board to enter the town
21 park with a lease. We'll document that as well.

22 We'll also provide full-size drawings
23 similar to this for the next meeting. But
24 essentially I wanted to show you this.
25 Basically, we were able to relocate the facility

1 to the opposite end of the property. I think
2 that does a couple things. It brings it further
3 from the residences. It also eliminates the
4 access drive and some of the concerns that there
5 were to storm water and erosion control by being
6 able to locate it where the alternative location
7 is.

8 RICHARD FRANZETTI: You're going to
9 submit the plan so that we'll have to go back
10 through the review that we did initially just to
11 make sure that they meet town code on those site
12 plan issues, just so you're aware.

13 ROBERT GUADIOSO: Yeah. So, what I
14 would say is that we don't intend to submit a
15 full set of plans at this stage. If the Planning
16 Board, after reviewing the plans and having the
17 time to review it, requests or prefers the
18 alternative location, we would be happy to
19 engineer it in that location.

20 CHAIRMAN CRAIG PAEPRER: So, this is a
21 10-acre parcel, correct? Or 10-acre
22 approximately?

23 ROBERT GUADIOSO: 10.19.

24 CHAIRMAN CRAIG PAEPRER: So, is there a
25 way to put more -- I don't know if there's

1 wetlands, I don't know if there's a lake, but
2 more in the middle so it doesn't have much of an
3 impact on any neighboring residents?

4 ROBERT GUADIOSO: No, because there
5 were other uses there. There are also wetlands
6 towards the back of the property. By pushing
7 this -- what we've done here is we've pushed this
8 the furthest from residents as possible by
9 placing it up against the property line adjacent
10 to the park. Do you see what I'm saying?

11 CHAIRMAN CRAIG PAEPRER: Yeah.

12 ROBERT GUADIOSO: So, by moving it in
13 that direction, we've moved it as far as we can
14 from Brittany.

15 MAN 7: The wetland back to the
16 property -- east end of the property, is that a
17 state wetland or just a town wetland?

18 ROBERT GUADIOSO: I believe it's a
19 state but I'll have to double-check that.

20 MAN 8: I think it is.

21 ROBERT GUADIOSO: And what we will do
22 too as well with the next submission, we actually
23 had the DEC give us the signed survey showing
24 where the wetlands are, and we'll provide that to
25 the board as well.

1 CHAIRMAN CRAIG PAEPRER?: Refresh my
2 memory. What was the reason it was moved from
3 the location where it was proposed to this new
4 location?

5 ROBERT GUADIOSO: So, the resident
6 comments were that it was too close to the
7 property line and it was too close to the house.
8 That now it'll be, approximately, 706 feet from
9 that residence, whereas before, it was right on
10 the property. It met the 25-foot setback. The
11 tower was, approximately, 30 feet from the
12 property line.

13 So, the comment was not only was the
14 tower too close to the property line, but what we
15 did is we came up the existing access drive and
16 then we went down an existing path and created an
17 actual access drive. And there was concern about
18 tree removal and erosion and sediment control.
19 We don't believe those concerns were a problem
20 because we had addressed those in the engineering
21 documents. But, nevertheless, given those
22 concerns from the residents, we were able to
23 place the facility all the way on the opposite
24 end of the property.

25 MAN 7: And those concerns were voiced

1 during the prior meeting?

2 ROBERT GUADIOSO: I'm sorry, I didn't
3 hear you.

4 MAN 7: Those were voiced during the
5 prior --

6 ROBERT GUADIOSO: The prior meeting and
7 during the Zoning Board meeting.

8 MAN 8: The picture you just gave us
9 kind of shows the new cell tower on top of
10 something that appears to be existing there.
11 What is that?

12 ROBERT GUADIOSO: There's basically --
13 there's like a shed in that area. There are a
14 number of out buildings on that property.

15 MAN 9: Isn't that the paddock? That's
16 not the paddock? Okay.

17 ROBERT GUADIOSO: No. I don't believe
18 so. You're talking about the building?

19 MAN 9: Yes.

20 ROBERT GUADIOSO: When you say the
21 paddock, do you mean the enclosure or the
22 building?

23 MAN 9: Enclose for horses.

24 ROBERT GUADIOSO: Got you. Yes.

25 MAN 9: I'm just looking at Google

1 Earth to see where I am.

2 ROBERT GUADIOSO: So, again, I'm not
3 expecting a decision from the board this evening,
4 obviously. We're just presenting this to you.
5 But we will do is we'll provide the full-size
6 plans. They won't be fully engineered but it'll
7 give you an opportunity to take a look at it. If
8 the board prefers the alternative location, we'd
9 be happy to engineer it.

10 The engineering will not change much
11 because, again, we're using the existing access
12 drive and the existing access almost all the way
13 up to that location. Thank you. Any questions
14 on that?

15 MAN 7: I'm sorry. Is this drawing in
16 large print on one of those boards?

17 ROBERT GUADIOSO: No, but we'll submit
18 a large print to you.

19 MAN 8: Can't hear you.

20 MAN 7: Sorry. If the public meeting
21 is still open and if you've submitted some new
22 information in this small format, the public
23 can't see it. But if we can get that next --

24 MAN 9: We can have it on that board
25 here but in that size.

1 MAN 7: Okay, so I don't think it's
2 particularly helpful for the comment --

3 CHAIRMAN CRAIG PAEPRER: Right, we're
4 going to leave it open.

5 MAN 7: It's going to be open, so...

6 WOMAN 1: The people that it's going to
7 affect their property, we would like to see it.
8 It's not just for the board.

9 CHAIRMAN CRAIG PAEPRER: And we will
10 provide that. They will provide that.

11 MAN 7: We're going to keep the public
12 meeting open, so... They'll submit full-size
13 documents.

14 ROBERT GUADIOSO: This was in large
15 part in response to comments that, quite frankly,
16 we received yesterday.

17 MAN 7: Right.

18 VICE CHAIRMAN ANTHONY GIANNICO: I have
19 a question on Site Plan LE-2. On the compound
20 plan it's showing three locations for future
21 equipment.

22 ROBERT GUADIOSO: I'm sorry, are you
23 referring to the original or the new one we just
24 gave you?

25 VICE CHAIRMAN ANTHONY GIANNICO: The

1 new one that was just handed out this evening.

2 ROBERT GUADIOSO: Thank you.

3 VICE CHAIRMAN ANTHONY GIANNICO: Site
4 Plan LE-2. I see several areas that show future
5 equipment. And what's the intent of that? What
6 would be future equipment?

7 ROBERT GUADIOSO: Sure. So, we've
8 always shown that. In fact, under your code,
9 we're required to build a facility for future co-
10 location. We submitted a co-location commitment
11 letter as well, as required by your code.

12 So, what we do is not only do we build
13 the tower to be able to support co-location, we
14 also make sure that we have the space at the
15 ground. The entire compound is designed for it.
16 So, basically, there are four operating companies
17 in the area right now. There's two that might
18 potentially merge, there's also the potential of
19 Dish Network providing a wireless infrastructure.

20 Our experience has basically been four
21 carriers in total. So, we've designed it for
22 four carriers, plus we've also designed space in
23 the event the municipality should need space for
24 its own antennas. Homeland Towers has offered to
25 make that space available at no charge to the

1 town, both on the tower and within the compound.

2 I just also want to correct another
3 misstatement. This issue of -- that we could
4 just automatically put on a 20-foot extension or
5 more. That's simply not correct. There are six
6 criteria under the federal law that allows a
7 facility to be modified in a way that does not
8 substantially change the physical dimensions.

9 One of those criteria, in fact, is
10 whether it defeats the stealth elements of the
11 facility. And courts have held that if you
12 change the height or the width of a stealth
13 facility in such a way to defeat the stealth
14 elements, that's not considered an eligible
15 facilities request.

16 So, the scare tactics of that -- if we
17 get a, in this case, 110-foot tower, it'll be
18 extended in height automatically without having
19 to come to the town. That's just simply
20 incorrect.

21 VICE CHAIRMAN ANTHONY GIANNICO: Just a
22 question getting back, again, to the future
23 equipment -- those areas. I understand other
24 carriers will come in with other cabinets and
25 controls and so forth. But would they also be

1 adding additional propane tanks and generators
2 with their equipment?

3 ROBERT GUADIOSO: So, it depends. It
4 depends on what they use. So, some carriers do
5 and some carriers don't. Some carriers have and
6 then they've not. Some carriers do it on certain
7 sites and not on other sites. So it's a little
8 difficult to predict.

9 One of the things that we've done is
10 we've laid out the equipment compound in a way
11 that we think will support all of the equipment,
12 including those possible additional uses as far
13 as generators.

14 VICE CHAIRMAN ANTHONY GIANNICO: I just
15 wanted to bring out that then there is a
16 possibility of having four 1,000-gallon propane
17 tanks.

18 ROBERT GUADIOSO: That's not been our
19 experience. Our experience has been not that.
20 Some carriers prefer to have diesel, some
21 carriers prefer to have propane. There are pros
22 and cons of each. Sometimes it's actually good
23 to have one carrier with diesel, one carrier with
24 propane because then there's a redundancy in the
25 fuel supply.

1 Usually when those types of facilities
2 are needed, it's a real emergency situation.
3 There's a power outage.

4 MAN 10: So, how many (indiscernible)?

5 MAN 11: Can't hear you. Can't hear
6 you.

7 MAN 10: Sorry. If we were to get four
8 carriers, how many different fuel supplies are
9 there?

10 ROBERT GUADIOSO: It could be three
11 different types that they generally use. They
12 either use a propane generator or they use a
13 diesel generator.

14 MAN 10: So, it's going to be a diesel
15 storage tank for the generator --

16 ROBERT GUADIOSO: Usually it's built
17 into the generator for the ones that we've seen
18 on these sites and/or they have battery backup.
19 So, not every carrier uses a generator. Not
20 every carrier uses a generator at every site.

21 BOARD MEMBER KIM KUGLER: I have a
22 concern, bringing up a point that Mr. Campanella
23 brought up about towers catching on fire. And
24 now we're going to have a fuel source back there,
25 and we're talking about a heavily wooded area.

1 Has the Fire Department looked at this and access
2 to the facility?

3 ROBERT GUADIOSO: So, we did refer this
4 application and the other application to the Fire
5 Department in both instances. We haven't
6 received any negative response. As far as tower
7 fires, quite frankly, those are extremely rare.

8 CHAIRMAN CRAIG PAEPRER: Quite frankly
9 they're what?

10 ROBERT GUADIOSO: Rare. Extremely
11 rare. So I think --

12 BOARD MEMBER KIM KUGLER: Have you
13 experienced it in any of the sites that you've
14 put up?

15 ROBERT GUADIOSO: No. None for
16 Homeland Towers at all.

17 WOMAN 2: It's rare but it has
18 happened.

19 ROBERT GUADIOSO: Just as buildings
20 have caught on fire and, obviously, we still
21 permit buildings.

22 BOARD MEMBER KIM KUGLER: Well, my
23 concern is because it's wooded. Both of these
24 towers are going up in wooded areas with houses
25 back there. And forest fires spread. So, you're

1 talking about free zones.

2 (Applause)

3 ROBERT GUADIOSO: Actually, the other
4 application is up against woods but it's in a
5 very cleared area. The entire area is cleared.
6 And it's been used in the past for machinery
7 storage, and it's completely cleared now. This
8 area is actually towards the park, but there are
9 ballfields there and there's lights. Large poles
10 with lights so this isn't -- I wouldn't consider
11 this a heavily wooded area. There is woods in
12 the area, but if you look on the original sheet,
13 on the front sheet, you can see --

14 CHAIRMAN CRAIG PAEPRER: Can I ask
15 everyone else to show some respect? When we're
16 speaking let's all be quiet. We can speed up the
17 meeting and all get out at a reasonable hour.

18 ROBERT GUADIOSO: You can see there's a
19 strip of woods between this and the ballfields.
20 And the ballfields is a very cleared area. The
21 back area of the property has all the different -
22 - I used the word paddock, but all the different
23 horse stables back in there. And there's cleared
24 areas around that.

25 So, it's not like it's stuck in the

1 middle of the woods and, quite frankly, we do
2 have facilities in the middle of the woods and
3 that's not a problem. There's also a house up
4 there so access to that home is available for the
5 Fire Department, just as it would be for this
6 facility.

7 BOARD MEMBER KIM KUGLER: Well, that's
8 the thing. You just said it. We have a house up
9 there.

10 WOMAN 2: Two houses.

11 BOARD MEMBER KIM KUGLER: And you have
12 woods, and you say you put towers in wooded areas
13 before. But are there houses in those areas?

14 ROBERT GUADIOSO: Of course.

15 BOARD MEMBER KIM KUGLER: I don't want
16 to put our residents at risk. That's my concern.
17 Fire -- are these towers equipped with any kind
18 of extinguishing?

19 ROBERT GUADIOSO: So, the tower itself
20 is made out of metal. The place where there have
21 been fires on very rare occasions is where there
22 was welding going on on the tower and the
23 sheathing on the cables inside the tower caught
24 on fire. That's when you have fire.

25 Other than that, the tower itself is a

1 noncombustible steel structure. So, the issue of
2 fire is completely remote. Access to the
3 location is provided because, remember, we have
4 to build the tower. We have to bring in a crane,
5 we have to bring in cement trucks to be able to
6 build the tower. So, there's full access to each
7 of these locations, both for construction and
8 ongoing maintenance, as well as emergency
9 services. That's how we design the facilities.

10 MAN 7: I have a question. So, a
11 couple of things have been stated here and just
12 for clarity for the record and for my
13 understanding. Okay, Homeland -- you've
14 indicated Homeland Towers and Verizon are co-
15 applicants on this application.

16 ROBERT GUADIOSO: Correct.

17 MAN 7: Okay. And, as such, Verizon is
18 a provider, contrary to another statement. I'm
19 just trying to understand. There's also a
20 coverage map that purportedly is Verizon's
21 coverage -- indicates that there's not a coverage
22 problem. Can you tell us, did Verizon come to
23 Homeland Towers and say, we need coverage here
24 because we don't have coverage? Or how did this
25 come about that Homeland Towers is decided or

1 indicated, or the partnership has decided that
2 there needs to be a tower here? How did that
3 come to be?

4 ROBERT GUADIOSO: Sure. So, I'll take
5 one step back. We'll provide a response to that
6 online marketing coverage map and the relevance
7 of that to the materials that have already been
8 submitted.

9 Secondly, Homeland Towers and Verizon
10 work together and they have a process where,
11 where Verizon has an area of need, Homeland
12 Towers finds the site and develops the site for
13 Verizon. So, it's a pretty straightforward
14 process and not uncommon in the
15 telecommunications industry.

16 MAN 7: Okay, so --

17 ROBERT GUADIOSO: But also on top of
18 that -- I just want to reiterate, Homeland Towers
19 does not build towers on speculation. They --
20 and this is a great example -- they come in with
21 a wireless carrier as a co-applicant. They don't
22 build towers on speculation without a carrier.
23 Sure. And Mr. Vicente, who's the president of
24 the company would like to add a few words to
25 that.

1 MAN 7: Sure.

2 MANUEL VICENTE: Sorry about that. So,
3 one thing that's really important is we don't
4 make any determinations about the need or the
5 location of where a tower should go. The need is
6 established by Verizon. What they ask for as far
7 as height specifications, etc., all comes from
8 the carrier. We do not build on spec and we do
9 not make any of those decisions. We simply are
10 the developer once they've made those decisions.

11 MAN 7: And you're a local developer?
12 National?

13 MANUEL VICENTE: We are a regional
14 developer.

15 MAN 7: Regional. So, just to be clear
16 then, so Verizon, in essence -- you have a
17 working relationship that you are their regional
18 -- one of their regional providers or builders of
19 towers. They identified themselves that there is
20 a need in this area, and then -- because you're
21 the regional builder, they've come to you and
22 said, hey, can you find us a location? Is that
23 accurate?

24 MANUEL VICENTE: Correct. That is
25 accurate. We have a contract with them. And

1 when they have established a need in a particular
2 area, they give us directive as to looking for a
3 property in that area and the specifications they
4 need. We then go out and secure it and develop
5 it for them. But we do not make the decisions of
6 where it goes, what height it is, what kind of
7 equipment goes on there, you know, how it fits
8 into their network. That is not anything that we
9 are in charge of or do. We just basically --
10 it's like an order that they give us.

11 MAN 7: Right. Understood. So, the
12 follow-on question then is the determination, if
13 I understood the information I've seen here --
14 the determination of the coverage gap by Verizon
15 was indicated to be based on a model, is that
16 correct?

17 MANUEL VICENTE: No, that's not
18 correct. What Verizon does is they know their
19 network, they know where their network is failing
20 or flawed or has holes or problems. Based on
21 that, they give us their order to go and find
22 something to fix that.

23 As far as all the information that's
24 been provided, that information's been provided,
25 as Mr. Guadoso said, in multiple ways, including

1 the best way, which Ron Graiff actually considers
 2 the gold standard and which Mr. Campanelli got
 3 wrong, which is called the drive test, which Mr.
 4 Campanelli described that's what you should do.
 5 That's what we did do. We conducted a drive
 6 test. Live antenna on the crane, drove around,
 7 collected all that data, put it together, gave it
 8 to your consultant, he reviewed it.

9 So, all that was done and none of it is
 10 done by Homeland. It's done by qualified
 11 vendors, Verizon, and reviewed by a third party
 12 entity.

13 MAN 7: I understand that. Thank you.
 14 So, okay, if I understood the drive test, because
 15 I did -- I had read some of Mr. Graiff's report
 16 that there were some variations in strength. I
 17 understand that that is a signal strength test?

18 MANUEL VICENTE: That's correct.

19 MAN 7: Okay. Is there correlation
 20 between -- because there's also mention of a
 21 dropped call analysis that Verizon has.

22 MANUEL VICENTE: That's a different set
 23 of --

24 MAN 7: Okay, so strength and dropped
 25 calls.

1 ROBERT GUADIOSO: If you recall, the
2 dropped call data was requested by the Planning
3 Board. We had indicated that in this case it was
4 somewhat anecdotal but that we would provide it
5 anyway. We did provide it. It was explained
6 what the relevance was. Mr. Graiff had actually
7 commented that it was of no relevance to him but
8 we had provided it anyway at the request of the
9 board.

10 But at the end of the day, this issue,
11 as Mr. Graiff confirmed, and as PureCom
12 demonstrated, is a coverage gap issue. The drive
13 test data showed the signal levels as collected
14 at multiple heights from the crane test and as
15 collected without the proposed site from the
16 existing surrounding sites. We submitted both
17 what we call a scan test, which is the existing
18 signal from existing sites, and the drive test
19 data or the CW data from this proposed location,
20 from the crane with the test antenna at multiple
21 heights.

22 MAN 7: Okay. Sorry, but just for
23 clarity, okay? Who then is -- who determines
24 what the minimum signal strength requirement is
25 to constitute a gap? Is that a federal code?

1 Like, you must have X amount of strength?

2 ROBERT GUADIOSO: No. It's a function
3 of the service of the system. It's a function of
4 the area and the design that you're trying to
5 cover. So, for example, the signal strength
6 within a building has to be stronger in order to
7 penetrate the building. But what we provided was
8 the actual signal strength in the ambient air,
9 not anyplace else. And then we propagated that
10 on drive test maps.

11 So, that's a matter of what will the
12 system operate at at various signal levels, which
13 then determines where that signal level will be
14 strong enough. Let me give you an example.

15 Have you ever had a call, walked into a
16 building, gone into the basement or gone into an
17 elevator and lost the call? That happens because
18 the elevator or the building itself, that
19 degrades the signal. So, the system's designed
20 to take into account those variables.

21 Also, there was a statement before that
22 that was incorrect, that the propagation model
23 doesn't take into account the topography or the
24 trees. Again, that's incorrect. So, what we did
25 is we did a propagation model, okay, which is

1 based on the computer modeling program to show
2 where coverage would be based on all the existing
3 sites, and then we confirmed that with the actual
4 drive test data. So, we did actually both ends
5 of that analysis.

6 MAN 7: Okay. With all due respect, I
7 think I understood that, but I'm not sure it
8 quite answered my question. The question is who
9 determines... What entity determines what is an
10 adequate signal strength? In other words, you
11 know -- I don't an analogy. A doctor determines
12 how much a prescription you need based on some
13 real data. That's the doctor --

14 ROBERT GUADIOSO: Sure. The engineers
15 do. The carrier --

16 MAN 7: So, who -- is it Verizon? Is
17 it the feds saying all providers must have X
18 amount of power?

19 ROBERT GUADIOSO: No, the carriers do
20 and they all have basically relatively the same
21 criteria. So, it's all based on physics, quite
22 frankly. Based on the frequency range, the type
23 of frequency.

24 MAN 7: I don't want to go into
25 physics, but, okay.

1 ROBERT GUADIOSO: But, yes, the carrier
2 determines the criteria, the design criteria.

3 MAN 7: Thank you.

4 MAN 10: Can you address the extent to
5 which modeling was used in creating these -- or
6 performing these tests?

7 ROBERT GUADIOSO: Sure. We did both
8 actually. So, the propagation model is a model
9 that's used, and it's detailed in the PureCom
10 report. The Atoll Model. It's a well-regarded
11 model that's used throughout the world.
12 Basically, what the model takes into account is
13 the physics, the signal propagation from the
14 particular frequency ranges, it takes into
15 account the clutter, which includes everything
16 that's on the ground -- the trees, the foliage,
17 things of that nature. It takes into account the
18 topography and it uses a formula to be able to
19 provide an area where the coverage is from the
20 surrounding sites.

21 And it's a prediction. But we know
22 that the prediction is correct because we also
23 then went out with a drive test vehicle, with an
24 antenna on the roof connected to special drive
25 test equipment in the vehicle, and we collected

1 the actual data. And then we were able to
2 compare that to the modeling. The modeling is
3 helpful...

4 MAN 10: Can I ask one question?

5 ROBERT GUADIOSO: Sure.

6 MAN 10: Have you provided us the raw
7 drive test data?

8 ROBERT GUADIOSO: Yes, we provided all
9 that data. We also were able to use the
10 modeling, because the modeling shows where the
11 coverage is throughout, okay? The drive test
12 data is limited to the roads that's driven. So,
13 that's one of the downfalls of the drive test is
14 that you collect the data on the roads. But when
15 you look at our drive test and when Mr. Graiff
16 looked at our drive test, we drove almost the
17 entire area. It was very robust, the areas that
18 we drove.

19 And we provided that data on the maps,
20 and Mr. Graiff did review that. So, we did both,
21 to answer your question.

22 MANUEL VICENTE: And if I may just to -
23 - I don't think that there -- and I've been doing
24 this for 30 years and I can tell you I don't
25 think that there is any additional data that we

1 could possibly provide. Because once you do the
2 modeling, you do the drive testing, you do the
3 call data, that's basically as much information
4 that exists.

5 And as Mr. Graiff mentions often, this
6 is the gold standard. And as Mr. Campanelli
7 said, the drive test is really a great way to
8 confirm the model. And in this case, we did
9 everything we possibly could to demonstrate the
10 need to both this board and your consultant. I
11 don't think there's anything else we could've
12 possibly done.

13 And, once again, all those decision --
14 height, does it work, where it goes -- those are
15 all made by the carrier, in this case, Verizon.

16 CHAIRMAN CRAIG PAEPRER: Thank you.

17 ROBERT GUADIOSO: Thank you.

18 CHAIRMAN CRAIG PAEPRER: Okay, anyone
19 from Dixon Road like to be heard? Please, go
20 ahead.

21 MAN 12: It's interesting to sit
22 through a presentation like that. Do all of you
23 have a copy of my exhibits in opposition to this
24 application? I would ask you please to turn to
25 Exhibit G. And you'll see the first photograph

1 images in color is the Wellesley, Massachusetts
2 tower. I strongly encourage each of you, please,
3 go on to Google, search for cell tower burns to
4 the ground and watch the very large, very clear
5 picture of this tower burning and collapsing in a
6 heap of flames.

7 Now, Mr. Guadoso said cell towers are
8 steel, they don't go up in flames. Please look
9 at the next page because a photograph is worth a
10 thousand words. This is the photograph of the
11 cell tower fire from Philadelphia, Pennsylvania
12 in June 2013. Based upon what is depicted in
13 this photograph with regard to Mr. Guadoso's
14 claim that cell towers do not go in fire, I
15 respectfully disagree.

16 Now, so that's one from Philadelphia,
17 one from Massachusetts. The next page is a color
18 photograph of a cell tower in flames in
19 Montgomery, Maryland 2015. You can go on the
20 internet and find these. They're not hard to
21 find. Pretty much the only times I've ever gone
22 to research this, I pretty much find that at
23 least once a month a cell tower goes on fire.

24 I would probably say that in 70-75
25 percent of the cases they don't collapse. What

1 usually happens is they burn really hot and they
2 bend and they warp. And then if they're put out
3 in time, they cool and they stand back up. But
4 if they're not put out in time like the Wellesley
5 one, they collapse in a flaming heap. It's very
6 dramatic. And if there's anything nearby that's
7 flammable, if you watch that video -- and what I
8 still can't understand is why they couldn't put
9 it out before it collapsed.

10 What that tells me is the fire went up
11 so fast, the Fire Department couldn't get there
12 in time despite the fact that it was on a main
13 road. And not an isolated road. If you watch
14 the video, you'll see probably 100 cars drive by.
15 And everybody's video of this thing up in flames,
16 collapsing.

17 So, with regard to Mr. Guadioso's
18 representation that they don't go on fire, I ask
19 you to look at just a sampling of photographs.
20 But if this is not enough, go on the internet, go
21 on Google, take a look, you'll find many.

22 If that's not enough, the following
23 exhibit is Exhibit H. I think I've given you, I
24 don't know, 25 articles about cell tower fires
25 which required a school to be evacuated... These

1 are not ones involving fatalities. They're there
2 too, I assure you. But this is just a sampling
3 of 30 cases I pulled. I don't know, this
4 probably took me 15 minutes. So, any allegation
5 that cell towers don't go on fire is absurd.
6 That's number one.

7 Similarly absurd is any claim at all
8 that Verizon is telling Homeland where this tower
9 has to go. That's absurd. Okay, one of the
10 reasons I have a pretty good understanding of how
11 site developers think and how they work is
12 because before I fought against cell towers, I
13 not only negotiated leases for cell towers but I
14 represented a cell developer, a site developer
15 just like Homeland.

16 I represented a company doing exactly
17 what Homeland does. And, quite frankly, I was so
18 disgusted I couldn't do it anymore. So, now I
19 switched sides and I make less money but I sleep
20 better at night, okay?

21 Verizon did not tell Homeland they have
22 to put it at these locations. I guarantee it.
23 So, how do they make their choices? Well, I'll
24 tell you what my clients did when I represented a
25 company putting these up. They will look for

1 areas where it's reasonable to anticipate future
2 needs and capacity. And what they will do is --
3 and when I'm saying "them", a site developer.

4 And I'm also going to correct another
5 false statement made by Mr. Guadoso. He said
6 earlier I claimed Homeland was the only
7 applicant. I never said that. What I said was
8 Homeland is a site developer. They don't provide
9 any personal wireless services. So the record is
10 clear, Homeland is claiming -- it is not claiming
11 that it needs this tower, it's claiming Verizon
12 needs to tower, which, once again, is
13 contradicted by Verizon's own data.

14 CHAIRMAN CRAIG PAEPRER: Mr.
15 (indiscernible), let me interrupt you. The Dixon
16 Road people have the floor now. You can speak
17 after they all --

18 MANUEL VICENTE: With all due respect -
19 -

20 CHAIRMAN CRAIG PAEPRER: No, look --

21 MANUEL VICENTE: He's attacking... No,
22 no, no, no.

23 WOMAN: No, it did not.

24 CHAIRMAN CRAIG PAEPRER: Look, look,
25 look, look. Let me be very clear, you'll have a

1 time to speak. Right now, the Dixon Road people
2 have the floor.

3 MANUEL VICENTE: Sorry to interrupt you.

4 ANDREW CAMPANELLI: So, I have
5 negotiated leases for Verizon, for Sprint, for
6 AT&T, for all of them. I've negotiated leases to
7 put cell towers up. I've negotiated leases for
8 municipalities to have cell towers.

9 And essentially, if a site developer
10 finds a location where they're going to build a
11 cell tower, and they approach Verizon and say,
12 look, I got this site, I'm going to have four
13 carriers. Do you want the top spot? Verizon's
14 always going to say yes.

15 First of all, money is no object to
16 Verizon, okay? We used to think of the tobacco
17 companies as the mega giants of money. Their
18 paupers compared to the wireless companies, okay.

19 The critical aspect of the cell tower
20 is location, okay? Now, they're talking about
21 putting four carriers on a 110-foot tower? It's
22 not going to happen. Every carrier on a cell
23 tower needs 10 feet of vertical real estate.
24 What that means is even if you've got a four-foot
25 antenna, you could have a four-foot, six-foot, or

1 an eight-foot, okay? If Verizon has an eight-
2 foot antenna and puts it up at the 110 feet, the
3 next carrier, for its antennas to work, have to
4 be 10 feet lower for the cells the operate.

5 So, if you're going to put four
6 carriers on a 150-foot tower, let's say the
7 Verizon's -- antennas go halfway down. It's an
8 eight-foot antenna. So, the first antenna, the
9 base of it, goes from 110 to 106. Now you need
10 to go 10 feet before you hit the start of the
11 next antenna. That means the fourth carrier
12 would be at like what, 63 feet?

13 Do you really think anybody's going to
14 pay for that? They're not. This tower is going
15 to be taller than their representing to you.
16 Okay. Go on the Internet and look up what is the
17 vertical real estate necessary for multiple cells
18 on a cell tower. You don't have to be an
19 (indiscernible) engineer to figure this out.

20 Now, as far as the definition of the
21 gap. You asked excellent questions. Oh, let me
22 back up. They said they gave you the data. I'm
23 sorry, maybe I missed it. I looked through
24 everything I could find on the Town's records,
25 and what I could not find -- and if I'm mistaken,

1 I'd love to see it -- they did not give you the
2 hard data from the test. There is no listing of
3 the signal strength they took anywhere in the
4 file. So, either they're not telling the truth,
5 or I couldn't find it.

6 What they gave you is the result of
7 their modeling. They took the actual signal
8 strength and manipulated them, for whatever
9 reason. Maybe they're accurate. Maybe they're
10 not. But what I'm telling you is unless you see
11 the actual records of the signal strengths, which
12 they have, they can just print them out. But
13 they didn't. They're not in the file.

14 And of equal import, nor are the
15 dropped call records from Verizon. When they say
16 there's nothing else they can give you,
17 seriously? Verizon can't actually tell you how
18 many calls were dropped in every given location?
19 Of course they can.

20 And if you really want to take a look
21 at the veracity or the authenticity of their
22 reports, the sine wave charts are laughable. The
23 sine wave charts that look like this. Take a
24 look at them. You're going to buy something
25 really funny. When they talk about the high

1 level of dropped calls, all of the sine waves are
2 pointed at the top and the bottom.

3 But when they go to the sign wave that
4 shows a lot of drops, all of a sudden, the one at
5 the top is cut off. It's the only sine wave
6 chart with vertical space, which shows the top of
7 the chart is cut off, which means if it wasn't,
8 the dropped call rate would have been in excess
9 of 100 percent, which is impossible, which
10 suggests that the sine wave was actually moved
11 up. It was manipulated.

12 And on top of that, when they tell you
13 a percentage of dropped calls were dropped, a
14 percentage of what? How many calls? Was it
15 three calls out of 500 million? I don't know,
16 because they haven't given you the hard data.

17 All I'm telling you is if you want to
18 make sure that the data they're giving you is
19 accurate, asked for the hard data.

20 Now, as far as the Dixon Road Tower, at
21 least they've taken an inkling of a step in the
22 right direction, because the site that was
23 proposed before today was absurd. You don't put
24 a 100-foot tower 50 feet from somebody's property
25 line on a 10-acre parcel of property. That shows

1 they really don't care what they submit to you,
2 okay? Because there's no way they can claim that
3 consistent with your code requirements that they
4 minimized the adverse aesthetic impact to the
5 greatest extent possible. That's a joke. Can
6 any of them stand in front of you with a straight
7 face and say, that application represented an
8 attempt to do that? It's nonsense, okay?

9 So, now I'm going to try to be nicer.
10 Here's what I'm going to suggest. In every case,
11 I look at the sites. I've look at this site.
12 There are far less intrusive alternative
13 locations. And I'm going to be really bold and
14 suggest to the Board, and I'm going to say this.
15 Cell towers are in fact a necessary evil, okay?
16 Everybody loves their cell phones and we need
17 them.

18 Your code has smart planning
19 provisions, which are consistent with smart
20 planning provisions across the country. Smart
21 planning provisions are called such because they
22 recognize you need cell towers. So, what are
23 your goals of your code?

24 Your goals are really threefold.
25 Number one, you want to regulate cell towers so

1 you can saturate the Town with coverage, while at
2 the same time minimizing the number of towers you
3 need to provide that coverage. And number three,
4 minimizing the unnecessary adverse aesthetic
5 impact on homes and communities. That's what
6 should guide you.

7 That's why getting the information is
8 critical, because before you can figure out how
9 to do that, they need to show you exactly where
10 the gaps are, because if they don't, you have no
11 idea if there's at least interest of means.

12 Now, when I looked at this site -- and
13 I looked at the other one too, and I have
14 recommended some alternate sites -- to me, I
15 found one site that I thought would be superior,
16 but there are others. I looked at the Jimmy
17 McDonough Memorial Park. And my thoughts were, I
18 wouldn't put it in the park. I wouldn't want
19 this near kids.

20 But directly to the east of the park is
21 the undeveloped property. And yes, there are
22 woods there, but there's no homes. This tower
23 could easily be placed in the property directly
24 to the east of Memorial Park. So, I would
25 suggest to the Town if Homeland really wants to

1 get towers here, I'm going to hope that the Town
2 and Homeland can speak.

3 You've heard from your constituents.
4 They don't want it near homes. Perhaps less
5 intrusive alternative locations could be arrived
6 at. Maybe something could be worked out. But
7 certainly in this case, I think the undeveloped
8 property to the east of Jimmy McDonough Memorial
9 Park is far superior.

10 The only downside for Homeland is --
11 and the only reason they won't want to do it
12 there -- it costs more money. Because, you see,
13 if they put it on this site here, they have easy
14 access, they have connectibility, both in terms
15 of power and connectivity for the line.

16 If they have to put it out into an
17 undeveloped area, they have to remove foliage,
18 they have to put in a gravel access road, they
19 may have to run utility posts to put the power
20 and the connectivity in.

21 So, that site would be more expensive,
22 so they might want to say, oh, gee, we can't put
23 it there. But the reality is there's no
24 legitimate reason why it can't go there. And as
25 long as there are sufficiently wide access paths,

1 okay, you've got a risk of fire. But as long as
2 you've got plenty of room for a fire apparatus to
3 get in there, it's a far superior site.

4 So, I hope that maybe somebody sitting
5 behind you might think about that and might
6 discuss it with the Town.

7 In a similar vein, same thing for the
8 other site. There are significant alternatives
9 that are viable. The only other thing I would
10 suggest to the Board is to consider hiring a
11 slightly different type of RF engineer, and that
12 is very simple. A site RF engineer.

13 You hear from them and PureCom that
14 it's got to go here, okay? We know it's
15 nonsense, because if you look at the site, they
16 wanted to use for Dixon Road until tonight, there
17 was no way that PureCom could justify it.
18 PureCom could stand in front of you and say it
19 has to go here, 50 feet from somebody's home.
20 So, if it collapses, it going to fall on
21 somebody. So, it just removes all the
22 credibility from their report.

23 My suggest is, there are plenty of RF
24 engineers who are alternative site analysis
25 people. And they can tell you, even from their

1 allegations, sites that would be equally suitable
2 to remedy whatever gap in coverage they claim to
3 exist. And there are a lot in your area that
4 don't have to be near people's homes.

5 So, if you're going to hire a site
6 engineer, and again, I have strong reservations
7 about anybody hiring Mr. Graiff without him
8 disclosing his conflict; that's horrible, in my
9 opinion.

10 But I think there's probably a happy
11 solution here, I think. And I've looked at all
12 the alternatives. I go on Google Earth, I
13 studied all the areas around, I look at the
14 streets, I look at the homes. There are plenty
15 of alternatives for both locations.

16 And I respectfully submit that though
17 should be considered, because you heard the con-
18 --

19 So, basically, you can achieve both
20 objectives. You can accommodate Homeland and yet
21 still make sure that these people's homes are not
22 adversely affected. So, I respectfully submit
23 that to the Board.

24 There was something else important I
25 had to tell you, and I can't remember it. That's

1 really bad. Just give me a moment. Significant
2 gap definition. Interesting thing, I've been
3 battling this all over the United States.

4 When the Telecommunications Act of 1996
5 was adopted, the code does not define what a
6 significant gap is. And courts have been loathe
7 to describe it. However, a Federal court in New
8 York has described it. And what they said is, a
9 gap in service exists when someone using a
10 carrier's personal wireless services is unable to
11 initiate, maintain and conclude a call without
12 interruption or loss of service.

13 A significant gap is a gap which is in
14 fact significant, either in geographic location
15 or the number of persons who are deprived of
16 service. If they have one block where you can't
17 get service, that's not a significant gap. If
18 you have 50 people that can't get service, it's
19 not a significant gap.

20 The important part is, who makes that
21 decision? The reality is, it's you. It's you.
22 It's your job to make that decision. As long as
23 you make a decision based upon the evidence
24 before you, courts are loathe to overturn that
25 decision. So, that's one of the factual

1 determinations I'll ask you to make.

2 Ironically, Mr. Gaudioso referred to
3 the Kent case, which blows my mind, because he
4 talked about the Lane appraisal being accepted.
5 The Lane appraisal was not accepted by any zoning
6 board in the Kent case. And the reason is the
7 Kent application was so bad, they knew they
8 couldn't get it approved by the Zoning Board.

9 So, much to the chagrin of the Zoning
10 Board, Mr. Gaudioso's client basically went and
11 asked for a zoning approval from the Town Board.
12 And no member of the Town Board was on the Zoning
13 Board. And the Town Board made a decision that
14 there was a significant gap in service.

15 Because the supervisor wanted the site,
16 they put it on a Town (indiscernible) highway
17 property site, so it never really got a real site
18 review. The Board of Zoning Appeals wasn't happy
19 about it, but they never got a chance to review
20 the application. And they said it's basically
21 exempt from zoning laws. That's what happened in
22 that case. Nobody, nobody said the land
23 appraisal was worth the paper it was written on,
24 because I assure you it wasn't.

25 So, in any event, it is a step in the

1 right direction moving away from those homes. It
2 changes what's in my brief. It certainly doesn't
3 change all the photographs of the fire. You can
4 judge for yourself whether his representation
5 that they don't (indiscernible) fire is accurate.
6 And I thank you very much for your time.

7 (Applause)

8 ROBERT MONTANARO: Robert Montanaro, of
9 30 Brittany Lane. I certainly respect everyone's
10 time, so I'll be extremely brief. I have a lot
11 of respect for the working people here that have
12 to get up, including the Board, and I thank you
13 in advance for the time that you've given us.

14 I'll make a few points here, which is
15 that I think you've seen enough data to know what
16 cell phone towers do to the hard-earned equity
17 that everybody in this room who's gone back to
18 work to put more equity in their home. And
19 that's probably their major retirement money.

20 And I think you've seen from what
21 realtors who are in the real estate business say
22 about cell towers. So, I wouldn't debate law
23 with Mr. Gaudioso, but I will take a realtor's
24 opinion over anyone else's. And I think you see
25 that it will greatly take a lot of equity out of

1 these homeowners. I can tell you I've got AT&T
2 and Verizon. I don't have any issues at my home.

3 The other point that'll make is that I
4 again say that I do think smart planning by the
5 Zoning Board, by the Planning Board, and
6 ultimately by the Town Board, it encompasses
7 looking at Town properties and commercial
8 properties where the Town gets the income from
9 the tower, that you help defray the costs that
10 are going on in this town.

11 In addition to that, you then are the
12 landlord of Homeland. And with everything I've
13 seen with some of the disingenuous information
14 and the manipulation, I think I have a lot more
15 faith in the Town being the landlord, rather than
16 a private individual who is selling out their
17 neighbors. Thank you.

18 (Applause)

19 CHAIRMAN CRAIG PAEPER: Anybody else
20 like to be heard?

21 RENEE PEREIRA: I do. My name is Renee
22 Pereira. I live at 42 Brittany Lane. The Town
23 has gotten a bunch of our letters, including with
24 what Mr. Campanelli has submitted.

25 Kim, you brought up a great thing,

1 saying about the hazards that it might cause.
2 So, now going to move a tower that's closer to,
3 or might possibly go on Town property. You all
4 know McDonough Park, ball field, soccer fields,
5 skateboarding park, and everything else. There's
6 thousands of kids that go there.

7 If there is a fire, do you realize how
8 many kids would die? Do you guys realize that?
9 So, I am asking the Town to please, please
10 reconsider. Thank you.

11 (Applause)

12 LARRY GRAY: Hello. Larry Gray, 20
13 Brittany Lane. I will make this brief as well,
14 as I have a 6:15 flight tomorrow morning, and
15 this has been going on a long time.

16 I do want to -- it was interesting that
17 it was brought up about coming up and addressing
18 factual inaccuracies, and I'd like to do that
19 myself. Particular to the Lane appraisal, which
20 may be a part of this process. This is my first
21 time going through it, so I don't know much about
22 it. But specific to the Lane appraisal -- and I
23 was the one that came to the Town to get a copy
24 of it. I read it. I have 30 years of experience
25 in research and analytics.

1 Maybe what the Lane appraisal does is
2 what it's supposed to do, but the way they're
3 portraying it as a study that talks about an
4 increase in property values is factually
5 incorrect. Basically, as it was pointed out
6 before, they look at homes that sold near a cell
7 tower, ones that are in view of it and ones that
8 are not. Then they take the sale price, square
9 footage, dollars per foot. They compare in view
10 of the tower versus not in view of the tower.
11 That's great. I don't care about that.

12 What I care about is if my property
13 today is worth X and they put a cell tower in,
14 what's it worth after it? I want to know the
15 before and the after. I don't care about
16 comparing being a tower or not seeing a tower.

17 So, to say that values increase is
18 incorrect. They're not looking at any before
19 information. It is all after the tower was
20 built. And I think that is just representing the
21 study in a very ingenuous way.

22 Now, just two quick points, because a
23 lot has already been said. Here's why I believe
24 studies you read online, why I would leave real
25 estate brokers, and so forth. And I've done a

1 lot of research myself. Anywhere between 20 and
2 30 percent property value declines. Easily.
3 Every one I did. I didn't see one study online
4 that said, oh, they go up.

5 Here's two facts that I would say as to
6 why those property values go down. This was from
7 key findings from a survey conducted by the
8 National Institute for Science, Law and Public
9 Policy in 2014. Surveyed 1,000 people. Two
10 facts you just need to know.

11 Ninety-four percent said a nearby cell
12 tower would negatively impact interest in the
13 property and the price they'd be willing to pay.
14 And then this one really stuck out to me.
15 Eighty-eight percent said that under no
16 circumstance would they ever purchase a property
17 in the vicinity of a cell tower.

18 So, if taking 88 percent of people who
19 might be interested in your house out of the way,
20 how does your property value? That's question I
21 would ask.

22 That's really it. Just, again, it's
23 been said a couple of times, but it is my belief
24 that the Town is placed to protect the rights of
25 the community. And we, as the residents, really

1 implore you to reject this and, you know, look
2 for other locations, which we certainly agree
3 with. And you know, putting this in the middle
4 of a residential neighborhood full of children
5 and families, just not the right thing to do.

6 (Applause)

7 BOBBY HALLY: Good evening. My name is
8 Bobby Hally and I live at 26 Brittany Lane. My
9 property is adjacent to 36 Dixon Road, and my
10 backyard borders the site where the tower is
11 planned.

12 A cell tower does not belong in any
13 residential neighborhood for many reasons. One
14 of my most important reasons is the well-being of
15 my family, especially my children, who are seven,
16 five and one. I don't think anybody in this
17 room, nor in their right minds, would want their
18 children growing up next to a tower that emits a
19 massive amount of radiofrequency. The World
20 Health Organization has listed this RF radiation
21 as a possible carcinogen, meaning possible cancer
22 cause.

23 My wife and I grew up in this town. We
24 own businesses in this town. We want our
25 children to experience what we believe to be a

1 close-knit community, where people care about one
2 another and their neighbors. A couple of
3 neighbors don't understand this.

4 Taxes aren't cheap by any means, and we
5 went over our budget last year to buy this home.
6 The construction of this tower will turn our
7 dream into a nightmare. As one of the properties
8 bordering the proposed site, we will see the
9 largest declines in property value.

10 I have spoken with numerous realtors.
11 People have touched on this. And they all agree
12 it would be detrimental to the value of all the
13 homes in our neighborhood.

14 We would expect the Court to reject
15 this tower on any residential property. I see
16 they have resubmitted to move the property. It's
17 literally two football fields. You're still
18 going to see it in the sky. You're going to see
19 it from the park.

20 I was going to ask, do they have to
21 resubmit an application for this new proposed
22 site? Will there be balloon tests for us to view
23 from our homes?

24 CHAIRMAN CRAIG PAEPRER: We just got
25 this a few minutes ago. We didn't have a chance

1 to discuss it yet.

2 BOBBY HALLY: Okay.

3 MAN: That's a good question.

4 CHAIRMAN CRAIG PAEPRER: Yeah. We'll
5 follow up on that.

6 BOBBY HALLY: Okay. And he mentioned -
7 - the lawyer here mentioned something about good
8 access from the ballfields, in case of fires.
9 It's wide open. There's no access tries to that
10 part of the property on the ballfields. So, I'd
11 like the Board to consider that as well. Thank
12 you for your time.

13 (Applause)

14 CHAIRMAN CRAIG PAEPRER: Thank you.

15 Hello. My name is John O'Leary, and
16 I'm actually going to talk about -- I live on
17 Dixon Lake Drive, which is parallel to Dixon
18 Road. I've been living here for 13 years. I'm
19 going to speak about the coverage, which I know.
20 I'm actually a radiofrequency engineer for the
21 past 23 years. I started my career with Nextel,
22 Sprint and we serve many other carriers.

23 Since I've moved in here, I've had
24 Nextel, I've had Sprint, I've had Verizon. Now I
25 have T-Mobile. The coverage -- there is no

1 coverage there. When you come around the bend, I
2 know if I'm on my phone in my car with my hands
3 free, the call is going to drop. I get off the
4 call before I even come around the corner.

5 If you continue around Long Pond and
6 around the lake towards -- you know, going
7 towards Bullet Hole, the back way, I call it,
8 same thing. You cannot make a call with any
9 carrier, and I've had them all. Today I have T-
10 Mobile and Sprint. I even tried to do things to
11 enhance the coverage in my house at my cost to
12 improve the coverage, and there's just not enough
13 signal to even do that.

14 Someone talked earlier about Verizon.
15 Verizon Fios is not Verizon Wireless. I have
16 Verizon Fios. Yeah, I've got Internet. I got
17 home telephone. I don't have home cellular
18 service.

19 The service now -- the world is
20 changing, right? It's a wireless world. We
21 can't stop it. But we're behind right now.
22 We're not going to have -- if there's no more
23 infrastructure, we are not going to have better
24 service. We don't even get 3G here, let alone
25 4G, 5G, 6G, whatever is coming.

1 I look at the wireless as a service,
2 like telephone, like cable, like water, gas,
3 sewer. It's a service. You can't build it
4 without infrastructure. And the only way to get
5 into the residential area, because they've
6 targeted all the commercial industrial area,
7 which is long sticks or maybe going back on 301.
8 By the way, you can't make a call going down to
9 301 from Dixon Road either, because I go there
10 all the time.

11 The only way to do it -- to cover
12 residential service is to get into it. They been
13 building these networks for 25, 30 years. Had
14 they been able to get the service there without
15 being in the residential, they would have done
16 it. It's not in their interest to build a tower
17 to go to a (indiscernible) if they don't need it.

18 So, I may be -- my neighbors won't like
19 this, but I'm in favor of the application because
20 the coverage is bad. And it is a safety concern
21 when you lose power. I lose power all the time
22 with these storms. Your phone is going to go
23 out. If you had a tower there, you could still
24 use your service, still contact or call the
25 police or fire, what have you.

1 So, I tend to want to approve the
2 tower. And as far as the visual, I know I'm not
3 -- I'm down low in the valley. I can't see the
4 tops of the lights at McDonough Park. So, I
5 can't see from anywhere in the valley with the
6 tree coverage that you're going to be able to
7 even see the tower. And I drive around there all
8 the time. When you're driving around or sitting
9 around, you can't see through the tree cover to
10 see that far up and that high up.

11 So, maybe Brittany Lane they have a
12 better view. They're up on a hill. They're
13 getting service from somewhere else because of
14 their height and elevation.

15 And as far as some of the other things,
16 the property values I can't talk about, but we
17 have towers around the whole town. There's
18 towers on Lake Mahopac that's been there for
19 probably 75 years. Their property values have
20 not diminished. You have three towers right
21 around this building. So, they're required for
22 public safety, for the community's safety.

23 And I think that we should approve or
24 figure out some way to get service back there,
25 because I have to deal without the service. I

1 can't work from home or do anything like that
2 because the service is no good at my house.
3 Thank you.

4 CHAIRMAN CRAIG PAEPRER: Thank you.
5 Anyone else from the public like to be heard
6 tonight?

7 JOE HENRY: Joe Henry, 74 Brittany
8 Lane. I'm going to just take a quick look at
9 this (indiscernible) duly proposed cell tower
10 area will directly impact my home. I am at the
11 very end of the cul-de-sac. I've been there for
12 close to 20 years. In fact, I purchased the
13 property from a member of this Planning Board,
14 with the wonderful expectation that I was going
15 to raise a family, and have a wonderful home, and
16 have the serenity when I come home from a hard
17 day's work.

18 Now, what they're telling me is I'm
19 going to see a 150-plus-foot cell tower in my
20 back yard. How would you guys feel? Horrible.
21 Not only that, as aside from this gentleman here,
22 I've actually constructed cell towers. In fact I
23 constructed one of the largest on the East Coast,
24 the 9-11 project in Orange County. I know the
25 dangers. And there are some. You need to take

1 that into consideration, because if that goes
2 off, it's going to be a problem. Okay?

3 Planning Board, please serve the
4 community. Reject this proposal. Please.

5 CHAIRMAN CRAIG PAEPRER: Thank you.

6 JOE HENRY: Thank you.

7 (Applause)

8 CHAIRMAN CRAIG PAEPRER: Anyone else?
9 Mr. Gaudioso?

10 ROBERT GAUDIOSO: Thank you, Chairman.
11 We had nothing else to add, other than we put in
12 a submission, as we discussed before.

13 CHAIRMAN CRAIG PAEPRER: So, similar to
14 the Croton Falls, my preference would be to leave
15 the public hearing open, ask Homeland Towers to
16 extend the shot clock, and that would give us
17 time to review everything we've heard tonight,
18 and for yourselves to do the same thing.

19 BOARD MEMBER RAYMOND COTE: Mr.
20 Gaudioso, will you -- in your response, would you
21 also address the New York City Environmental
22 Protection letter dated September 10th, the
23 issues that are raised in it?

24 ROBERT GAUDIOSO: That's on Croton
25 Falls?

1 BOARD MEMBER RAYMOND COTE: Yeah, for
2 Croton Falls, I'm sorry.

3 ROBERT GAUDIOSO: Correct. Yes.

4 BOARD MEMBER RAYMOND COTE: I know
5 we're talking different -- we're talking --

6 ROBERT GAUDIOSO: Yeah, I think the
7 issue they raised had to do with a private way-
8 of-way, not with --

9 BOARD MEMBER RAYMOND COTE: Yeah, the
10 right-of-way issue, yeah.

11 ROBERT GAUDIOSO: -- respect to the
12 Planning Board.

13 BOARD MEMBER RAYMOND COTE: Yeah.
14 Thank you.

15 MAN 1: I think he needs to acknowledge
16 --

17 CHAIRMAN CRAIG PAEPER: Yeah. I'm not
18 done. I'm not done. Thank you. Any other
19 comments?

20 MAN 2: Would you reply to Pat and the
21 Board about everything we just documented about
22 extending the shot clock?

23 ROBERT GAUDIOSO: Sure, my
24 understanding is the matter will be held over to
25 September 25th, or at the latest, October 9th.

1 And based on that, we're willing to extend the
2 shot clock to the end of October.

3 MAN 2: Okay.

4 MAN: The Zoning Board meeting's not --

5 MAN 3: The Zoning Board meeting's not
6 until the 26th --

7 WOMAN: 26th.

8 MAN 3: -- I believe. So, the Zoning
9 Board cannot act until the Planning Board

10 ROBERT GAUDIOSO: Right.

11 MAN 3: -- conducts the SEQR analysis.

12 CHAIRMAN CRAIG PAEPRER: Anything else?

13 ROBERT GAUDIOSO: Okay. Thank you for
14 your time this evening.

15 CHAIRMAN CRAIG PAEPRER: Do we have a
16 motion to adjourn?

17 BOARD MEMBER CARL STONE: Okay.

18 BOARD MEMBER ROBERT FRENKEL: Second.

19 CHAIRMAN CRAIG PAEPRER: All in favor.

20 ALL: Aye.
21
22
23
24
25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the
foregoing transcript is a true and accurate
record of the proceedings.

Sonya

Landanski Hyde

Digitally signed by Sonya Landanski
Hyde
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Date: 2019.10.30 16:39:50 -04'00'

Veritext Legal Solutions

330 Old Country Road

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Date: October 30, 2019

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