

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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MICHAEL CARNAZZA
*Director of Code
Enforcement*

RICHARD FRANZETTI, P.E.
Town Engineer

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

PLANNING BOARD MINUTES

OCTOBER 30, 2019

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

ABSENT: CARL STONE

<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	Resolution	Held over.
Braemar at Carmel	55.10-1-3	1	Resolution	Resolutions Adopted.
Joe Zakon d/b/a 14 Nicole Way LLC	65.6-1-22	1-7	Site Plan	No Board Action.
Longview School	52.-1-12	7-13	Site Plan	No Board Action.
Gateway Summit Senior Housing – Lot 6	55.-2-24.6-1 55.-2-24.6-2	13-14	Extension	1 Year Extension Granted.
The Fairways Senior Housing – Lot 7	55.-2-24.8-1 55.-2-24.8-2	14	Extension	1 Year Extension Granted.
Centennial Golf Club of New York LLC	44.-2-2,3,4	14	Referral	Off the agenda.
Homeland Towers Lake Casse	65.19-1-43	15-23	P.H.	Public Hearing Closed & Denial Resolution Adopted.
Homeland Towers Dixon Lake	54.-1-6	23-28	P.H.	Public Hearing Closed & Denial Resolution Adopted.
Minutes – 07/31/19		28		Approved.

The meeting was adjourned at 9:35 p.m.

Respectfully submitted,

Rose Trombetta

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

Chairman Paepre stated the applicant asked for a holdover to the next meeting.

BRAEMAR AT CARMEL – 49 SEMINARY HILL ROAD – TM – 55.10-1-3 - RESOLUTION

Mr. Carnazza said all his comments have been addressed.

Mr. Franzetti had no comments.

Vice Chairman Giannico moved to adopt Resolution #19-11, dated October 30, 2019; Tax Map #55.10-1-3 entitled Braemar at Carmel SEQR Negative Declaration. The motion was seconded by Mr. Cote with all in favor.

Vice Chairman Giannico moved to adopt Resolution #19-12, dated October 30, 2019; Tax Map #55.10-1-3 entitled Braemar at Carmel Final Site Plan Approval. The motion was seconded by Mrs. Kugler with all in favor.

JOE ZAKON D/B/A 14 NICOLE WAY LLC – 14 NICOLE WAY – TM – 65.6-1-22 – SITE PLAN

Mr. Porcelli recused himself and left the dais.

Mr. Carnazza read his memo which stated the applicant amended his proposal to construct 1 building, parking, and outdoor storage on the corner of Nicole Way and Rt. 6 in Mahopac. A detail of the retaining wall is required. Floor plans and elevations are required. Needed to confirm compliance with code. Landscape/buffer plans are required. Dumpster enclosure detail is required. Provide the Lot Depth and Lot Width lines on the plat. When I did the calculation, I came up with different numbers. The Architect should meet with me to discuss the proper way to calculate these numbers.

Mr. Franzetti had no comments.

Vice Chairman Giannico read Mr. Cleary's memo which stated the site plan has been revised as follows:

§ The two-building plan has been abandoned. The proposed plan depicts a single 60' x 90' (5,400 square foot). The single building is located within the building envelope, setback from Nicole Way a distance of 41'.

§ The building would house the Optimum Oil and Propane business operation, including 4 or 5 garage bays for oil delivery trucks, parts and equipment storage and a 1,400 square foot business office. The office will include a service counter where customers can pay bills.

§ The building will be constructed of concrete and concrete block with a gable roof and oriented to face Route 6.

§ In response to the evaluation of an alternate Route 6 driveway access, the current plan maintains the site access driveway off Nicole Way. The driveway is off-set from Route 6 by 100' and is designed to accommodate unrestricted two-way ingress and egress.

§ The new driveway accesses a reconfigured parking area for 11 vehicles located on the west side of the building, access into the building via overhead doors, and access to the outdoor storage area, which remains on the east side of the proposed building.

§ Two "optional employee parking" spaces are noted in the northeast corner of the drive.

§ The applicant has also submitted a "Project Narrative" describing the proposed operations of the facility.

The following site plan revise comments are offered:

1. Elevations and cross sections of the new building, as seen from Nicole Way are required.
2. A revised landscaping plan is required.
3. Details of the on-site sanitary sewage disposal system are required.
4. The Project Narrative describes a stormwater management system consisting of catch basins, and an on-site infiltration system. The stormwater plan should be illustrated on the site plan, and details provided.
5. Clarify the height of the "PVC stockade fence on top of retaining wall" located around the outdoor storage area.
6. "Optional parking" is not permitted. These spaces should either be formally designated as off-street parking spaces, or eliminated.
7. The suitability of the crushed stone portion of the parking and storage area requires review by the Town Engineer. It would appear logical to consider the stone within the outdoor storage area, but the area in front that includes the "optional parking" and the dumpster enclosure, would appear more suitably paved.
8. As opposed to the prior plan that prevented left turns out of the site onto Nicole Way, this plan allows this maneuver. The plan should indicate site distances to the south, and a sight line easement may be necessary to ensure that an unobstructed sight distance is maintained.
9. The operational characteristics of the proposed facility, as documented in the Project Narrative should be reviewed, and for those aspects that may result in adverse impacts, limitations or restrictions may be imposed as mitigation measures.

Mr. Alfred Cappelli, applicant's architect, addressed the board and stated the object of this evening's meeting was not to do a full review. We know we need to do landscaping and drainage and everything that is required by the town. The idea was to present to you this reduced version of plan. We went from two buildings down to one building, half of the parking, two thirds of the impervious and still coming off of Nicole Way. He said after presenting our previous application and coming back two meetings ago with our preliminary concepts of driveways off of Route 6, we were hoping to have some favorable input from you before we spent a considerable amount of money, to cross the T's and dot the I's that we know that you need for full application. We don't want to do that a second time and be confronted with an obstacle saying you're not coming off of Nicole Way or whatever the comments may or may not be. This is the revised application and we're looking for some input good, bad or indifferent from the board. We listened to you; we're talking about six trucks leaving in the morning and six trucks coming in at night. He said again the amount of parking, the amount of traffic generated the impact of the building and the users. There

won't be anybody there during the day. Two people are going to occupy the building. It's not a heavily used building.

Vice Chairman Giannico stated in the past one of the biggest concerns was safety and exiting onto Route 6. What have you done with this revised plan to make that a better situation?

Mr. Cappelli replied nothing. He said we approached the church and we made an agreement on the adjacent corner to control or have control of a site easement. Previously, Mr. Zakon had contemplated doing whatever work was necessary to that hill down to make the site visibility a little bit better. He has cut his project in half, why should he take that responsibility on him now. This is your intersection. It's a bad intersection by the town's doing, not by our doing. Our feeling is that six trucks exiting or entering on or off of Nicole Way in the morning and at night is not an adverse impact on the on the site.....

Mr. Cote interjected and said six propane trucks going out as you pointed out of a very bad intersection with visibility issues, it's not as benign as you might suggest.

Mr. Cappelli said we showed you a proposal of access off of Route 6. Whether we developed the property or a shopping plaza occupied the building. He said it was discussed that nobody wanted to see a series of retaining walls and the inundation of parking and everything else that went along with an access off of Route 6 on the east side of the property. I thought we came to that conclusion that's why we reverted back to the Nicole way access.

Chairman Paepre said I think the conclusion we came to was it would be a large burden on your applicant to install retaining walls. I don't think we got to the point that we looked at renderings with the retaining walls and what it would look like.

Mr. Cappelli stated yes it would be an economical burden on our client. Again, is that what the town wants to see with a series of winding retaining walls, etc, just to get a building on the site? Whether we developed it or whether it was developed by someone else that's what you would see to gain access by virtue of the topography and where that access on Route 6 had to be. We feel that the limited amount of traffic coming on and off Route 6 at Nicole Way we are not adding to that burden.

Chairman Paepre said my concern from day one since I was there with the applicant, Mr. Franzetti and the state representative and several others for about 30 minutes to 45 minutes watching the cars come by and followed up again with a phone call to the highway department, Mike Simone today to discuss tonight's meeting. Mr. Simone was concerned about making left hand turns. He said our biggest concern is safety. We could talk about aesthetics of the building; we could talk about retaining walls, we could talk about the topography, but our biggest concern from day one has been trucks coming out on Nicole Way and making a left hand turn onto Route 6. Although, the state was reluctant at first when we walked with Mr. Simone included down 100 yards towards Carmel, it was a much better line of site.

Mr. Cappelli said without looking at the gradient and the topography that in my first 30 or 40 feet in that easterly corner there I'm going up 20 feet in grade. Regardless of the cost, do you want to see the whole front of this property cut down, where I'm trying in this latest concept.....I'm 60 feet off of Route 6, I'm keeping a natural buffer there. No one will see the building by virtue of the topography and all the trees that are there.

Chairman Paerprer stated you opened the meeting by saying it's a bad intersection, so why would this board add propane trucks crossing a bad intersection.

Mr. Zakon, the applicant stated if it's such a bad intersection why is there a left turn allowed there now.

Chairman Paerprer said it's a state road. I wouldn't know.

Mr. Cote said there are a lot of intersections in this town that are not the best, but as a planning board part of job is to make sure that we don't make it worse. And I think that's what we are trying to say. It's a bad intersection, should something be done, yes, but's that's not our purview. It's the state's purview. We don't think making it worse is something we should do.

Mr. Bill Shilling, applicant's attorney addressed the board and stated the topic that has prevailed here is the intersection. Along the way, there were a lot of other comments made by the consultants and the board. This is a unique piece of property because it's a c-zone, but has access through a residential area. That itself presented problems that is board raised frequently. It was talked about being perhaps too ambitious for a c-zone. As Mr. Cappelli suggested there were two structures, now there is one structure. Issues such as parking, septic, lot disturbance were raised by your consultants and have been addressed by a modified version that is before you this evening. He said the focus on access is understood, but I would be happy to hear that this board recognized the efforts that the applicant made in addressing other issues that came up during this 10 month exercise. During that time, my applicant has paid over \$60,000 for consultants, engineers and traffic studies. So, I'd prefer this evening at least in part that you recognize the contribution and compromise that he has made in proposing a very modified site plan which a much less ambitious use then what was before you previously. Mr. Zakon heard your concerns and instructed Mr. Cappelli to change everything to provide for what is the most passive c-zone use. The building went from two to one. The size of the building is just large enough so it doesn't have to go to the zoning board for area variances. Reduced parking, septic size, less lot disturbance are all before you tonight. We are requesting that we take that step of recognition and realize that he has heard you and trying to get some c-zone use. It's a c-zone. I don't think there is any prohibition to the board putting it's thumbprint on an access that you wouldn't feel comfortable about. He said I don't think Mr. Zakon would object to "no left turns" or something like that. I'm disturbed that there were some many changes that were made just to accommodate this board and to move this project forward. He said it's more than just the access that we should be talking about. We should be talking about the fact that it is the most modest c-use in your code. He said the applicant has come here in good faith and has modified the application considerably. I wish you

would take recognition of that. Then we can talk about perhaps stipulations about access during a certain hour of the day. I would like to take that first step and have you acknowledge the fact that he's trying to get there. We're trying to get there and if you render this property unusable because of access, you're taking the property. There has to be a use for this property. You zoned it commercial and if you could find a better use for this property, let me know about, because I don't know where it is. He said for the record, we did contact the church. They didn't turn me down, they didn't welcome me with open arms, but they said they would consider. Again, the first step is to get rid of the two building busy site plan in a residential access, and we modified it to accommodate your concerns and now we're ready to go forward and we'll talk to you about access.

Chairman Paepre said I appreciate the time the applicant has spent on it, and we certainly don't want to encourage you to increase from \$60,000 to \$90,000 and still not get the answer that you want. Because of your statement, going from \$60,000 to \$90,000, I would suggest you focus on the safety as Vice Chairman Giannico and Mr. Cote mentioned as a main priority. It's nice that you went from two buildings to one building....

Mr. Shilling stated I think the access on Route 6 has been asked and answered in the negative. I think the NYSDOT said it was an impossible.....

Mr. Zakon said nothing is impossible, but the retaining walls would be 14 feet tall across the entire property. It's over one million dollars in site work for a \$300,000 project. It doesn't make financial sense do that type of work for the minuscule use of the property.

Vice Chairman Giannico asked where was the access onto Nicole Way on the previous plan.

Mr. Zakon replied the same place. We are keeping it far away from the homeowners as best as possible.

Vice Chairman Giannico asked if you were exiting the site, looking left, what is the topography there?

Mr. Cappelli said right now where the driveway is you are right on grade coming off of a Nicole Way. It's level grade coming in and then you start going up Nicole Way towards Katie Court.

Vice Chairman Giannico said Mr. Cleary referenced certain distances of line of site there. Based on what that line of site is and I think we need to weigh in via another party. Is that line of sight as it exists enough to safely turn onto that road. That's something we need to look at and it should not cost the applicant any money.

Mr. Carnazza said Mr. Franzetti should have an answer for that.

Vice Chairman Giannico said I would like to ask that question to Mr. Franzetti and see what he has to say about it. We do appreciate the work you have done so far. We do want to see the property developed, but we have the responsibility for safety and the nature of the type

of vehicles going out there on top of the traffic and blind spots is a concern. He said if we could work on this, that may be the way to go.

Mr. Cappelli said we certainly could do whatever we can to aid that on our property, so if any shaving has to be done on our property in order to gain visibility, that's not unreasonable. He said we could put "no left turn" for a truck off the site is not unreasonable. We have no control over the intersection of Nicole Way and Route 6. He said there is an easement there that Mr. Shilling is trying to tie up. Who is going to create that better visibility at that intersection? Is it the town's responsibility if Mr. Zakon got an easement at his cost legally to the town for maintenance? Will the town be willing to improve their intersection by shaving that hill down or whatever is needed to make it safer? Forget about our six trucks, everyone admits that's the worst intersection in town, second to one out here. You would be making safer for all the neighbors, not just Mr. Zakon.

Chairman Paepre said we want to see the property developed, but it's all about safety right now. He said earlier on we had the exit out of the property shaped so you could only go right exiting the property. I understand that changed.

Mr. Cappelli said I didn't show it on this plan, but we have no problem doing that.....

Mr. Zakon said I have no issue whatsoever, no left turn on Nicole Way.

At which time, Mr. Cappelli points to map to show the "no left hand turn" out onto Nicole Way for his trucks period.

Chairman Paepre said you know you could shape it.

Mr. Cappelli said absolutely!! We would do is put a curb there, it would be a mountable curb forcing everyone to go right only out of the site. We have no problem with that.

Chairman Paepre stated to Mr. Zakon to work with the consultants to see what we could come up with.

Mr. Shilling stated as a point of information, there is an easement on the church property for grading and for things just like that. The dominant easement holder, the person who has the right to enforce that was the subdivision, which is now probably defunct. The question is would the dominant easement holder, the one that enforces the grading, would the town take on that responsibility. Along the edge of the church there is an easement for grading, but the easement for grading was given by the owners of the subdivision. The question is would the church agree to the assignment of that easement, the dominant easement to be the town, so that they could increase the site distance.

Mr. Cote said I don't think we as the planning board could bind the town.....

Mr. Shilling interjected and said I'm just telling you as point of information that's there.

Mr. Carnazza said I would imagine we would not do it adjacent to a state road.

Mr. Shilling said if it's such a perilous intersection, I would think the town may reconsider or consider taking it.

Mr. Cappelli stated that hill is overgrown now, who maintains it now if the subdivision developer is no longer around. He said somebody should be maintaining it, I don't who, the church, the now defunct developer, the town, the state.....

Mr. Carnazza said if it's in a state right of way, the state is responsible. If it's in a town right of way, the town is responsible. If it's on private property, the private property owner is responsible.

Chairman Paepre said let's try and work together and see what we could figure out.

Mr. Porcelli returned to the dais.

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

Mr. Frenkel recused himself and left the dais.

Mr. Carnazza read his memo which stated the applicant proposes to convert the existing one family dwelling into a Private School. This is a permitted "Conditional" use as per the Schedule of District Regulations. A variance is required for lot frontage. It was brought to my attention that the "R.O.W." adjacent to this property may not be a Town, County, or State road. If this is the case, the property needs a 280A variance. The road map in the Building Department shows it as a town road. Please clarify. This plat still says phase I phase II. I specifically asked for that to not be on the plat. If the pupils are playing inside a building, the noise will be significantly lower than if they are outside. This structure should be constructed and complete prior to pupils attending this school. The Carmel Town Code specifically prohibits phased construction. Accordingly, any reference to phasing the construction of any aspect of this project should be eliminated from the plans. They need a variance for parking. The school allows pupils of High School age. Furthermore, I am opposed to granting a variance for parking for this use. If there is a recital or play and the families of the students are invited, any number of cars could potentially show up. This use is in a residential neighborhood. Parking on the road is not an option and if they double park, this could cause an issue for emergency responders to get to the building in an emergency.

§ 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.*

Mrs. Kugler read Mr. Cleary's memo which stated said site planning issues remaining to be resolved:

1. The site plan has been revised to indicate all 55 required off-street parking spaces. The applicant contends that this number of spaces is unnecessary, and is seeking a referral to the ZBA to allow for a portion of these spaces to be land banked, or constructed on “turf grass.” The Planning Board should assess the suitability of this request before making the referral.
2. The applicant does not intend to construct the gym building at the present time, but instead is proposing to construct the gym’s foundation only. At some time in the future, the gym building would be constructed. It is not clear how this approach addresses the Board’s policy to prevent “phasing” to occur. Clarification is necessary.
3. Confirmation of the status of Scout Hill Road is required.
4. Site access from the narrow driveway remains a concern. No comment from the Fire Department has yet been received, which is necessary to judge the suitability of the access way.

Vice Chairman Giannico read Mr. Franzetti’s 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 IS 1.4 acres. 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 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. All retaining walls great than 6 foot must be certified by a NYS licensed structural engineer.

Applicant has noted this comment

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

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

3. It is unclear is this property is serviced by a private road. The applicant has stated that they have reviewed tax records, however the applicant with need verify and provide a title search regarding ownership of this road.

There are concerns with the following:

- Maintenance for the private road;
- If agreement are in place with shared driveway owners;
- It is unclear if a 271 A variance is in place for these residences; and
- Access driveway/road not being up to Town Code.

Mr. Peder Scott, applicant's architect and engineer addressed the board and stated we have submitted everything for stormwater management review including a SWPPP. What we normally do is file an NOI with the DEC after review by the local authority. We have submitted everything to the DEC and we have comment letters about required permits. He said the intent of the project is to remodel the existing home into a school and add a gym. We are hoping we could start with the building and then build the gym later. We are aware of phasing and the issue with the town and one way we could do it is to go for a building permit when we get site plan approval. Apply for C/O on the existing building and we have 2 years to get a C/O on the gym. We are hoping to get occupancy of the big building and all the classrooms and the gym is ancillary and we would hate to hold up the use of the school pending construction of the gym. He said in speaking with the client this evening, if the town says we have to build everything all at the same time, we will agree to do that.

Chairman Paepre stated most of the issues I have heard so far tonight and previous meetings have been the increased traffic flow, the narrow roads, a very secluded neighborhood and steep hills. Those are some major hurdles you need to explain to us, how

that's going to be managed and if it could be managed. He asked if there was a detailed traffic study.

Mr. Scott stated we did an ITE analysis. We didn't take counts, but we took the ITE and we analyzed proposed traffic, existing traffic and combined the two together with a full occupancy (50 students, 14 teachers) and we are still at level A for the roadway. It's not overtaxed.

Chairman Paepre stated you are talking about roads that probably get 5 cars a week.

Mr. Scott stated we dug up the plat map from the archives which was filed in 1949. We also pulled every single deed on all the properties in that area. There are easements or anything listed in any of the deeds. In addition, in 2005 a subdivision was approved (points to map) on this project utilizing Scout Hill Road as a town road. The deed for the filed map indicates it's a town road for its entirety. It's 50 feet wide..... if a town owns the land we can't improve it and there is no indication in any manner, shape or form that this isn't a town road.

Mr. Carnazza said we need clarification, we need to make sure. Mr. Simone says they stop x amount of feet before and I don't know the exact number. We need to clarify that.

Mr. Charbonneau asked what was it that you looked at? Just the deeds to those specific properties or you did a chain and title search on any of those properties.

Mr. Scott said a lot of them referenced the 1949 drawings. All but one did not reference the 1949 plat map and that was referencing a map before this board in 2005 for a subdivision. All those had no reference to any easements or any form of responsibility for these homeowners to maintain something. Again, the meets and bounds are clearly filed on the 1949 map.

Mr. Carnazza said but if it never was dedicated to the Town of Carmel and improved, it's not a town road and that's what Mr. Simone was saying.

Mr. Scott what we are hoping for is to get a referral to the ZBA. He said when you look at the parking requirements we have shown that we could create all the parking that's required. We are hoping to go to the ZBA and do land banking. What is land banking? Land banking is a new concept which is being accepted by many municipalities where we will grade a site and get it ready to go, but we won't have pavement there. We will have grass. We use something called turf grass. It looks like a parking spot, but it's green. We are proposing a couple areas for that (points to map) to show the locations.

Mr. Carnazza said but we still don't agree on the parking calculations.

Mr. Scott said we are at a full 55. Our site is fully compliant with the number of parking spaces.

Mr. Carnazza said you don't have paved to comply, but you do have the spots.

Mr. Scott replied yes. He said all we want to do is go to the ZBA and see if we could reduce that in some manner, but again it is fully compliant with Mr. Carnazza's count and interpretation. He said we also need a variance for lot frontage. It doesn't have 100 foot frontage. When it was subdivided and approved for this project, they didn't give it a 100 foot frontage.

Chairman Paepre asked if the fire department was notified about this project.

Mr. Scott replied we met with the fire department twice. We forwarded documents to them twice. I haven't gotten a response back. I wrote in desperation in my response memos. Maybe someone from the town could help me with getting in touch with someone. I have physically been there and presented the plans to them. I did put a fire tank on the site that we discussed verbally.

Mr. Carnazza said he will contact someone for him. He said you are fully compliant, except you need a variance for frontage and parking on grass.

Mrs. Kugler asked why is the narrowest point at the beginning of the driveway.

Mr. Scott said the existing road is very narrow, but we are making 26 feet wide once it enters onto our property. So everything on our site is 26 feet wide.

Chairman Paepre said there are at about two and half pages of comments here comments here. He said I don't want to slow you down, but I don't think we passed on too many projects with two and half pages to the zoning board. We will be having another meeting in two weeks. I would like for you to work with the consultants and possibly get on the agenda two weeks from now. He said I'm concerned with fire department, I think it could be a showstopper if the fire department is against this.

Mr. Carnazza said I would also like to see if they have the frontage. They either need the 280A or the number. He said if you have it, it's fine. But if you don't let's get the 280 and this way you're done.

Chairman Paepre said my recommendation is to come back in two weeks.

The board members were in agreement.

Mr. Mark Jacobs, Director of the Longview School addressed the board and stated I really hope you don't move forward with what you are asking, but instead let us go to the zoning board. We have addressed every comment that we have been able to address. The lack of response from the fire department has been said at every meeting. It's great that Mr. Carnazza will help us. We have come back with a fully compliant proposal. He said if the ZBA approves the variances or not, either way we will come back in front of your board. It won't slow us down from addressing any of your comments. A school runs on a calendar

and for us to make this work, we need to be in that building by fall of 2020. He said I don't think you give up anything by allowing us to go to the zoning board now.

Chairman Paepre asked Mr. Carnazza how satisfied he was with the parking and items you mentioned.

Mr. Carnazza stated with regards to the parking, they complied with what we discussed, but they need to do the non-improved parking for some of their spots. He said the only outstanding issue is the 280A versus 57 feet of frontage is the only outstanding issue and I don't know how to answer that until we get some clarification on who owns that piece of land directly adjacent to the front of their property. It's either a number or a 280A. If it's zero then it's 280A.

Mr. Jacobs stated we have brought all the initial information which all points to the fact that it's a public road.

Mr. Carnazza said what you brought is a proposal. That's saying we are going to build this road in this spot. It doesn't say they built the road in that spot and dedicated to the Town of Carmel and that's the entire question.

Mr. Jacobs said in addition we brought copies of all the deeds which reference the areas the properties extend to and they show that they do not extend on either side to this road area.

Mr. Cote stated the properties are in line with the map you showed us and it shows the road, but what Mr. Carnazza is saying is he doesn't know if official transfer to the town ever occurred.

Mr. Carnazza said and that's what 280A is.

Mr. Cote said so when the developer cut up the property, he drew the road, the property lines ended the road, but there is still the unanswered question of whether that was ever dedicated to the town.

Mr. Carnazza said developed and dedicated.

Mr. Charbonneau said that's a significant issue, so two weeks back before this planning board to resolve that issue clears the way for the ZBA and doesn't cause you to be ping pong to a board that meets once a month.

Mr. Scott said the deadline for the ZBA is tomorrow.....

Mr. Charbonneau said would you include the 280A variance in the deadline tomorrow if you were going to put it in?

Mr. Scott said we could do that.

Mr. Jacobs said pushing the appearance to the December ZBA meeting, makes it potentially problematic for us to complete the project. Again, we are not going to slow down getting you all the information and complying, but we would like to go to the ZBA now for these issues.

Mr. Carnazza asked how long does it take to actually get a search of that piece of property in front of you to find out. Can you do it before the agenda?

Mr. Scott replied yes. I have a title search company and all the addresses.....

Mr. Carnazza said if it's not proper I will pull you off the agenda, but that's up to the board.

Mrs. Kugler stated based on Mr. Cleary's comments, I would be more comfortable with waiting to hear from the fire department first. I don't think it is a good idea to send them to the ZBA when there are a lot of loose ends not cleared up.

Vice Chairman Giannico agreed with Mrs. Kugler. He said I don't feel comfortable sending this to the ZBA also.

Mr. Frenkel returned to the dais.

GATEWAY SUMMIT SENIOR HOUSING – LOT 6 – GATEWAY DRIVE – TM- 55.-2-24.6-1, 6-2 – EXTENSION OF FINAL AMENDED SITE PLAN

Mr. Carnazza had no comments.

Mr. Cleary had no comments.

Vice Chairman Giannico read Mr. Franzetti's memo which stated the Engineering Department has no objection to re-granting the Site Plan Approval for this project as there are no changes to the site being made. The following should be noted:

Putnam County Department of Health (PCDOH) Requirements

- The PCDOH approved the wastewater collection system plans and they are valid until October 23, 2022.

New York City Department of Environmental Protection (NYCDEP) Requirements

- The NYCDEP approved the Stormwater Pollution Prevention Plan (SWPPP) for this project on August 21, 2007.
- The NYCDEP provided a conditional extension to the August 21, 2007 SWPPP on October 29, 2012.
- The conditions of the SWPPP are now set to expire on August 28, 2022.
- The NYCDEP approved an extension of the design approval on May 13, 2010. The permit is set to expire on October 30, 2024.

New York State Department of Environmental Conservation (NYSDEC) Requirements

- The NYSDEC approved an extension wetlands permit is set to expire on March 3, 2020.
- The NYSDEC granted a stormwater permit on June 18, 2007. According to the NYSDEC website, this permit is still in effect.
- The NYSDEC updated the General Stormwater Permit in 2015 (GP-0-15-002)
- Per the NYSDEC if a project was approved under an earlier version of the General Stormwater permit and is being built under an updated version of a General Stormwater permit, the applicant does not need to meet the updated technical criteria, only ministerial criteria.

Chairman Paerprer stated this has been going on since 2007, when do you plan to start?

Mr. Jeff Contelmo of Insite Engineering, representing the applicant addressed the board and stated it's the same answer. The market continues to work against market rate senior housing projects in the Town of Carmel. He said the applicant continues to be committed to the project and invest money in the project. He said this is an extension, not a re-grant of approval and within that re-approval resolution there is a provision to come back for a one year extension which is what we are seeking this evening. He said as a market rate project right now financing and related forces you need to get a project started doesn't have the confidence in a senior only/town home market family housing project in the Town of Carmel.

Mr. Cote moved to grant a 1 year extension of final amended site plan for the Gateway Summit Senior Housing – Lot 6. The motion was seconded by Vice Chairman Giannico with all in favor.

THE FAIRWAYS SENIOR HOUSING – LOT 7 – GATEWAY DRIVE – TM- 55.-2-24.8-1, 8-2 – EXTENSION OF FINAL AMENDED SITE PLAN

Mr. Carnazza had no comments.

Mr. Cleary had no comments.

Vice Chairman Giannico stated Mr. Franzetti's comments are the same as the Gateway Summit Senior Housing.

Mr. Cote moved to grant a 1 year extension of final amended site plan for The Fairways Senior Housing – Lot 7. The motion was seconded by Vice Chairman Giannico with all in favor.

CENTENNIAL GOLF CLUB OF NEW YORK, LLC – FAIR ST. – TM – 44.-2-2,3,4 – TOWN BOARD REFERRAL – CHANGE OF ZONING (DISCUSSION)

The applicant is off the agenda.

MELCHNER SITE PLAN – 177 BUCKSHOLLOW ROAD – TM – 75.16-1-8 – PUBLIC HEARING

Mr. Carnazza said all his comments have been addressed. He did an inspection on the site and there were no outstanding issues.

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

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

Mr. Frenkel moved to recommend full bond return to the Town Board. The motion was seconded by Mr. Cote with all in favor.

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

Mr. Carnazza stated the ZBA denied the variances required last week for the height, driveway and maximum fence height.

Mr. Franzetti had no comments.

Chairman Paepre stated this is a public hearing and we are planning on taking action tonight and asked if anyone in the audience wished to be heard on this application.

Mrs. Gail Fiero of 308 Croton Falls Road approached the podium and stated we have an issue with the applications. We have two historical properties that have been recognized and they are on their way on getting on the registry. At which time, Mrs. Fiero hands out paperwork to the board members.

Mr. Charbonneau stated for the record I provided a copy of what was submitted to the board to Mr. Gaudio for his review.

Mrs. Fiero continued and stated she is referencing the most recent letters to the planning board from EBI and Saratoga Associates, particularly the view images and assessments of our two historical structures which are 294 Croton Falls Road called the Fountain House and second one is the Well House. In reading everything in depth, the pictures submitted of the beginning of 292 Croton Falls Road driveway, it states that the view shed mapping shows any views exist to the proposed tower, it would be obscured since there is a 1,400 feet intervening distance of the proposed tower. Our historical structures are approximately 700 to 800 feet away from the tower and it is in view of it. They're documenting the 1,400 in that particular picture which is incorrect in relation to the historic site. These historic structures are our focus of concern against this tower. She said you can see the tower from these structures during every season. Next they show a line of sight profile for the Fountain House which is 294 and they label incorrectly as number 292. The Well House is quite a

distance further back even closer to the tower. This clearly contradicts and proves wrong the 1,400 foot view theory. She said with regards to EBI's letter, they stated they sent a letter to Putnam Valley Historical Society and they did not respond. Why didn't they send a letter to our Carmel/Mahopac Historical Society office since they were the ones that knew deeply about our historical nature of the property? EBI stated there is no requirement to send letters to neighboring property owners. She said if they had sent one to our local historical office and not Putnam Valley, our local office would have definitely notified my family, because they have always called over the past 25 years that they wanted to come and walk the property and more information. The EBI letter has many contradictory statements which I have marked for you and continued to read to the board. She said they also said the vegetative cover is thick and substantial and they are dense enough to completely screen views of the tower. It also states the view shed mapping predicts that there may be views of the proposed facility along the shared driveway, however the google street view shows the arching trees and that's where they show the picture of the 1,400 feet away. It's a lot of smoking mirrors. They say the Well House is 850 feet and the Richard Yates cottage is 985 feet. It's less than that. She stated here are some of the reasons for denial. The applicant must justify the proposed site all the factors. The applicant must show the hardship incurred if the permits were not granted. Did the applicant give a hardship? That's a reason for denial and the conflict with the historical nature is a reason for denial.

Mr. Bryce Fiero addressed the board and stated Homeland Towers has proposed a number of tower design options and we are opposed to all of these designs. We submit that none of these proposed designs meet the standard under the town and NYS code to minimize the negative impact on a historical and/or scenic resource. Also, these designs violate the conditions under the town code in many respects and have been determined by SHIPO to have an adverse effect upon historical receptors. We request that before taking a decision on the application before you to reflect upon the effort put forth by this community and its steadfast opposition. We are your neighbors and friends and colleagues and we know that you share the same love and affection for communities we do. We offer to you our sincerest thanks and appreciation for all the work you have put into this long process. As a community we've done everything we can to support you and let you know our feelings. We have attorneys involved in the opposition of this application. Many hours have been spent carefully examining court decisions, media reports and other resources. Our special counsel has stated that this board has more than enough information to deny this application. The board can feel confident that a denial is rationally based. We respectfully request that this board exercise their discretion in favor of this community and denial of this application. Finally, we ask the board to consider the entirety of the record before making its decision. Please consider the following from Homeland Towers, such as contradictions, misstatements, misapplications of the law and omissions. These actions make it impossible for a community and for the board to move forward in good faith.

Mr. Andrew Campanelli of Campanelli Associates, representing the residents addressed the board and stated I submitted my comments in writing and do not have anything further to add at this time. He said I simply ask if the board would grant me the courtesy of reserving

2 minutes after Mr. Gaudioso puts on his presentation which he appears prepared to do, so that I'm able to protect the record.

Mr. Robert Buckley of Eleanor Drive addressed the board and stated I saw some of the pictures that was submitted today and reviewed the backup documents. He said there is no question from a visual impact; Eleanor Drive is the most severely impacted with the direct view. We don't look from the ground up at it, we look either even at it, or some of us are higher looking down at it. He said I took pictures at the different heights, and my pictures are very real. This stands out like a sore thumb. Eleanor Drive is severely impacted by this visual monster that will not be above us, it will be either equal to us or in some cases you will look down at it. I believe it will have a negative impact on the resale value of my home. More importantly, for us to visually look at that every day, it will have an adverse impact on us.

Mr. George Fiero of 308 Croton Falls Road addressed the board and stated at Peckham Materials where there already is a tower about ¼ mile away, from this location, why don't they just go to Peckham?

Mr. Robert Gaudioso, attorney for Homeland Towers addressed the board and stated in the matter of housekeeping, I have asked for these in the past and I'll ask again, copies of anything that was submitted to the record including what was just submitted tonight, if the board in fact is relying on any of these documents which we haven't seen. Going back to the issue of SHIPO, there was a statement by Mr. Bryce Fiero that SHIPO had issued an adverse effect letter. He asked is that in your file?

Chairman Paepre said I personally don't know what's in my file....

Mr. Gaudioso asked is the board aware of a SHIPO adverse effect letter?

Mr. Charbonneau stated I don't believe there is such a letter.

Mr. Gaudioso stated I don't there is either. So, that statement on the record a few moments ago was completely incorrect. I want to make sure the record is clear on that. SHIPO has not issued an adverse effect letter. In fact, SHIPO has issued a concurrence, and we included that concurrence back when we filed the application. It was after we filed the application that there was an effort to make the two buildings on the property nearby as eligible for listing. They weren't made eligible until very recently. Since that time, we have revised the EAF to note that. We also submitted a report from EBI from a Secretary of the Interior qualified historian confirming the reasons why there would be no adverse effect on those properties that have been made eligible for listing. He said the letters as confirmed in the letter that we just recently submitted back on October 25th first Saratoga confirms all the distances are correct. The view shed map showed that the buildings that were made recently eligible for listing would not be visible based on the view shed mapping. We also produced actual site lines to show that those buildings would not be visible. There have been no photographs to show that those buildings would be visible in the public record. If there is please feel free to correct me. More importantly, the qualified historian confirmed

that irrespective of whether the tower would be visible or not visible, it simply would not have an adverse effect on those buildings based on the reason why those buildings were listed as eligible and that is a very important point. Just because a property that is eligible that for listing is within view shed of something doesn't make it impacted by that particular use. He said I'm not sure what the scale is on this map (points to map) but the tower that's shown on this map, showing all the distances, suspecting if this scale is correct, the tower would be about 2000 feet tall. He said that is clearly not what is being proposed. What's being proposed is a 140 foot mono-pine disguised as a tree. He said this document here is completely inaccurate and misleading to the board, because it is showing a tower, not only completely out of scale, but it's also showing a tower that does not anywhere near resemble what's being proposed. What we submitted since the last meeting back in the end of September was a letter from the DEC confirming that there is no freshwater wetland permits required. The application does not require any wetland permit from the state or from the federal government. We are in front of the ECB board for an administrative permit or a finding that no permits are required for the utilities that are proposed under the existing gravel access drive. In fact, the only other feature that's within the town wetland buffer is the stormwater management practice that we added as an accommodation to the neighbor. We are not making any changes to the road, but we did propose to put in some stormwater management practices to improve the existing condition. We submitted a letter from Mr. Raymond Vergati dated September 11th confirming that the alternative location suggested by the residents counsel was not available and not a feasible alternative. To my knowledge, there has not been one other single alternative site proposed or suggested. We believe we looked at all the different sites in the area. Regarding the Peckham property, I'm sure you're aware back in August we submitted the map showing where Verizon Wireless is located. They are actually located at that property. You hired an independent professional engineer to review the application, he spoke in front of this board and answered many questions and reviewed all of the materials that were submitted. Just to reiterate we submitted actual propagation mapping, submitted scan test data of all the existing signal. We submitted drive test data at three different heights based on the crane test. We submitted KPI's (Key Performance Indicators detailing the various aspects of both drop call data and access failure rate data. All of that was submitted to your board and reviewed by your third party consultant and Mr. Graiff did conclude in his report that we did prove the need for the height of the facility to provide the necessary coverage at this location. We submitted a supplemental letter from Lane Appraisals dated September 19th in response to the unsupported broker letters. Just to reiterate, the lane appraisal report was very simple. It looked at numerous studies over a long period of time, over a decade. It looked at towers specifically in the Town of Carmel and in the surrounding counties. It looked at the pure data when a tower would be visible and when a tower would not be visible. It looked at houses that had visibility of the tower and what did not have visibility of the tower. They compared the sales prices at that time. In the data it showed that there would not be a diminution in property values. I heard many times throughout the meetings, that the towers are going to make property values go up. We did not say that. We provided the raw data from an AMI certified appraiser. This is the same methodology that was held up in various cases. We cited to them in my letter. T-Mobile vs. Ramapo, the southern district of New York found the planning board's conclusion that the tower would lower property values was almost entirely conclusory in contrast to the comparative sales analysis submitted by T-

Mobile. That was the same analysis from Lane Appraisals. Mr. Gaudioso proceeded to cite different cases in New York. He said we submitted another follow up report from PierCon Solutions dated September 24, 2019 regarding Verizon Wireless' significant gap in service. We detailed that earlier and we reiterated the number of users, the different uses in the area including based on what would be most conservative analysis which is the 700 frequency band. We showed the hundreds and hundreds of residents that would not be covered by the existing service. We also detailed the issues regarding the propagation maps, the drive test data and the KPI data as well as the online coverage maps. That's all in the PierCon report. We submitted a letter from APT Engineering detailing there would be no significant adverse impacts related to fire dangers. Included in the letter was a minimal amount of welding that would be required. We indicated what we would do in those circumstances. We indicated the ordinances that are in place to protect against any fire danger. We referred the application to the local fire department. We've received no adverse comments back from them. We also detailed that the turning radius as shown on the site plan previously is adequate for emergency services personnel. The facility meets all the zoning code setback requirements and we also noted that there was a letter submitted from a Mr. Dennis Rogers dated March 28, 2013, if that date sounds unusual, it's because it is. It was in Mr. Campanelli's memo. That was the same letter that was submitted in the Town of Kent case that I mentioned earlier, where the court upheld the approval of that facility. We responded to that letter notifying the board that Mr. Roger's letter was completely inaccurate. All of the assumptions in the report were incorrect. He said I mentioned the EBI letter earlier that was dated September 19th.....we also submitted another letter from Saratoga Associates dated September 27th. This included additional visual renderings and site lines from nearby properties. There were a lot of comments at the last meeting about visibility from backyards, pools and so forth and so on. We submitted the visual rendering showing the limited visibility, the way proposed mono-pine would blend in with the existing coniferous trees. We also showed the site line showing various structures that were recently made eligible for listing would not be visible from the proposed facility. We submitted the APT Engineering letter dated September 17, 2019 detailing all the site plan changes requested by the ECB and we submitted the revised site plan based on those ECB comments.

Mr. Andrew Campanelli addressed the board and stated with regards to the lane appraisal, some of the statements made by Mr. Gaudioso are clearly not accurate. He has referred to the Kent case as somehow supporting his lane appraisal analysis, no court ever made any decision regarding the lane appraisal in the Town of Kent case that I handled. His argument with the regard to the lane appraisal is pretty simple, they claim that they looked at the value of homes which were similarly situated, some of which had a view of a cell tower and others didn't and said basically they sell for the same square price per foot. The problem that omits is what else was involved in the valuation of the home. Clearly, a home which is updated as has central air and fireplace with a view might sell for the same square footage as a house that doesn't have a view, but doesn't have any of those amenities. The cases he cited as far as saying the lane appraisal was good were all lower court cases. The case I cite in my brief is Omnipoint and Omnipoint says you don't have to have an appraisal. Real estate brokers' letters are substantial evidence of a reduction in property values and that case came from the United States Court of Appeals for the second circuit. The only court higher than that is the United States Supreme Court and that decision on Omnipoint has

stood since 2005 and it has never been overturned. Apart from that, for the record what he has not provided and it's very simple. He could provide what was done on Hickory Lane in Bedford. An appraiser there prepared appraisals for the nearby properties, they prepared two sets of appraisals, one without the tower and then they created appraisals for the homes, the exact same homes of what they would be worth with the tower there. Not surprisingly, the value of each of the homes was reduced collectively by millions of dollars. This applicant has not given you that. They still from this day have given you the hard data. They have given you manipulated data but not hard data. They talk about drop call data, read the PierCon Solution Report, there is no hard data. They discuss receiving engineering unspecified Engineering Data from Verizon. But, they don't give you the actual data. In similar vein they give you maps, which are creations using software which are manipulated. They introduce variables that take actual signals strengths and they multiply them by fractions to reduce the signal strengths. They don't give you the actual signal strength. It's nowhere, they could do it, but they haven't.

Mr. Gaudioso stated Mr. Campanelli is correct on one point, he did represent the residents in the Bruin case and the residents lost in that case. Both the lower court and the Appellate Division upheld the lower court and the lower court specifically referenced the lane appraisal fact that there was an appraisal report. The lane appraisal report was the same methodology as every report cited in each of the five cases. The T-Mobile case he cited there was no lane appraisal report. The cases I cited specifically talked about the fact when you have a broker letter that has no data, they're opinions, there are speculations and that's what the courts are focused on and the lane appraisal report has the actual data. He said the board has to be confined by the evidence on the record. The board has to be confined in making its decision based on substantial evidence under federal law. We have submitted all of the data that you requested, we submitted all the data that is required by your code and we submitted all of the data that was requested by your third party professional engineer and he came to the conclusion that we substantiated the need for the facility. There is no data in the record other than that data regarding the need for the facility. He said I ask that you close the hearing tonight and approve the application. Thank you.

Mr. Buckley stated I think the telecommunications act that the town enacted several years ago should be your bible. That should be what you base your decision on.

Mrs. Fiero approached the podium again and reiterated the distances from the two structures on her property and the eligibility of when they might become historical.

Mr. Gaudioso said regarding the comment the code being the bible, actually the federal law does supersede the code, but to the extent the code is relevant. The code that was recently adopted has a residential home setback requirement. It's two times the height of the tower. We meet that requirement by a wide margin. In addition, the code has no setback requirement for buildings or structures that eligible for listing or listed.

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

Mr. Frenkel stated I have carefully reviewed the draft resolution that the board will be acting on tonight. I am in full agreement with it, not to diminish any of the conclusions that are in that resolution I want to highlight a few things. I am disturbed about visual impact in light of the strong statements and pictures given by homeowners. On the issue of the effect on real estate valuations, I reviewed Homeland's lane report materials and the broker letters supplied by Mr. Campanelli, and I find the broker letters to be more persuasive. On the issue of historical property, I note that there are contradictions in Homeland's materials about the visual impact. At one location, the materials show that the tower would be visible when leaves are not on the trees. What would be visible would be a substantial part of the cell tower. Understanding the amount of months that leaves are not on the trees I find that a substantial impact.

Mrs. Kugler stated based on the documents we have before us as a board, I have read through our documentation and based on facts that were supplied by homeowners; I find it appalling that these residents are being visually impacted. Eleanor Drive, immediately on Shear Hill Road, I myself the day of the crane test went to visit a couple of the sites, Stacey Lane and can see for myself the impact that it has on the residents. Residents that are adjacent to this property or share this property, a resident who lives in a 1700's home is going to be visually impacted by this every single day. The people that live behind it on Stacey are going to see this every single day. When they bought their homes this was not what they had intentions of. I find it unfair that they will have to see this. So, to those aspects, I'm denying this application.

Vice Chairman Giannico stated we have had many meetings about this going back and forth and we heard all sides and ultimately this board represents the people of this town. This subject and these cell towers will affect the people in this town. I understand there is a need for technology, I understand there are other options which I don't think there has been a good compromise here or an offering of a compromise. Based on everything that we talked about the visual impact, property values and potential historical sights, I am not in favor of this as well.

Mr. Cote stated I have a few more comments. The first point I would like to make is that I have also reviewed the draft resolution and I do agree with every single point raised in the resolution which I will be voting later. I would like to state based on the zoning board's decision as well my own analysis the application does not conform with the town code §156-62 (O). I also do not believe that the applicant has satisfied their burden as set forth in §156-62 (I). The code says that the applicant must come forward with a detailed explanation to provide why a site of a higher priority was not selected. To be quite frank the applicant to us with a site selected and I don't believe I've ever heard any explanation why other sites were equally as viable. I can think of other sites in the areas which would if perhaps be better. With regards to the two areas that the other board members touched on, the visual impact as well as the potential diminution of value of the properties, the applicant has submitted an adverse visual impact study which was comprised of photographs taken mostly from public roads and public areas. What's noticeably missing is any sort of photographs from the properties that would be most affected by this including the property owner who is going to be at the base of this. I think it wouldn't have been a stretch for the

applicant to ask for permission to go properties to take pictures and truly get an assessment of what the visual impact was. We did have pictures submitted from council, two of which are pretty striking. They appear to be on a back deck, and you could the balloon test and crane test is right there. The visual impact is crystal clear. Beyond that when the crane test was done I rode around both times and when you go up those streets especially around the area is very visible. The other caveat is that after the site was moved to Crane Road location there was never a subsequent balloon test done to show the impact of the new position. But significantly, I take exception with the report submitted by Lane appraisals, which concludes in their report that the tower will not result in diminution of property values or reduce marketability of properties. I take exception with that. He puts four data points in his report, sale price, sale date, area and the square foot price. It is woefully inadequate. It doesn't take into account a lot of factors which really should be taken into account, such as the age of the house, the amenities and the type of house, such as a raised ranch vs. center colonial. The size of the property that house is on. Here in Mahopac, you have houses that are on 1/4 acre houses on half an acre and so on. That's a big impact on the price. It doesn't tell us what the purchase price vs the sale price. We don't know how long the house was on the market. For the Lane appraisal really doesn't tell us much. Having said that, I did do a little google research and I saw Lane appraisals for Philipstown and other places and there are varying amounts of detail. Some of them had prices of when the houses were purchased. Contrasting that with the letters that we received from real estate agents, were dealing with people with 35 years of experience and they are telling us their opinion based on their 35 years of experience that do realize that this is going to be an adverse impact on selling the house. He said I'm guided by §156-62 where the legislative intent is pretty clear, it's about preserving the character of the community, minimize the aesthetic impacts and realizing that the residential areas of paramount importance and for all of those reasons I will be denying the application.

Mr. Porcelli stated being I'm the newest member of the board; I was not around for a lot of these meetings. I was not able to see the balloon tests, but I did see a lot of the pictures which does have a significant impact on these homes. I do agree with this resolution and the items in it.

Chairman Paerprer stated I personally feel this will have a huge negative effect on the community. I think there has to be better alternatives for the community. It conflicts very much so with our town code, whether it's the aesthetics or height. I am not sold on the drop code coverage; I have driven up and down Croton Falls Road plenty of times and have never lost a call. Personally, I would rather lose a call for 30 seconds, then to wake up in the morning and look at that. I support everything I heard tonight from the other board members.

Vice Chairman Giannico moved to adopt Resolution #19-13, dated October 30, 2019; Tax Map #65.19-1-43 entitled Homeland Towers LLC & Verizon Wireless; 254 Croton Falls Road Site Plan and Special Permit **Denial**. The motion was seconded by Mr. Cote.

A roll call vote was taken as follows:

Mr. Porcelli	For the motion
Mr. Frenkel	For the motion
Mrs. Kugler	For the motion
Vice Chairman Giannico	For the motion
Mr. Cote	For the motion
Chairman Paeprer	For the motion

Motion carries.

HOMELAND TOWERS DIXON LAKE – 36 DIXON ROAD – TM – 54.-1-6 – PUBLIC HEARING

Mr. Gaudioso asked Mr. Cote for the record if the research he did was placed in the file (record).

Mr. Cote replied no.

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

Mr. Robert Montanaro of 30 Brittany Lane addressed the board and stated I will briefly summarize our major points. Our first point is that we do not feel that this tower on Dixon Road has been proven to be a need. There is clearly a shadow of doubt whether it's from the information that's been submitted and casting doubt on whether or not this tower is even needed. Secondly, common sense dictates, people would not be out here if they didn't have a common sense gut instinct that putting a cell tower up a few hundred feet from their home or several hundred feet from their home would not have a negative impact. In going to local realtors who have decades of experience is in contradiction of what was supplied by Homeland. It shows that negative impact is in the millions of dollars. As far as aesthetic impact is concerned and the perception of people whether they are in their backyard, living room or deck, I not quite sure how you would contradict that. That aesthetic impact is severe to people. The amount of taxes people pay can be verified by walking across the hall. Lastly, in regards to alternative sites on the Dixon Road site, it's clearly been shown that there are alternative sites again if a tower is even needed should be further explored. He said there is further communication that we reviewed on line between the town and Homeland where these alternative sites were looked at. Whether that ball got dropped because of cost or convenience, we have no idea. Again, the tower has not been proven to be a need. Putting up this tower several hundred from my home would not only have an impact, but I don't have any drop calls either.

Mr. Andrew Campanelli addressed the board and stated with regards to this application it is critical to me to create a proper record. The board as I mentioned previously really needs to make certain factual determinations. Within the exhibits that have been submitted to the board, I have submitted data maps directly from Verizon. In this case it was exhibit L,

which showed according to Verizon there was and there are no significant gaps in personal wireless services and no capacity deficiencies in the precise location of where they want to build this tower. In response, Mr. Gaudioso tries to minimize that display by claiming in some way that this is really a marketing tool. That somehow Verizon is essentially misleading or lying to the public.....

Mr. Gaudioso interrupted Mr. Campanelli and said I never said any of those things.....

Mr. Campanelli stated the importance of the maps that have been submitted for both cases, is what Verizon is showing you is that there are no significant gaps in their personal wireless service at this specific location. That is a critical term. Verizon is not representing this perfect service and I'm not arguing that this town has perfect service for Verizon. What I'm telling you is Verizon has no significant gaps which require this application be granted. It is critical that among the factual determinations you make you comply with the telecommunications act. He said Mr. Gaudioso said the act trumps the code. He's right with regards to this issue. The key issue is if an application violates your code, you must grant it, if Mr. Gaudioso proves that Verizon suffers from this significant gap in its personal wireless service and imposed installation is the least intrusive means of remedying that gap. It is critical among the findings you make in addition to whether or not there's a significant adverse impact on aesthetics, property value or if it complies with your code. It is extremely important that the board make a determination as to whether or not this applicant has established that there a significant gap in service. In this particular application, there is no way Mr. Gaudioso could prove that. There is absolutely nothing which requires a tower to be placed 50 feet from adjacent residential parcel on a parcel has large is this. It's more than 10 acres. There is absolutely no reason to do that. So, I ask that the board consider making a determination as to whether or not Mr. Gaudioso has established contrary to what Verizon says, that Verizon has a significant gap in service in each of these locations and that the proposed installation is the least intrusive means. If you find as a factual determination that he hasn't met either of those standards then the telecommunications act does not require you to grant the application.

Mr. Gaudioso stated back in September we submitted additional information. We submitted a letter from SHIPO concurring with the fact that there are no historic properties in the area. We submitted letters to both U.S. Fish and Wildlife Service and NYSDEC regarding a danger to threaten species including a letter from EBI confirming no adverse impacts to eagles. We submitted a letter from Mr. Klaus Wimmer dated September 17, 2019 confirming the only six alternative sites that were suggested were not feasible alternative locations and were not available for installation of a facility. We also submitted a letter from Mr. Klaus dated August 21, 2019 confirming that the town properties were not available. I heard some statements saying town properties were available, but we specifically included a copy of the correspondence from the town attorney confirming McDonough Park was not available. We actually had site visits, we proposed lease agreements, we had plans, but the town decided they were not going to lease that property. Regarding the lane appraisal report, I find it shameful that tonight for the first time on the night before the shot clock is supposed to expire; there are questions about the methodology in the lane appraisal report. That there was independent research that wasn't placed into the record and that the board months ago

resolved to hire a third party appraiser and I have not seen that review at all in the record and yet there are questions and reliance on our report versus the broker reports. I find that prejudicial and unfair to the applicant. Regarding the balloon test, the same comment, again prejudicial to say at this stage, why didn't we take photographs from certain places? I will remind the board I stood here on multiple occasions and requested the board to schedule a public hearing. We provided view shed maps with proposed visual rendering locations. We asked for all the locations the board, the public and staff wanted us to take photographs from. We took photographs from every single location that was requested, so to hear that we didn't take photographs from certain places, because we were trying to conceal data, is nothing further from the truth. That is absolutely ridiculous and prejudicial to the applicant that we stood here for months and asked for the public hearing to be set. We worked with the board and had special meetings and we extended the shot clock to be able to do the six balloon tests and the crane test and we hear tonight that there were photographs tonight that we didn't take. Again, I find that prejudicial. We submitted a response from PierCon Solutions dated September 23, 2019, again this reiterated the significant gap in service, and it reiterated the online marketing maps. I didn't make these statements, a PierCon expert made these statements explaining the difference between the online maps and the maps that were submitted. Explaining the difference between the propagation maps, the drive test maps and the KPI data. You heard from one of your own residents and talked about how he had all the different carriers and had problems with service. We submitted a letter from APT Engineering detailing those significant adverse impacts regarding fire dangers. We referred the application to the fire department and received no adverse comments. Again, the application meets the setbacks. There have been comments about setback to the property line, yes that meets the town code, if the setback should have been bigger that was up for the town code to adopt. We meet the setbacks, nevertheless, we proposed many months ago, alternative location much further all the way on the other side of the property. To say there were no alternatives and we didn't propose any alternatives, we did and we showed visual renderings from that alternative. We also submitted a sketch plan with respect to that and a freshwater wetland survey showing where the wetlands are on the property. With that I ask the board to close the public hearing and approve the application.

Mr. Campanelli stated I have to respond to the umbrage stated by Mr. Gaudio. Complaining that your actions are prejudicial and mentioning that there weren't photographs taken from the closest property the property that is directly adjacent to where the tower is going. Contrary to what Mr. Gaudio is stating, I respectfully submit that it's not your job to tell him where to take photos. He knows what his job is. I want to make the record crystal clear; I've cited Omnipoint which was decided by the U.S. Court of Appeals for the second circuit in 2005, 14 years ago, a federal judge said that the board in a case similar to this could completely discount the study that was offered by the applicant. The reason is, the photographs taken by the applicant were taken just as they here, were taken from public roads. No photographs were taken from homes that would be most adversely impacted. This comes as no surprise to Mr. Gaudio, and the reason is I probably have been up against him countless times. In at least a dozen cases in the past year I submitted briefs. In those briefs opposing Mr. Gaudio's applications, I laid out case after case and explained time and time again that according to the U.S. Court of Appeals for the second

circuit, the applicant should take photos from the nearby homes. They choose not to do so, so for this applicant to stand here and tell him that he's aghast and it's prejudicial to his client, that a member of this board would have the audacity to suggest that he should have done something that the federal court has said should be done 14 years ago, that's prejudicial, that's absurd. There are grounds for that statement and he knows it. It's his obligation to provide this board with an accurate depiction of what it's going to look like. The whole purpose of a visual analysis is to give you an accurate depiction to show you exactly what the adverse impact is going to look like. They didn't do it here and it wasn't an omission by error. They don't do it in case after case and they know they're supposed to. So, any umbrage I submit to you is disingenuous at best. Thank you.

Mr. Gaudioso stated first of all we took photographs directly in front of the closest resident from the street. We were not authorized to go on their property, if we authorized to go on their property and invited, we would have taken the photographs. The only thing Mr. Campanelli is right about is that he writes the same brief every time and we have seen it many times. Unfortunately, for him that's not what the Omnipoint case said. It didn't say you have to take photographs from the neighboring properties. We provided an expert report from Saratoga Associates based on the methodology we discussed with this board, your planner and all the photographs of all locations required by your code. We included the view shed mapping which is part of that analysis; we included the crane test, six balloon tests and the photographs. It's all one package. We submitted a complete visual analysis in accordance with the DEC manual for preparing such visual analyses.

Mr. Montanaro stated for the record, Mr. Gaudioso or anyone from Homeland Towers did not knock on my door to take pictures and no one knocked on his neighbors' doors as well. He said no one asked for authorization. I would have gladly taken him for a walk and take whatever photographs he wanted.

Hearing no further comments from the audience, Mrs. Kugler moved to close the public hearing. The motion was seconded by Mr. Porcelli with all in favor.

Mr. Frenkel stated my comments are duplicative of my earlier statements. With respect to the Dixon Road application, I have carefully reviewed the draft resolution and I find that I am in full agreement with it. I am disturbed about the visual impact in light of the strong statements and pictures given by the homeowners. On the issue of the effect on real estate valuations, hereto, I reviewed Homeland's Lane report materials, I also reviewed the broker letters and I find that the broker letters to be more persuasive. He said Homeland relatedly late in the game moved the tower to the center of property, but no balloon test was done for that move. That balloon test would have allowed homeowners to evaluate the effect of the visual impact and that has not been done.

Mrs. Kugler stated as in the first application, I'm denying this application based on some of the facts that we have seen and heard. She said a lot of the residents that are here tonight, would have easily opened their door knowing that this is such a concern to them and I think it was negligent on your part. As our code states this is a negative impact for them and I

don't think that is just for them. I spent a lot of time in that area and I have never had any issues with dropped calls, so I can't understand how this tower is possibly necessary.

Vice Chairman Giannico stated for the reasons we have stated in our resolution and for the discussions we had back and forth on this, again, I'm not favor based on a strong negative impact to our community, so therefore, I am not in favor of this application.

Mr. Cote stated for all the reasons I mentioned previously including the applicant doesn't comply with §156-62(O) the applicant failed to establish the priority pursuant to §156-62(I), the adverse visual impact. It's your responsibility to take the pictures.....

Mr. Gaudioso interjected and stated that's not the standard.....

Mr. Cote said I'm not saying it's the standard.....

Mr. Gaudioso stated we noticed those balloon and crane test, we did them on dates so that everyone would have a fair opportunity, everyone knew about, so that's completely unfair.

Mr. Cote said the reality is that my comment was quite simple, the pictures we were given were taken from public roads none from the properties that were most affected by it. I stand by that point. As far as the valuation, you gave us the Lane appraisal report it had four criteria points that were and I think there is a lot more information that would have been helpful if you were trying to show that there were no diminution in value. I'm not persuaded by the report you gave. I am persuaded by the letters from the realtors and know what's involved in selling a house versus appraising it. For those reasons, I will be voting no.

Mr. Porcelli stated again being the newest member of the board; I did not have that much time involved in this as the rest of the members. I did review a lot of the documents; I was not present for any of the balloon tests. He said I am in agreement with this resolution.

Chairman Paepre stated I have visited both sites for both balloon tests. I found the balloon test on Dixon Road to be very difficult to swallow. I thought it was extremely intrusive. I also submit everything we just heard. He thanked the neighbors for conducting themselves so professionally throughout all these meetings.

Vice Chairman Giannico moved to adopt Resolution #19-14, dated October 30, 2019; Tax Map #54.-1-6 entitled Homeland Towers LLC & Verizon Wireless; 36 Dixon Road Site Plan and Special Permit **Denial**. The motion was seconded by Mr. Cote.

A roll call vote was taken as follows:

Mr. Porcelli	For the motion
Mr. Frenkel	For the motion
Mrs. Kugler	For the motion
Vice Chairman Giannico	For the motion

Mr. Cote
Chairman Paepre

For the motion
For the motion

Motion carries.

MINUTES – 07/31/19

Mr. Frenkel moved to accept the minutes. The motion was seconded by Vice Chairman Giannico with all in favor.

Vice Chairman Giannico moved to adjourn the meeting at 9:35 p.m. The motion was seconded by Mr. Cote with all in favor.

Respectfully submitted,

Rose Trombetta