

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL ZONING BOARD OF APPEALS



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MICHAEL CARNAZZA
*Director of Code
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BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
WILLIAM ROSSITER
MARC DITOMASO
JOHN STARACE

ZONING BOARD OF APPEALS MINUTES

AUGUST 22, 2019

PRESENT: CHAIRMAN: JOHN MAXWELL, VICE-CHAIRMAN: PHILIP AGLIETTI
MARC DITOMASO, ROSE FABIANO & JOHN STARACE

ABSENT: SILVIO BALZANO & WILLIAM ROSSITER, JR.

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Arlene Salkow	65.13-1-49	1	Variance request granted.
Joseph Frumkin	75.8-1-48, 49 & 50	2 – 7	Variance request granted w/cond.
Jennick Property Mgmt Corp	85.16-1-20	7 – 16	Held Over.
Homeland Towers LLC & NY, SMSA Ltd. Partnership d/b/a Verizon Wireless (Casse)	65.19-1-43	16-28	Held Over.
Homeland Towers LLC & NY, SMSA Ltd. Partnership d/b/a Verizon Wireless (Dixon)	54.-1-6	28-35	Held Over.

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Dawn M. Andren

NEW APPLICATIONS

1. Application of **ARLENE SALKOW** for a Variation of Section 156.15 seeking permission to build addition to the master suite; walk-in-closet & bathroom. The property is located at 291 East Lake Blvd., Mahopac NY 10541 and is known by Tax Map 65.13-1-49.

Code Requires/Allows	Provided	Variance Required
25' – Side Yard setback	22'	3'

➤ Ms. Arlene Salkow of 291 East Lake Blvd., Mahopac was sworn in.

Chairman Maxwell said tell us what you're seeking relief on.

Ms. Salkow replied it is a master bedroom, walk in closet and addition to the bathroom.

Chairman Maxwell said you have 22' provided and need a variance of 3' because you're coming out from the back of the house from what I remember seeing on the drawings. There's no other property that you can purchase to bring this into conformance. The adjacent properties are occupied and you can't buy the property behind you to bring it into conformance?

Ms. Salkow replied no.

Chairman Maxwell said there's no other means to seek relief here.

Ms. Salkow said no.

Ms. Fabiano asked have you thought about going on top of the existing footprint of the house.

Ms. Salkow said no; I'm going straight out from my bedroom.

Ms. Fabiano said and you prefer that versus going up?

Ms. Salkow responded I can't go up. There's an attic up there.

Ms. Fabiano said no other questions. It's a very small variance.

Chairman Maxwell asked if there was any input from the public on this application of which there was none.

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mrs. Fabiano with all in favor.

Decision of the Board:

Vice-Chairman Aglietti moved to grant the requested variance; seconded by Mr. DiTomaso with all in favor.

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2. Application of **JOSEPH FRUMKIN** for a Variation of Section 156.15 seeking permission to construct a boat-house with a studio apartment above it. The property is located at 1 & 5 Fairy Lane, Mahopac NY 10541 and is known by Tax Map 75.8-1-48, 49 & 50.

Code Requires/Allows	Provided	Variance Required
Boat-House over Lake – 25 ft.	35 ft.	10 ft.
No Apartment over Boat-House	Studio Apartment over Boat-House	Variance required
Boat-House Height - 10'	26.25 ft.	16.25 ft.

- Joel Greenberg of Architectural Visions, 2 Muscoot Road North in Mahopac representing the applicant was sworn in.

Mr. Greenberg said we have something here that is very unique for Lake Mahopac and I think it's something that we will be proud of if we are able to get the variances and proceed with the project. We're going to eliminate the first house on the left once on Fairy Island – completely demolish the house. We also want to put an underground simulator for golf practice underneath the ground and the entire top will be lawn/grass and covered. The only part that will be exposed is the part that faces the Lake and of which will be windows. This will contain the golf simulator, a bathroom and some storage area. The boat-house will have two boats that will be enclosed and a third slip will be exposed. On top of that, we're proposing a studio apartment to be constructed. We're taking an existing one family house, eliminating it completely and we're going to be tying this lot to Joseph Frumkin and his wife which contains two lots and make these three lots into one large lot. That way on 3 lots you would have 1 house, a boat-house and a studio apartment. The question is why do we need the variances. First of all, if you look at the floorplan, it's in the shape of a trapezoid and it's done in a very tasteful way. It will be quite a beautiful sight to see on the south side of Lake Mahopac. If you recall from several years ago, the Frank Lloyd Wright house's deck is cantilevered well over 25' over the lake and these variances were granted. It certainly has become a sight-seeing spot and something the Town can be proud of and that's on the north side of the Lake. We have something here on the south side of the Lake which I think, if built, you will be just as proud of. Again; the Code says you're allowed to come off the shore line 25' but because this is a trapezoid, one side will be less than 25' and the other side will be 35'; so, it will vary from under 25' to 35'. The other section of the Code says a boat-house cannot be more than 10' in height. Because of the studio apartment and the configuration, the average height of the studio apartment will bring the height up from the Code requirement of 10' to approximately 20'. Again; because of the way the Code reads, the height of the building is not taken from the highest point but the average point to a point midway between the eve and the ridge. So; there are two variances that we require but as I have said, we're taking 3 lots, reducing it; instead of 3 houses, we're down to 1 house and to have these amenities which I think will be a beautiful asset to the aesthetics of that section of Lake Mahopac. You're probably asking why do we need the studio apartment? This is not to be rented. It's for family members of the Frumkin family – some of whom have pets whom we feel would not be conducive to Joe and his wife as far as allergies are concerned. That is one reason why this is being added. The other thing is that even though this height exceeds the Code, if you look here; this is a survey with the topography on it. You'll see that the high point of this is approximately 668-670 feet while the grade down at the shore line is about

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660 feet. There's a drop of approximately 10 feet from the high point to the low point. As you're driving by here, you probably won't see, unless you go down to the shoreline itself, more than 10' exposed of the proposed boat-house and studio apartment. If we could just go over the criteria for variances: this certainly will not be an undesirable change to the character of the neighborhood; it will certainly enhance it. Because of what we want to do, there is no other means to do it except to ask for the variances; Are the variances substantial? Number wise you could argue that they are substantial but I think the end result of what we're going to have will be an asset to the community and an asset to the neighborhood and an asset to the Town. Was it self-created? Again; it's not self-created. It's something that we want to do enhance the property, reduce 3 lots down to 1 lot and basically have 1 house on 3 lots.

Chairman Maxwell said so your intention is to combine these as one tax map?

Mr. Greenberg responded yes.

Chairman Maxwell said (to Mr. Carnazza) to have 3 existing houses on 1 tax map.....

Mr. Greenberg stated right now, the lot where the house is, that first house to the left, is lot #1. This was always here. This has been here for many years. The next two lots (if you look at this map over here), this shows the lot that we're talking about. It shows Mr. Frumkin's house which, originally when it was built, took these two houses that were there and combined them into 1 lot. Right now, you've got one house on two lots and the older house which is what we're talking about which is the first lot. So now we're taking these two lots which were already combined and now adding this one to the property; so, there'll be 1 house on 3 lots with a boathouse.

Mr. Carnazza interjected there will be one house on one lot – all the way in; then there will be one house in the beginning with an accessory apartment and a golf simulator in the same lot.

Mr. Greenberg interjected corrected.

Mr. Carnazza continued; there's not 3 houses on 1 lot. There's one and one.....

Chairman Maxwell interjected but he said they're combining the lots.

Mr. Carnazza said the far one you're not combining. You can't.....

Mr. Greenberg interjected yes; in other words, we have no problem making all the property that the Frumkin's own into one large lot.

Mr. Carnazza responded then you'll need a Use Variance for that also. You're allowed to have 1 single-family house on the lot; not 2 single-family houses.

Mr. Greenberg said I don't want 2 single-family houses. You misunderstood me.

Mr. Carnazza asked what's all the way in. Is there a house on that lot?

Mr. Greenberg (pointing out on map) said it's right here.

Mr. Carnazza said I need to check the TM.

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Mr. Frumkin said there is today a house on that lot.

Mr. Greenberg said the third lot?

Chairman Maxwell said Mr. Frumkin; if you're going to speak, I need to swear you in.

➤ Mr. Joseph Frumkin of 5 Fairy Lane, Mahopac was sworn in.

Mr. Frumkin said just to clarify on the facts; there's an additional lot over there which has also been incorporated so this is 1 house on 3 lots that exists today. Today, on 1 Fairy Island, which we bought last year, there is 1 house on 1 lot. That's the current state of affairs. What we want to do is combine everything and just have the apartment above the boat-house. I don't know if you consider that a dwelling or not.

Mr. Carnazza said so there's 1 house on the first two lots you purchased and this one he just bought is going to have an accessory apartment and a golf simulator.

Mr. Greenberg said so all the lots will now be 1 lot. Basically, 1 house on 4 lots – correct Joe?

Mr. Frumkin replied correct.

Chairman Maxwell said 1 house on all 4 lots with an accessory apartment.

Mr. Greenberg replied correct.

Mr. Carnazza asked how big is the apartment over the boat-house.

Mr. Greenberg I think it's.....

Mr. Carnazza interjected 900 sf max.

Mr. Greenberg said it's about 800 square feet.

Mr. Carnazza said I just want to make sure you didn't exceed that.

Chairman Maxwell said it wasn't advertised as such. Would it have to be re-advertised?

Mr. Carnazza read from the Legal Notice and said that's how it's advertised. "construct a boat-house with studio apartment above it. The property is located at 1 & 5 Fairy Lane – Mahopac. Studio is an accessory as long as there's a principal house on that lot which is the house and it has to be less than 35% of the total which it is.

Mr. Greenberg said just to repeat so that everybody is clear about it: we're now having one house; this house is coming down; the existing house is going to remain and all the lots that the Frumkin's own will become one lot. As Mr. Carnazza said, it'll be one house on the entire piece of property plus the accessory apartment and the golf simulator.

Chairman Maxwell said you guys will have to go in front of the DEC.

Mr. Greenberg replied yes; this is the first Board we're going with. If the variances are granted, we have a road to follow.

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Mr. Carnazza said and you can condition it that way. This way if they don't get it, the variance isn't just hanging out there.

Mr. Greenberg said yes; condition it on the fact that we have to get all the approvals from the local Environmental Conservation Board and since the Lake is state owned, the DEC also and Board of Health. This is the first step.

Chairman Maxwell opened this application to the Board Members for questions.

Mr. Starace said it's a really nice design. Was there any consideration for installing, designing and constructing this house on the property in the area above the sod farm or close to the dock inside the property line?

Mr. Greenberg replied we tried to do something unique and I think this is something unique; just to put a studio apartment in the middle of a lot doesn't make any sense. We're better off taking the house down, covering the whole area and it'll just become a whole landscaped area. The only portion that will be exposed for the golf simulator is the portion that directly faces the lake. When you drive onto the island, all that you're going to see is a beautifully landscaped area. This entire lot, which is landscaped now in the front and the side, once the house is down, will all be landscaped. This will be a wonderful entrance coming onto Fairy Island; beautiful landscaping and the boat-house with the studio apartment above. Again; at one time there were 4 houses. Now we're going down to 1 which I think is a big improvement.

Vice-Chairman Aglietti asked is there anything you can do to cut down the 10' variance that you need.

Mr. Greenberg asked on the height.

Vice-Chairman Aglietti replied no; on the.....

Mr. Greenberg interjected oh; on the actual..... I started giving some thought to that. The reason why we have the intrusion on the lake – this is the shore line (the heavy line over here); this is the boat-house line. I think what we could probably do is to twist it a little bit so that the boat-house and the dock are up against the shore line. The answer is we could probably reduce that by at least 3'. We could reduce that from 10' to 7'.

Mrs. Fabiano said the golf simulator building is not attached to the boat-house?

Mr. Greenberg replied no; if you look at the survey here, this is the boat-house, this is the golf simulator. Again; if you look at the rendering here, this is the boat-house and the golf simulator which is basically underground. The high point is over here and then it takes a nose dive down. You'll come onto the island, you'll never see this unless you're in the Lake looking back. The only part that is exposed is this portion of the golf simulator (with glass). Again; coming onto the island, all you're going to see is magnificently landscaped property.

Mrs. Fabiano said but you will be able to see that second structure because you'll see the lookout.

Mr. Carnazza said not from the shore.

Mr. Greenberg said no.

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Mr. Carnazza said from the road it's going to be at grade/level. From the water, you'll see one-story.

Mrs. Fabiano said so it's like having two structures on that property.

Mr. Greenberg said no because the golf simulator is underground.

Mrs. Fabiano said but not the top part of it.

Mr. Greenberg said yes....

Mrs. Fabiano said there's glass windows.

Chairman Maxwell said there's sod above it; it's like a basement.

Mr. Greenberg said look here; the house does this; we're taking down the entire house and the golf simulator is basically underground. The roof of the golf simulator is going to be lawn. The only part of the golf simulator that you're going to see is this little piece over here. The sides and the rear are going to be buried underground.

Mrs. Fabiano said like a basement.

Mr. Greenberg said yes; like a basement but on a basement, sometimes you see three or four sides. In this case, you're only going to see this facing the Lake. As you're coming onto the island, all you're going to see is the magnificently landscaped lot. The only time you can see this if you're on a boat coming past it.

Mrs. Fabiano said so it's not considered an accessory structure? It is.

Mr. Greenberg replied yes.

Mr. Carnazza said he needs a permit for it.

Mr. Greenberg said it's just a little unusual not being a structure that you see above grade. It's all below grade.

Mrs. Fabiano said we were not able to get on the property. The code we were given did not work.

Mr. Greenberg said we apologize for that. We did give the code to Dawn.

Mrs. Fabiano said another thing is your going through the process of merging all these properties?

Mr. Greenberg responded correct.

Mrs. Fabiano continued we can condition it then?

Mr. Greenberg replied absolutely; taking 4 lots into 1.

Chairman Maxwell then opened this application up to the public for input/comments of which there were none.

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Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. Starace with all in favor.

Decision of the Board:

Mrs. Fabiano moved to grant the requested variance with the condition that all three lots are merged into one, all approvals are granted within the State's jurisdiction of the Lake and the boat-house is reduced by 3' to 7' instead of 10'; seconded by Vice-Chairman Aglietti.

Mr. Starace said the code for the apartment over the boat-house – I'm opposed.

Chairman Maxwell said it's an accessory apartment which he's allowed by Code to have.

Mr. Starace said he's allowed by Code to have an accessory apartment over the Lake?

Mr. Carnazza said as long as he merges the lots; over the Lake has to be approved by the State. You're allowed to have an accessory apartment in the Town of Carmel if you get the approval of the Board of Health or sewer if you had it; as well as a bunch of different conditions of when you can and can't do it.

Mr. Starace said so we couldn't approve that until after the State approval anyway.

Chairman Maxwell said that's what Rose's motion was. It was contingent upon approval from the other jurisdiction that are within the realm of the Lake.

Mr. Starace then rescinded his opposition and Chairman Maxwell called for a roll vote.

<i>Mr. DiTomaso</i>	<i>in favor of the motion</i>
<i>Mr. Starace</i>	<i>in favor of the motion</i>
<i>Vice-Chairman Aglietti</i>	<i>in favor of the motion</i>
<i>Mrs. Fabiano</i>	<i>in favor of the motion</i>
<i>Chairman Maxwell</i>	<i>in favor of the motion</i>

Motion carries.

3. Application of **JENNICK PROPERTY MANAGEMENT CORP.** for a Use Variance seeking permission to install two (2) 30,000 gallon above-ground liquid propane storage tanks on pre-cast piers; two (2) bobtail fill stanchions & one (1) transport unload stanchion in residential zone. The property is located at 16 Route 6N, Mahopac NY 10541 and is known by Tax Map 85.16-1-20.

- Craig T. Bumgarner, Esq. with offices in Carmel, NY representing Jennick Property Management.

Mr. Bumgarner said the property in question is located at 16 Route 6N in Mahopac NY. It is a residential zoning district. The property consists of approximately 4.72 acres. Currently, if you're following along with the plans that we've provided, the 4th sheet in there depicts the property and what's on it right now. There is a 3,500 square foot building located on the property. That building is used by an auto-repair facility and is

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also used by a towing facility. In addition to that, there is outside storage on the property; some of it is used for new car storage for an automobile dealership and then there is a paving company and a landscaping company that also stores construction equipment there. What my client is proposing to do is install two (2) 30,000-gallon liquid propane storage tanks. They would be located here and sit on concrete pads. In addition to that there will be one stanchion attached to this to unload into the tanks and then two stanchions to load out of the tanks into the trucks that would deliver the propane.

Vice-Chairman Aglietti interjected the tanks are there now – right?

Mr. Bumgarner replied apparently so.

Vice-Chairman Aglietti asked what about the stanchions. Are they there too?

Mr. Bumgarner replied the stanchions are not there. In addition to that, there will be safety barriers put around the tanks. Our trucks are going to go in, fill-up in the morning and go out on their delivery route so this would be normal business hour type stuff. We're not talking about anything happening at night. It should not really generate a lot of additional traffic in and out of the site. We're applying for a Use Variance because this is a residential zone but understand something; it's as if we're bringing a commercial enterprise into a residential district where none previously existed. This is a commercial property and has been for a long period of time. The use that we're bringing to it is going to be relatively low impact to the area in terms of truck traffic in and out. There is going to be very little release in any of this. Basically, the only thing that gets released when these trucks filled is what's in the tip of the hose when we are loading in and bringing out. The emissions are going to be negligible. We are applying for a Use Variance which has a, traditionally, high standard to meet. Realize that we are an existing commercial facility here already. The financial reason that my client is looking to do this is because for him to deliver propane, he has to send his trucks an hour and a half away to pick-up propane. What happens in this business is the people that have the distribution facilities do not like to fill competitors. For him to be able to put the tanks here, fill the tanks and then fill his trucks, it makes it a lot easier for him rather than sending his trucks far enough away so that somebody who is not a competitor will fill those trucks. In terms of the character of the neighborhood, it's something that I addressed briefly before saying that this is commercial property. We're not asking, right now, to bring a commercial enterprise into the middle of a residential zone where none previously existed.

Chairman Maxwell asked the Board Members for any questions or concerns.

Mrs. Fabiano said you already mentioned that it is a Use Variance. With a Use Variance, you know that there are certain criteria that you need to meet. One thing that you haven't given us is any financials. I don't think that we can do anything with this case until we see some kind of financial proof that this property can't make a return which I think it already is. I think that you're not quite ready yet to present this case. I think that there's more homework that needs to be done.

Mr. Bumgarner responded what we can do is get some facts and figures – some sort of a balance sheet or something like that and submit it to the Board. If the Board would like to hold it over and we can submit that for the next meeting for sure.

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Mrs. Fabiano continued also I think there is a self-created hardship here. The tanks are already on the property when you didn't go through the process of getting the variances.

Mr. Bumgarner replied with all due respect, you're talking about the existing tanks and saying it's self-created. We didn't come here to get approval for these tanks that are already operating. The hardship that we've got here is the fact that we've got to travel an hour and a half for our propane. That's the hardship that we're facing now. That's not something that we created in that sense. We're looking to get something closer that we can deliver from there.

Vice-Chairman Aglietti asked was there a previous variance granted for this property.

Mr. Carnazza replied there's a letter in the (*Building Dept.*) file from 1982 that reads previous site plan approval was granted to construct the garage and to store construction equipment and materials. On the site, per section.....

Vice-Chairman Aglietti interjected nothing about tanks or propane.

Mr. Carnazza replied no; that was not included. That's why they're back here now.

Chairman Maxwell said the application says no previous Board appearances which is not true.

Mr. Bumgarner interjected I think he's referring to the site plan.

Mr. Carnazza said it doesn't say variance. It just says a site plan approval was granted. The problem is I don't have access to the old maps.

Mr. Bumgarner stated we didn't even complete that section of the application. It gets completed by the Planning Department so they had indicated that there were no prior variance applications. There was during that site plan approval, if you go back and look at the records, there was some discussion about outdoor fuel storage tanks but it was not this type of tank that they were referring to. They were referring to a tank for this construction business so they could just fill up with diesel on their way out the door. While we were at the Planning Board, it was indicated that we should be coming to the Zoning Board because that discussion about tanks and the approval of those tanks was not something that the Town felt was contemplated - it would've covered this application.

Mr. Starace said you mentioned that you would be operating basically 9 – 5 Monday through Friday?

Mr. Bumgarner replied I will have to have my client sworn in for that only because my understanding is that the trucks will go out a little bit earlier than 9:00 – 8 to 5 I'm told.

Mr. Starace said Monday through Friday, 8 to 5; no weekend work?

Mr. Bumgarner said he indicates in the wintertime, there could be weekends. One of the things that my client is finding in the business is that with fuel costs..... My client operates Action Fuel which is a fuel oil provider and a lot of their business is transitioning to natural gas and liquid propane so that's why they're seeing a lot more of the business being pushed that way.

Mr. Starace asked does your client have a possible forecast of a 60,000-gallon capacity – how much he would go through in a week or a month? What kind of activity would that be as far as offloading; are they coming in 9,000-gallon containers or 6,000-gallon containers. Do we have any idea of how many deliveries we're doing?

➤ Mr. Wayne Staton of 850 Peekskill Hollow Road, Carmel NY was sworn in.

Mr. Staton stated we do about 250,000 gallons per year and the majority of it is in the winter time which usually requires the trucks to load at least once a day in the winter time. They usually leave for the day and come back at the end of the day. The plan can only hold 80% capacity so it will only hold 48,000 gallons out of the 60,000. Trailers that come in will be 9,000 gallons. To replenish the tanks, it wouldn't take a lot of traffic. A couple times a week maybe.

Mr. Starace said once it's initially filled at 80%, it would go. The liquid propane – I was looking at your shop drawings and your site. There's no fixed fire protection that I saw there. Is there any fixed fire protection in place or proposed?

Mr. Staton replied they actually have safety valves in the event of leakage. They're powered by nitrogen so it would actually freeze the valves so nothing could be released. As far as a fire, I don't know what they install. I don't think there's an extinguishing system. I just think they're all safety valves.

Chairman Maxwell said I don't think there's a natural way to suppress propane; fuels fire – right.

Mr. Starace said yes; it's vapor – heavier than air. That's an extremely flammable substance and if there was a release or rupture, it's vaporized. That's a large area it could run over.

Mr. Staton replied yes; you would need a good mixture in order to have a flame. The liquid itself is going to freeze.

Mr. Starace asked do you have any emergency response procedures in place if that happens.

Mr. Staton responded I don't know what the procedure is to be honest.

Mr. DiTomaso asked Mr. Bumgarner to explain to the Board how two tanks of this size would not change the essential character of this neighborhood as the neighborhood is residential.

Mr. Bumgarner stated we're looking at this as an on-going commercial concern there with commercial traffic coming in and out. The added number of trips going in and out because of this operation being added to the site is minimal. When you have somebody coming to you for a Use Variance for property that is not already commercial, now you're talking about bringing a commercial operation into a neighborhood....

Mr. DiTomaso interjected but aren't the trucks going to be picking up at this site instead of picking up somewhere else. Wouldn't that increase the truck traffic?

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Mr. Bumgarner replied it would increase the truck traffic but as I said to a minimal degree on a road that is on the County line and is also a major thoroughfare. Mr. Staton just indicated that the tanks will be filled only a few times a week and his trucks will be going out in the morning and coming back at the end of the day.

Chairman Maxwell said I was going to ask a question but I see on the Site map that the nearest house, as the crow flies, looks like about 150/200 yards from the proposed propane facility location. I have to say that if I was living there, I wouldn't be very happy about this; just from a hazardous standpoint of what could potentially happen here. I think we're probably going to have to go through the criteria as a Board before I open it up to the public. For a Use Variance, you have to meet all of the criteria.

1. Is incapable of earning a reasonable return if used for any of the allowable uses. As Mrs. Fabiano stated, you would need to prove this to us; show us amounts and the burden which I don't think you've presented.
2. Property is affected by unique or at least highly uncommon circumstances.
3. Will not alter the essential character of the neighborhood. That's a tough one there.
4. Not self-created:

We're going to open it up to the public shortly but do you want to respond to any of those criteria?

Mr. Bumgarner said again; what we'll do is prepare a spreadsheet for you on the numbers so that we can give you some hard, financial figures. Understand something though: this is a residential zoning district and there are factors with this particular site that make it very unique. There are wetlands that surround a lot of this area. Wetlands that my client has cleaned up significantly since he took over there. This is a 4.72-acre site. You're not going to develop this into residences; you're not going to put a sub-division on this property. It really is, despite the zoning designation of residential, best suited as a commercial property and that's why it has been for many years. There is an engineer that my client is working with who handled the planning process of this and does these facilities all over the place. We will talk with them about the safety concerns because they're the ones who designed the safety features for this system. That's something that I'll update the Board with so you can be assured that there's not going to be a problem with these tanks being sited here.

Chairman Maxwell said if someone in the past made the mistake (in my opinion) of allowing this to be somewhat of a commercial property in a residential zone. It happened and is what it is. If there was a different type of use; like the continued use of cars or landscape storage that are not so dangerous, I think it would be a different situation. You'll probably meet some opposition as well but the fact and the nature of this type of facility and business is what concerns most people.

Mrs. Fabiano said you sell fuel right now – correct?

Mr. Bumgarner replied yes.

Mrs. Fabiano said so you're planning to expand your use by expanding your business to propane as well. Is that the way I understand it?

Mr. Bumgarner replied no; we already sell propane. The need for this facility is because we can't go to a similar facility nearby and buy our propane to distribute. That makes us competitors with the people who are selling us the fuel.

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Mrs. Fabiano said so you currently sell propane.

Mr. Bumgarner said we do.

Chairman Maxwell interjected but not from that location.

Mr. Bumgarner said not from this location; we send our trucks an hour and a half away.

Vice-Chairman Aglietti interjected this is a convenience. When you talk about incapable of earning a reasonable return on the property, this is a better convenient place that you want to put the tanks. You already put the tanks there.

Mr. Bumgarner replied no; it's a dollars and cents cost to us to send our trucks out to collect the fuel and bring it back.

Vice-Chairman Aglietti said how is that not self-created the fact that you put two tanks there, without getting approvals and without coming here, and now saying it's not self-created. That's one thing you have to prove as well as the financials that you didn't give us. How is that not self-created; we have these tanks here and we want to use them. How is that not self-created? You're not using it for auto-repair anymore; you're not going to use it for putting Audis from the dealership there. You now want to put something else there that you already put there, how is that not self-created?

Mr. Bumgarner responded we do plan on keeping the other uses that are there.

Vice-Chairman Aglietti interjected that's fine. How is this not self-created when you put two tanks there already?

Mr. Bumgarner responded if the tanks weren't there right now, would you feel it was not self-created.....

Vice-Chairman Aglietti interjected this is just one aspect to the proofs you have. It's your burden, not ours. That's one thing and this first proof is the financials where you have to show that it is incapable of earning a reasonable return. To me that doesn't include the fact that you want to make it convenient for your company.

Mrs. Fabiano interjected and make more money. That's the bottom line. You want to make more money. You're still reaping a reasonable return on this property whether you put these tanks in or not. You're still gaining a reasonable return. Any financials that you have will show that you are reaping a reasonable return. You've already expanded the usage by letting the Volkswagens come in and sit there. You're just increasing your profit margin by expanding and having propane on your property. Who is to say that your propane business sky rockets and you have trucks going in and out of there. When we grant a variance, we grant it forever. You may, very well, expand it to the point where it does create a problem on Route 6N with trucks going in and out. Right now, you're saying there's only going to be a little more business but potentially it could grow even more and you could have a lot more traffic going in and out.

Several background conversations took place.

Chairman Maxwell opened up this application to the public for input, comments and concerns.

- Mr. Anthony Bottalico of Brooklyn, NY representing his parents that live on 1 Route 6N was sworn in.

Mr. Bottalico stated I'm a Lieutenant in the NYC Fire Department. I have two Masters Degrees and a doctorate in biology. I am currently running the training for HAZMAT responses for NYC Fire Department. We train 700 of the responders who go to nuclear, chemical and biological incidents. I work on HAZMAT Company 1. We respond to all the major emergencies in NYC – even propane incidences – the settling, etc. I'm here to propose or put down the facts regarding propane. As you indicated, propane is a flammable gas. It is part of a HAZMAT guide that's prepared with funds from the United States regarding how first responders should address a propane incident type of emergency. This is the emergency response guide book with the particular guidelines. I want to first talk about the chemical and physical properties of propane. It's 44.1 is the molecular weight. It is heavier than air. The molecular weight of air is 29. That means it's a gas that stays relatively low. It also has a flammable range of 2.1% to 9.5%. That's a very low flammable range. If you have a failure of one of these tanks, you will be outside of the flammable range. The propane will move quite a distance depending on temperature, wind conditions, etc. and find an ignition source. Once the ignition source is met by the 2 to 5%, it will conduct a fireball for it. It is indicated as a flammable gas. It may be odorized. Even if there is a release and you do not smell it, it causes dizziness, confusion, excitation and it's also an asphyxiant because it's an oxygen displacer. It is an extremely hazardous material. In our emergency guidebook, which is on every NYC Fire Department vehicle & probably most fire departments throughout the country, there is a guideline that we would use if we were responding to a propane incident. It directs us to guideline 115 (which is for fire or explosion); it has severe health risks and it tells us of areas of evacuation for these particular types of leaks. I went to the guidebook on what the guidelines would be for first responders. Our guide only goes up to 36,984 gallons and the recommended distance for emergency response is 1,498 feet but preferred is 2,219 feet. That means that it's almost more than ½ a mile. If you go to google maps and look at the residential properties in that area, there is a significant number of household residences around the area there. I can't tell for sure on the number of life hazards there are. Also, in terms of fire suppression, this would require significant amounts of water. Even with one tank potentially failing, the minimum requirement for water for this type of operation is at least 1,000 gallons a minute. In a NYC hydrant, we need a 42" main and we would need several pumpers when we run through lines of 2.5" which would need to be stretched the distance of 200'. We wouldn't even be able to reach these tanks. You need enormous amounts of water to cool them down. If there is a fire, which usually occurs during transfer, and you can't cool those tanks, then you have an incident called BLEVE – Boiling Liquid Expansion Vapor Explosion. The gas that sits at the top of the surface of the tank begins to expand and heat and causes catastrophic failure of the tank within 6 minutes and causes a fireball. He's referring to relief valves controlled by nitrogen which freezes them but when you have fire and you have the thermal melt down of the frozen relief valves, they will eventually have to fail and if they do not then the tank does fail. The reason you have relief valves is because if you build up that pressure, you're going to have a catastrophic failure of the container. These types of containers are not even permitted in NYC residences. You're only allowed a 40 lb. tank and 1 per residential unit. It should never be in a structure. Regarding these particular hazards and the density of people in the neighborhood, it's going to be a disparity thing on all the residents of this neighborhood. I don't know if the tanks he has there are currently filled. I don't know how DOT regulations would permit the movement of these types of vehicles in that area without proper traffic signs and all.

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There has to be a whole fire suppression system which they didn't indicate which may be a dry chem foam. Also, emergency responders have to be within certain range or distance. These types of tanks are not even allowed over bridges in NYC for HAZMAT transport. These are relatively dangerous. I drove down 6N past my parents' property today and there was an accident right on 6N; 2 vehicles – opposing traffic. This is another safety concern. Regarding the fact that he has experience transferring propane – to even consider coming here with tanks of this size, which I don't know how he legally transported, if they do have propane or even if he just parks his trucks, he may have to have a significant fire suppression system above those vehicles. He may have already broken the law regarding the storage of propane because you just can't park one of these particular vehicles in a residential neighborhood. I can continue.....

Chairman Maxwell interjected I was just going to say; we get the point. It's very dangerous and we appreciate your scientific knowledge and background.

Mr. Bottalico ended with these particular books are available on line. They're prepared as guidelines.

Mr. Starace interjected; with your extensive knowledge, can you just tell us what is the ignition temperature or flashpoint of this substance.

Mr. Bottalico replied because it's a gas, and we have to consider a liquid's flashpoint, a gas is worse because a gas increases in volume. In this particular case and when you look at the guideline, it says it's not applicable because the state that this wants to be in is a gas. The only reason it's in the liquid state is because it's under pressure. As soon as you release that pressure, it becomes a gas. The expansion ratio of propane is 270 to 1. That means that 1 gallon will expand to occupy the space/volume of 270. If you take the volume of that particular liquid and multiply it by 270, that would be the amount of volume of gas that's generated from that propane. It's an enormous expansion ratio.

➤ Mr. Salvatore Serio of 30 Pine Tree Lane, Mahopac NY was sworn in.

Mr. Serio stated that gentleman's speech before me was incredible and I don't think I can compete with that but I do have a little statement and I'm representing everybody on Pine Tree Lane. "Good evening and thank you for giving me the time to address a major concern that we, the five home owners on Pine Tree Lane in Mahopac, NY, would like to voice. It has come to our attention that an application for a Use Variance was applied for in order to install two 30,000-gallon propane tanks at 16 Route 6N, Mahopac NY. As many of you know, Pine Tree Lane is a residential area with many children and families living there. With that being said, there are several concerns in regard to the Town allowing the installation of these tanks. First; of course, we are concerned regarding the safety and security of installing these tanks. However, we all trust in the Town of Carmel that all the necessary safety requirements will be enforced which will guarantee all safety measures are to be adhered to the greater good of the neighborhood. One of our greatest concerns is if you allow the installation of these propane tanks, this will cause a major nuisance to us all. The neighborhood will be hearing and smelling diesel trucks entering and exiting – day and night to fill up. We will have to deal with the strong odor of propane. This is not fair to the homeowners. We will be forced to keep our windows closed in order to alleviate the noise and odor factors. As it is now, tow trucks enter all hours of the day and night. They run the vehicles for a significant length of time, emitting fumes and noise pollution. In addition, the headlights are consistently shining into the neighboring homes. The odor of the

diesel fumes are intolerable and can lead to significant damages. There have been several incidents of neighbors smelling heavy fumes that are coming from cars that are being painted along with hearing loud, banging noises during early morning hours – sometimes as early as 6:00 a.m. Another major concern is that Route 6N is a two-lane road. How can a delivery truck safely enter and exit onto Route 6N without encroaching into the on-coming traffic lane? Route 6N has a lot of daily traffic and many school buses travel here as well. It does not seem justifiable to put this much risk into a residential neighborhood. We are asking you to please take into account our concerns and carefully consider what is best for the well being of the children and safety for all families. We all hope that you will understand and validate our objections to installing these tanks. We have faith in the process of these hearings and look forward to reaching the proper outcome for the community. With all that is being shared, we ask you, the Town of Carmel, to disallow this installation of tanks.” I do have a picture of two tanks on the property that someone gave me a couple days ago. Once again, thank you for your time and consideration of this matter.”

- Mr. Ed Levanti of 41 Route 6N, Mahopac NY was sworn in.

Mr. Levanti stated I could reiterate what he just said so I won't even bother but I represent all the houses on 6N all the way up to Carpenter's Trailer Park. I would have gone further but I didn't have time. We just got the letter a week ago. Everybody from the County border all the way up to Carpenter's Trailer Park is a “no” for this. The one thing that wasn't addressed that he mentioned is he said the trucks will only be filling up in the morning. That's when the school buses are running. An 18-wheeler is going to have to fill those tanks. The car carriers that already drop off all those Volkswagens and Audis cause major headaches because he has to pull out, back-up, pull-out, back-up because it is only a two-lane road. There's no way he could make a turn in or out. I'm imagining an 18-wheeler with a propane tank on the back of it. That's a scary thought. Also, it is a passing lane right there and it's the fastest section of 6N. It's kind of a race track right in front of my house. As he mentioned, it's surrounded by wetlands so that's definitely a factor. We like the environment. School buses are going up and down 6N early in the morning. My daughter gets on one. Again, everyone up to Carpenter's Trailer Park is a “no” on this.

- Mr. Robert Gaylog of 23 Colton Road, Mahopac NY was sworn in.

Mr. Gaylog said I just want to make a very brief statement: The Board, appropriately, asked one question of the gentleman that's in the business: what would you do; what's your back-up plan if there's an emergency. I can't believe that somebody in the business would evade that kind of a question. We had to depend upon the expertise of somebody that God sent to this meeting. All I have to say is that if I was in that business, I would have given you that information first. That should tell you a lot.

Chairman Maxwell asked if the applicant would like to recant or hold it over.

Mr. Bumgarner stated yes; we will have some further submissions for the Board. I want to talk to the engineer who designed the facility about the safety features and maybe even have him come in and talk to the Board at the next meeting. If you want to hold it over for us, then we'll get that information from them, comeback and address the Board at the next meeting.

Decision of the Board:

Mrs. Fabiano moved to hold over this application; seconded by Vice-Chairman Aglietti with all in favor.

4. Application of **HOMELAND TOWERS LLC & NY, SMSA Ltd. Partnership d/b/a/ Verizon Wireless (Casse)** for a Variation of Section 156.62(O)(2), 156-42(D) & 156-20 as well as an Interpretation seeking permission to install a wireless telecommunications facility. The property is located at 254 Croton Falls Road, Mahopac NY 10541 (n/o Diehl) and is known by Tax Map 65.19-1-43.

Code Requires/Allows	Provided	Variance Required
156-62(O)(2): 75 feet (height) *	140 feet	65 feet
156-42(D): 24 feet (width of access drive)	12 feet	12 feet
156-20: 6 feet (max height for fence)	8 feet	2 feet
* Code allows for increase in height if criteria in Code Section is met. Branches extend 7 feet above tower as an architectural feature.		

Please note: a court stenographer transcription of this public hearing on this application was also taken.

Mrs. Fabiano recused herself from this application.

- Mr. Robert Gaudioso, Esq. of Snyder & Snyder representing the applicant appeared before the Board.

Mr. Gaudioso stated this is an application for a wireless telecommunications facility. There are 3 variances that I'd like to discuss and then I'd like to discuss the documents that we've submitted in support of the application. The first variance is with respect to the fence height. The Building Inspector has determined that the fence height is limited to 6'. We've proposed an 8' fence. The reason we've proposed the taller fence is that under the wireless section of the Zoning Ordinance, which requires a special permit in front of the Planning Board, there's a requirement to adequately secure the facility. We have proposed the 8' fence. If the Board saw fit to reduce that to 6', we would certainly agree to reduce the height to 6'. Given the location of the facility on the large parcel, the fence will not be visible. It will be landscaped and well screened by the existing vegetation and there's no impact from the 8' fence. The second variance is a variance that the Building Inspector has determined that a 24' wide access drive is required. Currently, the existing access drive is what we're proposing to use. We're not proposing to increase the access drive or create a new access drive. As shown on the site plan here, the first approximately 100 and some odd feet is over a DEP watershed property that's an existing access drive. The easement is actually only 20' in width and we're proposing to use the existing access drive. The access drive crosses a second parcel. Again, it's an existing access drive. It's approximately 12' in width. If it were to be expanded to 24', we'd have to remove trees and a stone wall, and we're not proposing to do that. From there the existing access drive, again, goes on the subject property back to the facility in this location. Again, we're not increasing the size of the access drive.

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We are making an improvement that's unrelated to the access drive; there's an existing condition where water is coming off this hill. So, we've proposed to put in a swale and check-dam in this location. That's all under review by the Planning Board. Again; we are not proposing to increase the access drive and we're also asking for an Interpretation that there is no requirement for a 24' wide access drive under the Zoning Code. We believe the access drive of 24' only applies to aisles for parking and loading areas. Nevertheless, we request, in the alternative, the variance necessary for the 12' wide access drive. The 24' wide access drive is only required for two-way traffic. This, essentially, is an un-manned facility. It's visited approximately once every six weeks just for routine maintenance and inspection. The amount of traffic on this access drive is unsubstantial. The final variance relates to the height of the facility. The proposed height was originally filed with the Planning Board at 180'. After additional testing and review by the Town's own communication consultant, the application has been reduced in height to 140'. The proposed pole has also been designed to resemble a tree. In support of the application, we did submit a number of documents which included all the application forms: a letter of authorization, the disclosure statements, the notification to the property owners, and the deeds. We've also submitted the memo from the Code Enforcement Officer laying out these variances. We've submitted a memorandum from the Town's telecommunications consultant that was retained by the Town, separate and apart from the applicant, who determined that the coverage need for the facility is justified at the height of 140'. We've also submitted a visual resource evaluation that included a height, originally, of 180', a crane test with 6 different balloon tests. You have visual renderings in your packages showing the height of the tree at 140'. We've submitted an FCC (Federal Communications Compliance) report although the issue of FCC radio frequency exposure is federally preempted, we did submit a report that showed, in this case, that even with a full build out of the tower, the facility would be 55 times below the FCC limit. We've submitted a report from our own consultant, PierCon Solutions, which shows the justification for the proposed facility. We've submitted the environmental assessment form with visual EAF. Just a point of note: The Planning Board has declared its intent to be lead agency. Therefore, this Board is actually not able to act this evening. We do understand this will have to be carried over because the Planning Board has not issued a SEQR determination as of yet. So, we do consent to carrying this over to the September 26th meeting. We've submitted an opinion letter regarding FAA lighting. The tower will not require any FAA lighting. Finally, we've submitted a structural report showing the tower will be constructed in accordance with all State structural requirements. With respect to the site plan, and as I mentioned, that's the location of the facility; we're using the existing access drive; the utilities on the plans that you have show above-ground utilities but we've agreed with the Planning Board to place the utilities under-ground along the existing access drive. We can submit revised plans that have previously been submitted the Planning Board as a copy to your file. We're proposing to add 3 20-foot spruces which are required by the Code since the proposed facility is designed to resemble a tree. Finally; all of the setback requirements, both to the property line and to surrounding residences under the Town of Carmel Code, have been met with this proposed application. I'd be happy to answer any questions that you may have Mr. Chairman.

Chairman Maxwell said for an area variance, there are criteria that need to be taken into consideration:

- 1) Will an undesirable change in the character of the neighborhood or detriment to nearby properties be created by granting of the variance? I'll leave that one up to interpretation but some of the neighbors/surrounding residences might have issues.

- 2) Can any other method be used that does not require a variance but still allow for the benefit requested? I would think that there are, potentially, other types of properties or commercial properties that would fulfill this. I don't know if that data has proven that such within the information given so that's a question mark.
 - 3) Is the proposed variance substantial? I'd say and in my mind, when it comes to the height of the tower itself, it's pretty substantial.
 - 4) Will the proposed variance have an adverse effect or impact on the physical and environmental conditions in the neighborhood or district? Again; I leave that up to interpretation but I think that's affected there.
 - 5) Is the alleged difficulty self-created?
- So; I'm going to open this up to the Board.

Mr. Gaudioso interjected Mr. Chairman, could I just address those issues first if I may.

Chairman Maxwell replied sure.

Mr. Gaudioso stated those are actually not the correct criteria for this particular application. The applicant and the application, in this case, is deemed a public utility under New York State Law. Under a case from the Court of Appeals: Cell1 vs. Rosenberg, that's the highest court in NYS, they deemed that the variance criteria for a public utility application, such as this, are a different criterion. In addition, there's Federal Law that applies in this particular case because this is deemed a personal wireless service facility under Federal Law. Under Federal Law, a facility cannot be prohibited as far as providing its necessary service which has been confirmed by the Town's own consultant. As far as the New York State variance criteria, the Court made it clear that a municipality may not exclude a utility from the community and that the standard is actually that the proposed use is necessary to render safe and adequate service. We did cite, in our cover letter, to those cases and those particular Laws – both Federal and State with regard to this. So, as far as the proof that the facility is necessary, we did submit, throughout the process, the reports from our radio frequency consultant showing that the facility is necessary, including at the proposed height, and the Town did retain its own consultant to confirm those criteria.

Chairman Maxwell (to Mr. Folchetti) is that true about the Federal.....

Mr. Folchetti responded in terms of the Court of Appeals criteria that Mr. Gaudioso cited, is that what you're asking?

Chairman Maxwell said yes.

Mr. Folchetti responded yes; it's accurate.

Vice-Chairman Aglietti said but the criteria are reduced.

Mr. Folchetti replied yes; it's a less burdensome standard for the applicant.

Vice-Chairman Aglietti interjected there's still criteria that have to be.....

Mr. Gaudioso interjected the criteria is reduced to, essentially, what I mentioned before. What the Court of Appeals said that the proposed use is necessary to render safe and adequate service. The Federal Courts have taken that criteria a step further, and I did cite this: a cellular phone company vs. the Town of Oyster Bay. The Second Circuit

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Court of Appeals, which is the highest Federal Court in this area, stated “In New York, cellular telephone companies are afforded the status of public utilities. As such, a cellular telephone company’s application for a variance must be judged by the Zoning Board of Appeals on a different standard than that applied to the usual application for a Use Variance. Rather than granting a variance only on a showing of unnecessary hardship, the local Zoning Board must consider whether the needs of the broader public would be served by granting the variance.” Then it cites fact to the Rosenberg standard which is the facility necessary to provide that adequate service.

Mr. DiTomaso asked could you explain whether a 75’ pole would provide safe and adequate service.

Mr. Gaudioso replied it would not. The problem, at 75’ is two-fold. One: it is too low to the tree line to be able to cover the significant gap in service that has been demonstrated by the various maps including propagation maps, drive-test data and key performance indicators submitted by Verizon Wireless’ Radio Frequency Engineer. At 75’, the area of coverage would leave other gaps in the area. We did, as part of the crane test and not only for the visual renderings, tested the signal throughout the area at three different heights. In this case, 180’, 160’ & 140’ and we also did coverage maps showing the lower heights. What that demonstrated was at the lower height, even below 140’ - not even down at 75’ which is the height limit – there would still remain significant gaps in service. Therefore, the 140’, as confirmed by the Town’s consultant, is the minimum height necessary. At that height, we’ll also be able to comply with the Codes Requirement of co-location. So, we’ll be able to provide an additional spot on the pole for a future carrier. We’ve pledged to the Planning Board that we would build a foundation that if the Town were to approve an extension in height in the future, we would build in the structural capacity of the facility to be able to support that to avoid the proliferation of future towers and be able to encourage the co-location on this particular tower which is required by your own Code.

Mr. DiTomaso said just one other question about the fence. Did I hear you correctly that there was going to be screening around the fence?

Mr. Gaudioso responded when you look at the site plan, that side here is completely wooded. This is tucked in; there’s woods throughout this area. What we have is three 20’ trees in front of the fence to be able to screen the fence as well. Essentially, there is no place you can see the fence from.

Mr. Starace said the height of 140’ above the ground level to the pinnacle of this antenna tower; there’s a note here about branches extending another 7’ higher?

Mr. Gaudioso responded correct. What we’ve offered is one of two things. We could either cap the branches at 140’ – similar to the height of the tower. Or, we could put a couple topping branches on top that go up 7’. We did consult with Mr. Carnazza and he confirmed that would be an architectural feature that doesn’t require a height variance. Our position is we’re happy either way to put the extra couple branches on top for the additional 7’ or leave it the way visual renderings show – just at 140’. We’re comfortable either way.

Mr. Starace asked could you explain to the Board the means and methods of installing the antenna piece by piece, and how it’s erected up to 140’ or 147’.

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Mr. Gaudioso said good question. The first thing that's going to happen is the foundation is designed and then installed. Either it's a Mat Foundation or a Caisson Foundation depending on what the geo-technical report says. That's typically done at the building permit stage. From there, there's a base plate installed in the foundation. From there, the tower itself is typically stacked in 20' sections. It's a stacking process with a crane. The antenna mounts.....

Mr. Starace interjected so you have a crane on site at the construction site. What style of crane is that going to be? Every crane has a stick height on it.

Mr. Gaudioso replied I don't know off the top of my head for this particular one but I believe it would be a 100-ton crane. I could confirm that.

Mr. Starace said so the crane would be higher than the structure in order to lift it.

Mr. Gaudioso responded the crane would typically during that, basically 1 day, stacking time. Thereafter, any of the work that's done on the tower is typically done with a bucket truck. So, other than the type of crane that is used for the stacking of the tower, it's a bucket truck type crane or they can climb the tower because it has climbing apparatus on it. To continue.....after they stack it, then they mount the branches. All the branches basically come preassembled and then assemble the branches onto the tower as well as the mounting brackets for the antennas. The antennas are then attached to the mounting brackets and we put a note on the Planning Board's plans that the antennas will be camouflaged as well with what we call "socks". Basically, it looks like pine needles over the antennas. All of the branches and all of the mounting brackets will be colored with the same tree color of the pole to match. Then the brown and green branches are attached to the pole on the outside of that.

Mr. Starace said on the antenna itself there would be the antenna arrays that would be on the structure. How many arrays would there be on there?

Mr. Gaudioso responded what we have, just to put it into perspective, the maximum height of the Verizon antennas would be the 140'. Verizon has 6 antennas. They're approximately 72 inches in length by 11.9 inches in width by 7.1 inches in depth. There are arms that come off the tower, then a bar and those are mounted per sector. When I say per sector, there are 3 different sectors around the tower. Those 6 antennas and 3 sectors would be considered 1 array at the maximum height of 140'. We will build the tower to be able to hold 3 more arrays below that because there are currently 4 carriers that are operating in this area. Generally, you have Verizon, AT&T, Sprint/Nextel and T-Mobile. You may have heard in the news that T-Mobile and Sprint are trying to combine. You may also have heard that Dish may be coming to the area. Generally, there's usually 4 carriers. We would design the tower to have 4 ports that could be 3 other arrays installed in the future. Because of the low height of 140', we would design the foundation of the tower and the structure of the tower to be extended by 20' if approved by the Town in the future to avoid another tower someplace else.

Mr. Starace said would that be 4 separate licenses then?

Mr. Gaudioso replied correct. Each carrier has to have an FCC license. Typically, their licensed in a number of different frequency bands and they operate all their frequency bands from the same antenna array. Also, and to your point, we've designed the base of the facility with enough space to support all of the 4 carriers and we've also proposed

to bring in both telephone and electric in one shot so we're not digging up electric and telephone each different time. We want to bring it in, all at once, to support those co-location efforts.

Chairman Maxwell asked how did this site come into selection.

Mr. Gaudioso responded the Zoning Code has a priority list. Essentially, the priority list is:

1. Use an existing tower with existing antennas: What we showed the Planning Board (& we can show you if you'd like) is that on existing towers in non-residential zoning districts, Verizon Wireless is already on all of those existing towers in non-residential zoning districts.
2. Co-location on a site with an existing wireless telecommunication tower or structure in a non-residential zoning district but not fronting on Route 6, Route 6N, Route 52 and Route 301: That's redundant to the first one because that's essentially where most of the existing facilities are located and Verizon Wireless is already located on all of those facilities.
3. Co-location on a site with an existing wireless telecommunication tower or structure in any other non-residential district: Basically, that's the same as 1 & 2, in essence, when you break it down and look at the map. We can submit that map to you as part of the record.
4. Installation of a new wireless telecommunication facility in any non-residential zoning district: When we submit the map to you, and I have a copy tonight that I can show you, you can see all the non-residential zoning districts are the areas where there are already existing towers and structures. Again; Verizon Wireless is in all of those locations.
5. Installation of a new facility in a residential district: when you look at the area where the gap is and when you look at the area where the residential zoning district is, that's where we're located.

Let me just show you this one map as I think it's helpful. I apologize that I only have 1 copy this evening. There are two different maps here. The first map (Master Service Plan) shows the location of all of the existing Verizon sites with the blue dots. When you look at the pink dots, the two that are subject tonight – North is Dixon Lake and below that is Lake Casse (what we're talking about now). As you can see that's between the Putnam Valley Hospital (*more likely NOT Putnam Valley Hospital but Putnam Hospital Center*) to the east and all of the sites along Route 6 and up to the north and to the west. As Route 6 & 6N go, it's from the southwest to the northeast. You can see those areas don't have any blue dots because they don't have any existing facilities. When you look at the second map that I just handed you that shows a more zoomed in detail. You can see the various commercial zoning districts. Again, as you can see where Putnam Valley Hospital (see italicized above reference) is to the east and where all the sites are to the west and the Carmel site up to the north, those are the commercial zoning districts. So, where the proposed site is, it's essentially all residential. No matter where we went, we wouldn't be able to go on a location that was non-residential. The last map that I'd like to show you but want to caveat this: This is a map in green showing the best-case Verizon Wireless service. The reason I say the best-case – that's at its 700 megahertz which means that the gap area is the smallest. Even at that frequency band, as you can see, the areas that are already covered in green are all of the commercial zoning districts. The area that's left is all residential. In order to cover the residential area, you have to install a facility within the residential area. We've detailed this in a report. We'll submit that report to the Board but it has already been reviewed as part of the special permit process where the priority criteria is an applicable criteria. Finally, the last map I'd like to show you....this would be the

coverage at the 140' height: It says the center line of 136'. That's because the antennas are 8'. Where they generally propagate from is the middle of the antenna. So, we're showing that at 136' and that's the best-case scenario with the 700-megahertz frequency range. When we submit the full report, we'll include the 2,100-megahertz frequency range which covers a much smaller area and, therefore, the gap is much larger. Again, at a worse case scenario for us, the gap is still all within the residential area. The coverage at the 136' / maximum tower height of 140' covers that gap area throughout the residential zone.

Vice-Chairman Aglietti said the gap that you're talking about – that's the need that Verizon is providing to us in this report – correct?

Mr. Gaudioso responded correct. So, what we'll do is submit the previous reports to that. There were a couple different reports that show all of the various ways of showing the need. One way to show the need is the propagation map which I just showed you. That's a computer-generated map that's based on all of the technical criteria and how the signal propagates. Then it shows on the map the entire area of coverage that is existing and proposed. The thing about the map is that it's computer-generated. What we did is took a step further and we actually collected signals; not only the existing signal levels from the surrounding sites to show the gap area, we also collected signals at the multiple heights from the crane test. The weakness of the drive test is that you're only able to collect the signals on the roadways. The way we do that is with a special drive-test vehicle with an antenna connected to a laptop and they're able to collect that data and then produce it in the form of a map that's been reviewed by your consultant. The final thing that we included is what we call KPIs. It's not necessarily always relevant, the Planning Board members did request it and we did submit it to show that the dropped call data and the access failure; so dropped calls when you're on a call and the call drops prematurely. Access failure is when you're unable to initiate a call. We were able to show that there were elevated levels and, in some cases, extremely elevated levels on the surrounding sites where the antennas are pointing to this area which is an indication that there's an area of service and an area of insufficient service. That's what the KPI show. We included all three of those as reviewed by the Town's consultant and will submit those back-up reports as well.

Vice-Chairman Aglietti interjected I think you gave them to us; thank you.

Mr. Gaudioso resumed I think what happened though is on the other application, there was a prior report that detailed it on the other application. This one details it on this application. I think there were two or three reports for each application. I'll make sure for the record that we get copies of each and every report that's been submitted to the Planning Board.

Chairman Maxwell opened this application up to the public for input, comments and concerns.

➤ Mr. Ron Leviner of 14 Stacey Lane, Mahopac was sworn in.

Mr. Leviner said thanks very much for an opportunity to address the Board. I wanted to make a handful of comments in connection with the presentation by Homeland Towers. The first thing I'd like to say is I don't know if Homeland Towers is correct with respect to the interpretation of Federal Case Law and how it preempts Local Law. I do know I have my concerns as to whether they're providing a full and objective viewpoint on that question. I, along with other residents in the neighborhood, have hired an

attorney who will be providing the Town with a brief with respect to the entire application. I would ask that you take our attorney's opinion on this matter and other matters with respect to the application, into account. Without granting the interpretation of Homeland Towers, I would note that when they cited Federal Case Law, they did cite a necessity standard. I would just note that necessity is a pretty high standard. That's a tough standard. It's not a question of convenience; it's not a question of which site is cheapest but the plan has to actually be necessary. They've certainly provided a great deal of information but I would just note and ask the Board to consider the idea that even granting their interpretation of the law, that's a tough standard that should be considered carefully as to whether it's been met. The next point I'd like to raise is that every time Homeland Towers has previously been asked, at a public hearing, whether the proposed tower could be shorter than 180' and now shorter than 140', they had responded by our Town Code encourages co-location and that co-location requires additional height. They went into some detail on that point tonight. So, I would ask this Board whether an exception to this preference might be a better idea in this case. Perhaps the Town, generally, prefers co-location and there might be valid reasons for doing so but I would just ask whether it might be a better idea to rather than approving 140' tower, to look at whether we/The Town might wave that preference in this case and ask Homeland Towers to reduce the height of the tower as a result. I would further ask if the height of the tower was lowered because co-location was no longer preferred, whether Homeland Towers would still be interested in the site. In other words, if they could not collect co-location fees, would they be interested in this site. I think it's an important question and I think a big reason why it's an important question is because if they're not interested in the site unless they can collect co-location fees, what does that say about whether they have met a necessity standard. I think it's a point worth pondering and a question worth asking from the applicant. The next point that I wanted to raise was that I've certainly talked with many neighbors in the area of 254 Croton Falls Road and they unanimously agreed that the tower would, in fact, have a large impact on the enjoyment and the value of their properties. Many of those residents have written letters to the Town Supervisor, the Town Board reflecting those concerns. Certainly, we can get copies of those letters to you if you don't have them already. I'd like to bring in another fact that I think makes that especially relevant: the property itself, 254 Croton Falls Road, was created by a variance for a sub-division that was granted by this Board in August of 2015. At that time, the property owner told this Board, the Zoning Board of Appeals, that the sole purpose of the variance was to build a retirement home. There is, in fact, a retirement home on that property. I know because I can see it from my house; and that the proposed use would have no impact on neighboring properties including homes on Stacey Lane which is the road that I live on. That, in effect, turns out not to be the current planned use of the property. I would like to suggest to this Board that granting a second variance, not long after the rationale for the first variance turned out to be utterly false, would have a significant impact on the credibility of the authority of this Board and of the Town's governing mechanisms in general. This would be irrespective of this application. That would be terrible for all the residents of this Town. Thank you very much.

- Mr. Michael Barile of West Lake Blvd., Mahopac was sworn in.
- Ms. Emily Barile of 250 Croton Falls Road, Mahopac was sworn in.

Mr. Barile stated I just wanted to pick up on the last gentleman said because that's why I am here tonight. I'm not here as a Town Representative; I'm here as a landowner and a neighbor - my daughter's dreamhouse. I've known Mr. Richard Diehl for over 45 years - very closely. I've known his previous home, which my daughter is in now, since

he had for 35 years. When we bought that house, we bought it on a handshake; contract came after. We bought it on a handshake and it's quite obvious that handshakes don't mean what they used to mean. He was to build his own house up there. He had commercial uses on that property. I never felt that I needed something in writing from him for what he told us. Obviously, and maybe I shouldn't say it this way but with the 4th or 5th wife, I should have. We were assured and we were promised that the commercial usage on that property was going to cease with the retirement of the people that were on the property, and they were people that I knew. So, we entered into this deal for her to raise a family based on the knowledge that the commercial trucks were going to come off and there would never be another commercial vehicle going up that driveway. That driveway passes her house, her house only and tenants. . To say we were misled is.....I wouldn't even know how to describe to you how I feel over what this man did to us but I'm saying it publicly because I stood up here and vouched for him when he came here for that variance. I want to speak publicly and tell you what was told to me because if I ever would have dreamed, going upstairs a year and a half ago, that I would find out from Rob Vara or Rich Franzetti that a 180' tower was being built, without anybody telling me first, I never would have believed it and I never would have stood here and vouched for that guy. I'm a realist; I know your limits; I know the case law and I think I know how this is going to turn out. But; I wasn't letting this go by without speaking, publicly, about what this man said to us and what this man promised us. Now he knows publicly how we feel. I feel, as soon as this tower goes up, he's just going to sell it. He'll never live there and the fool should know his house is going to be half of what it's worth now. He'll never recover, in his lifetime, what they're going to pay him. I just wanted to get that off of my chest.

Ms. Barile stated I have a couple of other items that I wanted to discuss. I had brought this to the Planning Board but I would like to share it with you guys as well. When my father and Dave Furfaro had first met with individuals regarding the cell tower, it was when they were doing the balloon test. They assured my father and Dave Furfaro that the easement would be paved. As they have explained to you guys, they plan on digging it up on site.

Mr. Barile interjected and stated they said this during the balloon test.

Ms. Barile continued they told him themselves that they had planned on paving it up. Right now, I drive a Subaru Cross-trek; it's not a big car but if there is truck that is coming that way, you can't fit two cars there. You've got to pull over to the side. You're already on brush and unpaved area. The spot it is right now is also a disaster. To top it off, my lovely neighbors – the Diehls – have not done anything to upkeep the property. There are monstrous potholes and everything that I, myself, am taking care of. If it's going to be even more destroyed because these people are planning on tearing everything up to dig some trenches and then install their items, I think it's fair that they should be responsible for paving it; especially since they told people themselves that they had planned on doing it. Additionally, an item that has been a major problem with this whole issue with my neighbors is that the Diehls had to put in site-mandated drainage when they were building their driveway up into their property. They did not.

Mr. Barile interjected they did; they had a C.O. and then they removed it.

Ms. Barile continued that, again, goes to their character. The issue with that is it affects me. They are up-hill so all the water runs off of their property and further destroys the easement that I have to share with this individual. Now; these people are going to continually make it even worse by having to dig it up if they do not fix 1) the

drainage issue and the 2) paving issue. Another issue that I have a problem with that Verizon brought up was that they stated that they weren't planning on doing any sort of vegetative screening or cedar fencing; they were planning on doing just the bare necessity because, in their opinion, it's surrounded by vegetation and no one will see it. I will see it – especially in the winter. In Philipstown, they just required them to enter into a maintenance agreement and part of the maintenance agreement would be maintenance of the easement of which they're accessing. The other would require them to have cedar fencing; a third would be to require them to have this vegetative screening. It's not like we're asking for a lot; it's just to make it a little bit better since they're probably going to get their way anyways. And; for them to be required for them to dismantle it if a time comes in which it's no longer a necessity. Again; these are all items that had been agreed to but it's been done in Philipstown, I don't know why it can't be done here. My other question that I have is, since they've brought it up again tonight about the possibility of needing an extension on this; it's already at 140' but can go up another 20' to 160', are we coming back here again for a whole other variance and what is the process regarding that. Those are a couple of the issues I have; I would like to have some sort of maintenance agreement put down in writing so we can control the damage that's going to be done to the property. Then, also, have the same items that were agreed upon in the Town of Philipstown, agreed here which is the cedar fencing, vegetative screening, dismantling done by Homeland Team.

Chairman Maxwell said most of your concerns would be addressed by the Planning Board. What's in front of us right now are the three variances of what he's looking for. To answer your question, if someone is going to do something in the future, it's a whole new application and they'd have to come back through this whole process.

Mr. Carnazza interjected not in this case though. There is a Code Section, and I'm sure Mr. Gaudio knows it as I don't have it in my head, but they are allowed to increase by 20' or 10% without returning to the Planning, Zoning or changing their SEQR.

Ms. Barile replied that's where my question was; if you allow the variance for that additional 65' that they're requiring, then are you, essentially, just giving them the variance for 85' since they don't have to come back for that additional 25' if they need to be?

Chairman Maxwell said that's what Mr. Carnazza just read to you; I was unaware of it.

Mr. Carnazza stated that's my understanding; I spoke with Joseph Charbonneau, Esq. about this and that was the discussion.

Ms. Barile said so essentially, a 65' variance is an 80' variance grant and it's no longer 140', it's 160'?

Chairman Maxwell said so it's irrespective of what neighbors and the Town thinks. It's 'Uncle Sam' doing what he does.

➤ Ms. Gail Fiero of 308 Croton Falls Road, Mahopac was sworn in.

Ms. Fiero stated I won't even talk about the residential 1-5; we all know that. Right now that is undeniably inevitable, because I brought it up at the Planning Board Meeting, is our property that is next door to our house on 308, it's number 292 to 300 Croton Falls Road and it used to be where the Summer Stock Theatre in Mahopac used to. All of the actors/actresses used to stay there for the summer. One in particular, number 294,

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the house has been designated by the New York State Historical Society as a possible inclusion in their.....and it's already in their website. I gave the Planning Board all the letters from the New York State Department of Recreation and Historical Preservation – William Cradinger. I don't want to read it again but do you have copies of that because I wanted to give it to you right now.

Chairman Maxwell replied I don't think they were given to this Board. Maybe they were given to others.

Mr. Carnazza interjected that was given to the Planning Board.

Ms. Fiero said you don't need it.

Vice-Chairman Aglietti said you can give it to us.

Chairman Maxwell addressed everybody: just a reminder, tonight – in front of us are just the 3 variances.

Ms. Fiero said I know but there's a little more back-story to the whole thing that I think, like Mr. Barile was talking about, needs to be said because ever since this started – a year ago I guess – people have been asking me why would the Diehls want to put up this ugly tower. I know we can't say that it's unhealthy but why would they want to do that but I'll tell you why they want to do that – one of the reasons. All the old timers that have lived in this town for the past....., we've lived here over 45 years, they can tell you that when we bought this property from Jill Miller who was head of the Summer Stock Theatre, my husband had and still has an electrical business in Town. Jill Miller used to call up and he would do all the electric there. She used to actually tell us that she would not sell this property to anyone else. She didn't want to hear anything. We heard, from her, that Mr. Diehl had gone to her, several times I guess, and wanted to buy but she didn't trust him. She told us, through the years, she would only sell it to George and I. We grew up with nothing and we didn't know anything about commercial properties or anything so we just let it go but she kept saying to us that she wanted us to buy it. Right now, Mr. Gaudio and Homeland, they all have to re-do all their hundreds of pages of applications because one in particular – section E asks does the project site contain or is it substantially contiguous to a building, archeological site or district which is listed on or has been nominated by the New York State Board of Historical Preservation for inclusion on the State or National Register. I have many documents that we've already been accepted with this because number 294 cottage was occupied by Richard Yates who was a famous author who wrote Revolutionary Road. He lived there while he was writing this book. *There's* also a well-house where he made a little office. Mr. Crattinger told me when they determine who is going to get into this, they want it to be where the person lived while they were making a name for themselves – not where they were born or where they died. So; he made a name for himself for writing this book on the property which is in clear site of where they want to put this tower. My house, on 308, is the closest to the proposed tower. I think it's 479'. But; just the back story is Albany (Jill Miller called herself Albany) said she only wanted to sell it to us. She said I want you to buy it and I want to have a life estate here. Someone in the Town, with a lot of knowledge, came to us in 1984 and said that Jill Miller owed a lot of taxes on this property. She was going to lose it to the Town. Unbeknownst to us, there were people in Town who lived here a long time that wanted this property; we didn't know. Their ultimate goal was to develop it all. Jill Miller knew we just loved this property; it's just so tranquil and she knew we were the only ones that she said she could trust for this. Like I've said, I've heard from so many people

asking why he would want to do this. We've gone through a lot over the years because we ended up with this property. All of the old timers, our age – who have lived here many years – even people that are on the historical society of the Town – they all know this back story. There were residents so angry with us that we ended up with this property because they had the vision that they were going to build; they were going to make a whole development or whatever. I guess we interrupted their master plan. Over the years, Mr. Diehl ended up with acreage in the back because we did not have the money to keep paying the taxes on empty land so we sold it to him; this piece where he put his retirement home on. Now, that's just the end of that story. This is why there's a back-story and I feel good now that I can, at least, get out like Mr. Barile did and tell the story about this because there is a back-story of the people who were so angry how we ended up with this property. Thank you.

Ms. Fiero quickly came back to podium – I'm sorry; these applications need to be re-done because I was given the opportunity -- I got the FCC report that I've read over so many things and everything asks is this near anything that may be historical. It's all answered "no" and the FCC wouldn't have made their determination knowing that yes; there is historical. Thank you.

Seeing no others wishing to speak from the public, Chairman Maxwell afforded the opportunity for counsel to speak again.

Mr. Gaudioso said we will submit a statement in writing, as I'd mentioned before. Just to hit on a couple things. I agree with you that a lot of those issues were site plan issues that are in front of the Planning Board. Regarding the paving of the road, it's not possible to pave the road in that area. It's within 84' – even less than that – of a wetland within the DEP watershed so we weren't able to create that impervious surface. There are not monstrous pot holes; the road is gravel lined and we're not going to change any of that but any work that we do on the road, we'll certainly maintain that portion of the work and make it right as far as what it needs to be and that's a gravel driveway. As far as the issue of the historic property (SHIPO), we did submit as part of the EAF, SHIPO's concurrence that at the time, there were no historical resources in the area. It's my understanding that this recent determination that the property is eligible for listing – not listed – was just made in the past month and that comes well after the SHIPO concurrence. That's part of the record now. As I mentioned before, because of the coordinated SEQR review, we would agree to have the hearing held open until the September 26th meeting.

Vice-Chairman Aglietti asked what kind of vehicle do you expect to go and service this every six weeks?

Mr. Gaudioso responded usually it's a four-wheel SUV.

Ms. Emily Barile (again) said I have a picture that I just took a couple of days ago of a 2 x 4 foot pothole directly across from where he is talking about. He also told me, specifically himself, that he wanted to pave it. Now I'm concerned about the character of this individual which is now telling you guys something to get their way and telling me, the property owner, something completely different to appease me. I thought they were better people than that. I thought when you do a handshake deal or speak with someone, again they would be businessmen or professional but it appears that the lying to your face right now proves otherwise. If you guys would like print outs of all the potholes, I will even take measurements for you. Again; if they only plan on accessing the driveway with a simple vehicle like they just said, I'm confused as to how they plan

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on getting the crane up there which is, again, another.....I'm not an engineer but I'm curious to see how they plan they're getting this monstrous thing up this tight little area that I have an issue with just two cars. I have not seen the specific details of that so maybe they have something in all their files.

Chairman Maxwell said just submit pictures to the Planning Board when the time comes.

Mr. Gaudioso said I never told Ms. Barile that I wanted to pave the access drive. As I just informed you, we weren't able to pave the access drive and that's the bottom line on it.

Chairman Maxwell said to Mr. Folchetti: we can't close the public hearing on this?

Mr. Folchetti responded you could; the question or the action that Mr. Gaudioso is bringing up because SEQR is still undetermined by the Planning Board. But I believe the applicant has additional submissions for you and some of the people that have spoken wanted to submit to the Board as well. I think the best thing to do is to keep the public hearing open to the next meeting. At that point, presumably SEQR will be done at the Planning Board where there will be a determination one way or the other. I think, based on the record tonight and proceedings, that's the best thing to do.

Decision of the Board:

Vice-Chairman Aglietti moved to hold over the public hearing on this application; seconded by Mr. DiTomaso with all in favor.

5. Application of **HOMELAND TOWERS LLC & NY, SMSA Ltd. Partnership d/b/a/ Verizon Wireless (Dixon)** for a Variation of Section 156.62(O)(2), 156-42(D) & 156-20 as well as an Interpretation seeking permission to install a wireless telecommunications facility. The property is located at 36 Dixon Road, Carmel NY 10512 (n/o Spaccarelli) and is known by Tax Map 54.-1-6.

Code Requires/Allows	Provided	Variance Required
156-62(O)(2): 75 feet (height) *	110 feet	35 feet
156-42(D): 24 feet (width of access drive)	12 feet	12 feet
156-20: 6 feet (max height for fence)	8 feet	2 feet
* Code allows for increase in height if criteria in Code Section is met. Branches extend 7 feet above tower as an architectural feature.		

Please note: a court stenographer transcription of this public hearing on this application was also taken.

Mrs. Fabiano recused herself for this application.

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- Mr. Robert Gaudioso, Esq. of Snyder & Snyder representing this applicant as well appeared before the Board.

Mr. Gaudioso stated in the interest of time, the issues are very similar in this case. I'll try and point out some of the differences. The tower, in this case, was originally proposed at 150'. Through the additional studies and the review by the Town's consultant, the application is now for a 110' modi-pine. One of the differences in this case is that there is an existing access drive in this location on the property. We're proposing to put in a new gravel access drive to get to the facility in this portion of the property. This portion here is paved, this portion here is basically a trail now and we would just improve it with a gravel driveway. There's no other traffic that would be on this portion of the driveway. Same issue with the fence – we would agree to go down to the 6'; we've proposed the 8' because the Code Section of the Wireless Code of the Town of Carmel but we're happy with either the 6' or the 8' fence. We think that the 8' fence makes more sense. We did submit all the same information that I previously indicated. With respect to this application, what I'd like to do in what I will supplement later are the maps that I referred to in the last application, as part of our radio frequency submissions. Again, your consultant did look at these materials and did confirm that the coverage need for this facility at 110' has been justified. I'll submit those maps as part of the full application materials that were submitted to the Planning Board. I'd be happy to answer any questions Mr. Chairman.

Vice-Chairman Aglietti said this too shall require a hold over?

Mr. Gaudioso replied correct; it's the same situation in that the Planning Board intends to be lead agency, has coordinated review; they had previously circulated it last year so that's probably why a lot of folks don't remember it. It was circulated last year and there was no objection to the Planning Board being lead agency. So, therefore, they have to make a SEQR determination before this Board.

Chairman Maxwell said so that determination wasn't officially made; I read it in the minutes that they were trying to but.....

Mr. Gaudioso said they have not gotten to that stage.

Mr. Starace said I would imagine it's the same mobilization set-up, methods and means for construction and this could possibly go to about 132' with the 20%.....

Mr. Gaudioso interjected here's the rule: the Federal rule is if the facility were approved, it could only be extended a maximum of 20' or 10%, whichever is greater and it's only able to do that if it meets 6 criteria and that has to be approved by the Town so it's not an automatic up to 130'. It still has to go through a process; there are criteria under the law – one of which is that it would not defeat the stealth elements. In this case we're proposing a stealth tree.

Mr. Carnazza interjected did you say whichever is greater?

Mr. Gaudioso replied 10% or 20' – whichever is greater.

Mr. Carnazza said so it could be more than 20'?

Mr. Gaudioso replied if it were a 200' tower.

Chairman Maxwell simultaneously said not in this particular case.

Mr. Gaudioso said in this case, 20' would be the max. Again; there are 6 different criteria including not expanding the compound, not creating new disturbance, not defeating the stealth elements of the proposed facility.

Chairman Maxwell opened this application up to the public for input, comments and concerns.

➤ Tina Gambino of 36 Brittany Lane, Carmel was sworn in.

Ms. Gambino said my purpose for being here tonight is that I live right in the area of the proposed cell tower. But; the reason that I'm standing here and speaking to you tonight is that Mr. Robert Montanaro has stepped up for our group of neighbors but he was not able to be here tonight. So, his wife has asked me to read a letter from him if that's okay.

Chairman Maxwell replied sure.

Ms. Gambino said thank you very much. So, this is clearly to the Zoning Board from Mr. Robert Montanaro regarding the Dixon Road proposed cell tower: "Dear Board: The cell tower proposal for the Dixon Road/Spaccarelli property should not be approved for the variances specific to height of the tower and driveway expansions. I request that the Board consider the following factors:

- The removal of 35 trees will greatly disturb the aesthetic beauty of the views and surrounding properties. This combined with the driveway expansion along the property lines of neighbors will create drainage issues on the properties as well as cascade onto Dixon Road. The water drainage onto Dixon Road will create a safety hazard for the community and clearly liability to the Town during fall, winter, spring freeze thaw events. These trees that will be removed along with a larger driveway will exaggerate a problem that already occurs in this area specific to drainage.
- Placing a cell tower of 110' only 30' from property line is completely intrusive to surrounding neighbors. This is incredibly ridiculous when the Dixon Road property consists of more than 10 acres of property.
- Local realtors have already documented that a cell tower will have a negative effect of surrounding home values by 10% - 30%. Using a conservative average of 20%, the surrounding 30 homes on Dixon Road, Brittany Lane, Angela Drive and Bianca Court have an average value of \$500,000. This means that this cell tower will take \$3,000,000 of homeowner equity out of the pockets of the taxpayers. These same taxpayers pay approximately \$500,000 per year in real estate and school taxes. This will create potential litigation on several fronts.
- There are ample, less intrusive sites in our community that are not in the middle of residential neighborhoods as well as the fact that the Town should be exploring Town property. If, in fact, a tower is even needed. If such a tower is needed, placing it on Town property, at minimum, the Town would gain the income from the Tower and would be a direct landlord to control the activities by Homeland. This is what the taxpaying community expects of it's Town Boards. This is the difference between good planning versus bad planning. Thank you for your consideration on this utmost critical matter to our community and its future."

This has been submitted by Mr. Robert Montanaro and I can say that we all concur.

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- Mr. Larry Gray of 20 Brittany Lane, Carmel was sworn in.
- Ms. Linda Montanaro of 30 Brittany Lane, Carmel was sworn in.

Mr. Gray said it really does have to do with some of the proposed driveway and we think damage that's going to come to the property. As Ms. Gambino stated, it's a 10 acre property and a lot of this has to do with already existing driveways if they have but they're proposing to put a driveway all the way around here, across all of our properties through the back with the removal of.....

Ms. Montanaro (at map without mic) interjected these are all properties along the stone wall here; (at mic) the driveway up against the stone wall disturbing all of the trees that are going to be destroyed on the property lines. Not to mention the fact that this whole area, which they don't talk about, is an entire ridge coming up from Dixon Road. This is where we talk about the drainage issue which your D.O.T. has come in and made big trenches because we already get rain and water and rocks and gravel and everything coming off of that driveway. Now they want to add an extra driveway with another 500' plus of blacktop.

Mr. Gray said again; with a 10-acre property and all of their stuff right here, the tower goes against our houses and their driveway goes along our houses. That just doesn't make a lot of sense. That was one of the questions I have. Is it documented – can they accurately count how many trees are going to be removed. Is that part of the process?

Chairman Maxwell responded I think there was an assessment of 35 trees in the reports that I saw. I don't know who made that assessment but it was offered in the.....

Mr. Carnazza interjected saplings are not trees – just so you're aware. It's not a tree until it becomes a certain measurement.

Mr. Gray said this is a pretty mature area; there's a lot of trees.

Ms. Montanaro said the other thing that you need to note is that this entire area right here where they're going around, there's no trees. It's a paddock and where they put his horses.

Mr. Gray said a lot of the points are and many of these were raised about tree removal, using their own existing driveway and property and building off of that versus disrupting everybody else in the entire neighborhood. Current water run-off, icing – all of this burden should be on the property owner. We should not be the ones burdened with everything that goes on with this process. Trees, run-off, erosion – that's

Chairman Maxwell interjected again; those are Planning Board issues and concerns. It's fine that you've addressed them here but we're really just concerned about the area variances that they're seeking.

Mr. Gray said I did have a couple questions that may be for the Planning Board but one of the things that I'd love to ask is: you heard before about the property values and health concerns, all of that is my issue as well but property values is a big deal to me and I do consumer market research for a living so I did a bunch of research. You can certainly google stuff and I found about thirty studies that all talked about the degree of property decline. They cite a study that says property values increase when you put a cell tower in a residential neighborhood. My question would be how/can we have access to that? Again; I do that for a living so I'd like to see the methodology, the data,

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the questions that were asked and all of that because research can tell you what you want it to tell you.

Chairman Maxwell responded I don't recall reading that in the literature but it's certainly.....

Mr. Carnazza interjected it's in the Planning Department in the Planning file.

Mr. Gray asked would the public have access to that.

Mr. Carnazza responded everything we have is accessible to the public; yes.

Mr. Gray said through a website?

Mr. Carnazza replied no; you have to go in and see Rose or Dawn.

Mr. Gray said just let me make sure I don't have one more question because some of this may very well be for the Town Board (s/b Planning Board). I would like to verify the number of trees to be removed, would like to get my hands on that study and the last question I had is: they talked a little bit about safe and adequate service. We all live right here and our service isn't outstanding but we have service. Is this really to expand service or is this tower going to be 5G capable? I did a little research on this as well where 5G is a new technology. Obviously, they know more about it a little more than I do but it's stronger, bigger band-width; everybody's going to it. There's a race for it. The challenge is that most existing towers can't handle it; they have to put up new towers. The other challenge, from what I've read, the signals cannot go as far and more towers are needed which is why there is a race to put up these towers. I've read a bunch of articles where one goes up, ten go up really fast. So, I would like to know the real use. Is this going to be a 5G capable tower?

Chairman Maxwell said I don't know the answer to that but.....

Ms. Montanaro interjected I put this picture up here just so you can get an idea. One day, on my way to work, I backed out of my driveway and I saw a big crane in my backyard, right there. I passed by and I turned around and came back home. That was the first day and that was this day's test. I then immediately drove up to the ball field and I have pictures to show you what it looks like from the ball field. It's even worse. Second day, they came back and put another balloon test. It went even higher. The balloon popped and it failed. They took the crane down. I never saw them again. I called Town and asked whoever to get here quick because I needed an explanation for what was actually going on. Nobody would believe what it looks like. That's what it's going to look like at its lowest point. Not to mention the fact that he can add another 20' to the top of that, at any point, because they're building the base big enough to accommodate the extra 20' from the get-go. So, you figure that out. If they're not going up an extra 20', they wouldn't be spending the money on a bigger base. Also, there's a generator in this base. Generators have propane. You already know what level of damage a propane tank can do. I have a generator. I have 2 propane tanks and run tests on them every single week to make sure my tanks and my generators are running properly. Nobody is checking on this every week. If this goes on fire and fails.....as you see my house sits in the middle of the woods. That whole woods is going to go up in flames, not to mention the horses and everything else he has on his property. That's a big concern to me also.

DRAFT

➤ Ms. Gail Fiero jumped up to podium again

Ms. Fiero said it's just very quick: to answer Mr. Gaudioso's saying that....

Chairman Maxwell interjected you have to address the Board!

Ms. Fiero continued, Mr. Gaudioso said that my applications showing all.....

Chairman Maxwell interjected are you referring to the previous application?

Ms. Fiero responded yes.

Chairman Maxwell said this is a whole new application so we can't.

Ms. Fiero said so I can't talk now?

Vice-Chairman Aglietti said it's closed.

Chairman Maxwell said yes; I'm sorry.

Ms. Fiero said anyway it wasn't a month.

➤ Mr. Rick Recine of 5 Bianca Court, Carmel was sworn in.

Mr. Recine said I'd like to refer to the site plan with the markings on it. Let's start with the tie in of the electric and communications. The electric and telephone tie-in on Dixon Road. The trees would have to be removed from the proposed access road, down to Dixon Road to accommodate a trench for the two utilities. Or; and worse, poles and overhead wires would be run in lieu of underground trenching, most likely, because this slope is all rock and boulders. The green represents the limit of disturbance (points to map). In this particular area, they are allowed by the town, the limit of disturbance; to me that sounds like they could do whatever they want within this boundary. He said it's 30 feet wide for a 12 foot wide access driveway. They are going to tear everything they can within this whole boundary to construct the road and a tower.

Chairman Maxwell stated again these are planning board issues. What's in front of us tonight are just the variances for the height, width, the aisle width of the drive and the height of fence.

Mr. Recine said I'm talking about the width of the road, the proposed driveway. He asked so this here tonight doesn't concern cutting of trees or any of that.

Chairman Maxwell said you could voice your concern about that, that's fine. I'm just reminding everybody what's under purview of this board....

Mr. Carnazza said but what they are getting a variance for is for a narrower driveway which would require less cutting of trees.

Mr. Recine asked how will they get a 100 ton crane up a 12 foot wide driveway?

Mr. Carnazza said if we made them do the full width, there obviously would be more trees that had to be cut. If they put a wider road, there is going to be more trees.

Mr. Recine stated for the record all the vegetation would be destroyed within this green area. The circled trees with the little boxes, those are trees to be protected. He went on to discuss the proximity of proposed access road to the property lines. He said the limit of disturbance is very close to existing stonewalls and very large trees. The construction of the access road will destroy the roots of those trees. If they take the stumps out they will probably have to move the stonewall also.

Mr. Gaudioso stated the photograph of the crane is when the crane was at 150 feet. The proposed height is now 110 feet. The 150 feet was the full height when we did the multiple height tests for the testing of the RF signal. He said we are proposing to remove 35 trees to be. The limit of disturbance is basically the largest area that we can disturb. That's a limit to us, but we are protecting trees within that area. We use that limit in the stormwater calculations for erosion control. He said all those details are on the plan and it has been reviewed by the Town Engineer. In addition, as part of the application submitted to the planning board we do show all the turning radius for the various trucks on the property. He said we do appreciate the comments about the location of the access drive in the facility. The park is over here (points to map) and one of the code requirements is to minimize impact on the park. We can certainly look at alternatives on the property that would be closer to the park, but would be further from the residences. That's something we can certainly take back based on the comments this evening.

➤ Mr. Ruff Gambino of 36 Brittany Lane was sworn in.

He addressed the board and stated I was under the impression the park would be an alternate. It's at the same level and same height. Why does it have to be put in residential neighborhood when it could be put in the park instead on town property? It's not as intrusive and it's at the same level. Cost shouldn't be a factor. It should be what's better for the neighborhood.

Mr. Gaudioso stated we did make an offer to place it in the park and the town refused to lease the property to us.

Chairman Maxwell stated I'm not on the Town Board; I'm here for the zoning board to hear certain criteria that they are looking for. If you have an issue with that, you could go to the Town Board.

Mr. Gambino stated when I bought my property, it was a wooded lot. This should not be in a residential neighborhood.

Chairman Maxwell stated we are hearing your concerns as a board and we are taking it in. We are not voting on this tonight, it's going to be carried over.

Mr. Gambino said there is an alternative for this site.

Chairman Maxwell said I understand, but it's not for this board to decide upon or under our purview.

Mr. Gambino said the trees in that area are about 75 to 80 feet. This is going to tower over the top of the tree line. This is going to destroy the aesthetics of the neighborhood.

DRAFT

Decision of the Board:

Vice-Chairman Aglietti moved to hold over this application; seconded by Mr. DiTomaso with all in favor.

Mrs. Fabiano returned to the dais.

The meeting adjourned at 10:15 p.m.