

HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES

SEPTEMBER 30, 2021

SPECIAL MEETING 7:00 PM

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board Vice-Chair, Mr. Newlin called the meeting of the Board of Adjustment to order at 7:00 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act and State Executive Order 103.

ROLL

Ms. Taglairino called the roll. It went as follows:

Mr. Cammarata	Present	Mr. Newlin	Present	Mr. Maselli	Excused
Mr. Addonizio	Present	Ms. Sovolos	Present	Mr. Boyan	Present
Mr. Rosenbaum	Present	Mr. Symonds	Present	Mr. Flanagan	Present(7:45)

Mr. Hall, Board Attorney, Mr. Fox, Board Engineer, Ms. Mertz, Board Planner and Ms. Taglairino, Board Secretary were present as well.

REGULAR MEETING

EXECUTIVE SESSION DETERMINATION

Mr. Newlin announced the request for the Board to adjourn into an Executive Session at the end of the meeting to discuss Professional reviews. Mr. Addonizio made a motion to adjourn into Executive Session. The motion was seconded by Mr. Rosenbaum. On a voice vote all approved of holding an Executive Session at the end of the meeting.

ADMINISTRATIVE

Mr. Newlin announced the following applications are pending completeness:

<u>Application BOA# 14-20</u>	Donald & Eliza Murphy 49 Meyersville Road, B55/L5
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<u>Application BOA# 16-21</u>	Ronald & Judith Preiss 110 Village Road, B15/L10.03, R-1 Zone
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Mr. Newlin announced that the following applications are carried until the October meeting:

<u>Application BOA# 02-21</u>	Dr. James Wittig 34 Kitchell Road B1/L5 R-1 Zone
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<u>Application BOA#03-21</u>	Jack Lankford Wade 203 Blue Mill Road, B4/L27, R-1 Zone
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MINUTES

Mr. Newlin tabled the July and August minutes until the October meeting.

OLD BUSINESS

Application BOA# 14-21

Charles Kilgore and Victoria Hawbecker

82 Sand Spring Road, B22/L1

Applicant is requesting variance relief for a front and side setback and for an accessory structure setback as per N.J.S.A.40:55D-70(c).

Presenting:

Nicole Magdziak, Attorney

Richard Schommer, Engineer

Hyland Turner, Architect

- Ms. Magdziak noted that the applicant submitted 2 variations of the Board for their review.
- Ms. Magdziak noted that one plan rotated the home on the plan 90° and the other plan shifted the house 45°.
- Ms. Magdziak opined about the constraints of the property.
- Mr. Schommer presented Exhibit A with the existing conditions on the property.
- Mr. Schommer presented Exhibit A-2 with a proposed plan to shift the home 90°.
- Mr. Schommer presented Exhibit A-3 with a plan that shows the home shifted 45°.
- Mr. Schommer noted there are still setback variances with both plans but there is no variance for building coverage or lot coverage.
- The plan includes an attached garage and a proposed future pool cabana.
- Mr. Schommer pointed out an approximate tree clearing area.
- Mr. Schommer presented an Exhibit showing neighboring dwelling comparisons.
- Several members noted their preference for the plan turned 90°.
- Mr. Newlin did not share the Board's preference. He was open to either plan.

Mr. Newlin made a motion to approve the Plan A Exhibit subject to landscape plan being approved by the Township Engineer and the proposed patios are not elevated. The motion was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Mr. Newlin, Mr. Rosenbaum, Mr. Addonizio, Mr. Boyan, Mr. Symonds, Mr. Cammarata & Mr. Flanagan.

Against: None

NEW BUSINESS

Application BOA# 7 &12-21

529 Waterfront Properties, LLC
595 Van Beuren Road, B5/L8, RR Zone

Presenting:

Arnold Lakind, Attorney

Scotti Collins, Attorney for the Gargiulos

Mr. Addonizio recused himself.

Mr. Gargiulo and Mr. Battista were sworn in for testimony.

- Mr. Lakind noted that the item in question is the Zoning Officer decision of the issuance of a permit for a fence on the flagstaff of 595 Van Beuren Road.
- Mr. Hall noted that the proceeding were confined to the definition of a recorded road right-of-way.
- Mr. Lakind cited 225-116Q, that prohibits and part of a fence, driveway gate or pillar from being located in a public right of way.
- The Board discussed the definition of a road right-of-way vs a private shared driveway deed.
- Mr. Byrnes noted a condition within the issuance of the permits that there may need to be access granted in the future to the driveway from Block 5 Lot 6.01 through the proposed fence.
- Mr. Gargiulo and Mr. Battista opined their outlooks on the current conditions of the flagstaff.

After much discussion, Mr. Flanagan made a motion to deny the appeal based on the fact that the driveway is not classified as a road. It was seconded by Mr. Rosenbaum. A roll call vote went as follows.

For: Mr. Flanagan, Mr. Newlin, Mr. Rosenbaum and Ms. Sovolos

Against: Mr. Symonds and Mr. Boyan

OLD BUSINESS

Application BOA# 17-18

New York SMSA Limited Partnership d/b/a Verizon
Wireless
8 Millbrook Road, B17/L1, PL Zone
Applicant requesting variance relief for use, per NJSA
40:55D-70(d) for a cell tower.

Presenting:
Richard Schneider, Attorney
Mr. Mlenak is acting Board Attorney for this application.
Robert Simon is an objecting attorney for this application.
Dr. Bruce Eisenstein, RFP Specialist
Peter Steck, Objector Planner

Mr. Schneider questioned Mr. Steck.

There was a discussion about the October 15, 2021 meeting date.

A transcript of the testimony is appended to the minutes.

OTHER BUSINESS

None

EXECUTIVE SESSION

There was a motion to adjourn into Executive Session.

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 10:40.

Lori Taglairino

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

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HEROLD LAW, PA
BY: ROBERT F. SIMON, ESQUIRE
Attorneys for the Objectors: SGSL, LLC; Harsh and
Nina Bansal; Michael and Susan Koenek; David
and Eunice Conine; Brian and Christina McKittrick; Livio Saganic and
Christel Engel; James M. Carifa and Sarah G. Conine; Ted Cotton

No public members are sworn

CHAIRMAN FLANAGAN: Okay. Welcome back everybody. Take a roll, please.

SECRETARY TAGLAIRINO: Mr. Boyan?

BOARD MEMBER BOYAN: Here.

SECRETARY TAGLAIRINO: Ms. Sovolos?

BOARD MEMBER SOVOLOS: Here.

SECRETARY TAGLAIRINO: Mr. Maselli is not here. Mr. Symonds?

BOARD MEMBER SYMONDS: Here.

SECRETARY TAGLAIRINO: Mr. Newlin?

BOARD MEMBER NEWLIN: Here.

SECRETARY TAGLAIRINO: Mr. Rosenbaum?

BOARD MEMBER ROSENBAUM: Here.

SECRETARY TAGLAIRINO: Mr. Addonizio?

BOARD MEMBER ADDONIZIO: Is back.

SECRETARY TAGLAIRINO: Mr. Flanagan?

CHAIRMAN FLANAGAN: Here.

SECRETARY TAGLAIRINO: Mr. Cammarata?

BOARD MEMBER CAMMARATA: Here.

CHAIRMAN FLANAGAN: Welcome back. Mr. Schneider, Mr. Simon, I sincerely apologize. We expected we would be done with all of this sooner. I wound up being late. My apologies. You're going to cross-examine Dr. Steck tonight and do your -- what's the word? I forget already.

<p style="text-align: right;">Page 5</p> <p>1 MR. SCHNEIDER: Redirect.</p> <p>2 CHAIRMAN FLANAGAN: I know we hope to have</p> <p>3 an hour and a half tonight. I thought you said --</p> <p>4 MR. SIMON: We sort of talked outside about</p> <p>5 where we are, dates, and all kinds of things.</p> <p>6 CHAIRMAN FLANAGAN: And I'm -- I know we're</p> <p>7 running late on time. We need to do an executive</p> <p>8 session tonight as well. We have to talk about</p> <p>9 scheduling for this application.</p> <p>10 MR. SIMON: We talked about all of that and</p> <p>11 we're hoping that we can get as far as we can. We just</p> <p>12 need a couple of minutes before you go into Executive</p> <p>13 Session to talk about scheduling.</p> <p>14 MR. SCHNEIDER: Mr. Chairman, do you want</p> <p>15 to do it now?</p> <p>16 CHAIRMAN FLANAGAN: Please. Yes. We can</p> <p>17 do that now.</p> <p>18 MR. SCHNEIDER: So just tell me --</p> <p>19 CHAIRMAN FLANAGAN: And everyone, by the</p> <p>20 way, feel free to leave masks on, if you're</p> <p>21 comfortable, or feel free to take them off.</p> <p>22 MR. SCHNEIDER: Just tell me what your</p> <p>23 cutoff time is so I know when the appropriate break is,</p> <p>24 assuming I don't complete.</p> <p>25 CHAIRMAN FLANAGAN: Okay. We're scheduled</p>	<p style="text-align: right;">Page 6</p> <p>1 to end at 10:30.</p> <p>2 MR. SCHNEIDER: So do you want to cut off</p> <p>3 before 10:30 for Executive Session?</p> <p>4 CHAIRMAN FLANAGAN: Let me ask the Board.</p> <p>5 How does the Board feel about going to 10:30 and then</p> <p>6 we'll take ten minutes afterwards?</p> <p>7 MR. SYMONDS: I'd like to go as long as we</p> <p>8 can.</p> <p>9 MR. SCHNEIDER: So we'll go to 10:30.</p> <p>10 We'll play it by ear. Let me see if I can move this</p> <p>11 along in the interest of time.</p> <p>12 I don't know about housekeeping item, but I</p> <p>13 want to respond to one question that came up at the</p> <p>14 prior public hearing. I think it was either the Chair</p> <p>15 or Mr. Newlin, a couple of questions concerning the</p> <p>16 distance of the pole from both Village Road and</p> <p>17 Millbrook Road and you asked that question in the</p> <p>18 context of what the setback was for the Green Village</p> <p>19 Fire Department. So I have those numbers for you, so</p> <p>20 for the purposes of the record.</p> <p>21 For this site the tower is plus or minus</p> <p>22 365 feet from Village Road, and 650 feet from Millbrook</p> <p>23 Road. With respect to the flagless flagpole at the</p> <p>24 Green Village Fire Department at 529 Green Village</p> <p>25 Road, and I did that application, I'm now referring to</p>
<p style="text-align: right;">Page 7</p> <p>1 the zoning drawings, the setback of the tower to the</p> <p>2 front property line is 130 feet.</p> <p>3 CHAIRMAN FLANAGAN: Okay.</p> <p>4 MR. SCHNEIDER: So just for purposes of</p> <p>5 record, unless anybody needs me to mark anything, I'll</p> <p>6 just proffer that.</p> <p>7 MR. MLENAK: I'll just ask Mr. Simon if</p> <p>8 he's accepting of those numbers because it was given by</p> <p>9 Counsel?</p> <p>10 MR. SIMON: I don't have any reason to</p> <p>11 doubt Mr. Schneider, and certainly I'll verify that.</p> <p>12 If there's an issue I'll raise it, but I believe Mr.</p> <p>13 Schneider.</p> <p>14 MR. SCHNEIDER: I'll give you a set of the</p> <p>15 shadow plans.</p> <p>16 MR. SIMON: It's fine. I got it. Okay.</p> <p>17 Can I just -- can I throw in one more housekeeping</p> <p>18 thing? I had submitted to the Board I think before the</p> <p>19 last meeting, a certification from the crane operator</p> <p>20 incident to our site visit. Just basically reciting</p> <p>21 and identifying the process he went through and how he</p> <p>22 raised the crane and the times he was there and the</p> <p>23 height it was and the location it was. I submitted</p> <p>24 that to the Board.</p> <p>25 I have spoken to Mr. Schneider as to</p>	<p style="text-align: right;">Page 8</p> <p>1 whether he would require that I bring the crane</p> <p>2 operator in for live testimony subject to his</p> <p>3 cross-examination. He can speak for himself. What he</p> <p>4 told me is that he has no objection to the</p> <p>5 admissibility of the certification for what it is. And</p> <p>6 unless the Board has any objection --</p> <p>7 CHAIRMAN FLANAGAN: We don't need to see</p> <p>8 him. Thank you.</p> <p>9 MR. SIMON: Okay. Rich, is that accurate?</p> <p>10 MR. SCHNEIDER: One hundred percent</p> <p>11 accurate. We can move along. We should just quit</p> <p>12 while we're ahead.</p> <p>13 BY MR. SCHNEIDER:</p> <p>14 Q. Okay. Mr. Steck, I'm going to try, in the</p> <p>15 interest of time, while I have a couple of questions,</p> <p>16 but certainly they'll be less than Mr. Simon's, let's</p> <p>17 see if we can move this along.</p> <p>18 A. And I understand that I am still under</p> <p>19 oath.</p> <p>20 MR. MLENAK: You're currently under oath.</p> <p>21 P E T E R S T E C K, having been</p> <p>22 previously sworn, testifies as follows:</p> <p>23 Examination BY MR. SCHNEIDER:</p> <p>24 Q. Mr. Steck, on direct with Mr. Simon you</p> <p>25 provided the Board with the benefit of your experience</p>

<p style="text-align: right;">Page 9</p> <p>1 as a professional planner, including specifically your 2 testimony in conjunction with applications for wireless 3 communications facilities. My understanding, and you 4 correct me if I'm wrong, is that you have had occasion 5 to testify in opposition to various wireless 6 telecommunications cases; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And can you give me the applications and at 9 least the municipalities in which you so testified?</p> <p>10 A. In opposition?</p> <p>11 Q. Yes, correct.</p> <p>12 A. Bernardsville, Cranford on two occasions, 13 two different towers. I'll have to go through my 14 records. Hillsborough. Northvale. The Northvale case 15 I was representing the municipality, so it was not for 16 a private client in opposition. You caught me off 17 guard so I'll have to look at my records to give you 18 the other names.</p> <p>19 Q. Okay. With respect to the Bernardsville, 20 let's just say Bernardsville, Cranford and 21 Hillsborough, who is the attorney with who you work 22 with in opposition?</p> <p>23 A. Mr. Simon.</p> <p>24 Q. All of those matters?</p> <p>25 A. The three.</p>	<p style="text-align: right;">Page 10</p> <p>1 Q. The three being one in Cranford, one in 2 Bernardsville, one in Hillsborough?</p> <p>3 A. Yes.</p> <p>4 Q. In the interest of time, are your clients 5 in this matter the same as those of Mr. Simon?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And were you retained by Mr. Simon 8 or the clients directly?</p> <p>9 A. My initial contact was through Mr. Simon.</p> <p>10 Q. And --</p> <p>11 A. Although my recollection is my proposal was 12 not to Mr. Simon, but to the clients.</p> <p>13 Q. So can I assume from that answer that your 14 contractual, your retainer agreement is directly with 15 the clients of Mr. Simon's as distinct to Mr. Simon 16 himself?</p> <p>17 A. That's correct.</p> <p>18 Q. Do you know where all of your individual 19 clients reside?</p> <p>20 A. My recollection is that I have two clients. 21 I'll call them prime clients. And they were on the 22 crane inspection tower.</p> <p>23 Q. The one being conducted on July 9th of this 24 year?</p> <p>25 A. Yes. It was July 9th or 10th?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. I'm sorry. It could be the 10th, I'm 2 sorry. So when you say the two prime clients, there 3 are numerous clients that you're referring to as the 4 two prime clients?</p> <p>5 A. If I can just consult my records I may be 6 able to be more accurate.</p> <p>7 MR. SIMON: Would you like Mr. Steck to 8 consult his records or do you want to move on, or he 9 can go back to it?</p> <p>10 MR. SCHNEIDER: No, that's fine.</p> <p>11 BOARD MEMBER NEWLIN: Can you repeat the 12 question while you're waiting?</p> <p>13 BY MR. SCHNEIDER:</p> <p>14 Q. I was asking whether he was retained by all 15 of his clients or were there certain -- two prime 16 clients that he was retained by?</p> <p>17 A. I would invite assistance from Mr. Simon 18 because my proposal --</p> <p>19 Q. Let's move along. Other than the crane 20 test that was conducted on July 10th did you have 21 occasion to personally visit any of your clients' 22 residences?</p> <p>23 A. The first time I was on their properties 24 was during the crane test.</p> <p>25 Q. Was there any other time other than on July</p>	<p style="text-align: right;">Page 12</p> <p>1 10th where you had occasion to visit any of your 2 clients' respective properties?</p> <p>3 A. I was not physically on those properties 4 but I did tour the neighborhood on other occasions.</p> <p>5 Q. You indicated in conjunction with your 6 direct testimony, Mr. Simon asked you a series of 7 questions about what you did in preparation for your 8 testimony. I just want to make sure I understand it. 9 You've had the opportunity and have reviewed all of the 10 transcripts of the public hearings conducted to date?</p> <p>11 A. Yes.</p> <p>12 Q. And you indicated on direct that you had 13 the opportunity to review all of the exhibits that were 14 posted on the website. Do you understand whether all 15 of the exhibits that have been marked into evidence in 16 this matter have been posted on the website?</p> <p>17 A. I don't know whether they have or not.</p> <p>18 Q. Okay. Did you review any exhibits that 19 have not been posted on the Harding Township website 20 for this matter?</p> <p>21 A. I don't know because I don't know what -- I 22 have reviewed all the exhibits that were posted on the 23 website. If I was present at a meeting where an 24 exhibit was marked I was, you know, obviously -- that 25 was available to me if I was here.</p>

<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. But it is possible that there were</p> <p>2 exhibits not marked into evidence -- I'm sorry, that</p> <p>3 were not posted on the website or were not marked into</p> <p>4 evidence and you may not have reviewed those exhibits;</p> <p>5 is that correct?</p> <p>6 A. I wouldn't know -- if they were marked as</p> <p>7 an exhibit in the record and they were posted on the</p> <p>8 website I did look at them.</p> <p>9 Q. You were present at the -- as you just</p> <p>10 indicated, at the site inspection that is conducted on</p> <p>11 that Saturday morning July 10th; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And in conjunction with your physical</p> <p>14 appearance on that evening you took certain photos as</p> <p>15 was more particularly reflected on Exhibit O-5;</p> <p>16 correct?</p> <p>17 A. On that morning, yes.</p> <p>18 Q. On that morning, yes.</p> <p>19 A. Yes, I did.</p> <p>20 Q. And other than the photographs that you</p> <p>21 took and are reflected in Exhibit O-5 did you have</p> <p>22 occasion to undertake any additional visual analysis?</p> <p>23 A. I took additional photographs that I did</p> <p>24 not put in my exhibit.</p> <p>25 Q. Okay. Did you -- have you had occasion or</p>	<p style="text-align: right;">Page 14</p> <p>1 -- strike that. Did you have occasion to prepare for</p> <p>2 this case, what we would commonly refer to as photo</p> <p>3 simulations?</p> <p>4 A. I did not.</p> <p>5 Q. Okay. In your capacity as a professional</p> <p>6 planner in the past have you had occasion to prepare</p> <p>7 what we -- what has been commonly referred to as photo</p> <p>8 simulations?</p> <p>9 A. On this case or in general?</p> <p>10 Q. In general.</p> <p>11 A. I have not done photo simulations, but I</p> <p>12 have on other occasions, for example, floated a helium</p> <p>13 balloon just to indicate where the top of a cell tower</p> <p>14 would be, but part of my practice is not producing</p> <p>15 photo simulations.</p> <p>16 Q. Were you present on the date of the crane</p> <p>17 test that resulted in the visual analysis prepared by</p> <p>18 Mr. Masters as reflected in O-5?</p> <p>19 A. No.</p> <p>20 Q. Were you present at the crane test that was</p> <p>21 conducted by Verizon Wireless in February of 2019?</p> <p>22 A. No.</p> <p>23 Q. Had you been retained by your clients by</p> <p>24 either of those dates?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Now, on direct you provided testimony</p> <p>2 somewhat detailed about what you understood to be the</p> <p>3 required variance relief in conjunction with this</p> <p>4 application. So I want to be sure that I understand</p> <p>5 all aspects of that testimony.</p> <p>6 You spent some significant time discussing</p> <p>7 the nature of the existing uses that are conducted at</p> <p>8 the DPW property. Just so I don't misunderstand your</p> <p>9 testimony as it relates to those uses, you take no</p> <p>10 issue with or do not dispute that the underlying DPW</p> <p>11 use is a permitted use in the PL Zone which the subject</p> <p>12 property is located; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And your opinion is that, and you</p> <p>15 acknowledge that the wireless communication facility is</p> <p>16 not a permitted use in the PL Zone; hence, that's why</p> <p>17 this matter is before the Board as a D-1 Use Variance;</p> <p>18 correct?</p> <p>19 A. That's one of the "D" Variances that is</p> <p>20 triggered by this application.</p> <p>21 Q. And the other "D" Variances, just so we're</p> <p>22 clear in the interest of time, is your opinion that a</p> <p>23 "D" Variance is required as a second or third principal</p> <p>24 use on the subject property; is that a fair statement?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Now, in order to establish the entitlement</p> <p>2 to a D-1 variance because the use here is not</p> <p>3 inherently beneficial the burden of the applicant is to</p> <p>4 establish that the use serves the general welfare</p> <p>5 because the site is particularly suitable for the</p> <p>6 proposed use; is that a correct statement?</p> <p>7 A. Under the positive criteria, yes.</p> <p>8 Q. Okay. And you would acknowledge that</p> <p>9 Verizon Wireless is licensed by the FCC at various</p> <p>10 frequency bands; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And would you agree that by virtue of that</p> <p>13 license its use as a matter of law serves the general</p> <p>14 welfare; correct?</p> <p>15 A. For part of the positive criteria that's</p> <p>16 correct. It does not -- that does not in itself</p> <p>17 address the particular suitability that needs to be</p> <p>18 demonstrated.</p> <p>19 Q. But it does establish as to that prong of</p> <p>20 the positive criteria that its use serves the general</p> <p>21 welfare; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And to use your words, and you correct me</p> <p>24 if I'm wrong, the fact that Verizon Wireless is</p> <p>25 licensed they have crossed that hurdle, is that</p>

<p style="text-align: right;">Page 17</p> <p>1 consistent with your recollection of how you</p> <p>2 characterize --</p> <p>3 A. That part of the positive criteria, yes.</p> <p>4 Q. Were you present physically or did you</p> <p>5 otherwise have the opportunity to review the testimony</p> <p>6 of Police Chief Heller in this matter?</p> <p>7 A. I was not present but reviewed the</p> <p>8 transcript.</p> <p>9 Q. Okay. And in the course of your opinions</p> <p>10 that you rendered on direct did you give consideration</p> <p>11 to the testimony of Police Chief Heller?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And do you recall specifically that</p> <p>14 portion of the Chief's testimony in which he testified</p> <p>15 about a lack of reliable wireless communication</p> <p>16 services that the police were encountering in various</p> <p>17 portions of Harding Township?</p> <p>18 A. I recall that that was part of his</p> <p>19 testimony.</p> <p>20 Q. Okay. Do you believe that the lack of</p> <p>21 reliable wireless communication services, as testified</p> <p>22 by Police Chief Heller, is relevant in assessing</p> <p>23 whether the use advances the general welfare?</p> <p>24 A. In my opinion it's relevant.</p> <p>25 Q. Okay. You also, with respect to the</p>	<p style="text-align: right;">Page 18</p> <p>1 negative criteria, discussed at length the</p> <p>2 applicability of the Sica balancing test; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you don't take any issue with the</p> <p>5 opinion rendered by Mr. Masters as confirmed by Mr.</p> <p>6 Mlenak and Ms. Mertz that this application with respect</p> <p>7 to the negative criteria is governed by the Sica</p> <p>8 balancing test; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And for the benefit of the public</p> <p>11 and for the benefit of the Board what is the first</p> <p>12 prong of the Sica balancing test?</p> <p>13 A. The first prong is to assess the magnitude</p> <p>14 of the public benefit that is associated with the</p> <p>15 proposed use.</p> <p>16 Q. Okay. And do you happen to recall the</p> <p>17 testimony of Police Chief Heller as it relates to</p> <p>18 certain training exercises that he took part in at the</p> <p>19 Harding Township Elementary School?</p> <p>20 A. I know that he -- I don't know it under the</p> <p>21 heading of training exercises, but I know that he did</p> <p>22 comment on the need for, in his opinion, better --</p> <p>23 better radio frequency connections having to do with</p> <p>24 the school.</p> <p>25 Q. And in fact did not Chief Heller testify</p>
<p style="text-align: right;">Page 19</p> <p>1 that there was a lack of reliable wireless</p> <p>2 communication services at the Harding Township School</p> <p>3 when he conducted those training exercises?</p> <p>4 A. Again, I don't remember it under the</p> <p>5 heading of training exercises, but I know that it was</p> <p>6 his opinion that he would have preferred better</p> <p>7 reliability in communication at the school.</p> <p>8 Q. Do you believe the lack of reliable</p> <p>9 wireless communication services encountered by the</p> <p>10 Chief during the training exercises at the Harding</p> <p>11 Township Elementary School would be a relevant</p> <p>12 consideration as the Board considers whether the use</p> <p>13 serves the general welfare?</p> <p>14 A. It would be one consideration, but my</p> <p>15 understanding is that the applicant needs to address</p> <p>16 also multiple technology. So for example, there could</p> <p>17 be an in-building distributed antenna system that would</p> <p>18 solve the issue.</p> <p>19 Q. So your response to that is that there may</p> <p>20 be other technologies, but you don't dispute the</p> <p>21 underlying fact that if there was a lack of reliable</p> <p>22 wireless communication services that would be a</p> <p>23 relevant consideration in the first prong of the Sica</p> <p>24 balancing test?</p> <p>25 A. That would be one consideration.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. If it in fact is one consideration in</p> <p>2 assessing the public interest at stake would it</p> <p>3 likewise be a relevant consideration as the Board</p> <p>4 balances the positives and the negatives under the</p> <p>5 fourth prong of the Sica balancing test?</p> <p>6 MR. SIMON: Rich, can you repeat that</p> <p>7 please?</p> <p>8 MR. SCHNEIDER: Can you read that back?</p> <p>9 (Whereupon, the Court Reporter reads back</p> <p>10 the question.)</p> <p>11 THE WITNESS: It would be a consideration</p> <p>12 but not dispositive of meeting the statutory</p> <p>13 responsibility of the applicant.</p> <p>14 BY MR. SCHNEIDER:</p> <p>15 Q. Do you happen to know how many children</p> <p>16 attend the Harding Township Elementary School?</p> <p>17 A. No.</p> <p>18 Q. Do you know what grades there are at the</p> <p>19 Harding Township Elementary School?</p> <p>20 A. It's an elementary school, so I imagine</p> <p>21 there are elementary grades, but I do not know</p> <p>22 precisely when the early students start or when the</p> <p>23 older students graduate.</p> <p>24 Q. Do you know how many staff are employed at</p> <p>25 the elementary school?</p>

<p style="text-align: right;">Page 21</p> <p>1 A. No.</p> <p>2 Q. Do you know if there are administrative</p> <p>3 offices of the Harding Township school district at the</p> <p>4 elementary school?</p> <p>5 A. I do not know for sure.</p> <p>6 Q. Do you know if the superintendent's office</p> <p>7 is at the Harding Township School?</p> <p>8 A. I do not know for sure.</p> <p>9 Q. In preparation for your testimony here this</p> <p>10 evening did you have occasion to familiarize yourself</p> <p>11 with the public bid process which preceded this</p> <p>12 application?</p> <p>13 A. Yes.</p> <p>14 Q. Did you review the bid specifications?</p> <p>15 A. I believe I did.</p> <p>16 Q. Did you have occasion to review any meeting</p> <p>17 minutes or transcripts of the Harding Township</p> <p>18 committee relative to the public bid process?</p> <p>19 A. I did not.</p> <p>20 Q. Did you personally make any inquiry to the</p> <p>21 Township of Harding to obtain any information about the</p> <p>22 public bid process?</p> <p>23 A. No.</p> <p>24 Q. I just need to get a drink. Hold on.</p> <p>25 (Brief pause.)</p>	<p style="text-align: right;">Page 22</p> <p>1 Mr. Steck, I believe, and you'll correct me</p> <p>2 if I'm wrong, you indicated when you were going over</p> <p>3 your qualifications with Mr. Simon that I believe that</p> <p>4 you indicated that you had served previously as the</p> <p>5 Municipal Planning Consultant to both Maplewood and</p> <p>6 Montclair, was I correct about that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. In Montclair I was their In-House Planning</p> <p>10 Director so I was not a consultant. But in Maplewood I</p> <p>11 was hired as a consultant.</p> <p>12 Q. Based on that municipal experience and your</p> <p>13 other experience are you generally familiar with the</p> <p>14 process involved when a municipality solicits bids for</p> <p>15 lease rights to municipal property?</p> <p>16 A. That function largely comes out of law</p> <p>17 departments so I would not be -- as the planning</p> <p>18 director or the planning consultant in Maplewood I</p> <p>19 would not be familiar with those procedures.</p> <p>20 Q. Based on your extensive experience as a</p> <p>21 professional planner would it be reasonable for you to</p> <p>22 assume that in a municipality such as Harding Township</p> <p>23 makes available certain property for lease rights that</p> <p>24 one would reasonably assume that the municipality is</p> <p>25 familiar with the property before going out to public</p>
<p style="text-align: right;">Page 23</p> <p>1 bid; correct?</p> <p>2 MR. SIMON: Objection. When you say</p> <p>3 familiar with the property, in what context?</p> <p>4 MR. SCHNEIDER: Familiar with the existing</p> <p>5 land uses, surrounding land uses, ongoing operations.</p> <p>6 Q. Is that a reasonable assumption based on</p> <p>7 your experience?</p> <p>8 A. It is, but there are times when</p> <p>9 municipalities make mistakes in putting properties out</p> <p>10 to bid. They don't know all of the factors involved or</p> <p>11 may not know, for example, in Maplewood an easement was</p> <p>12 on a property that had to do with, let's say, lease.</p> <p>13 Q. Let me be more specific. Based on what you</p> <p>14 know would it be reasonable to assume that the Township</p> <p>15 of Harding was well familiar with the nature of the</p> <p>16 ongoing DPW operations that are conducted at the</p> <p>17 subject property?</p> <p>18 A. I would assume that they were aware of</p> <p>19 those operations.</p> <p>20 Q. Would it likewise be reasonable to assume</p> <p>21 that the township was aware of what the permitted uses</p> <p>22 are in the PL Zone?</p> <p>23 A. I would assume that they would be aware of</p> <p>24 the permitted uses of the PL Zone.</p> <p>25 Q. Would it be reasonable to assume that the</p>	<p style="text-align: right;">Page 24</p> <p>1 Township was familiar with the nature of the</p> <p>2 surrounding land uses to that of the DPW property?</p> <p>3 A. I assume that the elected officials are</p> <p>4 aware of the facility and the surrounding land uses.</p> <p>5 Q. Would it be reasonable to assume that the</p> <p>6 Township Committee was familiar with the relevant</p> <p>7 Master Plan considerations as it relates to the subject</p> <p>8 property?</p> <p>9 A. I'm less confident that they would be</p> <p>10 familiar with the Master Plan considerations.</p> <p>11 Q. Okay. Would you think it's reasonable to</p> <p>12 assume that the township was familiar with any</p> <p>13 redevelopment plans or studies that impact the subject</p> <p>14 property?</p> <p>15 A. Well, since the governing body has to adopt</p> <p>16 a redevelopment plan I would presume that at least in</p> <p>17 theory they were aware of those redevelopment plan</p> <p>18 provisions.</p> <p>19 Q. Would it be reasonable for you to assume</p> <p>20 that the -- when a township solicits a public bid for a</p> <p>21 use on a particular piece of property it would want to</p> <p>22 ensure that that proposed use doesn't operationally</p> <p>23 interfere with the existing use at the property?</p> <p>24 A. Would you repeat that, please?</p> <p>25 Q. In your professional opinion would it be</p>

<p style="text-align: right;">Page 25</p> <p>1 reasonable to assume that when a township or</p> <p>2 municipality goes out to public bid for a particular</p> <p>3 use at a subject property that it would want to ensure</p> <p>4 that that proposed use does not operationally interfere</p> <p>5 with the existing use?</p> <p>6 A. That's a reasonable assumption.</p> <p>7 Q. Would it be reasonable in your opinion to</p> <p>8 assume that in this case the Township of Harding would</p> <p>9 be familiar with the boundaries of both the state and</p> <p>10 Federal historic district?</p> <p>11 A. I don't know whether the Township was or</p> <p>12 was not. The bid specs, I believe, did put the burden</p> <p>13 on the bidder to address similar issues. So I would</p> <p>14 presume that in a general fashion the governing body</p> <p>15 was aware of some historic issues.</p> <p>16 Q. You spent some significant time on direct</p> <p>17 testimony with Mr. Simon talking about what you opined</p> <p>18 as a third use, that being the Tunis-Ellicks House</p> <p>19 which is located on the same property. Would it be</p> <p>20 reasonable to assume that the Township was well</p> <p>21 familiar with the fact that that house existed at the</p> <p>22 subject property?</p> <p>23 A. Yes.</p> <p>24 Q. Would it be reasonable to assume that the</p> <p>25 Township was familiar with the cell towers proposed or</p>	<p style="text-align: right;">Page 26</p> <p>1 the cell tower's proximity to both the national and</p> <p>2 state historic district?</p> <p>3 A. I don't know whether they were familiar</p> <p>4 with the subtleties of the local versus the state and</p> <p>5 national designations.</p> <p>6 Q. Do you recall, if you know, what the</p> <p>7 original authorized height of the proposed tower was</p> <p>8 under the public bid?</p> <p>9 A. I don't recall offhand. It may -- I don't</p> <p>10 recall the precise height on the bid specs.</p> <p>11 Q. Would it be reasonable in your opinion to</p> <p>12 assume that the township was aware of the potential</p> <p>13 visual impact that would result from the sighting of a</p> <p>14 tower on the subject property?</p> <p>15 A. Well, my recollection is that a bidder at</p> <p>16 that moment didn't necessarily disclose the aesthetics</p> <p>17 of the proposal, so I'm not sure that the governing</p> <p>18 body would necessarily have evaluated that in advance.</p> <p>19 Q. But the township would have been made aware</p> <p>20 of the fact in this case that the bid authorized a</p> <p>21 140-foot tower; correct?</p> <p>22 A. Yes.</p> <p>23 Q. As a professional planner do you think it's</p> <p>24 important, generally, that municipalities provide for</p> <p>25 reliable wireless communication?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes.</p> <p>2 Q. Now, was Harding Township, as you</p> <p>3 understand it, under any legal obligation to make</p> <p>4 available its public property for the sighting of a</p> <p>5 wireless communication facility?</p> <p>6 A. No.</p> <p>7 Q. So as they did with this municipal building</p> <p>8 property they could have declined to make the property</p> <p>9 available; correct?</p> <p>10 A. When you say municipal building property</p> <p>11 you mean the one we're in?</p> <p>12 Q. Let me rephrase the question. So, the</p> <p>13 Township could have very easily declined to make</p> <p>14 available the DPW property for the sighting of a</p> <p>15 wireless communication facility; correct?</p> <p>16 A. Yes.</p> <p>17 Q. They were under no obligation to make that</p> <p>18 property available to Verizon Wireless or any other</p> <p>19 wireless communication carrier; correct?</p> <p>20 A. Correct.</p> <p>21 Q. At the last public hearing Board member</p> <p>22 Newlin asked you a question, and I'm not sure that you</p> <p>23 either answered it or I understood the answer. So let</p> <p>24 me go there again.</p> <p>25 Recognizing that the Township was not under</p>	<p style="text-align: right;">Page 28</p> <p>1 any obligation to make available the DPW property for</p> <p>2 the sighting of a wireless communication facility, do</p> <p>3 you have an opinion as to why they did in fact make the</p> <p>4 property available?</p> <p>5 MR. SIMON: Objection. If you know</p> <p>6 directly, but are you asking him to speculate? Because</p> <p>7 he shouldn't be speculating.</p> <p>8 Q. Do you have an opinion as to --</p> <p>9 A. I'm aware that Verizon -- my recollection</p> <p>10 is that Verizon approached the municipality, but I</p> <p>11 don't know why the municipality -- I don't know what</p> <p>12 was in the mind of the elected officials as to why they</p> <p>13 responded by offering this property.</p> <p>14 Q. In your opinion would it be reasonable to</p> <p>15 assume that, in fact, they made the property available</p> <p>16 because they have identified a need for reliable</p> <p>17 wireless communications services?</p> <p>18 MR. SIMON: Objection. Unless you know,</p> <p>19 specifically.</p> <p>20 A. I don't know that the municipality had an</p> <p>21 independent evaluation of the reliability of</p> <p>22 communications.</p> <p>23 Q. What other considerations would you think</p> <p>24 would be relevant in the township making available the</p> <p>25 facility for a wireless communication use?</p>

<p style="text-align: right;">Page 29</p> <p>1 MR. SIMON: Objection. That's vague and 2 speculative. 3 BOARD MEMBER BOYAN: So just as a point of 4 order, shouldn't the Chair rule on the objection? 5 MR. MLENAK: Well, the objections that -- 6 so far before that have taken place Mr. Schneider has 7 rephrased the question and Mr. Steck has answered the 8 question. And on this particular question, Mr. 9 Schneider, do you want to rephrase the question? 10 MR. SCHNEIDER: I'll move on. I think the 11 point's been made. 12 BY MR. SCHNEIDER: 13 Q. You indicated previously, I believe, or at 14 least certainly on direct, that you're familiar with 15 the relevant provisions of the PL Zone; correct? 16 A. Yes. 17 Q. Okay. And in the interest of time let me 18 see if I can condense this. There are no setback 19 requirements contained in the PL Zone; is that correct? 20 A. Yes. 21 Q. And there's no requirements as they relate 22 to minimum lot area; correct? 23 A. Correct. 24 Q. No requirements relating to impervious 25 coverage; correct?</p>	<p style="text-align: right;">Page 30</p> <p>1 A. Correct. 2 Q. No requirements relating to building 3 coverage; correct? 4 A. Correct. 5 Q. And are there any height requirements 6 contained in the PL Zone? 7 A. I don't recall any. 8 Q. On the assumption, which I believe is 9 correct, that there are no height requirements, if 10 hypothetically the township of Harding wanted to 11 construct a 120-foot silo or salt dome in conjunction 12 with its DPW use, would a height variance be required? 13 A. No. 14 Q. Are there any other zone districts within 15 Harding Township that do not contain any bulk or height 16 requirements? 17 A. None that I know of. 18 Q. Does the PL Zone contain any permitted 19 conditional uses? 20 A. I don't recall any conditional uses at all. 21 I think they're either permitted or not permitted. 22 Q. So neither the existing DPW use or the 23 proposed wireless communication use constitutes a 24 conditional use; correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. And you in preparation for your 2 testimony obviously had the opportunity I'm sure to 3 review in detail the testimony that was proffered by 4 Mr. Masters in his capacity as the Planner for the 5 Applicant; correct? 6 A. Correct. 7 Q. And do you recall that portion of his 8 testimony where -- and I'll do this in the interest of 9 time -- where he went through the conditional use 10 requirements that would be applicable for wireless 11 communication towers if it was located in a conditional 12 -- a permitted conditional use zone; do you recall that 13 testimony? 14 A. He did go through the requirements for the 15 OB or B-2 Zone. 16 Q. And in fact under Harding Township's 17 Ordinance, wireless communication towers are a 18 permitted conditional use in certain zone districts; 19 correct? 20 A. In the two zones that I mentioned. 21 Q. Right. And as the Chairman specifically 22 asked you last time, those zones are nowhere proximate 23 or close to that of the DPW property; correct? 24 A. Correct. 25 Q. Do you happen to know the distance of those</p>	<p style="text-align: right;">Page 32</p> <p>1 zones from the DPW property; if you know? 2 A. It's certainly more than a mile away. 3 Q. So since the wireless communication here 4 use is not located in the two zoned districts where 5 towers are a conditional use would you agree with the 6 fact that Section 225-175 which relates to the 7 conditional uses for wireless telecommunications towers 8 do not govern this application? 9 MR. SIMON: I'm going to object, only in 10 terms of the use of your term "Do not govern." I don't 11 know what you mean. 12 Q. Is any relief required from Section 225-175 13 as they relate to wireless -- to telecommunications 14 towers? 15 A. No relief is required, but those conditions 16 are relevant in terms of documenting the policies of 17 Harding Township. 18 Q. Okay. Let's talk about then the relevance 19 in documenting the policies of Harding Township. 20 In -- would compliance with various 21 Sections of 225-175 be relevant in documenting the 22 application's conformance with the policies of Harding 23 Township? 24 A. It depends on which provisions you're 25 referring to.</p>

<p style="text-align: right;">Page 33</p> <p>1 Q. Okay. So let's go through those. And in</p> <p>2 the interest of time, Mr. Speck, do you happen to have</p> <p>3 Section 225-175?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. I want to refer you, if I may, to</p> <p>6 Subparagraph "C" of that Section of the Ordinance. You</p> <p>7 let me know when you're there?</p> <p>8 A. I'm there.</p> <p>9 Q. Okay. When an applicant -- "When the</p> <p>10 Applicant demonstrates to the satisfaction of the Board</p> <p>11 that suitable locations on existing buildings or</p> <p>12 structures do not exist or are not available or viable</p> <p>13 the Applicant may seek approval to erect a wireless</p> <p>14 telecommunications tower in accordance with the</p> <p>15 following requirements." And then there's a list of</p> <p>16 requirements; correct?</p> <p>17 A. Yes.</p> <p>18 MR. SIMON: I'm sorry. Just so the</p> <p>19 record's clear, you're referring to Section 225 --</p> <p>20 MR. SCHNEIDER: Yes, dash 175 capital "C."</p> <p>21 MR. SIMON: Thank you.</p> <p>22 BY MR. SCHNEIDER:</p> <p>23 Q. Okay. Now I'm referring to C-1A. With me,</p> <p>24 Mr. Steck?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 34</p> <p>1 Q. Okay. So as we go through them these are</p> <p>2 the various conditional use requirements, if you were</p> <p>3 located in those two zones; correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And the first one is minimum lot</p> <p>6 size same for permitted use. There's no minimum lot</p> <p>7 size in the PL Zone so that section would be satisfied;</p> <p>8 correct?</p> <p>9 A. Well, this doesn't apply to the PL Zone.</p> <p>10 It only applies to the OB and the B-2 Zones, and they</p> <p>11 have minimum lot sizes.</p> <p>12 Q. Okay. So the next one would be -- so is it</p> <p>13 your opinion that -- strike that.</p> <p>14 You just indicated that they would be</p> <p>15 relevant, these provisions would be relevant in</p> <p>16 determining conformance with Harding Township's</p> <p>17 policies?</p> <p>18 A. Some of them may be relevant, but again you</p> <p>19 can't ignore the fact that these were designed to apply</p> <p>20 when a tower was proposed in either the OB or the B-2</p> <p>21 Zone.</p> <p>22 Q. Okay. With that understanding let's go to</p> <p>23 Subparagraph C. "The maximum tower height: No more</p> <p>24 than necessary to provide service and no case higher</p> <p>25 than 120 feet." Would that be relevant here?</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Certainly if it was in the OB or B-2 Zone</p> <p>2 it would be relevant. But it's a starting-off spot</p> <p>3 because now we're in a zone that doesn't even permit</p> <p>4 it. One might say, well, if the governing body were</p> <p>5 looking at this area maybe it would only allow a tower</p> <p>6 of 80 feet in height. So you cannot rely on the</p> <p>7 120 feet because that was intended for a specific zone</p> <p>8 that happened to be a commercial zone that specifically</p> <p>9 permitted towers as a conditional use.</p> <p>10 Q. So your opinion is that that section of the</p> <p>11 ordinance which talks about -- those sections of the</p> <p>12 ordinance which talks about minimum lot size, minimum</p> <p>13 setback of tower, maximum tower height, that may or may</p> <p>14 not be relevant as we assess this application?</p> <p>15 A. You have to read the specific wording, but</p> <p>16 on its face the starting point is these were intended</p> <p>17 to be applicable for the two zones that allowed it as</p> <p>18 towers as a conditional use.</p> <p>19 Q. So in your opinion these provisions do not</p> <p>20 provide any relevant guidance to the Board as it</p> <p>21 assesses this application?</p> <p>22 MR. SIMON: Objection. That's not what he</p> <p>23 said at all.</p> <p>24 MR. SCHNEIDER: I'm asking him.</p> <p>25 A. If, for example -- one example of guidance</p>	<p style="text-align: right;">Page 36</p> <p>1 is if you were coming in with a tower of 140-feet in</p> <p>2 height one would say, well, that is really out of the</p> <p>3 box, because even in the zones where they allow it as a</p> <p>4 conditional use there's a limit of 120 feet.</p> <p>5 Q. Okay. What about the ordinance requirement</p> <p>6 which provides the maximum number of towers per lot is</p> <p>7 one; is that relevant?</p> <p>8 A. That may be relevant because it's suggested</p> <p>9 that issues like setbacks should apply to that</p> <p>10 individual tower, period.</p> <p>11 Q. Okay. What about the ordinance provision</p> <p>12 which permits a compound of no more than 2500-square</p> <p>13 feet, would that be relevant?</p> <p>14 A. That would be relevant if you were in an OB</p> <p>15 or a B-2 Zone. If someone in any case were -- one</p> <p>16 could argue that in other zones where it's not even</p> <p>17 permitted one could argue that just meeting the</p> <p>18 2500-square foot compound might be too large.</p> <p>19 Q. Okay. The next one is, "It shall be</p> <p>20 situated behind any existing structures, buildings, or</p> <p>21 terrain features. Would that be relevant?</p> <p>22 MR. SIMON: Rich, I'm sorry. Relevant to</p> <p>23 what?</p> <p>24 MR. SCHNEIDER: As the Board assesses the</p> <p>25 applicability of Section 225-175.</p>

<p style="text-align: right;">Page 37</p> <p>1 A. Again, in my view, because this was 2 intended only for two zones, it's a starting point but 3 one could argue that in a zone that doesn't even permit 4 it the regulations potentially should be more 5 restrictive. 6 Q. Okay. The next ordinance provision 7 provides that "The maximum height of all equipment 8 shall not exceed 12 feet." Would that be relevant for 9 the Board in assessing this application? 10 A. It's a starting point that clearly anywhere 11 they shouldn't be more than 12 feet, but because this 12 is in a zone that doesn't permit it and it's near 13 residential uses one could easily conclude that a more 14 restrictive height limit would be appropriate in other 15 areas. 16 Q. Okay. "When a location out of public view 17 is not possible a landscape buffer of 20 feet is 18 required." 19 First of all with respect to this 20 application do you believe this that this facility is 21 located out of public view or within public view, as it 22 relates to the DPW property? 23 A. I'm not sure what public view is. The 24 compound is clearly visible from adjacent residential 25 property. So I'm not sure what the phrasing means</p>	<p style="text-align: right;">Page 38</p> <p>1 "public view is." 2 Q. Is it relevant to you that the -- 3 MR. SIMON: Wait, wait. Are you done 4 answering the question? 5 THE WITNESS: I'm not sure what the view -- 6 what the intent of the public view is. It may be, if 7 it's from the adjacent property owner that's one 8 consideration. It doesn't say from the public street. 9 Q. Would it not be relevant that in assessing 10 whether it's out of public view whether the equipment 11 would be visible to people accessing the DPW property? 12 A. Would you ask that again, please? 13 Q. Would it be relevant in your opinion as to 14 whether the equipment compound would be visible to 15 individuals who are accessing the DPW property for 16 their recycling or the like? 17 A. It's not clear from this wording. It's 18 clear that people dropping recycling materials off will 19 see this facility, but the answer is people even 20 hundreds of feet away will see it. This applies just 21 apparently to the equipment area. Let me read it one 22 more time. 23 Q. Sure. Take your time. 24 MR. SIMON: Rich, I apologize. What 25 section is this, specifically.</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. SCHNEIDER: 225-175 C-2 -- I'm sorry, 2 C-2(d). 3 THE WITNESS: So it's clear from the 4 heading too that this applies just to the equipment 5 compound. 6 BY MR. SCHNEIDER: 7 Q. So now having familiarized yourself with 8 the fact that it only applies to the equipment compound 9 would it be reasonable to assume that the intention of 10 this provision is to ensure that the equipment compound 11 only be required to have a landscape buffer if it's a 12 location out of public view? 13 A. Well, if the location out of public view is 14 not possible and you were within the OB or the B-2 Zone 15 this suggests that that negative influence could be 16 mitigated by a 20-foot buffer. 17 Q. Okay. So again, your opinion as to this 18 section, as it was on the other ones, that these have 19 limited relevance because they're not located in the OB 20 or any of the two permitted conditional uses, is that a 21 fair statement? 22 A. That's correct. If this were in a zone 23 that wasn't even permitted one could argue that a 24 40-foot buffer would be appropriate for the compound. 25 Q. The next requirement relates to a required</p>	<p style="text-align: right;">Page 40</p> <p>1 fencing of 7- to 8-feet in height. Would that be 2 relevant? 3 A. It's relevant if you're in the zone that 4 permits it as a conditional use. 5 Q. So you're grouping those with your opinion 6 on the previous? 7 A. Yes. This whole section, in my opinion, 8 was intended for towers that were proposed in either 9 the OB or the B-2 Zone. 10 Q. Okay. Subparagraph 5, which you discussed 11 extensively at the prior public hearing said -- 12 provides "Wireless telecommunications towers shall not 13 be erected within 1,000 feet of any historic district 14 or site listed or eligible for listing on the national 15 and/or state register of historic places." 16 Should that provision be considered in the 17 same light that you just opined as to the other eight 18 provisions? 19 A. Yes. 20 MR. SIMON: Well, I'm going to object. If 21 you can just rephrase, because you sort of coupled a 22 whole bunch of things together. 23 MR. SCHNEIDER: I'll rephrase the question. 24 Q. Does that section of the ordinance -- let 25 me rephrase it.</p>

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1 Should that section of the ordinance be
2 given the same consideration as that which you just
3 opined as to the previous seven or eight sections?
4 A. Yes. One could argue that if a tower was
5 proposed in other than an OB or B-2 District
6 potentially it should be 2,000 feet away from a
7 historic site.
8 MR. SIMON: Do you want me to -- I have
9 about probably ten or fen minutes and then --
10 CHAIRMAN FLANAGAN: How does everyone feel
11 about hearing another ten or 15 minutes? Well, let me
12 ask, ten or 15 minutes you have to do your redirect?
13 Let's talk about scheduling. I think you
14 guys mentioned you had some discussion earlier?
15 MR. SIMON: We did.
16 CHAIRMAN FLANAGAN: So let me say -- and
17 I've spoken to Steve and Alf about this. I am not
18 going to -- there's a 99 percent likelihood I will not
19 be here October 21st. I am traveling for business.
20 I'm trying to have things changed. I don't think I'm
21 going to get somebody to cover for me. I'd like to be
22 here to vote and be at the end of this application. So
23 with that said --
24 MR. SCHNEIDER: Here's my solution. It
25 takes two to tango, but I think we can pull this off.

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1 November 4th. It's a Thursday.
2 BOARD MEMBER BOYAN: So November 4th and
3 5th is the New Jersey Teachers' Convention, which is a
4 big vacation week.
5 CHAIRMAN FLANAGAN: What about earlier that
6 week, Tuesday or Wednesday?
7 MR. SCHNEIDER: I can't do Wednesday but I
8 can do Thursday.
9 CHAIRMAN FLANAGAN: Monday.
10 MR. SIMON: I can't. We're talking about
11 November?
12 SECRETARY TAGLAIRINO: So the room will be
13 available November 2nd.
14 MR. SIMON: Which is Election Day. I'm
15 available that night.
16 SECRETARY TAGLAIRINO: Oh, so then it's not
17 available. The room is not available the following
18 week.
19 CHAIRMAN FLANAGAN: Well, so let me ask.
20 So the Teacher's Convention. Are you going to go away?
21 Are people going away? What about that week prior, the
22 last week of October? I know Steve and I had spoken
23 earlier.
24 BOARD MEMBER ROSENBAUM: I will not be
25 here.

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1 Based on -- let's assume we have another
2 half hour to 45 minutes of Mr. Steck, let's just be
3 conservative. What I would propose to do, whether
4 you're here or not Mr. Chairman, is carry the matter,
5 Mr. Steck, apparently may have some other matter, but
6 if we can start early, let's say 6:30 or seven on the
7 21st, just for the limited purpose of getting Mr.
8 Steck's planning testimony complete, which at that
9 point in time would complete all expert testimony on
10 this matter. Okay. And then maybe even tonight we can
11 then schedule a meeting for the first week of -- I'm
12 throwing out November, but it could be, you know, for a
13 final public hearing scheduled subject to the Board's
14 availability wherein we would have public comments,
15 summation and vote. That way we get it done in a
16 meeting in an hour.
17 CHAIRMAN FLANAGAN: So let me ask --
18 MR. SCHNEIDER: Does that --
19 CHAIRMAN FLANAGAN: Let me ask the Board.
20 MR. SCHNEIDER: And the date we had in mind
21 that at least Mr. Simon, myself and Mr. Mlenak were
22 available, I did not check with Dr. Eisenstein --
23 DR. EISENSTEIN: What day are you talking
24 about?
25 MR. SCHNEIDER: Well, I'm throwing out

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1 CHAIRMAN FLANAGAN: The week of the 25th?
2 BOARD MEMBER ROSENBAUM: Yes. I'll be out
3 of town.
4 MR. SCHNEIDER: Is November 4th definitely
5 out?
6 CHAIRMAN FLANAGAN: Well, we're not going
7 to have George here. Who else is not going to be here?
8 SECRETARY TAGLAIRINO: It is also Historic
9 Preservation. Technically, it is, but we can finagle a
10 Special Meeting.
11 CHAIRMAN FLANAGAN: Let me ask this.
12 George, can you vote anyway? Can you vote on this
13 application?
14 BOARD MEMBER ROSENBAUM: Is he eligible to
15 vote?
16 BOARD MEMBER BOYAN: In terms of having
17 read the material, yes, but as Alternate number two I'm
18 not sure I'm going to be asked to.
19 CHAIRMAN FLANAGAN: All right. Well, is
20 there anybody else who wouldn't be able to attend on
21 the 4th?
22 BOARD MEMBER CAMMARATA: I may not be able
23 to, Mike.
24 MR. SCHNEIDER: But will we know that by
25 the 21st?

<p style="text-align: right;">Page 45</p> <p>1 BOARD MEMBER CAMMARATA: Yes. I should</p> <p>2 know by then. I'll know probably by Monday.</p> <p>3 MR. SCHNEIDER: So -- go ahead.</p> <p>4 MR. SIMON: No, you can go.</p> <p>5 MR. SCHNEIDER: So what I would suggest is</p> <p>6 we complete Mr. Steck on the 21st, and then --</p> <p>7 MR. SIMON: Rich, just to be clear, Peter</p> <p>8 don't you have another gig that night?</p> <p>9 MR. STECK: I do have a meeting in South</p> <p>10 Hackensack on the 21st.</p> <p>11 MR. SIMON: And the reason why I'm raising</p> <p>12 that now is for Mr. Steck to be available to finish the</p> <p>13 cross and the redirect, and plus if there's any</p> <p>14 questions from members of the public, that we just ask</p> <p>15 that we start on the 21st of October as early as</p> <p>16 possible so we can get it in and get him out.</p> <p>17 CHAIRMAN FLANAGAN: All right. So the guy</p> <p>18 who's probably not going to be here on the 21st what</p> <p>19 time does everyone want to start? Actually, the</p> <p>20 7 o'clock start I liked.</p> <p>21 BOARD MEMBER NEWLIN: Seven. How full is</p> <p>22 the Agenda?</p> <p>23 SECRETARY TAGLAIRINO: We have -- well --</p> <p>24 BOARD MEMBER NEWLIN: Very full?</p> <p>25 SECRETARY TAGLAIRINO: No, in fact, it</p>	<p style="text-align: right;">Page 46</p> <p>1 isn't full because I was kind of slow on the roll on</p> <p>2 applications trying to get to this.</p> <p>3 CHAIRMAN FLANAGAN: I mean, we have Wittig,</p> <p>4 we have Wade --</p> <p>5 SECRETARY TAGLAIRINO: I don't know if</p> <p>6 Preiss will be ready to come in. So I think we</p> <p>7 possibly would have two, honestly.</p> <p>8 CHAIRMAN FLANAGAN: Would a seven o'clock</p> <p>9 start work? What time do you need? Seven o'clock</p> <p>10 start works for you?</p> <p>11 MR. STECK: The answer is, I will try to</p> <p>12 make it work. It's just that this was sprung on me</p> <p>13 this evening, so I don't know what's happening in South</p> <p>14 Hackensack. I only want to offend one Board per</p> <p>15 evening.</p> <p>16 MR. SCHNEIDER: You can offend them because</p> <p>17 we've been at it for 20 hearings or something.</p> <p>18 CHAIRMAN FLANAGAN: And they got you last</p> <p>19 time, not us. Right, weren't you there? So when are</p> <p>20 you going to know?</p> <p>21 MR. STECK: For the good of the order I</p> <p>22 will be here at seven o'clock.</p> <p>23 CHAIRMAN FLANAGAN: Seven o'clock on the</p> <p>24 21st.</p> <p>25 MR. SCHNEIDER: But could we give some more</p>
<p style="text-align: right;">Page 47</p> <p>1 concrete discussion about the next meeting date?</p> <p>2 CHAIRMAN FLANAGAN: Oh, yes. Yes. I just</p> <p>3 want one meeting at a time. So 21st at seven Verizon</p> <p>4 goes first, right? Fair enough. And then the</p> <p>5 following meeting is going to be -- I'm sorry. Where</p> <p>6 did we leave off? We said the 4th is a possibility.</p> <p>7 Mike, you will know by the 21st.</p> <p>8 Does anyone else have an issue?</p> <p>9 BOARD MEMBER SOVOLOS: Mike, I'm curious</p> <p>10 why we're not doing the regularly scheduled meeting</p> <p>11 that month?</p> <p>12 CHAIRMAN FLANAGAN: It's not to say we</p> <p>13 won't do it.</p> <p>14 MR. SCHNEIDER: Well, I guess the other</p> <p>15 option, Mr. Chairman, is just bang this -- excuse the</p> <p>16 expression -- complete the application in its entirety</p> <p>17 on October 21st.</p> <p>18 BOARD MEMBER NEWLIN: Mike said he would</p> <p>19 not be here. It would be a better idea to have a full</p> <p>20 Board. You're not paying me enough.</p> <p>21 MR. SCHNEIDER: I'm sorry. You're right.</p> <p>22 I forgot.</p> <p>23 MR. SIMON: Rich's request to bang it out.</p> <p>24 BOARD MEMBER NEWLIN: You're not a good</p> <p>25 salesman there, Rich.</p>	<p style="text-align: right;">Page 48</p> <p>1 CHAIRMAN FLANAGAN: To answer your</p> <p>2 question, Elizabeth, I would -- we're going to have a</p> <p>3 regular application with Mr. Steck on the 21st of</p> <p>4 October. I think on the 18th of November, which would</p> <p>5 be the regular scheduled November meeting we're going</p> <p>6 to need to meet with regular applications. And the</p> <p>7 goal is by the time we get to the 18th this application</p> <p>8 is done, right, because what we're proposing is on the</p> <p>9 4th, if that's the day, have a meeting which is solely</p> <p>10 this, and vote.</p> <p>11 BOARD MEMBER ROSENBAUM: Vote and then</p> <p>12 approve the Resolution?</p> <p>13 CHAIRMAN FLANAGAN: You're giving me the</p> <p>14 look of why are we having two meetings in one month?</p> <p>15 BOARD MEMBER SOVOLOS: Are you talking to</p> <p>16 me?</p> <p>17 CHAIRMAN FLANAGAN: No. I'm trying --</p> <p>18 MR. MLENAK: I think the issue, and Rich</p> <p>19 and Rob can speak to it, to get through the application</p> <p>20 in one meeting we will need the whole meeting.</p> <p>21 CHAIRMAN FLANAGAN: What if we gave you the</p> <p>22 entire meeting on the 8th of November. And I know part</p> <p>23 of the desire is to not have this drag out. I can give</p> <p>24 you the entire meeting. So we can give you</p> <p>25 November 18th, give you that entire meeting. I'll bump</p>

<p style="text-align: right;">Page 49</p> <p>1 all other non-Verizon applications out of that night.</p> <p>2 That way it's a regular night. There won't be any</p> <p>3 scheduling issues.</p> <p>4 MR. SIMON: So does that pre-suppose that</p> <p>5 we're still going to have Mr. Steck come in on the 21st</p> <p>6 of October and get him done?</p> <p>7 CHAIRMAN FLANAGAN: Yes.</p> <p>8 MR. SIMON: And then the 18th of November</p> <p>9 would be devoted to --</p> <p>10 CHAIRMAN FLANAGAN: Entire.</p> <p>11 MR. SIMON: -- public comment, summations</p> <p>12 and vote?</p> <p>13 CHAIRMAN FLANAGAN: And vote.</p> <p>14 MR. SCHNEIDER: And we would have the</p> <p>15 entire evening.</p> <p>16 MR. SIMON: I mean, the only thing I would</p> <p>17 suggest based on prior experience is that we would</p> <p>18 still need to start a little early even if that was</p> <p>19 seven o'clock.</p> <p>20 CHAIRMAN FLANAGAN: Earlier than seven?</p> <p>21 MR. SIMON: No, I'm saying seven on the</p> <p>22 18th and I think we would be able to get it done.</p> <p>23 CHAIRMAN FLANAGAN: If you're amenable to</p> <p>24 that. Let me ask, Lori, we don't much -- we're not</p> <p>25 going to trip any obligations, right, by if someone</p>	<p style="text-align: right;">Page 50</p> <p>1 came in -- what's the mandatory timeline to have to</p> <p>2 respond to an application once it's filed, 30 days?</p> <p>3 MR. SCHNEIDER: 45 days for completeness</p> <p>4 and then 120 days if it's a variance from the date of</p> <p>5 completeness.</p> <p>6 CHAIRMAN FLANAGAN: Okay. So 45 days from</p> <p>7 the date of completeness. So if we get one completed</p> <p>8 tomorrow I have 120 days to hear it, right?</p> <p>9 MR. SCHNEIDER: You can always ask for an</p> <p>10 extension of time like you did me.</p> <p>11 BOARD MEMBER ROSENBAUM: If we did the</p> <p>12 November 21st that would mean that --</p> <p>13 MR. SCHNEIDER: November 18th.</p> <p>14 BOARD MEMBER ROSENBAUM: I'm sorry, the</p> <p>15 18th, that means the attorney would then draft the</p> <p>16 Resolutions?</p> <p>17 MR. SCHNEIDER: No.</p> <p>18 MR. MLENAK: It would be the following</p> <p>19 meeting.</p> <p>20 MR. SCHNEIDER: I don't want to speak for</p> <p>21 the Board. We would just vote or the Board would vote</p> <p>22 on the 18th and then a Resolution, hopefully an</p> <p>23 approval, whatever it is, would be adopted at a</p> <p>24 subsequent meeting.</p> <p>25 BOARD MEMBER ROSENBAUM: So it's done, done</p>
<p style="text-align: right;">Page 51</p> <p>1 then?</p> <p>2 CHAIRMAN FLANAGAN: Fair enough.</p> <p>3 BOARD MEMBER ROSENBAUM: I just want to</p> <p>4 make sure that that timeline is okay.</p> <p>5 CHAIRMAN FLANAGAN: Well, I had a</p> <p>6 discussion with the attorneys and my understanding,</p> <p>7 though, is when we vote even if it's verbal it's done,</p> <p>8 done. There's no changing their mind between voting</p> <p>9 and writing the Resolution.</p> <p>10 BOARD MEMBER ROSENBAUM: So the Resolution</p> <p>11 then is to get it properly recorded.</p> <p>12 MR. SCHNEIDER: The Resolution is just a</p> <p>13 memorialization of the Board's action that it would</p> <p>14 have a taken.</p> <p>15 MR. MLENAK: If the Board votes yes the</p> <p>16 Board can't vote no on the Resolution.</p> <p>17 CHAIRMAN FLANAGAN: Are you guys okay if I</p> <p>18 give you the entire meeting -- so October, the regular</p> <p>19 October meeting, Mr. Steck, first up seven o'clock, an</p> <p>20 hour to 45 minutes. Then we will give you the entire</p> <p>21 18th meeting.</p> <p>22 MR. SCHNEIDER: That works for me.</p> <p>23 CHAIRMAN FLANAGAN: That works. If that</p> <p>24 works for you, you're the Applicant. Mr. Simon, you</p> <p>25 agree with that, too, right?</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. SIMON: Yes. I mean, the only thing,</p> <p>2 just being out there, I have no idea, nor does Rich, I</p> <p>3 think, in terms of the amount of public comment.</p> <p>4 CHAIRMAN FLANAGAN: So I will say my goal</p> <p>5 is to have -- to hear everybody. So everybody in the</p> <p>6 gallery can speak their minds, speak their peace. I</p> <p>7 appreciate if people have strong views on this one way</p> <p>8 or the other. I think we can get through and I hope</p> <p>9 everyone can get their thoughts maybe in writing and</p> <p>10 try to keep it down to five minutes, max. If you hear</p> <p>11 someone else has said your bit please don't repeat it.</p> <p>12 We have three and a half hours to go through it. And</p> <p>13 listen, we've been at this for two years so you guys,</p> <p>14 absolutely, we want to hear what the public has to say.</p> <p>15 I expect we'll get through it. And</p> <p>16 honestly, if we have to sit here until midnight we will</p> <p>17 sit here until midnight.</p> <p>18 MR. SIMON: I think it's the right -- to go</p> <p>19 one evening starting at seven o'clock for the benefit</p> <p>20 of the Board and the Applicant I think it's the right</p> <p>21 thing to do.</p> <p>22 CHAIRMAN FLANAGAN: So with that said, are</p> <p>23 you done with Mr. Steck? We'll finish it off.</p> <p>24 MR. SCHNEIDER: I will finish it off on the</p> <p>25 21st of October starting at 7 o'clock.</p>

<p style="text-align: right;">Page 53</p> <p>1 CHAIRMAN FLANAGAN: All right. Carried to 2 the 21st. Did you say no to the notice required or -- 3 MR. SCHNEIDER: We can say it. No further 4 notice is required. 5 MR. SIMON: I know Rich, he wants to, but I 6 think somebody on that side of the dais has to do it. 7 CHAIRMAN FLANAGAN: All right. Because he 8 always says it. 9 MR. SIMON: He can't help himself. 10 CHAIRMAN FLANAGAN: No further notice 11 necessary. 12 MR. SCHNEIDER: See you in October. 13 MR. MLENAK: Rich, you will extend? 14 MR. SCHNEIDER: Yes, mutual extension. 15 MR. MLENAK: Of the line. 16 CHAIRMAN FLANAGAN: All right. Good night. 17 (Whereupon, the hearing on this application 18 concludes at 10:40 p.m.) 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 54</p> <p>1 C E R T I F I C A T E 2 3 I, IRIS LA ROSA, a Notary Public and Certified 4 Shorthand Reporter of the State of New Jersey, do 5 hereby certify that the foregoing is a true and 6 accurate transcript of the testimony as taken 7 stenographically by and before me at the time, place, 8 and on the date hereinbefore set forth. 9 I DO FURTHER CERTIFY that I am neither a 10 relative nor employee nor attorney nor counsel of any 11 of the parties to this action, and that I am neither a 12 relative nor employee of such attorney or counsel, and 13 that I am not financially interested in the action. 14 15 IRIS LA ROSA, CSR, RPR 16 Certificate No. 30XI 00162800 17 Dated: 18 19 20 21 22 23 24 25</p>

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