

TOWNSHIP OF CHATHAM  
ZONING BOARD OF ADJUSTMENT

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IN THE MATTER OF: :  
 : TRANSCRIPT  
CASE NO. BOA 15-83-3, : OF  
NEW YORK SMSA, LIMITED, : PROCEEDINGS  
VERIZON WIRELESS :  
BLOCK: 83, LOT: 3 :  
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Thursday, June 16, 2016  
Municipal Building  
54 Fairmount Avenue  
Chatham, New Jersey 07928  
Commencing at 9:40 p.m.

BOARD MEMBERS PRESENT:

TONY VIVONA, Chairman  
GERGORY BORSINGER  
JON WESTON  
TINA ROMANO  
RICK WILLIAMS  
MICHAEL HYLAND  
JOHN HURRING, JR.

ALSO PRESENT:

MARGARET SMITH, Secretary  
ROBERT A. MICHAELS, Planner  
JOHN K. RUSCHKE, P.E.

ALISON GULINO, CCR, RPR  
CERTIFIED COURT REPORTER

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A P P E A R A N C E S :

STEPHEN H. SHAW, ESQ.  
Counsel for the Board.

FERRARO & STAMOS, LLP  
22 Paris Avenue, Suite 400  
Rockleigh, New Jersey 07647  
BY: FRANK FERRARO, ESQ.  
Counsel for the Applicant



1                   CHAIRMAN VIVONA: Chatham Board of  
2 Adjustment, 15-83-3, New York SMSA, d/b/a Verizon  
3 Wireless on Pine Street.

4                   MR. FERRARO: Good evening, Mr.  
5 Chairman, members of the Board. Frank Ferraro of  
6 Ferraro & Stamos on behalf of the applicant, Verizon  
7 Wireless.

8                   MR. SHAW: I will note that we  
9 concluded public comment at the last meeting and,  
10 essentially, this evening is going to begin with,  
11 basically, your summation and then review and  
12 discussion by the Board.

13                   I did want to note, I don't know if  
14 there's an Isabel and Mark Taylor in the audience.  
15 They are township residents that sent a letter to  
16 the Board concerning sales activities on their  
17 property subsequent to the last public comment  
18 period. The Board cannot consider any kind of a  
19 written letter. The only thing we can consider is  
20 testimony. Again, if the Board wanted to, it would  
21 be appropriate to, by motion, reopen the public  
22 comment period just for the purposes of allowing  
23 this information concerning sales activities  
24 subsequent to our last public comment period to go  
25 forward.

1 Ms. Taylor, if you wanted to put  
2 something on the record, if you want to, we can  
3 request the Board to reopen the public hearing for  
4 you to put the comment that you have in the letter  
5 on the record.

6 MR. TAYLOR: Yes.

7 MR. SHAW: If you want, it would be  
8 appropriate to reopen for this comment.

9 CHAIRMAN VIVONA: I think it would be  
10 okay provided it is not three and a half hours.

11 MR. HYLAND: We are asking her to read  
12 her letter?

13 CHAIRMAN VIVONA: Yes.

14 All in favor?

15 MEMBERS OF THE BOARD: Aye.

16 CHAIRMAN VIVONA: All opposed?

17 (No response)

18 MS. TAYLOR: In light of the vote on  
19 June 16th, we would like you to know that the  
20 Verizon cell tower proposal has already adversely  
21 affected Pine Street property values.

22 We put our house on the market on  
23 May 20th. Three days later, we were elated to have  
24 an offer that we accepted. Unfortunately, that  
25 offer was rescinded once the buyer heard about the

1 proposed cell tower. There's been subsequent  
2 interest in our house but have been told that some  
3 buyers are waiting for the outcome. That is the  
4 reality of the tower on Pine Street. It is harming  
5 the community and will continue to do so until you  
6 deny the application. Since then, there's been two  
7 offers that have been canceled. As soon as they  
8 found there was a variance, they pull out.

9 CHAIRMAN VIVONA: All right. Thank  
10 you.

11 Mr. Ferraro?

12 MR. FERRARO: Yes, Mr. Chairman.

13 Just quickly, in summation on this, I  
14 know we had a lot of testimony on this particular  
15 matter and a lot of comments over the five hearings  
16 we had on this. It's not my intention to rehash the  
17 testimony. The Board has the transcripts and has  
18 been here for all of it.

19 I would ask the Board, especially in  
20 any application where there's a lot of public  
21 participation and objection, to base your decision  
22 on the experts and the substantial and the competent  
23 expert testimony that's been provided in this  
24 matter.

25 We have submitted testimony from our

1 radio frequency engineer who has credibly testified  
2 to the fact that there is a need for this particular  
3 facility in this particular area in order to address  
4 the area of deficient coverage. He also testified  
5 to the fact that there is a capacity deficiency in  
6 this particular area in the Verizon network that  
7 needs to be addressed in order to provide reliable  
8 service to Verizon's customers and the public.

9           The Board also had the benefit of the  
10 expert opinion of its own radio frequency expert,  
11 Dr. Eisenstein, who also opined that he agreed with  
12 Mr. Pierson's testimony as to the need in the  
13 network for a new site. We feel that this  
14 particular testimony was substantial and it was  
15 unconverted by any expert testimony indicating  
16 otherwise.

17           Verizon Wireless, as the Board knows  
18 -- this is not the first wireless application that  
19 it has had -- has an FCC license. By virtue of that  
20 license, the Supreme Courts in New Jersey held that  
21 service, in and of itself, promotes the general  
22 welfare by virtue of that license. Verizon holds  
23 four of those licenses, as testified to by Mr.  
24 Pierson.

25           With respect to the particular

1 suitability of this site, I think the obvious factor  
2 is that there's an existing utility tower on the  
3 property. It's 132-1/2 feet tall. In our  
4 application, we are simply proposing to extend it by  
5 a de minimis 8 feet to accommodate the antenna.

6 This is not something new within this  
7 particular right of way. While this is an R3 zone,  
8 this utility PSE&G right of way runs through this  
9 town. There are no conditionally permitted zones,  
10 as was testified to by the planner, that could be  
11 utilized as an alternative. Your ordinance does  
12 promote and encourage carriers to use existing  
13 structures whenever possible in order to minimize  
14 the number of towers in town. That is what we are  
15 doing here, similar to the application of AT&T that  
16 this Board heard and approved on the next tower down  
17 on that particular right of way. The Board, at that  
18 time, found that that site was particularly well  
19 suited for the use, specifically, because there was  
20 already a tower there.

21 The same thing applies here. This  
22 particular application is almost identical to that  
23 except for the fact that our antenna will extend  
24 above the tower 8 feet. In that application, the  
25 Board approved a height above the tower of 12-1/2

1 feet.

2 MS. ROMANO: Which site are you  
3 referring to?

4 MR. FERRARO: Tower 81-1. Our  
5 particular tower is 82-1. This is the tower that we  
6 provided testimony on.

7 MR. SHAW: This is Shunpike?

8 MR. FERRARO: Correct. That  
9 particular application also included what's called a  
10 "Fort Worth insert," a structural pipe insert within  
11 the tower. In this particular installation, that  
12 would not be required.

13 In that application, the Board also  
14 found that the use proposed by AT&T, because it was  
15 going on an existing structure, was an inherently  
16 beneficial use. By deciding that, the Board stated  
17 that the positive criteria is automatically met,  
18 given the fact that it came to that conclusion.  
19 Whether the Board decides that in this case, and I  
20 believe that it should, because, quite frankly, that  
21 pole is the next one in line in that particular  
22 right of way in the same zone.

23 As I stated, these installations are  
24 very, very similar in nature. The Board should  
25 consistently find that this particular installation

1 is also inherently beneficial, even if the Board did  
2 not find that, I think that the testimony has  
3 demonstrated this site is particularly suited for  
4 the use given the existing tower on the site.

5           You've heard testimony from the radio  
6 frequency engineer that the topography is favorable  
7 here and the signal can propagate in the direction  
8 it needs to to cover this gap in coverage.

9           One other thing about this tower. As  
10 the Board knows, PSE&G swapped out this tower. This  
11 is a new type of tower, a unipole type tower that  
12 Verizon is going on. PSE&G is doing this throughout  
13 this particular right of way. These poles have  
14 limitations. You heard testimony to the fact that  
15 Verizon looked into collocating with AT&T on that  
16 other Shunpike PSE&G tower. That tower cannot  
17 accommodate both the AT&T facility and our facility.

18           There's testimony to the fact and  
19 correspondence provided by PSE&G indicating they  
20 will only permit 42 cables on any tower in this  
21 right of way. For maintenance purposes, they have  
22 to be able to climb the tower and work on the tower.  
23 AT&T at the Shunpike tower was approved for 24  
24 cables in this particular installation. That pole  
25 cannot accommodate 54 cables. PSE&G wouldn't allow

1 it.

2 This is the next closest pole in the  
3 same zone, the same relief that AT&T was required to  
4 get, that being a use variance, height variance. In  
5 fact, AT&T had a rear yard setback variance.  
6 There's none in this particular application.

7 So for those reasons and the reasons  
8 that the Board has already indicated in the prior  
9 resolution in the area, we believe the facility is  
10 particularly well-suited for the use. We believe  
11 that the applicant has made a good-faith effort to  
12 try to locate where other carriers are currently  
13 operating but the testimony, I think, was clear that  
14 we are not able to do that.

15 With respect to the particular  
16 suitability, from an engineering standpoint, this is  
17 on an existing public utility right of way. While  
18 it's a residential zone, the use of this property is  
19 consistent with a public utility type use, which the  
20 Verizon Wireless telephone network is certainly  
21 compatible with.

22 There's also the benefit of that  
23 particular site in that we can provide landscaping  
24 around the ground equipment. PSE&G no longer allows  
25 landscaping within its right of ways. This

1 particular design was grandfathered in because it  
2 started a year ago so we are able to mask our ground  
3 equipment better than at another location.

4 This facility, as the engineer  
5 testified to, it is accessible for routine  
6 maintenance. This particular facility will be  
7 readily accessible off of Pine Street on a very  
8 infrequent basis. A technician visits approximately  
9 once every month to six weeks.

10 With respect to the particular  
11 suitability, you heard from our professional planner  
12 who testified to the fact that that area is R3  
13 almost exclusively. There are no conditionally  
14 permitted zones in that area of town. That's why  
15 the existing utility structures are really the  
16 appropriate place for any wireless telecommunication  
17 facility, as it eliminates the need for a new tower.

18 With respect to the negative criteria,  
19 the Supreme Court held, with telecommunications  
20 facilities, you use the same type of balancing test  
21 that you would use in an inherently beneficial type  
22 case. In that instance, we would ask the Board to  
23 balance the positive and negative criteria and  
24 determine, on balance, these particular variances  
25 can be granted without substantial detriment to the

1 public good as the Board has concluded in the past  
2 on other wireless applications in this zone and in  
3 this public right of way.

4           The benefits to the public are  
5 substantial. The court, in Smart vs. Fair Lawn, has  
6 concluded that wireless telecommunications are a  
7 paradigm for a use that benefits the public at large  
8 and, not only are you providing wireless  
9 telecommunications, you are providing E911 services  
10 to the public as well.

11           You heard our planner identify any  
12 detrimental effects that he thought would ensue from  
13 the granting of the variances. Generally, when you  
14 are talking about wireless communications, you are  
15 talking about aesthetics. In this particular  
16 application, the planner did an extensive visual  
17 study to show the Board what the facility would look  
18 like if approved. We are talking about 12 antennas  
19 8 feet above an existing 132-1/2-foot steel  
20 electronic transmission tower. His opinion is that  
21 it was a de minimus increase. The courts in New  
22 Jersey have found, in a litany of cases, these type  
23 of minor height deviations do not amount to a  
24 substantial detriment to the public good.

25           In addition, you heard from the

1 professional engineer, this is a passive use.  
2 There's not a lot of traffic at the site. No need  
3 for current employees. You don't have the  
4 traditional site plan issues you have with other  
5 types of uses. There's limited lights that are only  
6 used during emergency visits. There's no drainage  
7 impact and no noise from this equipment since  
8 there's no generator being proposed. There's no  
9 shelter being proposed which means there's no  
10 air-conditioner so no air-conditioner condensers.  
11 The equipment will basically create no noise or any  
12 disturbance to the residents. That was confirmed,  
13 not only by the applicant's engineer but the Board  
14 had its own acoustical engineer who concluded in a  
15 letter that there will be no impact to the  
16 surrounding neighborhood as a result of this  
17 installation with respect to noise. There will be  
18 no smoke, dust, glare, vibration or odor as a result  
19 of this particular facility.

20           With respect to the third step, you  
21 heard the planner testify as to possible conditions  
22 that the Board can put on this facility in order to  
23 mitigate any substantial detriment. There were a  
24 couple of options discussed and proposed by the  
25 Board. The applicant was open to all of them. The

1 cables that are going on the tower can be colored  
2 gray to match the infrastructure of the tower and  
3 help them blend in. The antennas come off-white and  
4 can be painted gray, if the Board preferred, to help  
5 them more blend in with the superstructure of the  
6 tower.

7           There is a canopy over the equipment  
8 that will stick up only 2 feet. That canopy can be  
9 finished in the same color as the fence to blend in.  
10 We have the landscaping that we are proposing and  
11 with respect to the concern with any noise from the  
12 rain hitting the canopy, the applicant was open to  
13 providing a material on the top of the canopy with a  
14 surface that would deaden any rain noise so there's  
15 no disturbance to anybody in the area.

16           We believe, on balance, that the  
17 benefits of this variance outweigh the detriments.  
18 We believe there are almost none. Like I said,  
19 there's a tower there now. There's two towers there  
20 in that particular right of way. We are just going  
21 on one of them and with respect to the height  
22 variance, we feel it's de minimis. You heard from  
23 the radio frequency engineer, this is the minimum  
24 height necessary, 140-1/2 feet, in order to remedy  
25 this particular gap in service.

1           For these reasons and the substantial  
2 evidence, we feel, that's been provided, not only by  
3 the applicant's experts but the Board's retained  
4 experts, we feel that the Board should act favorably  
5 on this particular application. We believe that the  
6 variances can be granted without substantial  
7 impairment to the zone plan or ordinance. The use  
8 of this property is a public utility use. There  
9 have been other similar installations in that right  
10 of way that have been approved by the Board.

11           And just a few things with respect to  
12 some of the issues that were brought up during the  
13 public comment. In summarizing what I heard from  
14 the public comment, I believe that most of it was  
15 based upon certain perceived fears about radio  
16 frequency emissions and the Board well knows that  
17 the FCC has stated in the Telecommunications Act  
18 that no local body can render a decision or deny an  
19 application based upon perceived radio frequency  
20 effects from radio frequency emissions. The Board  
21 is aware of that because it has its Guide to Public  
22 Participation that has it available before every  
23 meeting; it references it in there.

24           Another thing to keep in mind, there  
25 was some talk about, because another carrier is

1 providing service in a particular area, that would  
2 be a reason that the Board could disallow another  
3 wireless carrier to come in and provide their  
4 service. That would be contrary to the  
5 Telecommunications Act of 1996 that states that  
6 regulation and the FCC Declaratory Ruling No. 09-99  
7 basically states that you can't discriminate against  
8 functionally equivalent providers of wireless  
9 communications. One of the main purposes is to  
10 promote competition between the carriers so that  
11 customers have a choice between reliable services.  
12 The fact that AT&T or T-Mobile or Sprint or Verizon  
13 is providing service in an area is not a foreclosure  
14 to another carrier trying to come in and service  
15 their customers as well.

16           There was some comment with respect to  
17 sales of homes, property values, I think the Board  
18 is aware, once again, it's stated in your Guide to  
19 Public Participation for this meeting, that any kind  
20 of testimony with respect to property values has to  
21 be given by a licensed real estate appraiser;  
22 otherwise it's speculative, a net opinion, and not  
23 something that the Board should be considering.  
24 This was also upheld in New Jersey SMSA, Limited  
25 Partnership vs. Middletown; it held the same thing.

1           So I would like to thank the Board.  
2 They gave a lot of time to this application and  
3 especially through special hearings and we would ask  
4 the Board to look favorably on this application  
5 based upon the depth of the expert testimony  
6 provided. Thank you.

7           CHAIRMAN VIVONA: Okay. What is the  
8 build window? When is PSE&G going to shut down  
9 towers?

10          MR. FERRARO: I wouldn't know that at  
11 this point. It all depends.

12          CHAIRMAN VIVONA: What is your lead  
13 time? When PSE&G says "We will shut down," how  
14 quickly do we have it ready?

15          MR. FERRARO: You are talking 30 to 45  
16 days. They want -- these are priority sites. When  
17 they are shutting down, you have to get this done.  
18 It might be quicker than that.

19          CHAIRMAN VIVONA: I don't have a  
20 problem with the noise because I don't think there's  
21 going to be noise. I don't have a problem with the  
22 radio frequency. It's proven it's nonexistent.  
23 There's more danger from the high-tension wires than  
24 from that. There's more danger from your cell phone  
25 than that.

1           I have a problem with the location of  
2 the tower that's in question because, granted, we  
3 allow -- we have allowed other facilities but none  
4 of them are so close to homes as this particular  
5 tower. It's not -- it's the location of the tower.  
6 The one down further down the line at Colony Pool is  
7 not close to homes and that was already a  
8 preexisting site.

9           MR. WILLIAMS: Yes.

10           CHAIRMAN VIVONA: The one on Nicholson  
11 was a preexisting site and it's well-shielded from  
12 homes. This particular pole is in the middle of a  
13 neighborhood and, unfortunately, even though it is a  
14 utility corridor, it's used. People -- it's flat.  
15 It's highly visible and the enclosure, I know that  
16 Verizon has tried to agree to everything we  
17 suggested but the enclosure that PSE&G wants is  
18 twice as big as anything we have allowed. It's 30  
19 by 40 to go around the pole.

20           MR. FERRARO: That was not a PSE&G  
21 requirement. That's trying to meet the Board's  
22 request to hide the cable bridge so what the  
23 applicant did was propose the fence to go around the  
24 tower so that the cable bridge would be completely  
25 invisible to the public; it would be masked behind

1 the fence. So that's why that particular design  
2 change was made.

3 The Board wanted, in the beginning,  
4 wanted the cable tray underground and what the  
5 testimony was and the same thing with the AT&T  
6 installation and maybe no one picked up on it at the  
7 time, you can't go completely underground -- I'm  
8 reiterating the testimony of the engineer -- all the  
9 way to the base of the tower because you have the  
10 foundation for the tower. So basically, you have to  
11 have the cable tray come up approximately 8 feet  
12 from the tower up to the height that it goes in so  
13 it comes up to about 10 feet and then into the  
14 tower. So you can't entirely hide the entire cable  
15 bridge doing that. Essentially, what happened, the  
16 fence goes all the way around the tower so it would  
17 completely shield the cable bridge from public view  
18 and all you would see is the fencing and the  
19 landscaping, which I don't think is out of character  
20 with the type of fencing and landscaping that we see  
21 in any residential zone.

22 And with respect to the location of  
23 this, AT&T's equipment was approved 44 feet from the  
24 closest residential property line. This is almost  
25 the exact same setback. We are actually 44 feet

1 from our fence line to the closest property line  
2 from our equipment.

3 CHAIRMAN VIVONA: You are talking  
4 about Sunset?

5 MR. FERRARO: Yes. It was 43 feet at  
6 the Shunpike tower that was approved for AT&T so  
7 it's almost the exact same distance from the closest  
8 residential property line at that particular  
9 facility.

10 CHAIRMAN VIVONA: Yeah. But the  
11 difference on the Sunset and Nicholson one is it is  
12 preexisting. There's something there already so...

13 MR. FERRARO: But there wasn't always  
14 something there. When it was approved, there was  
15 nothing there. It was just a utility structure. At  
16 the time AT&T came in, just like in this  
17 application, there was no wireless carrier present  
18 when that got approved. Someone had to get approval  
19 first.

20 CHAIRMAN VIVONA: That one got  
21 approved. When they removed the tower and put a new  
22 tower back up, it went back up. It got approval to  
23 go back up because it was there before. This  
24 particular tower never had anything by it.

25 MR. SHAW: The property had already

1 received use variance approval. The difference with  
2 your application is: Use variance approval has not  
3 already been granted for that tower location.

4 MR. FERRARO: Correct. Our position  
5 is: We are looking for the same, almost identical,  
6 variance relief that was granted to those other  
7 carriers.

8 CHAIRMAN VIVONA: Yeah. I realize  
9 that but this particular site is way different than  
10 the one on top of the mountain. It's way different  
11 than the one that's down by the swimming pool that  
12 was already approved and the temporary tower. We  
13 are losing a tower there. This one, we are building  
14 a huge structure. I don't have a problem with the  
15 antenna, the wire, the height. I think all that  
16 fades away. It's just, unfortunately, for your  
17 industry, you have to have the equipment and the  
18 equipment has to be shielded and it's just -- it  
19 doesn't work.

20 MR. FERRARO: I would ask the Board to  
21 identify the detriment. I mean, what we are  
22 proposing is a 7-foot-tall composite fence around  
23 the equipment. That's not something that's uncommon  
24 in any kind of residential area. There will be  
25 landscaping as well.

1 MR. WESTON: I can identify a  
2 detriment. I have a room full of people that object  
3 and I have some comments that I would like to make.

4 MR. FERRARO: I would like to point  
5 this out and I think the Board knows this. There  
6 could be 20 people here in favor of the application  
7 or 20 people to object to the application. That's  
8 not a valid basis for approving or denying a land  
9 use application.

10 MR. WESTON: No, it's not but there  
11 are other issues involved. I want to point out that  
12 I voted "yes" on some of these applications and "no"  
13 on some and I would like you to know I have prepared  
14 some notes just so I could be clear as possible and  
15 more concise than usual. I have a lot of trouble  
16 with this particular application and let me start  
17 off with the first comment.

18 One of the reasons people appear in  
19 front of a Board of adjustment is they believe their  
20 concerns are going to be heard and be given serious  
21 consideration in response to issues raised by the  
22 public. This Board often requires significant  
23 modifications to proposed plans or rejects plans  
24 entirely. Yet, we have routinely been given a  
25 presentation where -- and I said this before -- the

1 radio frequency engineer comes out, all the experts  
2 come out and then we are presented with a complete  
3 where we are supposed to go "must say yes." Well, I  
4 say, this particular application gives me some  
5 problems.

6           The FCC encourages collocation of  
7 equipment. This is effectively precluded in this  
8 case because of guidelines issued by PSE&G. Yet, no  
9 one submitted any evidence. I heard the statement  
10 that it's difficult to maintain. I think engineers  
11 with the proper challenge can do better. If the FCC  
12 wants this collocated all over the country, this is  
13 going to be precluded by the fact that the monopole  
14 installation is unable to support the requisite  
15 number of cables to do a collocation. So I have a  
16 concern about that but someone tells me "Never mind.  
17 It doesn't apply in this case." I say it does.

18           I think that Chatham needs some  
19 guidelines on the appearance of cellular  
20 installations. It's my opinion that the ground  
21 equipment facility, as presented, is too large to be  
22 placed -- and this is an important point -- in close  
23 proximity to a home or public road. I know that  
24 some changes have been made in color schemes and the  
25 materials to be used. These changes do not address

1 the matter of the mass of the ground facility and I  
2 have a problem with that in its proposed location  
3 next to a road, next to homes.

4 People didn't complain with the other  
5 application. That's a difference and that, to me,  
6 is a substantive difference and, personally, I am  
7 not aware of any efforts that have been made to  
8 negotiate directly with the affected community on  
9 this topic.

10 I would also like to say, particularly  
11 in reference to the planner's submission, when  
12 engineering drawings are presented to the Boards,  
13 for the record, they must include a scale and other  
14 information to have the proper Photoshopped images  
15 to reach an important judgment. So you have serious  
16 problems with the visuals that were presented as a  
17 Photoshop. There was some discussion of that and I  
18 went back to decide it was done with a wide-angle  
19 lens so the site looks smaller. I maxed it out.  
20 The only way you could make those picture is to go  
21 wide and when you go wide, things get small. Do not  
22 buy it.

23 My last point is: You all heard the  
24 argument that people that buy homes adjacent to  
25 power lines or water towers or whatever have given

1 up a right to object. How does that make sense?  
2 When does it stop, two cell towers, three, maybe a  
3 McDonalds' stand? I don't know. To me, it's a  
4 circular argument.

5 Those are my comments. In case you  
6 cannot tell, those are my issues.

7 MR. FERRARO: The applicant did  
8 provide a written communication from PSE&G stating  
9 what the maximum number of cables are on those  
10 particular towers. The problem is: The tower that,  
11 obviously, the public would like us to go to cannot  
12 accommodate us. It's not available so there are no  
13 other existing structures in this area. I think the  
14 Board knows that. I know the public knows that  
15 there's no other 130-foot-tall existing structure in  
16 that particular area that you can utilize. By  
17 prohibiting Verizon from going on this tower, you  
18 are prohibiting them from providing their service  
19 and, in my opinion, you are discriminating against  
20 this particular carrier, where, in the past, you  
21 granted approval for the same use and height  
22 variance approvals to other carriers.

23 I mean, the Municipal Land Use Law,  
24 now, they have a new section, 46.2, that defines  
25 collocation differently now. They define it as

1 placing an antenna on an existing support structure  
2 whether or not there's an existing carrier there or  
3 not. So the fact that there's already on existing  
4 tower on this site makes this a collocation  
5 facility. That's a relatively new section of the  
6 Municipal Land Use Law that was not around when  
7 these other applications -- well, it was around with  
8 T-Mobile.

9 MR. WESTON: I quibble with the term  
10 "discrimination." Again, your client -- I think, I  
11 made it fairly clear -- maybe I should go longer --  
12 that my reservations are the location of this, clear  
13 site to homes and very close to roads and these are  
14 issues that, one, did not come up. I mean, if you  
15 lay a tape measure out, you can get your 45 feet but  
16 if you look at, you know, qualitative rather than  
17 purely quantitative, if you look at that, you go  
18 "This site is a large facility on the ground." I  
19 don't care about what's in the air. It's right  
20 close in visibility to existing homes and it's very  
21 close to a road that is heavily trafficked by  
22 children and the general public so you can charge my  
23 comments on any number of grounds perhaps but not on  
24 discrimination. I take exception to that.

25 MR. FERRARO: I would like to point

1 out too that the AT&T compound that was approved is  
2 24 by 30. This particular compound is 20 by 44 so I  
3 don't think the difference is that substantial and,  
4 like I said, the point of it, we can make the  
5 fenced-in area smaller. The point of making it  
6 larger was to encapsulate the bottom of the pole so  
7 you would not see anything. That installation, the  
8 AT&T pole, you are going to see the cable bridge  
9 sticking up 10 feet out of the ground as it goes  
10 down the tower. It says so on their approved plan.  
11 With that AT&T equipment also was a shelter so they  
12 have air-conditioner condensers in that shelter that  
13 have to run that facility. You have noise. You  
14 don't have that here so I'm just having difficulty  
15 seeing how this particular facility causes some kind  
16 of substantial detriment to the public good when we  
17 have, basically, taken every possible step to make  
18 sure this would be as innocuous as possible. You  
19 will see a 7-foot stockade fence. Is that a  
20 substantial detriment? Our planner opined that it  
21 isn't. I respect everyone's comments and feelings  
22 but --

23 MR. HYLAND: Let me take a different  
24 crack at it.

25 The Shunpike facility is off of a

1 county road and has much higher vegetation between  
2 the pole and the street and it's across the street  
3 from a church. It's not a residential area. This  
4 facility is on a much quieter street. The  
5 vegetation is grass. You can see from the street  
6 straight back into the facility. It's much more  
7 heavily foot-trafficked than Shunpike so those are  
8 the differences.

9 MR. FERRARO: The street?

10 MR. HYLAND: The street.

11 CHAIRMAN VIVONA: One is in a  
12 neighborhood and one is in the woods.

13 MR. HYLAND: Let's step away from that  
14 for a second. I want to make sure everyone in the  
15 room understands what the next steps are.

16 If we vote to not approve the  
17 application, what do you assume your client does?  
18 Do you guys appeal?

19 MR. FERRARO: I can't discuss -- I  
20 don't think it would be appropriate to discuss that  
21 until --

22 MR. HYLAND: What has happened in the  
23 past?

24 MR. SHAW: I think you can use your  
25 own judgment as to what the likely outcomes are from

1 a Board approval or a denial.

2 MR. HYLAND: I think we can. I'm not  
3 sure everyone in the room can. I'm trying to help  
4 bring everyone up to speed. It's my opinion that,  
5 if we were to deny the application, that Verizon  
6 would appeal based upon what other carriers have  
7 done in the past and that would end up in front of a  
8 judge who would look at what's in the testimony and  
9 render a decision; is that accurate?

10 MR. SHAW: Right. And part of your  
11 decision involves a balancing of tests so even if  
12 one does conclude that there is some negative impact  
13 from this application, the Board has to, based upon  
14 the record, conclude that that's a substantial  
15 negative impact when compared to whatever the public  
16 benefits are for providing communications as an  
17 established public benefit.

18 MR. HYLAND: If we deny the  
19 application and the decision is appealed by Verizon,  
20 there's a cost associated with us having the  
21 township showing up in front of the appeals court;  
22 is that true?

23 MR. SHAW: Absolutely.

24 MR. HYLAND: On the other hand, if we  
25 accept the application and the public is upset about

1 our decision, is there anything they can do to -- do  
2 they have an appeals process?

3 MR. SHAW: They can do the same thing.  
4 Any person who is an objector to the application can  
5 file an appeal to challenge the Board's approval of  
6 the application.

7 MR. HYLAND: We have seen examples of  
8 that in the past. I guess there's one going on now,  
9 I think.

10 MR. SHAW: In terms of a situation  
11 where the individual property owners appeal, yes.  
12 In fact, they can intervene later in the process.  
13 To do so, certainly, any person who is here as an  
14 objector has a right within 45 days of the  
15 publication of the decision here to file an action  
16 to challenge the decision in Superior Court.

17 MR. HYLAND: I had a question about  
18 different things that I heard that I wasn't sure  
19 about.

20 There was a lot of discussion about  
21 failure to notify. There was discussion about which  
22 list the town provided to Verizon in order to notify  
23 the people.

24 MR. SHAW: The notice that was  
25 provided was the legal notice that was in accordance

1 with the Municipal Land Use Law. So in terms of the  
2 formal legal notice, the applicant complied with  
3 those requirements. In addition to which, there was  
4 actual notice given and the property owner has been  
5 able to participate in the hearing process.

6 MR. HYLAND: Good.

7 Then there was a second point of  
8 dispute where it was suggested that, as long as  
9 other coverage providers could fill the gap, it  
10 wasn't that all coverage providers be able to fill  
11 the gap.

12 MR. SHAW: The case law is to the  
13 contrary on that, that every carrier who is licensed  
14 has a right to provide that. They have an  
15 obligation to provide service and the fact that some  
16 other carriers are providing service in the area is  
17 not a basis for denying the application.

18 MR. HYLAND: Okay.

19 So the last question that I have,  
20 there have been discussions about property values  
21 that were not given by licensed real estate  
22 appraisers so we can't take those comments as  
23 evidence but we are allowed, in our own minds, to  
24 contemplate outcomes that may be associated with  
25 neighboring homes and I know, if I were a

1 neighboring homeowner, one thing I might do is  
2 consider trying to get my home reappraised so I  
3 could get my property taxes lowered to the extent  
4 that the Board did approve this resolution and so  
5 are we supposed to take into account the negative  
6 potential impacts on property tax receipts that  
7 approving this location may have as a Board?

8 MR. SHAW: I don't think the fact that  
9 there could be potential tax appeals if the property  
10 is devalued -- there really was -- what was allowed  
11 to go in this evening was some anecdotal experience  
12 of someone and the Board can certainly weigh those  
13 consequences as to what will happen to a property  
14 but you should not be speculating as to  
15 consideration of the township as to the potential of  
16 tax appeals to neighboring properties.

17 MR. MICHAELS: In response to Mr.  
18 Hyland's question, Chatham's ordinance allows an  
19 appeal of an approval by any interested party to go  
20 to the Committee. The Land Use Law allows a town  
21 the provision to that if it's in the local ordinance  
22 and Chatham's ordinance allows that to go to the  
23 Committee and that is on an approval, not a denial.

24 MR. HYLAND: So if we were to approve  
25 and someone didn't like our approval, they have a

1 choice, either go to the town Committee or to the  
2 judge?

3 MR. SHAW: That is correct.

4 MR. HYLAND: That's good to know.

5 That's all I have.

6 MR. FERRARO: I would submit, it comes  
7 up a lot in these cases. I think the testimony is  
8 consistent with this. There's a big difference  
9 between something being visible and arising to a  
10 substantial detriment to the public good. So the  
11 facility that we are proposing is essentially a  
12 wooden-fenced facility. We believe it's similar in  
13 size to the ones that you approved in the past and  
14 this particular facility does not have some of the  
15 nuisances associated with it that those other  
16 facilities have, like the noise with the shelter.

17 In addition, we are not naive to the  
18 difficult position the Board is put in when there's  
19 a lot of objectors in the room on an application.  
20 The Board knows this is a quasi-judicial body. It's  
21 here to weigh the evidence that's been put in the  
22 record. If the Board is going to start substituting  
23 its own judgment in place of the expert testimony,  
24 it has to do so reasonably and when there's no  
25 competing testimony, to do so is generally

1 unreasonable. I'm not asking anyone to like the  
2 application. We are asking the Board to weigh the  
3 evidence because we strongly believe that the  
4 evidence weighs in favor of granting the statutory  
5 relief that we are requesting.

6 CHAIRMAN VIVONA: The reason this  
7 tower was chosen is because nothing else was  
8 available near it because, the way these monopoles  
9 are designed, they cannot accept coexistence. It's  
10 -- to me, it's a design flaw that they would build  
11 this gigantic steel tower that can only handle 31  
12 wires when the whole technology requires 24 wires  
13 per carrier. So it's a design flaw putting wireless  
14 companies in a bind, putting us in a bind. You are  
15 obligated to provide the coverage. These people are  
16 obligated to fight for their neighborhood and we  
17 have to weigh them both up.

18 My suggestion, we like to get as few  
19 towers as possible. That's why we want to  
20 collocate. The AT&T tower cannot accept the  
21 collocation but it's a great area because it's not  
22 in a neighborhood. After our last meeting, I went  
23 to Pine Street, looked and I could see this facility  
24 for 2 miles in either direction because of where it  
25 is, a perfect location. I looked towards Shunpike

1 and I could see the next tower, AT&T.  
2 I could also see the temporary tower behind the  
3 church. When I drove up Shunpike, I had to drive  
4 into the parking lot to see the temporary tower;  
5 it's very well hidden.

6 My suggestion is: I agree with one of  
7 our objectors and I think that we would allow the  
8 temporary structure to become a permanent structure  
9 because Gloria Dei receives the income and they want  
10 the income. The AT&T, your arch rival, does not  
11 want to work with any of this. They want to go on a  
12 tower that they invested their money and lawyers and  
13 experts in on the PSE&G tower. I would suggest that  
14 we look into permitting the temporary tower to  
15 become a permanent site for Verizon. It's the same  
16 coverage. It's 150 feet away or less than 500 feet  
17 away, relatively the same height.

18 I would entertain extending the height  
19 variance to make it a viable location. Instead of 8  
20 feet high, you would have to build your own tower  
21 but you guys have a lot of money. You can do that  
22 but -- just kidding with that -- it's a hidden  
23 location. You have to drive into the woods to see  
24 it. You wouldn't necessarily have to put all the  
25 other stuff because it doesn't look like a work site

1 but this way -- AT&T has to come off that pole;  
2 they're required. They've run out of time. They  
3 have to come off that pole. The site is still  
4 available. I suggest that Verizon look at that site  
5 and I know you did look at that site but it's a  
6 temporary site that was scheduled to come down. I'm  
7 willing to put up for a vote that we allow it to be  
8 a permanent structure.

9 MR. HYLAND: Is that our decision?

10 CHAIRMAN VIVONA: That's my opinion.  
11 It's our decision that we can do but we allowed the  
12 temporary structure.

13 MR. HYLAND: So we have the power, as  
14 a Board, to make it permanent?

15 MR. SHAW: The problem is:  
16 Ultimately, it has to go through an application  
17 process. So really, in terms of what the Board  
18 decision here could be would be to perhaps make a  
19 finding that that was an alternate site that should  
20 be available and should be pursued before an  
21 approval is granted for this site but in terms of  
22 the process, I mean, this Board can't say "We are  
23 going to approve and we think it's a good idea to go  
24 on that pole" because that itself has to go through  
25 a whole application hearing process. The church

1 would then have to sign on as -- for a new  
2 application consenting to the application and you  
3 would have a whole new hearing process that would  
4 have to go forward and it would only be in the  
5 context of that hearing process that the Board could  
6 make an affirmative decision that that site was  
7 appropriate but the only thing that the Board could  
8 consider here would be whether or not that  
9 alternative site was appropriately evaluated but I  
10 think, in terms of what the presentation was that  
11 was made was, that was a temporary site which was  
12 not available and the applicant was proceeding with  
13 a collocation application to utilize existing  
14 structures and that was the application that was  
15 presented and here before the Board.

16 MR. HYLAND: I like your idea. I  
17 don't know if -- I want you to keep rolling. I  
18 don't know if we have that kind of power.

19 MR. FERRARO: It's my understanding  
20 it's a temporary tower. It's to come down and be  
21 dismantled because AT&T is utilizing the existing  
22 transmission tower. It's also approximately 80 feet  
23 tall. It's substantially shorter than the tower we  
24 are going on. Our tower is 132 feet. To extend  
25 that pole, it's a 52-foot deviation from what's

1 existing there. It's an 8-foot deviation here and  
2 it's in an R3 zone. In this zone, you need a use  
3 variance. We can't assume that a use variance is  
4 going to be granted or a height variance of that  
5 magnitude is going to be granted by this Board.  
6 That is assuming that site is even available for  
7 lease.

8 MR. HURRING: I was curious about what  
9 our expectations can be around evaluating other  
10 sites because I looked. I think you put in here --  
11 at one point, it says "It also shows that no  
12 technically comparable sites are available." So you  
13 have to show that this site is good but there's no  
14 other great option either existing or building new,  
15 and right under that, there's another, you know, I  
16 guess, case that is rendered that says, "Oh. It  
17 does not require proof that there is no other  
18 potential location for use." So now, that is where  
19 it lost me. Do you have to show that you looked at  
20 other locations? I know there was the one.

21 MR. SHAW: There is a requirement for  
22 an applicant to demonstrate that they have reviewed  
23 alternate sites and made a good-faith effort to  
24 demonstrate that alternate sites are not available  
25 and the testimony that was presented addressed other

1 existing similar PSE&G tower structures as to their  
2 availability of those as alternate sites to address  
3 what was needed for the site.

4           What was not addressed was separately,  
5 a new -- the Gloria Dei site that's presently a  
6 temporary tower. If there were to be a proposal for  
7 an alternate location for a permanent tower on that  
8 site, it's a new application that would have to be  
9 presented and from my understanding, again, as to  
10 the existing height, I mean, it would be a new  
11 proposal for a new tower at whatever height was  
12 necessary. Presumably, the new tower would be  
13 similar to the 130-foot standard which the applicant  
14 has demonstrated would be necessary for their  
15 current location to provide service. I mean --

16           MR. HURRING: But we don't know  
17 because it wasn't presented.

18           MR. SHAW: It was not evaluated or  
19 presented as an alternative for this.

20           MR. FERRARO: I do believe Mr. Pierson  
21 did touch on the temporary tower at that particular  
22 location but as we stated, it was temporary. It's  
23 slated to come down so anything would be a new  
24 tower.

25           CHAIRMAN VIVONA: It was out-ruled

1 because it's temporary so it wasn't really fully  
2 investigated because it's temporary and had to come  
3 down. I'm suggesting that we can look into making  
4 it a non-temporary thing. If this thing gets  
5 denied, you will file an appeal. It will take nine  
6 months to a year. If it gets approved, they will  
7 file an appeal. The same thing, you are back almost  
8 a year. If we do -- if we can make the temporary  
9 site work, AT&T has to be off.

10 MR. SHAW: At this junction, they are  
11 already beyond the springtime that they are allowed  
12 to move off the grid because of the temperatures  
13 that are involved. The company has to be able to  
14 provide power when it's off. The spring season is  
15 gone. We have an approval for them with an  
16 extension through December of this year as their  
17 second deadline. If they don't get approved -- if  
18 they are off that tower by, I would say, October,  
19 they are going to be back in here for another  
20 extension to stay on the temporary tower. I mean --  
21 but they have their approvals and GPU would allow  
22 them to do it. They are supposed to be, under our  
23 current approval, off those towers this fall.

24 CHAIRMAN VIVONA: Right.

25 MR. FERRARO: They are occupying that

1 tower. It's a single-user temporary tower. It's  
2 not available. At the time we are before this  
3 Board, Verizon has two years invested in this  
4 particular area just to get to this point before  
5 this Board and we are talking about a facility that,  
6 quite frankly, at the time of this vote, is not  
7 available. It's occupied by AT&T, can't accommodate  
8 us, does not have the height to accommodate us.  
9 Even if it did, it would require a use variance  
10 because it's in an R3 zone and a 50-foot height  
11 deviation, where we require an 8-foot extension.

12           So to get back to the gentleman's  
13 question regarding the application addendum, that's  
14 why the case law requires us to demonstrate that the  
15 site is particularly suited with a good-faith  
16 analysis of alternatives. We are not required to  
17 show that the site is uniquely suited, that this is  
18 the only possible site where you can provide  
19 coverage from. It just happens to be that it is  
20 uniquely suited in this particular case because  
21 there's no other available towers in that particular  
22 area that can give us the height we need and be  
23 where we need to be location-wise to address this  
24 gap in this capacity deficiency.

25           This is just anecdotal in nature. The

1 talks of design flaws in the towers, it's explained  
2 to me, PSE&G is in the business of providing power,  
3 electric, so they could not justify or get funding  
4 to build towers that would specifically accommodate  
5 telecommunications use because they are not in the  
6 wireless telecommunications business so that's why  
7 these particular towers were built the way they are  
8 to accommodate PSE&G's use and not necessarily to  
9 have multiple carriers on them like the old towers  
10 could accommodate. That's why we are going to see  
11 more of these single-user applications in this  
12 particular area and in all their right of ways that  
13 they are upgrading.

14 MR. HYLAND: If we were in an area  
15 that didn't have power transmission lines going  
16 through it, what would you do? Do you just build  
17 your own towers?

18 MR. FERRARO: If there's no adequate  
19 existing structure, you would have to create an  
20 existing structure at the appropriate height to meet  
21 the technical needs of the gap.

22 MR. HYLAND: So if you go to some town  
23 that does not have these things, you come before the  
24 Board and you try to build a tower?

25 MR. FERRARO: Correct.

1                   MR. HYLAND: Just for yourselves and  
2 sometimes with others?

3                   MR. FERRARO: Generally speaking,  
4 towers are built to accommodate more than one  
5 carrier because that's what towns want. If they are  
6 going to approve one carrier, they would rather have  
7 one tower than multiple new towers.

8                   CHAIRMAN VIVONA: That is why we --  
9 AT&T actually asked if they could make that a  
10 permanent site.

11                  MR. SHAW: They contemplated it at one  
12 point.

13                  CHAIRMAN VIVONA: And we advised them  
14 no because we didn't want another tower.

15                  MR. FERRARO: That's usually the  
16 township's position and that's what your ordinance  
17 states, "Do not come in here with a new tower if you  
18 can utilize an existing structure."

19                  CHAIRMAN VIVONA: Right. But when  
20 this particular structure -- because it suits you  
21 guys really, really well and it also is in the  
22 neighborhood, I'm offering a -- I can't say "fast  
23 track" but I'm offering that site that, I think, we  
24 can look much more favorably upon because the church  
25 wants the tower because they want the revenue. It's

1 in an R3 zone but not next to homes. The AT&T tower  
2 is 50 feet away so the same stuff would be there but  
3 it's in a wooded, overgrown thing that you really  
4 can't see. This is just right in your face and I  
5 think we have to pursue making that work.

6 MR. FERRARO: All I'm authorized to  
7 do, at this point, Mr. Chairman, we spent six  
8 hearings on this, a lot of time getting to this  
9 point. I don't know what else to say at this point  
10 other than, the applicant is requesting that the  
11 Board act on this application. I mean, the Board  
12 can't grant us an approval tonight for a new tower  
13 at the church facility; it's not an option. I mean,  
14 these sites take a long time to get to this stage.  
15 We are relying upon the expert testimony that there  
16 will be no substantial detriment to the public good.  
17 We understand there's public opposition. To me,  
18 that's the only difference between this particular  
19 location and the one that AT&T got approved. I  
20 appreciate what you are saying. We are here for a  
21 vote on this particular application. We can't ask  
22 for a vote or approval on a site that we have not  
23 filed an application on.

24 MR. HYLAND: So if we do not vote  
25 tonight and we kicked it down the road as far as we

1 can...

2 MR. SHAW: Unless the applicant were  
3 to consent to an extension, they would be entitled  
4 to a statutory approval.

5 MR. HYLAND: So if we don't vote  
6 tonight and they do not consent to another meeting,  
7 they are approved?

8 MR. SHAW: Well, there's a little more  
9 to it but basically.

10 MR. BORSINGER: There's two sites for  
11 AT&T right now?

12 MR. SHAW: A temporary location and a  
13 permanent location.

14 MR. BORSINGER: Another option for you  
15 guys is to say, okay, to go to AT&T saying there's  
16 an indication that you can get permanent approval at  
17 Gloria Dei. That frees up their tower that's  
18 already approved, right, so you just move to their  
19 tower and they stay at Gloria Dei.

20 MR. FERRARO: The likelihood of that  
21 happening is not --

22 MR. BORSINGER: Why?

23 MR. FERRARO: That temporary tower,  
24 it's inferior. That's a band-aid.

25 MR. SHAW: If they were going to stay

1 there, they would have to file. It would have to be  
2 50 feet taller and --

3 MR. BORSINGER: But the site itself is  
4 viable?

5 MR. SHAW: Right.

6 MR. BORSINGER: Because they wanted to  
7 stay there, they just needed another tower.

8 MR. WESTON: Since we are establishing  
9 a record here, there was the assertion that the only  
10 difference between this application and the previous  
11 one is the presence of an objecting public. I want  
12 to point out that we are aware or, at least, we are  
13 all aware that we are a quasi-judicial body, that a  
14 number of issues had been raised concerning mass,  
15 location to houses, location to roads. So that the  
16 -- tossing out the reference that somehow the  
17 presence of our neighbors prevents us from fairly  
18 hearing witnesses, expert or otherwise, should be  
19 incorporated into the record as well. The first  
20 one, I let go. The second one, I thought needed to  
21 be challenged. There have been two references to  
22 the public. There's no pressure from them to the  
23 deliberations and I think the record should indicate  
24 that as well.

25 MR. FERRARO: It's been indicated

1 through this proceeding, this particular fenced area  
2 could be made smaller. The Board wanted the cable  
3 tray hidden. That is why the fence was put around  
4 the pole. At no point did the Board ask the  
5 applicant to reduce the size of that back because it  
6 could easily be done. That could be a condition of  
7 approval if the Board is worried about the mass of  
8 the fence line. Per the Sica balancing test, this  
9 Board can impose a condition that the fence not  
10 extend around the pole and you would have a smaller  
11 structure.

12 MS. ROMANO: So there's one thing that  
13 -- in our Master Plan that I want to touch on. So  
14 our Master Plan is intended to preserve open space  
15 avoiding adverse environmental impacts but it also  
16 intends to preserve the basic residential character  
17 which exists in the neighborhood right now, the R3  
18 zone.

19 I am a little concerned that the tower  
20 is so close to a residential neighborhood and I  
21 think that's where the Board is also having some  
22 concerns but another objective of our Master Plan is  
23 to promote pedestrian and bicycle circulation, not  
24 only to reduce traffic, but to facilitate the safety  
25 and enjoyment of the public. This area is -- as the

1 resident also stated, that it's a concern because  
2 the children walk from Lafayette School, Cougar  
3 Field. It's heavily used for children to walk to  
4 and from schools and it's safe. It's a quiet  
5 street. Having this location here, even though I  
6 know it's not going to be all the time, you will  
7 have more traffic going to and from just to maintain  
8 the site.

9           There was also concern stated in other  
10 sites as well that we have seen that any sort of  
11 cell phone tower generates a lot of garbage at the  
12 site. Since there are a lot of children walking in  
13 the area, it could be a concern for safety if  
14 there's bottles or glass or whatever the case may  
15 be. That's what I think is a detriment to the  
16 application, just, because it can impact the safety  
17 of the children in the area, just, because, right  
18 now, it's currently being used as a safe zone for  
19 kids to be off the street going to and from schools.  
20 I just think it would increase traffic.

21           MR. FERRARO: I appreciate your  
22 comments. What I would say is that this is not open  
23 space. This is not a public park. This is not  
24 public property. This is actually private property.  
25 There shouldn't be anybody walking up and down these

1 --

2 MS. ROMANO: Are the vehicles  
3 maintaining this using Pine Street to access the  
4 site?

5 MR. FERRARO: An SUV, probably smaller  
6 than a lot of vehicles you see on this road. They  
7 come once every four to six weeks and they come once  
8 for a few hours and they leave. I don't see, in the  
9 testimony, the basis for this being a dangerous  
10 facility to children. It's a fenced-in equipment  
11 area. In fact, the fence is going to be 7 feet tall  
12 instead of 6 to provide adequate security and there  
13 wouldn't be anyone there so there would not be any  
14 garbage.

15 MR. HYLAND: Where was it on the hill  
16 that we saw -- Nicholson, whose facility was that?

17 MR. WILLIAMS: T-Mobile with Verizon's  
18 equipment. It was the T-Mobile site.

19 MR. HYLAND: How long had it been  
20 there?

21 MR. WILLIAMS: As long as I can  
22 remember.

23 MR. HYLAND: Presumably, since PSE&G  
24 initially switched the line so I think that we do  
25 have evidence from specific site visits that we made

1 that these types of facilities attract industrial  
2 garbage because we observed it at the last site  
3 visit that we went to and it was your company's  
4 garbage.

5 MR. FERRARO: I have no way of  
6 verifying that. I don't understand how a facility  
7 that doesn't have any occupants generates garbage.

8 MR. HYLAND: That was what was  
9 shocking to us. I guess you do not have to have a  
10 basis for it because you don't have to vote but we,  
11 as voters, observed it with our eyes. It was a big  
12 piece of metal equipment that had been abandoned by  
13 Verizon and never picked up.

14 MR. FERRARO: That is a zoning  
15 enforcement issue if that's, in fact, the case.

16 MR. HYLAND: Which brings me to a  
17 zoning enforcement issue that works for everyone.  
18 Can we put a performance bond down as a condition so  
19 that we have the funds necessary to make sure that  
20 the site is properly maintained even though it's not  
21 our site?

22 MR. SHAW: In terms of our ability to  
23 impose a bond, just generally speaking, you have an  
24 ordinance. I think you need an ordinance to have a  
25 framework to impose an obligation like that.

1                   Currently, something you find in every  
2 cell tower resolution is a requirement in the event  
3 that the tower ever ceases to be used, within six  
4 months, they are required to remove everything from  
5 the site. There are no bonds posted to do that but  
6 that is a standard provision in every resolution I  
7 have seen approving a telecommunications facility.

8                   MR. HYLAND: We said earlier tonight  
9 that, if -- that builder who disturbed the steep  
10 slopes, we would watch very closely and it was  
11 discussed that maybe we would incorporate a  
12 performance bond or something along those lines into  
13 his next proposal. Since we have already seen that  
14 Verizon had trouble picking up the garbage somewhere  
15 else, can we use that in this case? I guess you are  
16 saying "no"?

17                   MR. SHAW: I think, if you do not have  
18 an ordinance establishing a structure and a method  
19 for calculating things, I don't know how this Board  
20 can establish its own bonding requirement.

21                   MR. HYLAND: That was one thing that  
22 ticked me off, though.

23                   MR. WILLIAMS: The T-Mobile site is  
24 another one. It was a piece of crap too. It was  
25 falling apart.

1 MS. ROMANO: So one other thing -- I  
2 know this does not help -- it seems like there's a  
3 lot of cell phone antennas or towers needed in that  
4 particular area. We have a lot of hills. I know  
5 the first objective is to try to use an existing  
6 structure but maybe we really do need to propose a  
7 cell phone tower so you don't have multiple boxes,  
8 one here, 300 feet down the road, there's another  
9 one because only one carrier can go on these towers.  
10 I don't know. I know it's PSE&G. There's all this  
11 stuff but, you know, we want to use existing  
12 structures but rather than having multiple boxes, no  
13 one wants to see an 8-foot fence.

14 MR. FERRARO: 7.

15 MS. ROMANO: I don't know. I know we  
16 are trying to explore other options but can we just  
17 put up a tower and have five carriers on it and call  
18 it a day?

19 MR. HYLAND: Find the highest location  
20 in town and you put a tower and be done with it.

21 MR. MICHAELS: In order to pursue that  
22 type of approach, you need to amend the ordinance  
23 and provide locations that they are permitted uses  
24 and that takes away from a hearing and gives an  
25 applicant some assurity [sic] that they can get it

1 approved and that goes before the Planning Board but  
2 you have to amend the ordinance to identify specific  
3 locations or zones or municipal properties or  
4 whatever in which it's a permitted use.

5 MS. ROMANO: Maybe that's what's  
6 needed. Clearly, there's a gap in coverage, even  
7 though we all think we have coverage and we are all  
8 able to make calls but these are experts and they  
9 are telling us there is a gap. Maybe that's the  
10 next step. We have so many antennas everywhere with  
11 all these housing units. I feel it's a major  
12 problem. I would rather do like by Geraldo Farms, a  
13 structure, a water tower with a bunch of carriers on  
14 it, rather than keep on approving these piecemeals.

15 MR. MICHAELS: That's something that  
16 you can incorporate in your annual report to the  
17 governing body at the end of the year if you wish to  
18 pursue that.

19 MS. ROMANO: It's not your  
20 application. I think, seeing all these, it proves  
21 there's a need. I understand your need and the  
22 first part is to try to use an existing structure if  
23 that doesn't work -- I'm still having a hard time.  
24 I think it doesn't work for this location. If  
25 there's no other options, I think that is the next

1 approach. I don't know how we go about doing that.

2 MR. FERRARO: There are locations in  
3 town, usually municipal property, where there are  
4 monopoles that all the carriers are on but they  
5 can't cover all the other areas of town.

6 MS. ROMANO: But this area is needed.  
7 That's why we have other carriers down this runway  
8 because it is -- with all our limits and slopes and  
9 everything else, it's maybe something we should  
10 explore.

11 MR. FERRARO: This is a zone with a  
12 maximum permitted height of 35 feet so you are not  
13 going to find a lot of structures that are a  
14 sufficient height for an antenna facility other than  
15 this particular right of way. We can't assume that  
16 the use variance is going to be granted for a new  
17 tower at any other location in the R3 zone. We  
18 can't assume that relief is going to be granted at  
19 another location. You send out a notice for a  
20 150-foot tower, you might have a whole other slew of  
21 residents from that section of town who object. You  
22 cannot assume -- I appreciate what you are saying.  
23 I'm not saying -- you cannot assume that that relief  
24 is going to be granted.

25 MR. BORSINGER: I don't know there was

1 good due diligence with the Gloria Dei location  
2 because it was approved. There was not a lot of  
3 flack but you really didn't consider that.

4 MR. FERRARO: It was considered. It's  
5 a temporary tower so the tower is coming down.

6 MR. BORSINGER: But it's an approved  
7 site for a cell tower.

8 MR. FERRARO: It's an approved site  
9 for a temporary tower until AT&T went back on the  
10 utility structure, the same structure that we are  
11 trying to go on. The original approval was never to  
12 put a new tower at the church. The original  
13 approval was to put it on the PSE&G tower. That's  
14 what the town approved. The only reason why there  
15 was ever a temporary ballast-mount antenna on that  
16 church property is because it was needed temporarily  
17 when PSE&G was swapping out their towers.

18 MR. BORSINGER: Due diligence would  
19 point out that was a viable location and Pine Street  
20 is a viable location for you.

21 MR. FERRARO: It becomes a matter of  
22 what's particularly suited for the use, replacing an  
23 80-foot temporary tower with a 140-foot new tower or  
24 going on an existing 130-foot tower. This facility  
25 where we are going provides the height necessary.

1 It's not the same relief because the height variance  
2 at the church that you are talking about, that is a  
3 much larger variance than what's being requested  
4 here.

5 MS. ROMANO: I don't think it's the  
6 height. I think it's the location.

7 MR. FERRARO: We have to look at it  
8 from a planning perspective and what your zoning  
9 ordinance allows from a planning perspective. Your  
10 ordinance says to utilize existing structures, not  
11 propose new towers next to existing structures.

12 MS. ROMANO: It says you utilize that  
13 first and if it's not an option, you continue. Just  
14 because it's an option and it's still occupied, I  
15 don't think it's the proper place. Just because  
16 it's vacant, it doesn't mean that you are guaranteed  
17 to go there. I think it states that you look to an  
18 existing structure first if it's an optimal site.  
19 So you know, it's very close to residents. I don't  
20 know if this is an optimal site. If this is it and  
21 there's nowhere else to go, you go to the next stop.  
22 If it's going on a building, there's nothing else,  
23 that's not an option, then the last resort is its  
24 own tower if it's needed in the area.

25 MR. BORSINGER: A new tower may not be

1 a bad option. We are having to look at Verizon,  
2 AT&T, Sprint, T-Mobile. I don't know. If Sprint  
3 came in here, I don't know where they would put it.  
4 They would have to build a new tower and if you  
5 build a tower at Gloria Dei, maybe you could put  
6 four or five carriers on there. From our  
7 standpoint, it might make more sense.

8 MR. FERRARO: We are presenting this  
9 particular application at this particular site. I  
10 have to operate under the statutory criteria for the  
11 granting of a use variance. I cannot assume all  
12 these other things are going to happen.

13 MR. BORSINGER: I understand. I am  
14 pointing to: I don't think due diligence was done  
15 for the location that included the possible  
16 standalone tower at the Gloria Dei site.

17 MR. FERRARO: I would submit to the  
18 Board that per the case law, we had to make a good-  
19 faith effort to utilize existing structures. We are  
20 not required to rule out every possible property  
21 where you can put a new tower because, quite  
22 frankly, that's every property in town you can  
23 potentially put a tower on.

24 MR. BORSINGER: From our standpoint,  
25 we have to look at multiple carriers and now, PSE&G

1 is telling us you can only put one carrier per tower  
2 so, you know, it doesn't make -- when you look at it  
3 in the aggregate with the number of carriers looking  
4 to put up towers, it may make more sense to put up a  
5 new tower with multiple carriers than to put up all  
6 those different sites along the PSE&G lines.

7 MR. FERRARO: We are just speculating  
8 and talking now. That's not going to happen here.  
9 You already have all the carriers picking their  
10 towers and there are PSE&G towers in this area.  
11 They have their sites.

12 MR. WILLIAMS: This one is really hard  
13 for me because, if we put it anywhere but here, this  
14 would be easy. It isn't easy and yet, the other  
15 side of me says that, if this goes to a judge, I'm  
16 not a lawyer, but we will lose. If we turn this  
17 down, we will lose. The opposition to this is  
18 strong. It's obviously intensely felt but it's no  
19 more stronger opinions than all the other ones that  
20 we approved. That is just my opinion so we will  
21 lose if this goes to appeal.

22 MR. WESTON: I'm not troubled by that.  
23 If an applicant is presenting material and asking me  
24 to vote, I'm not in the business of picking a  
25 winner. I'm going to hear the evidence and I

1 understand --

2 MR. WILLIAMS: If we are going uphill  
3 on every one of these, how are we helping the  
4 township if we are always going to lose every one of  
5 these other than, we feel better about it because we  
6 are supporting the people in town and I love doing  
7 that. Trust me, I do. If we are going to end up  
8 losing them anyway, what are we doing? We should be  
9 pushing the stuff that Tina is talking about,  
10 getting another solution here so we don't have every  
11 tower in this town that is going to be pushed on  
12 this Board over the next ten years. Every single  
13 inch of this town is going to be pushed on by these  
14 carriers. We are going to be doing this for the  
15 rest of our careers on this Board.

16 MR. WESTON: That's one of the reasons  
17 I made the reference to the guideline. Working off  
18 the alternatives, I mean, down the road, down the  
19 road, "I need a decision now" and everything is  
20 hypothetical but my question would be: If this  
21 tower did not exist, where would you go? What would  
22 you do if this tower didn't exist?

23 MR. FERRARO: We don't have to answer  
24 that question because I couldn't possibly answer  
25 that question. You know, luckily, we do not have to

1 answer that question. There is a tower here.  
2 There's a 132-1/2-foot-tall electronic transmission  
3 tower; there's two of them. It seems like the  
4 people in this room love their neighborhood  
5 regardless of these utility right of ways. This is  
6 a very small installation when compared to the size  
7 of those facilities. It blends in with the existing  
8 facility. I mean, the standard here is whether it  
9 rises to a substantial detriment. That is a  
10 significant threshold.

11 CHAIRMAN VIVONA: Well, it's also  
12 improving a significant deficit in your coverage and  
13 "significant" is the big word.

14 MR. FERRARO: That's not the standard.  
15 The standard in New Jersey is: You have to show an  
16 area of deficient coverage. The New Jersey case law  
17 is clear on that. There's no New Jersey case which  
18 requires demonstration of a significant gap in  
19 coverage. That is a claim under the  
20 Telecommunications Act. You are claiming that the  
21 service is -- the town's actions are a total  
22 prohibition on service, then you have to demonstrate  
23 a significant gap in coverage but the New Jersey  
24 courts have not adopted that standard.

25 MR. SHAW: You don't get to that issue

1 because of the Municipal Land Use Law with a more  
2 liberal standard than the federal standard so the  
3 New Jersey case law is applied in terms of the  
4 significance. The burden is to establish that there  
5 is a gap in coverage, not to quantify how  
6 significant that gap is although, I would note, if  
7 you get to the point of evaluating the positive and  
8 negative criteria, the significance of a gap in  
9 coverage can be incorporated into analysis of what  
10 the negative impacts are. That was essentially what  
11 was done by the Appellate Division in the  
12 Bernardsville case that was decided last year. It's  
13 not a determination that the carrier has to  
14 establish a significant gap. It's a burden but the  
15 number of users impacted by a gap can be a  
16 consideration in the Board's balancing and  
17 consideration.

18 MR. FERRARO: Just what I'd submit on  
19 that fact, you had Mr. Pierson. He's an expert  
20 doing this for 30 years. He considers this  
21 particular gap significant and the Board retained  
22 its own radio frequency expert that agreed with Mr.  
23 Pierson's testimony. Unless we are going to discard  
24 both of their 60-years combined of radio frequency  
25 experience and supplant their opinion with our own,

1 I think we established quite clearly there is a gap  
2 in coverage in this area.

3 CHAIRMAN VIVONA: Well...

4 MR. HYLAND: Do you want us to vote  
5 tonight?

6 MR. FERRARO: The applicant is asking  
7 for a vote. This is a year in the making.

8 MR. HYLAND: It's a yes-or-no  
9 question.

10 MR. FERRARO: Yes.

11 MR. SHAW: Before we get to a vote, I  
12 want to double-check this.

13 Rick, we are showing you as, in  
14 addition to the April 13th, you were absent. Did  
15 you --

16 MR. WILLIAMS: I sent that in last  
17 month.

18 MS. SMITH: I don't have a signed  
19 copy. I'll ask you to send it.

20 MR. WILLIAMS: I signed it the last  
21 meeting that I was at.

22 CHAIRMAN VIVONA: All right.

23 If no one has anything else, there's  
24 no more public comment. We already had that.

25 MR. HYLAND: "Yes" means we approve

1 and "no" means we do not approve?

2 MR. SHAW: Make a motion to approve or  
3 deny. A motion to approve should be made with  
4 conditions that could include utilizing a gray wire  
5 that would be more compatible with the design. It  
6 could be a reduction in the size of the shelter.

7 CHAIRMAN VIVONA: Well, a reduction in  
8 the shelter just shows the cable bridge.

9 MR. SHAW: Right.

10 So I'm just saying, you can do a  
11 motion to approve subject to various conditions to  
12 address negative impacts or a motion to deny but it  
13 would have to be based upon a balancing of the  
14 benefits and a finding there was a substantial  
15 detriment to the public good opposed by whatever the  
16 negative impacts are.

17 MR. FERRARO: For clarification  
18 purposes, if there was a condition to reduce the  
19 size of the enclosure -- I don't have an engineering  
20 scale but -- what would happen is, we could take 15  
21 feet off of that fence line. What would happen is,  
22 the cables could be run underground. Just know that  
23 they would have to come up out of the ground 4 feet  
24 from the pole because that is where the foundation  
25 is and then it would come up to a level of,

1 approximately, 10 feet and then into the pole. So  
2 that's what you would be seeing, a 4-foot section of  
3 the cable tray.

4 CHAIRMAN VIVONA: That would be on the  
5 side away from Pine Street?

6 MR. FERRARO: Yes. From Pine Street  
7 itself, it would be on the opposite side of the  
8 pole.

9 CHAIRMAN VIVONA: So our concerns are  
10 a smaller enclosure. We discussed the fence, the  
11 sound-deadening on the roof of the canopy, gray  
12 cables. The antennas, you said, come white?

13 MR. FERRARO: They come off-white;  
14 they can be painted any color. The tower is gray.

15 MR. SHAW: I think the decision was  
16 the off-white was less visible in the sky on other  
17 applications.

18 CHAIRMAN VIVONA: What about the  
19 foliage?

20 MR. SHAW: I think that's in the  
21 application.

22 MR. FERRARO: It's on the plan, the  
23 landscaping.

24 CHAIRMAN VIVONA: The lights are on  
25 the plan, no generators.

1 MR. FERRARO: There was talk of a  
2 light being installed up under the canopy so there  
3 would be no spillage and on a timer.

4 MR. SHAW: My suggestion would be for  
5 the Board to initially entertain a motion to approve  
6 subject to those conditions.

7 CHAIRMAN VIVONA: Okay.

8 MR. SHAW: If it's unsuccessful, as  
9 previously done, we would entertain a motion to  
10 deny.

11 MR. HYLAND: So if the motion to  
12 approve fails, then we make a motion to deny?

13 MR. SHAW: Yes.

14 CHAIRMAN VIVONA: And then your vote  
15 would be opposite.

16 So I think we exhausted our questions  
17 so we will have a motion to accept this application  
18 with the conditions that were stated.

19 MR. WILLIAMS: I move that we accept  
20 the application with the conditions as stated.

21 MR. HYLAND: I'll second.

22 MS. SMITH: Chairman Vivona?

23 CHAIRMAN VIVONA: Unfortunately, I'm  
24 going to vote "no" because I would like to see the  
25 Gloria Dei facility utilized.

1 MS. SMITH: Mr. Weston?

2 MR. WESTON: No.

3 MS. SMITH: Mr. Williams?

4 MR. WILLIAMS: Yes.

5 MS. SMITH: Ms. Romano?

6 MS. ROMANO: No. I'll also -- I would  
7 like to hear more evidence on exploring other  
8 options. I think it also impacts the existing  
9 character of our community, which is Number 6 of the  
10 Master Plan and also the Master Plan about the  
11 promoting to reduce traffic and I think more  
12 vehicles will be going down this road and to  
13 facilitate the safety and enjoyment of the public  
14 and with the public being present, I also think that  
15 is a detriment to the application.

16 MS. SMITH: Mr. Borsinger?

17 MR. BORSINGER: Given that I think  
18 there are other options that weren't given due  
19 diligence, I say "no."

20 MS. SMITH: Mr. Hyland?

21 MR. HYLAND: I vote "yes."

22 MS. SMITH: Mr. Hurring?

23 MR. HURRING: Yes.

24 MR. SHAW: Okay. The application is  
25 defeated by 4 to 3.



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I, ALISON GULINO, a Certified Court Reporter, Registered Professional Reporter and Notary Public of the State of New Jersey, do hereby state that the foregoing is a true and accurate verbatim transcript of my stenographic notes of the within proceedings, to the best of my ability.

\_\_\_\_\_  
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