

TOWNSHIP OF CHATHAM
ZONING BOARD OF ADJUSTMENT

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IN THE MATTER OF: :
: TRANSCRIPT
CASE NO. BOA 17-63-21.01, : OF
T-MOBILE NORTHEAST, LLC : PROCEEDINGS
BLOCK: 63, LOT 21.01 :

:

Thursday, November 16, 2017
Municipal Building
54 Fairmount Avenue
Chatham, New Jersey 07928
Commencing at 8:07 p.m.

BOARD MEMBERS PRESENT:

TONY VIVONA, Chairman
TINA ROMANO
MICHAEL HYLAND
RICK WILLIAMS
WILLIAM STYPLE
JON WESTON
PAIGE LaBADIE

ALSO PRESENT:

MARGARET SMITH, Secretary
ROBERT A. MICHAELS, P.P., Planner
JOHN K. RUSCHKE, P.E., Engineer
BRUCE A. EISENSTEIN, Ph.D., RF Consultant

MICHELE QUICK
CERTIFIED COURT REPORTER

QUICK COURT REPORTING, LLC
47 BRIAN ROAD
WEST CALDWELL, NEW JERSEY 07006
(973) 618-0872
office@quickreporters.com

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

STEPHEN H. SHAW, ESQ.
Counsel for the Board

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Mack-Cali Corporate Center
50 Tice Boulevard
Woodcliff Lake, New Jersey 07677
By: JENNIFER KNARICH, ESQ.
Counsel for the Applicant

I N D E X

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1 CHAIRMAN VIVONA: All right. Next,
2 calendar BOA 17-63-21.01, T-Mobile Northeast, River
3 Road.

4 You're on.

5 MS. KNARICH: Great. Good evening,
6 Chairman, ladies and gentlemen of the Board,
7 Jennifer Knarich from Price, Meese, Shulman &
8 D'Arminio on behalf of the applicant, T-Mobile
9 Northeast. This is a continued hearing, we were
10 last before the Board on October 19. At that time,
11 this was a request that the Board deem the
12 application approved under the federal collocation
13 law as an eligible facilities request. As testified
14 to by our professionals at the last meeting, a use
15 variances has already been approved for Verizon
16 Wireless to be upon an existing 138-foot tower,
17 JCP&L tower, to be exact. That is located at River
18 Road, Chatham, Block 63, Lot 21.01. While the size
19 of the antennas and the proximity of the equipment
20 cabinets would otherwise trigger variance relief
21 pursuant to Chatham's wireless ordinance, federal
22 law permits carriers to select its technology and
23 preempt review provided the modification is not a
24 substantial change. We did provide testimony as to
25 why we feel it is not a substantial change and why

1 we need that requirement under the federal
2 collocation law as an eligible facilities request.

3 We concluded -- the applicant concluded
4 testimony from the engineer, the RF engineer, as
5 well as FCC compliance; however, there were a few
6 items that the Board requested that our RF engineer
7 look at so I'd like to put him on first just to
8 address those questions that the Board had, unless
9 there's other housekeeping items that you guys have.

10 CHAIRMAN VIVONA: Not that I'm aware.

11 MR. SHAW: Not that I'm aware.

12 MS. KNARICH: Okay.

13 CHAIRMAN VIVONA: Okay, and you were
14 sworn in last time so you can just --

15 MR. FEEHAN: Yes.

16 CHAIRMAN VIVONA: -- state your name
17 for the record again and we'll start.

18 MR. FEEHAN: Adam Feehan.

19 A D A M F E E H A N, having been previously sworn,
20 testified as follows:

21 MR. FEEHAN: So one of the things that
22 was asked to be reviewed last time was the existing
23 700-megahertz coverage because I previously did not
24 bring it, I only brought the 2100 megahertz
25 coverage. So this is the existing 2100 -- sorry,

1 700-megahertz coverage, and as I testified to --

2 MR. HYLAND: Excuse me, can you --

3 MR. FEEHAN: Yeah, sorry.

4 MR. HYLAND: Thanks.

5 MS. KNARICH: Do you want to mark that
6 in?

7 MR. SHAW: If that's the existing.

8 (Mr. Feehan moves board.)

9 MR. HYLAND: That's great, that's more
10 than enough.

11 MR. FEEHAN: There good?

12 (Mr. Hyland nods.)

13 MR. FEEHAN: We need to mark this.

14 MR. SHAW: It's A-16 with today's
15 date. And it's 700-megahertz coverage?

16 MR. FEEHAN: Yes.

17 MS. KNARICH: Correct.

18 MR. FEEHAN: A-16 and today's the
19 16th?

20 MR. SHAW: Yup.

21 (Site map with overlays is marked as Exhibit
22 A-16.)

23 MR. FEEHAN: So the first overlay, I
24 already have the first overlay, the base map is the
25 same base map as the 2100, I just figured I'd come

1 prepared with the whole set rather than take the
2 other one apart.

3 The first overlay is the existing 700-
4 megahertz coverage. As you can see, as I talked
5 about last time, that the gap would probably be a
6 small gap and it would be located in the southeast,
7 so that's where the gap is still located. So that
8 shows the existing coverage.

9 MR. HYLAND: Pink is the gap?

10 MR. FEEHAN: What's that?

11 MR. HYLAND: Pink is the gap?

12 MR. FEEHAN: Yes, pink is the gap for
13 700 megahertz because 700 megahertz covers better
14 than the higher frequencies; therefore, the gap
15 would be smaller.

16 The coverage which could be -- the
17 coverage which is obtained from the proposed site is
18 not too much incremental coverage down to the
19 southeast, too much additional in the 700-megahertz
20 gap, again, because the gap is further away from the
21 site just because 700 megahertz covers further. So
22 you requested that I bring the 700-megahertz plot so
23 that's what I brought here.

24 One of the other questions that was
25 brought up was why couldn't we go below the Verizon

1 Wireless antennas, and correct me if I'm wrong,
2 there was an older application from 2010 which did
3 have a proposal for antennas below the Verizon
4 Wireless antennas. I reached out to people who were
5 in charge of the project at that time, which they
6 are in contact with JCP&L. At that time, JCP&L
7 allowed antennas to go below the Verizon antennas or
8 into, I'm not sure of the terminology but it's
9 closer to the transmission lines there. They no
10 longer allow the antennas to go below those Verizon
11 antennas on this site, that's why they're above. So
12 we don't have that option, it's out of our hands in
13 order to choose whether we go above or below.
14 Because we didn't have that option, I didn't look at
15 locating below because it's not -- it wasn't our
16 choice to put them below.

17 MR. HYLAND: And the 700 -- what's the
18 terminology, 700 --

19 MR. FEEHAN: 700-megahertz?

20 MR. HYLAND: -- megahertz antennas --

21 MR. FEEHAN: Yes.

22 MR. HYLAND: -- we're going to have
23 three of those, that's what you're applying for?

24 MR. FEEHAN: Yes, there's one in each
25 sector here, one points to the northeast, one points

1 to the southeast, and one to the southwest.

2 MR. HYLAND: And those are the largest
3 of the antennas that are going up.

4 MR. FEEHAN: Yes, those are the large
5 antennas, I believe they're 7.75 feet. And the
6 reason we try to deploy the larger antennas -- I
7 talked about it last time. The larger the antenna,
8 the more gain which a site has, which, if you point
9 it in the right direction, can allow you to cover
10 further. So that's the idea, by deploying the
11 largest or the highest gain antennas at sites, you
12 limit the overall total number of sites and improve
13 coverage. By going to a smaller antenna, that
14 coverage which is provided gets pulled back based on
15 the gain.

16 MR. HYLAND: Okay, so it was just --
17 it was brought up by the public that the larger
18 antennas were the most unsightly.

19 MR. FEEHAN: Um-hum.

20 MR. HYLAND: And so I'm going to try
21 and re -- I'm going to ask you to re-say what you
22 just said to help me understand why you need those
23 big ugly antennas, "ugly" being someone else's word,
24 given that it doesn't appear that they're doing much
25 for you, if anything.

1 MR. FEEHAN: Yeah, in this -- in this
2 specific scenario -- I did take a closer look at
3 this area. In some areas, like I said, the larger
4 antennas which have more gain are going to have a
5 greater effect than others. It depends on the type
6 of environment, the type of losses which are being
7 incurred along the way, and in this specific case,
8 it doesn't do as much for us as I would like and I
9 would love to be able to fill that whole gap, I'd
10 like to say that that gap will be filled based on
11 the proposed for 700 megahertz, but it's just simply
12 not for this case. There's still a little bit
13 remaining. We do fill some of it; as you can see,
14 there's some areas in which there's new coverage
15 provided to the southeast, but I'm not filling that
16 whole gap with this. But like I said before, the
17 idea of putting the larger antennas in there is in
18 order to provide the most coverage we can possible.
19 If we did shrink to smaller antennas, the amount
20 we're covering of that gap would pull back.

21 MR. HYLAND: And where are the 700-
22 megahertz antennas that are providing all of this
23 service right now?

24 MR. FEEHAN: I'm just going to flip it
25 back up --

1 MR. HYLAND: Yeah.

2 MR. FEEHAN: -- just so we can see it
3 because I know it blocks out some of the colors
4 there, but you can see them -- they're identified on
5 this exhibit by the pink, the purple dots.

6 MR. HYLAND: Okay.

7 MR. FEEHAN: There's one to the
8 southwest here (indicating), there's one to the
9 south and there's two that are actually off the
10 screen. I wanted to -- I pointed them out, there's
11 an arrow pointing in that direction, just because --
12 in case that question came up, where is that
13 coverage coming from. They're coming from two sites
14 which are located off of the screen. None of the
15 coverage down below the hill going on this line I'm
16 drawing here from the left to the right on the
17 exhibit, no coverage is being provided from above
18 that hill because it doesn't -- it's not able to
19 clear that hill and go down here (indicating).

20 MR. HYLAND: And the pink dot in the
21 middle of the map is --

22 MR. FEEHAN: That's the proposed.

23 MR. HYLAND: -- the proposed.

24 MR. FEEHAN: That's the proposed
25 location, yes.

1 MR. HYLAND: Okay.

2 CHAIRMAN VIVONA: So there's a
3 municipal lot on the other side of, I guess that's
4 Passaic Street -- everything's either Passaic,
5 Mountain or River -- and it's actually probably
6 maybe 500 feet from the tower, you're proposing
7 something in that lot to fill your lot better or is
8 that lot not --

9 MR. FEEHAN: What's the direction? To
10 the east?

11 CHAIRMAN VIVONA: To the east.

12 MR. FEEHAN: Up north as well?

13 MR. STYPLE: It's what the proposal
14 says.

15 MR. FEEHAN: It's labeled on my
16 Exhibit A-16 here?

17 CHAIRMAN VIVONA: Yeah. Or is that
18 actually further away from your area?

19 MR. FEEHAN: It's a little bit further
20 away, I mean, it could depend on topography but it
21 appears that that site is actually a little bit
22 lower and a little bit further away, so I don't
23 think it would be able to fill that gap better, no.

24 CHAIRMAN VIVONA: Okay. And it's just
25 such a minimal gain, really.

1 MR. FEEHAN: Well, the purpose -- when
2 we talked about it last meeting, we looked at the
3 incremental coverage for the 2100 megahertz because
4 that was a significant amount.

5 CHAIRMAN VIVONA: Right.

6 MR. FEEHAN: Just because we're at a
7 lower frequency, the gap to be covered here is not
8 as much, just because 700 megahertz covers a further
9 distance.

10 CHAIRMAN VIVONA: Right, and 700
11 megahertz, that's more for the old technology?

12 MR. FEEHAN: No.

13 CHAIRMAN VIVONA: Or is it --

14 MR. FEEHAN: 700 megahertz is a -- is
15 T-Mobile's smaller LTE channel, it's their 5-
16 megahertz LTE channel. So it provides data
17 services, which includes voice-over LTE, otherwise
18 known as VOLTE, so you can make calls on it or you
19 can do data transmissions as well.

20 CHAIRMAN VIVONA: Okay. Because I was
21 just thinking, if we didn't put those antennas up
22 and had the other ones that are smaller and less --
23 less visible, being the limited amount of gain
24 you're getting, if that was a possibility.

25 MR. FEEHAN: I mean, what I can say we

1 can do, if it's, you know, a huge issue on being the
2 larger antenna, there is a smaller version of it,
3 it's a 6-foot version, which would match the
4 existing Verizon antennas up there, so it wouldn't
5 be any larger than the ones that you see. If that's
6 something that you feel that needs to happen, we're
7 willing to compromise on that and reduce the size of
8 the 8-foot -- 7.75-foot antenna to a 6-foot antenna,
9 if that's what you'd like.

10 MS. KNARICH: To be consistent with
11 what's up there now?

12 MR. FEEHAN: Yes.

13 MS. ROMANO: But don't you need the
14 larger antennas to get further, so wouldn't you
15 actually cover less?

16 MR. FEEHAN: It would be covering less
17 but we're saying the scenario is, taking the antenna
18 away, we'd rather have the antenna there that
19 doesn't cover as much rather than no antenna at all.

20 MS. ROMANO: But it looks like, in
21 that area, you're fully covered anyway. You were
22 trying to get the bigger antennas just to cover a
23 little bit more of the pink, which didn't really
24 achieve that anyway. It was a very small amount so
25 it's like, if we do the smaller ones, then it's even

1 achieving less of that, so I feel like it's either
2 just none --

3 MR. FEEHAN: Yes, but it's not doing
4 nothing, it still will provide additional capacity
5 to the system, and as I talked about last meeting,
6 if you're installing a facility in one location and
7 you have three LTE channels, it would be silly to
8 not put all three LTE channels there because, in the
9 future, if you do have a capacity problem, it might
10 have been mitigated already by having that
11 additional channel and then we'd have to go and
12 install the additional equipment and maybe have to
13 come back, I'm not sure what would happen, but
14 possibly have to come back before the Board in order
15 to put that extra up there while we could have
16 solved the problem already.

17 MR. SHAW: Dr. Eisenstein?

18 DR. EISENSTEIN: So you get more gain
19 from the larger antenna but you also lose beamwidth.

20 MR. FEEHAN: Yes.

21 DR. EISENSTEIN: Tell me how that
22 trades off. It looks like you lose coverage also
23 with the larger antenna because you're losing the
24 spread.

25 MR. FEEHAN: Well, if you put a

1 shorter antenna, as you said, the vertical beamwidth
2 would increase because it has to be proportional to
3 the gain, but you would just down-tilt it in order
4 to not -- sorry.

5 DR. EISENSTEIN: I was thinking more
6 about the horizontal spread, the fan.

7 MR. FEEHAN: Oh.

8 DR. EISENSTEIN: You're going to lose
9 beamwidth there because if you raise the gain of the
10 antenna, you shorten that thing in. You're not
11 going to get, for example, 120 degrees out of a
12 live-gain antenna.

13 MR. FEEHAN: Um-hum. I mean, that's
14 why we're using three sectors. We're up against a
15 cliff here and so, normally, you know, we point the
16 sectors in three directions, quasi-omnidirectional,
17 in an attempt to cover 360 degrees, but since we're
18 only doing 180, you can make that sacrifice here.

19 DR. EISENSTEIN: Well, let me ask you
20 this: In numbers, for your 7-foot antenna, what's
21 the gain of that?

22 MR. FEEHAN: I have it written down.
23 I believe I brought those sheets. Yeah.

24 MR. HYLAND: So just to refresh my
25 memory while you're looking that up, you're applying

1 for 12 antennas and the current application is nine
2 small ones and three big ones?

3 MS. KNARICH: Yeah, that's correct,
4 right? 12 total?

5 MR. FEEHAN: It's, yes, it's the 180
6 sector so three 7.75-foot antennas, and I guess if
7 we're calling the other six the small ones, then
8 yes, six small ones.

9 MR. HYLAND: Nine small ones?

10 MR. FEEHAN: Six small ones.

11 CHAIRMAN VIVONA: Nine total.

12 MS. KNARICH: Nine antennas.

13 MR. HYLAND: Very good.

14 MR. FEEHAN: Nine total antennas.

15 MR. HYLAND: Yes. Thank you.

16 MS. ROMANO: But three of them are the
17 700?

18 MR. FEEHAN: Yes, one in each sector.

19 The gain for the 7.75-foot antenna,
20 I'll give it to you in DBI, is --

21 DR. EISENSTEIN: DBI's fine.

22 MR. FEEHAN: -- 16.2.

23 DR. EISENSTEIN: And what's the
24 beamwidth of that?

25 MR. FEEHAN: The beam -- the

1 horizontal?

2 DR. EISENSTEIN: The horizontal, yeah,
3 the fan.

4 MR. FEEHAN: The horizontal beamwidth
5 is 67 degrees.

6 DR. EISENSTEIN: That's what I
7 thought. Okay, and for the 6-foot antenna, what's
8 the gain of that?

9 MR. FEEHAN: 15.5.

10 DR. EISENSTEIN: How do you get more
11 gain from a smaller antenna?

12 MR. FEEHAN: The first one's 16.2 and
13 then 15.5.

14 DR. EISENSTEIN: Oh, 15.50.

15 MR. FEEHAN: Yes.

16 DR. EISENSTEIN: I thought you said
17 16. 15.5 --

18 MR. FEEHAN: And then the horizontal
19 beamwidth is 67.

20 DR. EISENSTEIN: So also 67?

21 MR. FEEHAN: Yes. The vertical
22 beamwidth is the one that changes in this case.

23 DR. EISENSTEIN: So I think we can
24 agree that it's a minimal difference. I mean,
25 you're not gaining much.

1 MR. FEEHAN: Yeah, that's why I'm
2 saying, based on the amount that we're gaining, I'm
3 okay going to the 6-foot-size antenna, similar to
4 the ones that Verizon Wireless already has deployed
5 on there, same size.

6 DR. EISENSTEIN: Right.

7 So, Mr. Chairman, it seems to make very
8 little difference for the 6-foot antenna versus the
9 7-foot antenna in terms of their coverage.

10 CHAIRMAN VIVONA: Okay.

11 MR. HYLAND: So what's the difference,
12 though, between the 7-foot antenna and no antenna at
13 all?

14 DR. EISENSTEIN: Well, that -- that
15 would be -- they'd have to show the plot without
16 anything on there. What would you lose -- if you
17 took away all the antennas at 700 --

18 MR. HYLAND: No, no, just the 700 --

19 MR. FEEHAN: That was the first plot
20 that I showed you.

21 MR. HYLAND: I agree.

22 MR. FEEHAN: Yeah.

23 MR. HYLAND: It was virtually nothing
24 and it seems like the public has a big problem with
25 these antennas so we're trying to get away with as

1 few as we can.

2 DR. EISENSTEIN: Yeah, I think the
3 problem is that they're licensed at that frequency
4 and they're entitled to coverage at that frequency
5 for that band.

6 MR. HYLAND: So could you expand on
7 that, please?

8 DR. EISENSTEIN: For all practical
9 purposes, when the company gets a license for a band
10 of frequencies, it's almost like they're separate
11 companies, so if they have 1900, they get to cover
12 1900; if there's 700, they get to cover 700 and you
13 can't say "Well, you have 1900 so you don't need the
14 700." They have the license there from the FCC and,
15 as a result, they're entitled to their coverage.
16 So, you know, the idea would be, if they already
17 have existing coverage and they're getting a minimal
18 increase, then, you know, that's a -- that's sort of
19 a Board decision of whether or not it's a minimal
20 increase in coverage, but you can't say that they're
21 not entitled to the thing altogether. They might --
22 like, for example, to address your capacity issue
23 down the road, you could have a smaller antenna and
24 just not worry about the gain, just have the
25 capacity issue addressed in close to the site.

1 MR. FEEHAN: Sorry, could you rephrase
2 that?

3 DR. EISENSTEIN: Sure. Right now,
4 there's no capacity issue, right? You're not making
5 a capacity claim.

6 MR. FEEHAN: I'm not making an
7 argument of that, no.

8 DR. EISENSTEIN: Okay. So in the
9 future, you might have a capacity issue and you
10 would need the 700. So if you had small antennas,
11 smaller than even the 6-foot, that were doing 700,
12 that would cover you in close, it would give you a
13 better spread, like, you might be able to get 120
14 degrees out of a smaller antenna because you don't
15 have as much gain out of it, a physically smaller
16 antenna, and then at some later time when the
17 capacity issue came up, you'd have the in-close
18 coverage to the site that could offload capacity
19 from one of the more distant sites. So, I mean, I'm
20 just giving you a possibility where you're still
21 getting a piece of 700 coverage but you're
22 satisfying the argument that they don't want the
23 extra-large antennas up there.

24 MR. FEEHAN: I mean, I thought we were
25 satisfying the argument by shrinking the antenna

1 from the 7.75 to the 6-foot, which is already there.

2 DR. EISENSTEIN: All right, so that is
3 completely a Board decision, that's not something I
4 can opine on. If you think, as a Board, 6 feet is
5 better than 7 -- what is it 7.75?

6 MR. FEEHAN: 7.75, yeah.

7 DR. EISENSTEIN: So you're saying a
8 foot and three quarters on the size. That's a Board
9 decision. I would argue that they're getting very
10 little from a radio frequency point of view out of
11 that, so if that was the only decision, I'd say go
12 to the 6-foot one because it's smaller, but you
13 know, it's not -- it's not going to be invisible by
14 going down that one-and-three-quarter feet. As a
15 matter of fact, on top of a 138-foot distance, I
16 don't think, with your eye, you'd be able to see the
17 difference.

18 MR. FEEHAN: And just to reiterate,
19 those are the same sizes which Verizon Wireless,
20 who's already there, that's the size of their larger
21 antennas.

22 CHAIRMAN VIVONA: Right.

23 MR. HYLAND: Okay.

24 CHAIRMAN VIVONA: Well, then I'm
25 inclined to lean towards the smaller. Basically,

1 when you said they're -- I forget what you said,
2 inclined to or -- they're actually required to
3 provide coverage for their license.

4 DR. EISENSTEIN: Well, they have the
5 right. They have the right to fill their -- each of
6 their licenses separately. That is their right
7 since they purchased those frequency bands and the
8 FCC says if you purchase them, you have a right to
9 fill them. Now, the FCC could also argue, if
10 they're not providing coverage in one of the bands,
11 at some point in time, not based on just this
12 application, but at some point in time, the FCC
13 could say "You're not filling that -- your band out,
14 we want to take those bands away from you and give
15 it to someone that will use it."

16 CHAIRMAN VIVONA: Okay.

17 DR. EISENSTEIN: So the providers
18 would almost -- if they paid the money for a license
19 for a certain band, they want to -- they want to put
20 equipment in and fill that band.

21 MS. ROMANO: But --

22 DR. EISENSTEIN: And 700's a good one
23 for them because that's where -- that's your 4G
24 system right now, right?

25 MR. FEEHAN: Yes.

1 DR. EISENSTEIN: Yeah, so that's their
2 good system.

3 MS. ROMANO: But isn't the bands
4 already filled if that's the green? Right, isn't
5 the green already solid coverage? Isn't it if you
6 have too much, isn't that kind of like interference,
7 like, don't you --

8 DR. EISENSTEIN: Well, you could speak
9 to that. What about the equivalent of co-channel
10 interference? I know it's a CDMA system, but you
11 get the equivalent of co-channel interference -- you
12 want to speak to that -- if you have too much
13 coverage?

14 MR. FEEHAN: Yeah, you don't want to
15 have too much coverage in one area, that's true, so
16 I understand where you're coming with that.

17 MS. ROMANO: Because it seems like
18 it's just getting darker green. Like, it's already
19 green and then you add more and it's just super-dark
20 green --

21 MR. FEEHAN: Yeah.

22 MS. ROMANO: -- so I thought, you
23 know, just in the past, everything that we're
24 seeing, you have an interference issue.

25 MR. FEEHAN: So one of the ways you

1 mitigate that is by down-tilting the antennas and
2 you want to try to limit the borders which they're
3 crossing. If you have a site which covers, you
4 know, one square mile by itself and you have another
5 site which is coming from a very large distance
6 away, which you don't want to cover that area, then
7 you could have an interference issue, but if we have
8 an area -- as you see up there, it's a large area
9 being covered by a few sites. You like to be able
10 to divide up that usage to avoid a capacity problem
11 in the future. A capacity problem occurs when one
12 site is covering a very large area by itself, so
13 we're trying to do preventive maintenance here as
14 opposed to address the problem while it's already
15 occurring.

16 MS. ROMANO: But this isn't one site
17 covering all that green already, right?

18 MR. FEEHAN: No, there's a couple
19 sites covering that area but they are covering, in
20 my opinion, a very large area.

21 MS. ROMANO: Okay. So this is just
22 kind of help --

23 DR. EISENSTEIN: From the other sites,
24 it's only the sector that's pointing in the
25 direction. They may have another site somewhere

1 that also has three antenna sectors around it
2 pointing in different directions. Only the ones
3 pointing towards the area we're looking at are
4 covering it, so from their point of view, what he's
5 saying is that if a capacity problem arises in the
6 future, those sites would get overloaded, they
7 wouldn't be able to handle the issue, but as of
8 right now, he's not making a capacity argument, this
9 is purely for the future, and you know, I guess
10 that's one of the questions the Board would have:
11 If they do hit a capacity issue, which I could tell
12 from you my experience, inevitably, they will, I
13 mean, there's no -- there's no doubt about that
14 because the capacity's growing quite rapidly, the
15 demand for capacity, so they are going to hit it at
16 some point. They would have to come back to the
17 Board and, you know, at that point, I guess that
18 would be a 6409(a) type thing because you'd have
19 existing antennas up there. I think they would be
20 able to put the new antennas up as a matter of
21 right.

22 MS. ROMANO: So you would replace
23 these antennas, like, in the future?

24 DR. EISENSTEIN: I don't think they
25 would replace, they'd need new antennas for a

1 different band. Well, that raises another --
2 actually, it's another interesting point.

3 Aren't there multiband antennas?

4 MR. FEEHAN: There are some, yes, but
5 they, of course, come with some drawbacks. So a
6 multiband antenna, in order to do multiple bands,
7 they have to do some stuff on the inside which would
8 reduce the gain at various bands similar to, like,
9 what a diplexer would do. If you combine different
10 frequencies onto one element, there has to be some
11 sort of loss in effect, you can't perfectly mix
12 everything together and have the same amount of
13 gains.

14 DR. EISENSTEIN: Are you putting radio
15 heads behind these antennas?

16 MR. FEEHAN: For the 700 megahertz?
17 I'd have to look at that. I'm not sure off the top
18 of my head if there's one right there.

19 DR. EISENSTEIN: So the diplexer could
20 be done with the radio heads. You could get by with
21 -- I would think you could get by with one set of
22 antennas that could handle your frequencies and then
23 put a radio head behind them that would then do the
24 diplexing.

25 MR. FEEHAN: I'd have to take a

1 further look at that, but if I could address one
2 other thing that we were talking about before, not
3 to jump off topic here, but with the 700-megahertz
4 frequency, if we remember the first map, the 2100
5 map, there were still some gaps in coverage which we
6 need to be able to remedy, so the only thing that
7 would be able to cover them from T-Mobile's network
8 is that 700-megahertz frequency, so when a capacity
9 problem arises in the future, I believe it's going
10 to occur on the 700-megahertz frequency first
11 because it's hitting those areas which the 2100
12 isn't covering. So that's why I want to try to
13 mitigate the problem before it happens.

14 DR. EISENSTEIN: Could I ask you to do
15 something for me because --

16 MR. FEEHAN: Sure.

17 DR. EISENSTEIN: Refresh my memory.
18 Could you show me what the existing coverage is at
19 700 and what the new coverage is --

20 MR. FEEHAN: Yeah.

21 DR. EISENSTEIN: -- that you're
22 proposing with the -- I know you did it with the
23 larger antennas. I just want to see what that
24 difference looks like.

25 MR. FEEHAN: The difference is really

1 only seen down in this bottom here. But this is the
2 existing coverage, the first one here, for 700.

3 DR. EISENSTEIN: This is existing
4 coverage.

5 MR. FEEHAN: Yes.

6 DR. EISENSTEIN: And that brownish-
7 greenish --

8 MR. FEEHAN: Green is in-building.

9 DR. EISENSTEIN: -- thing. At what
10 level?

11 MR. FEEHAN: Minus 97.

12 DR. EISENSTEIN: Why are you doing --
13 oh, minus 97, okay, that's okay. All right, go
14 ahead.

15 MR. FEEHAN: And the proposed coverage
16 area down --

17 DR. EISENSTEIN: So just flip it for
18 me so I could just see -- don't take it all the way
19 up, just take it enough so I can see.

20 (Mr. Feehan complies.)

21 DR. EISENSTEIN: Okay, well, that's --

22 MS. ROMANO: But that's with the
23 larger antennas too, though, right?

24 DR. EISENSTEIN: That's statement in
25 this, I mean, that's --

1 MS. ROMANO: So, like, if you did the
2 smaller antennas, you probably wouldn't even get to
3 that pink area.

4 DR. EISENSTEIN: You wouldn't even get
5 to that, yeah.

6 MR. MICHAELS: If I may, Mr. Chairman,
7 in reference to the ordinance, the ordinance has a
8 limit of five-foot antennas, so they're coming
9 closer to what the ordinance limit is if they reduce
10 it from 7.75 to 6 feet, so that, from an ordinance
11 point of view, is getting closer to conformance.

12 MR. HYLAND: So could I ask a
13 hypothetical question? Let's say that an area from
14 some hypothetical carrier is all green but they
15 decide that they want to go into the middle of that
16 area and add additional coverage. It seems like, as
17 a Board, we're kind of hamstrung on most of these --
18 we have to approve them once they've gone through --

19 DR. EISENSTEIN: No, no.

20 MR. HYLAND: Well --

21 DR. EISENSTEIN: Well --

22 MR. HYLAND: -- what are the rules
23 with respect to --

24 DR. EISENSTEIN: All right.

25 MR. HYLAND: -- adding additional

1 coverage?

2 DR. EISENSTEIN: So if they -- if
3 they're -- if I take your hypothesis at face value,
4 they have existing coverage and they come in and
5 they say, for whatever reason, "We want to add more
6 in the same area," my recommendation to the Board
7 would be to not approve it because they haven't
8 established a gap in coverage. However, however --

9 MR. HYLAND: So the gap in coverage is
10 --

11 DR. EISENSTEIN: They don't have
12 adequate coverage in that area.

13 MR. HYLAND: -- is part of the
14 foundation to the argument that they need this.

15 DR. EISENSTEIN: Sure, sure.

16 MR. HYLAND: Okay.

17 DR. EISENSTEIN: And that's like step
18 one that they have to establish. My opinion is they
19 have not established that at 700 megahertz, they
20 have not established the gap in coverage. I mean,
21 that's a de minimis gap there. So I think if the
22 Board were to -- my opinion is, if the Board were to
23 turn them down at 700, I would have no problem with
24 that. That's that.

25 There's a second issue, though, that we

1 have to understand and that is that the old way of
2 looking at coverage from cell phones was how much
3 power did you have in an area, that's what these
4 plots are showing, it's received signal power. The
5 new criteria, because everything's switching over to
6 data, and that's what LTE really means, everything,
7 including your voice, is going to be a data call,
8 not a -- not a phone call the way we normally think
9 of a phone call. The data hits a different issue
10 and that's a capacity issue. So if I take your
11 hypothesis again and they say "Look, we have
12 adequate coverage here but we need another site in
13 this area where we have adequate coverage because we
14 need the capacity, we need the extra bits per second
15 that we can generate from that and we're offloading
16 other sites, put the new site in to give us
17 capacity," the courts in New Jersey and the FCC have
18 held that a capacity constitutes a gap in coverage,
19 and that's a -- that's been -- I don't remember the
20 case citation but I've read the cases on that. So
21 they are not making a capacity issue right now but
22 they will, so really the issue is, you know, let
23 them -- let them put it up now and don't come back
24 again with a capacity question or, at some point,
25 they're going to come back again or may not come

1 back again, they may invoke what's called "Section
2 6409(a)" of the Middle Class Tax Relief Act, in
3 which case they could put their new antennas up by
4 right since it's an existing site without going
5 through any Board approval.

6 MR. HYLAND: So if we approve six,
7 they could just show up one day with their 6409 flag
8 and put three more up?

9 DR. EISENSTEIN: No. No.

10 MR. SHAW: I would also note that --

11 DR. EISENSTEIN: They wouldn't have a
12 gap.

13 MR. SHAW: Yeah. Doctor, although
14 6409 provides that they cannot deny the approval,
15 you know, I would still suggest that, you know, the
16 Board would not have the ability to deny an approval
17 because if it meets the requirements, then the
18 general welfare purposes for a use variance would be
19 met because it's necessary to satisfy the federal
20 standards.

21 DR. EISENSTEIN: Yeah, I think --

22 MR. SHAW: So I'm not sure if, you
23 know, just because you're saying 6409, the Board of
24 Adjustment disappears in the process, you know, we
25 are currently here on an application which could be

1 treated as a purely 6409 if you want it to.

2 DR. EISENSTEIN: Right.

3 MR. SHAW: You don't write out the
4 ordinances that are on the books, you figure out how
5 you can make it work together.

6 DR. EISENSTEIN: Right.

7 MR. SHAW: So I mean, basically, if
8 someone came in with an application for a different
9 antenna size, it probably would even be, you know,
10 something that the Board could not deny. The
11 administrative mechanism for reaching it, you know,
12 would be worked on.

13 DR. EISENSTEIN: They satisfy the
14 minimal amount of disruption. I mean, I think, to
15 the extent possible, the wise thing is for the Board
16 to maintain control over this and not have a
17 situation where they come in and they say "We meet
18 all the requirements of 6409, issue a construction
19 permit," because the words are -- I may have it
20 backwards but I think it says "must approve and may
21 not deny," I mean, it's --

22 MR. SHAW: Right, "may not deny."

23 DR. EISENSTEIN: Yeah.

24 MR. SHAW: Right.

25 DR. EISENSTEIN: "Must approve and may

1 not deny," the two in there, so I think that that's
2 a pretty solid condition.

3 MS. KNARICH: And actually --

4 DR. EISENSTEIN: They would have to --

5 MS. KNARICH: -- if I may --

6 DR. EISENSTEIN: -- you know -- and by
7 the way, it further says that you can't even ask
8 them for business plans or proofs.

9 MS. KNARICH: Yeah, and just for
10 purposes of the record, it states exactly, "A state
11 or local government may not deny and shall approve
12 any eligible facilities request for a modification."

13 DR. EISENSTEIN: I had --

14 MR. SHAW: Which is another way of
15 saying you grant the variances if they're necessary.

16 MS. KNARICH: I just wanted to get on
17 the record the correct definition.

18 MR. SHAW: Just so I'm understanding
19 this correctly, is part of the suggestion here that,
20 based upon the map that was presented for 700
21 megahertz, that they have not demonstrated, in your
22 opinion, a significant gap?

23 DR. EISENSTEIN: They have not
24 demonstrated a gap.

25 MR. SHAW: Not a gap, not a

1 significant gap in service.

2 DR. EISENSTEIN: Yeah, take out the
3 word "significant."

4 MR. SHAW: Right.

5 DR. EISENSTEIN: In my opinion, they
6 have not demonstrated a gap at 700 megahertz. And
7 further, I could state that it's unlikely that they
8 will ever have a coverage gap at 700 megahertz, I
9 mean, nothing's going to change that map to take
10 away existing coverage, so the only issue would be
11 if, at some future time, they have a capacity gap.

12 CHAIRMAN VIVONA: And capacity --

13 DR. EISENSTEIN: And that would be a
14 gap just the same as if it was a coverage gap.

15 CHAIRMAN VIVONA: Right, and a
16 capacity gap doesn't mean there's going to be 5,000
17 new homes, it's going to be 5,000 more phones using
18 data.

19 DR. EISENSTEIN: No, it's that all the
20 existing people are using five times as much as
21 they're using it now. More movies, more games, more
22 pictures, more videos.

23 CHAIRMAN VIVONA: Okay.

24 MS. KNARICH: And I think you have an
25 option here as to the size, but if we had to come

1 back for the additional -- for the 700 megahertz, I
2 mean, we could request for the 8 feet at that point
3 under 6409(a).

4 CHAIRMAN VIVONA: You could request
5 for the 8-foot ones?

6 MS. KNARICH: You know, file for --
7 under 6409(a), we wouldn't necessarily do 6 feet, we
8 would go for the 8 feet.

9 DR. EISENSTEIN: See, that's the other
10 catch in the Telecommunications Act, the 1996 act,
11 it says that as a Board, one of the things that you
12 can't tell them what to do is how to handle their
13 technology. So if they establish that they have a
14 need under 6409 and that they meet the requirements,
15 they can come in with whatever they want and there's
16 no Board review. There's no review that would say
17 that "No, you can only have smaller antennas." As I
18 understand the way the law is written, they would
19 just go for a construction permit.

20 MS. ROMANO: But that's after it's
21 approved? That's after we approve the 6 foot?

22 DR. EISENSTEIN: No. No, no, no.

23 MS. KNARICH: No, if you went for the
24 6 foot here, we wouldn't need to come back for the
25 8.

1 DR. EISENSTEIN: If you take what I
2 said, and that is that they have no gap at 700 --

3 MS. ROMANO: Yup.

4 DR. EISENSTEIN: -- and as a result,
5 you say "Okay, we're not approving the antennas at
6 700 because you have no coverage gap at 700," now a
7 couple years go by and they develop a capacity gap,
8 they come in and they bypass this Board altogether,
9 as I understand it, they go right for a construction
10 permit under 6409 and they say "We can put up
11 whatever antennas we need based on our assessment of
12 the technology we require," which could be 6-foot
13 antennas, it could be 10-foot antennas, it could be
14 something else.

15 MS. ROMANO: But that's on the --

16 DR. EISENSTEIN: But you would have no
17 review.

18 MS. ROMANO: No review at all.

19 DR. EISENSTEIN: No review.

20 MS. ROMANO: But it's on the existing
21 carrier. Let's say we don't approve the 700 and we
22 approve the 2100.

23 DR. EISENSTEIN: Right.

24 MS. ROMANO: They could come onto the
25 2100 and then add those 700 because of 6409?

1 DR. EISENSTEIN: 6409 would -- again,
2 if they satisfy the minimal level of disruption --

3 MS. ROMANO: Okay.

4 DR. EISENSTEIN: -- which means
5 they're not increasing the height by 10 percent or
6 20 feet, they're not increasing the stuff on the
7 ground by a certain amount. If they satisfy that
8 minimal level of disruption, it does not go before
9 this Board.

10 MS. ROMANO: Okay.

11 MR. WESTON: If we --

12 DR. EISENSTEIN: They just go in and
13 they build it.

14 MR. WESTON: If we approve tonight,
15 whatever, 6-foot antennas, is it possible that down
16 the road, they can come in and say "Our needs have
17 changed and we want 10-foot antennas" and bypass the
18 Board?

19 DR. EISENSTEIN: I think they'd have a
20 harder time on that because now what you're saying
21 is you've already approved them to handle both the
22 existing coverage gap at 2100 and a potential
23 capacity gap at 700 and I think the record would
24 then illustrate that, preemptively, they've given up
25 their right to change that. So I think that -- in

1 my opinion, that would close it from the viewpoint
2 of the site.

3 MR. WESTON: So they give up some
4 portion of their 6409 rights if we approve at 6 foot
5 tonight.

6 DR. EISENSTEIN: That would be my view
7 of it.

8 CHAIRMAN VIVONA: And just to clear my
9 head a little bit and let the public know that we
10 are -- the Board of Adjustment is limited to what we
11 can do. We can keep them within the overall height
12 limits, we can keep them to whatever restrictions we
13 want as far as, you know, covering the wires,
14 enclosures around them, make it as aesthetically
15 pleasing, if you will, as possible, but we are not
16 basically allowed to stop this, so... I know
17 everyone here wants to do a petition and fight it,
18 but all that's going to happen is, if it's denied,
19 the telecommunications companies sue the town, we
20 invest tens of thousands of dollars, and eventually,
21 they have more money and we all lose.

22 Right?

23 MR. SHAW: It's not just a question of
24 the money, it's a question of the case law and how
25 the law is developed as to how difficult it will be,

1 but you know, there are grounds for challenging the
2 Board, you know, with the information that was
3 presented, and as long as there's a rational basis
4 in the record to justify the Board's decision, I
5 mean, you know, we can take the steps to deny
6 applications but, ultimately, you know, it's a
7 pretty tough deck in terms of what the case law is
8 that you're running against.

9 CHAIRMAN VIVONA: Okay. We can't take
10 questions just yet, but you will have your
11 opportunity.

12 DR. EISENSTEIN: Could I ask one other
13 thing? Again, I'm not a planner and I didn't hear
14 the planning testimony. Is there any way that you
15 could paint these antennas so that they're not
16 ostentatious or...

17 MS. KNARICH: I'll have my planner
18 address it but, I mean, I don't see an issue, an
19 issue with it.

20 MR. FEEHAN: No RF issue.

21 MR. HYLAND: Do you have invisible
22 paint?

23 (Laughter)

24 MS. KNARICH: I think all the
25 telecommunications carriers would be using it if

1 they could.

2 MR. HYLAND: Were there any other
3 housekeeping issues from last time?

4 MR. SHAW: No, those are the issues,
5 it was to address the mapping to identify what the
6 700 megahertz actually was, what the gap was, and
7 then to find out why they could not put the antennas
8 below the existing T-Mobile antennas.

9 CHAIRMAN VIVONA: And that's due to
10 PSE&G's changing policy.

11 MS. KNARICH: JCP&L.

12 MS. ROMANO: JCP&L.

13 CHAIRMAN VIVONA: Right, JCP&L's
14 changing policy that you can't allow them that close
15 to transmission lines.

16 Okay, and there was a much larger gap
17 for the higher frequencies, the 21 and the 19.

18 MR. FEEHAN: Yes.

19 CHAIRMAN VIVONA: And those are
20 addressed by this tower, this collocation.

21 MR. FEEHAN: Yes.

22 CHAIRMAN VIVONA: Okay. And I would
23 like to reiterate that nothing on the ground would
24 change, there's already an existing structure that
25 would allow all your equipment to be housed without

1 expanding the base of the tower, there's no
2 permanent ground disfiguration, there's no
3 additional -- there won't be any additional that's
4 not on that tower as it sits, except for the --
5 obviously, the equipment. The wire would be run
6 similar to the wires that are already up there. We
7 had telecommunications in the past where they would,
8 you know, color the wires as close to the tower
9 color as possible so that it's less noticeable.
10 We'd also like the antennas to be, you know, as
11 innocuous as possible with some sort of color, which
12 I guess your planner will speak about, and I think
13 we're all in agreement that a 6-foot is adequate as
14 opposed to the 8-foot, and that's just basically a
15 summary but that's all I have for Mr. Feehan.

16 Do any of the Board members have any
17 other questions for him? If not, we can open up
18 questions to the public again.

19 MS. KNARICH: And that'll be limited
20 to his testimony this evening.

21 MR. SHAW: Just this testimony right
22 now.

23 CHAIRMAN VIVONA: Just his testimony.
24 So if anyone has a question for what Mr. Feehan just
25 said, nothing else, no statements, just a question

1 about what he said, you're welcome to ask him about
2 his testimony. I just ask that you state your name
3 and your address. If it's not about what he has
4 said, you will have an opportunity with a different
5 person. Okay?

6 Ma'am, do you have a question for Mr.
7 Feehan on what he just said or do you want to wait?

8 MS. ZWICK: Well, I'm not sure if it
9 qualifies. I have a question for the Board.

10 CHAIRMAN VIVONA: Okay.

11 MS. ZWICK: I'm Susan Zwick at 417
12 River Road. I had a question about this Rule 6904
13 that you were discussing.

14 DR. EISENSTEIN: 6409.

15 MS. KNARICH: 6409.

16 MS. ZWICK: 6409, sorry. That they
17 can come at any time, it's like they have -- they
18 have a right to -- to establish service. Okay? I
19 got that much out of it. But they could come back
20 at any time and upgrade without getting permission.
21 Is that correct?

22 DR. EISENSTEIN: The rule is, if you
23 have a site with an existing telecommunications
24 facility --

25 MS. ZWICK: Okay.

1 DR. EISENSTEIN: -- then if they
2 satisfy what the FCC called "minimal amount of
3 disruption," and I'll give you the definition in a
4 minute, then they can come in by right and put --
5 put in their antennas and their equipment. But the
6 FCC has defined a minimal disruption as adding 10
7 percent to the height of the tower or 20 feet,
8 whichever is greater. So let's take 20 feet. They
9 could add 20 feet to the height of the existing
10 structure and the disruption on the ground is they
11 can put in no more than four additional cabinets,
12 and they have to stay within the existing leased
13 area.

14 MR. SHAW: Just for your information,
15 the way we interpret it here in Chatham is we still
16 have site plan requirements and we still have
17 variance requirements --

18 MS. ZWICK: Um-hum.

19 MR. SHAW: -- and if an applicant is
20 proposing telecommunications facilities, and this is
21 the example, which is collocation, if you meet those
22 criteria, the Board cannot deny the application.
23 That doesn't mean, however, they don't have to
24 submit it and we don't have to have a right to have
25 a presentation as to what the issues are.

1 MS. ZWICK: Related to that 6409 rule,
2 though, there's a 10-percent or 20-foot limit, so
3 you have an existing tower at 134 feet, they want to
4 raise it to 150. So if T-Mobile comes in, they want
5 to raise it to 150, that qualifies, they get
6 permission, so what if somebody else comes in --

7 DR. EISENSTEIN: Done.

8 MS. ZWICK: -- and wants to --

9 DR. EISENSTEIN: Done.

10 MS. ZWICK: -- build on top of that?

11 DR. EISENSTEIN: Done. You get one
12 shot.

13 MS. ZWICK: You get one shot for a
14 tower.

15 DR. EISENSTEIN: Right. Per site,
16 yeah.

17 MS. ZWICK: Okay, so that's in the
18 ruling.

19 DR. EISENSTEIN: So I gotta say, the
20 ruling has not been interpreted by the courts, that
21 I know of, I mean, it probably has but I'm not aware
22 of it and I haven't seen any case law on it. The
23 law does not -- again, as I read it, you can correct
24 me if I'm wrong, Jennifer, but I don't think the law
25 says that you only get one shot, but based on what

1 I've read, there was extensive FCC testimony, they
2 had open hearings over a three-year period on this
3 issue, and there are literally hundreds and hundreds
4 of witnesses that came in. I've read through most
5 of those statements and that would be my
6 interpretation from what I saw in there, that is the
7 first one that comes in as a collocater; otherwise,
8 I mean, just logically, you could have a
9 thousand-foot antenna there pretty soon.

10 There is not written into the law or
11 the FCC regulations but also common sense that says
12 assuming that the tower can hold the additional
13 weight. I mean, it's not written in there but
14 that's one of these commonsense things. That's why
15 they have to go for a construction permit one way or
16 another, and the construction permit may very well
17 say "Sorry, you can't do it, the tower can't hold
18 it." So, I mean, it's not -- it's not ironclad,
19 it's not bulletproof, but what the FCC was trying to
20 do, what Congress was trying to do with this law, as
21 best as I understood all the testimony that went
22 into it, is they wanted, for collocation sites, to
23 have a streamline procedure for them to add -- if
24 there's an existing site and another carrier comes
25 along and wants to add to it, they should just be

1 able to do it, as long as they're not doing a
2 massive disruption. So that's my understanding of
3 what they intended. Now, everything beyond that is
4 going to, you know, require some interpretation, and
5 at some point or another, the courts are going to
6 rule on this, including the kinds of things that Mr.
7 Shaw is saying. You know, at some point or another,
8 if it comes down to an issue like that, the courts
9 would to have to rule on it, but in my reading of
10 these various statutes, I've never seen language as
11 clear as the language in 6409, "shall approve and
12 may not deny," I mean, that's about the strongest as
13 I've ever seen language written in a law.

14 MS. ZWICK: Thank you.

15 CHAIRMAN VIVONA: Yes, ma'am.

16 MS. MAGISTRO: Theresa Magistro.

17 (Court reporter asks for spelling.)

18 MS. MAGISTRO: M-A-G-I-S-T-R-O. 138

19 Passaic Street.

20 Mr. Feehan, you talked about mitigating
21 something before it happens and that's why you need
22 this. This is a critical area in Heritage Greenway
23 zone and it seems that you have to show exceptional
24 and undue hardship in order for this -- the
25 variances to be granted, so what is the undue

1 hardship?

2 MR. FEEHAN: I'm not sure how to
3 answer your question.

4 MR. SHAW: I'm not sure if that's
5 really related to what his testimony was.

6 MS. KNARICH: Yeah.

7 MR. SHAW: He's an RF engineer. You
8 might want -- and I'm not quite sure what standard
9 you're referring to but perhaps you might ask that
10 question when the applicant's planner gets on. He
11 might be more likely to be able to address that
12 question.

13 MS. ZWICK: It's really need, it's a
14 need question.

15 MS. KNARICH: It's a what? I'm sorry.

16 DR. EISENSTEIN: Didn't...

17 MR. FEEHAN: It's a need question. A
18 need question?

19 MS. ZWICK: Yeah. So right now,
20 you're saying you don't need it, you're just --

21 MS. KNARICH: If I may, I think that's
22 not what his testimony is.

23 CHAIRMAN VIVONA: Okay. Yes, ma'am.

24 MS. ZWICK: Susan Zwick again.

25 Related to the number of antennas, the antenna size,

1 the spacing -- in the letter that we got when we
2 were notified, the spacing was stated that a
3 variance is required because normal spacing is, you
4 have a panel, you have five feet of space, and then
5 you have the next panel, and the letter said that
6 these panels would be one foot apart, so at a
7 distance, that would become almost a solid mast. Is
8 one foot apart the plan?

9 MR. SHAW: Can Mr. Feehan identify the
10 --

11 MR. FEEHAN: One foot apart for what?

12 MS. ZWICK: The letter said that the
13 panels would be spaced one foot apart and you needed
14 a variance for that because that's not normal
15 spacing.

16 MS. KNARICH: I'm just going to have
17 him take a look at the ordinance because that's what
18 you're referencing.

19 MR. FEEHAN: Over here?

20 (Mr. Feehan reviewed ordinance.)

21 MS. ZWICK: I found my letter if that
22 would help.

23 MR. FEEHAN: I believe they're talking
24 about equipment cabinets in that, what you're
25 referring to.

1 MR. SHAW: Oh, there's space between
2 the equipment cabinets.

3 MR. FEEHAN: I believe that's what the
4 ordinance is referring to there, so not the
5 antennas.

6 MR. SHAW: Not the antennas, it's the
7 equipment cabinets.

8 MS. ZWICK: The equipment cabinets
9 near the ground.

10 MR. SHAW: Yeah, those are not the
11 antennas, those are the equipment cabinets.

12 MS. ZWICK: Okay. Okay, so these
13 panels are spaced how far apart?

14 MR. FEEHAN: I have to -- let me
15 reference the drawings here, get you the exact
16 number.

17 MS. ZWICK: Would they be the same as
18 what's existing?

19 MR. FEEHAN: They would be similar,
20 yes. It's not going to -- all three antennas would
21 not be right on top of one another, no.

22 MS. ZWICK: Okay.

23 MR. FEEHAN: I know it's going to be
24 at least -- let me just get the number. Sorry. The
25 engineer might have the -- the engineer might have

1 it off the top of his head.

2 MR. NAU: They're four feet.

3 MS. KNARICH: Four feet? Four feet.

4 MR. FEEHAN: Four feet. So they'll be
5 spaced four feet, four feet, four feet. It won't be
6 on continuous three antennas right on top of each
7 other.

8 CHAIRMAN VIVONA: Anything else for
9 Mr. Feehan?

10 MR. NAU: I have a question. So you
11 propose -- my name's Jim Nau, the last name's N-A-U.

12 COURT REPORTER: Thank you.

13 MR. NAU: You proposed a municipal
14 site before, you mentioned -- you said it was lower
15 in site, so I would imagine residential would not be
16 a preferred site to go to, you would prefer to go to
17 a municipal or a city site before you go in a
18 residential zone, so when you pointed to the site
19 being lower, I'm not sure you're a hundred percent
20 sure of where you're looking at because the proposed
21 site's in a floodplain, this municipal site that you
22 point up is a higher level than that one. Secondly,
23 so --

24 MS. KNARICH: Is that a -- is there a
25 question?

1 MR. NAU: Yeah, this is a question.
2 You stated the fact that the site is lower, so -- I
3 don't think that's accurate, so can you --

4 MR. FEEHAN: I'll take another look at
5 the board, sure.

6 MR. NAU: -- please go back up and
7 take a look to see if that site is lower?

8 The second question I have, too, is
9 basically for Dr. -- I'm sorry, I don't know your
10 last name.

11 DR. EISENSTEIN: Eisenstein.

12 MR. NAU: I would assume by law that
13 you guys --

14 MR. SHAW: Let's get through one
15 question first.

16 MS. KNARICH: Yeah.

17 MR. NAU: Okay. So can you point out
18 the municipal site better? I'm not sure he was
19 fully sure where that was.

20 MR. FEEHAN: I'm looking at the -- the
21 area on mine, A-16, is identified as "sewage
22 disposal," which Board member William Styple pointed
23 out to me. I'm following the contour line for 200
24 feet round elevation and a sewage disposal area on
25 A-16 goes down an elevation in that direction.

1 MR. NAU: That's the place for the --
2 that's not the sewage place.

3 MR. FEEHAN: I'm not sure where the
4 lot is, I'm just --

5 MR. NAU: Yeah, that's a municipal
6 site that he's referring to.

7 MS. ZWICK: Is that across the River?

8 MR. NAU: Across the road. I'm
9 assuming you're talking about the next tower over.

10 CHAIRMAN VIVONA: On the other side of
11 River Road.

12 MR. NAU: So across that road, there's
13 a road right there, so you're looking at the sewage
14 site that's not the town's.

15 MR. FEEHAN: Okay.

16 MS. ZWICK: That would be the New
17 Providence section --

18 MR. NAU: So you keep on going in that
19 direction.

20 MS. KNARICH: Just one person at a
21 time so the transcriber can take it down.

22 MR. NAU: It's over here (indicating).
23 Yeah.

24 MR. FEEHAN: All right, so more
25 north --

1 MR. NAU: The reddish.

2 MR. FEEHAN: Okay, so it would be
3 further northeast than I indicated earlier, which
4 would get you further away from the gap. I'm not
5 sure how much higher it is, but I don't think,
6 still, that would make a difference, and in
7 preference of siting location, we try to use an
8 existing structure or an existing wireless facility
9 already rather than constructing a new wireless
10 facility.

11 MR. NAU: Um-hum. So for you, then, I
12 guess from a, you know, from a law standpoint, is it
13 better, I mean, does the town have any justification
14 or any ground to say "No, that site's not good but
15 we propose another site for you"?

16 DR. EISENSTEIN: Well --

17 MR. NAU: Can you do that if it does
18 solve their issues to some extent?

19 DR. EISENSTEIN: Just to be clear, I'm
20 not a lawyer.

21 MR. NAU: Okay.

22 DR. EISENSTEIN: Usually I thank God.
23 But --

24 MR. NAU: You seem to act like one.

25 DR. EISENSTEIN: I understand that.

1 I'm an electrical engineer, but because of the
2 nature of this work, it's governed by regulation so
3 it's not just engineering. For me to advise the
4 Board, I have to understand the federal regulations
5 and, to the extent possible, the state and municipal
6 regulations, but the question that you're asking is
7 really a legal question and should be addressed to
8 the attorney, not to me.

9 MR. NAU: Okay.

10 DR. EISENSTEIN: The Board has certain
11 rights, but some of those rights are taken away from
12 boards in general by three different ordinances of
13 the -- of the federal government and federal
14 preemption.

15 MR. SHAW: What I would say at the
16 moment is we have an applicant who has applied for
17 collocation on a tower --

18 MR. NAU: Um-hum.

19 MR. SHAW: -- which is subject to the
20 FCC regulations and which, because it's a
21 collocation application, unless -- you know, they
22 really have the right to do it and to locate it on
23 this particular site.

24 MR. NAU: Um-hum.

25 MR. SHAW: We do require applicants,

1 when they are initially siting a cellular
2 telecommunications facility, to demonstrate that
3 they have looked for alternate sites and they are
4 not, you know, and we'll require them to do that, so
5 if something hasn't already gone up, we'll require
6 them to demonstrate having looked to all kinds of
7 other alternate sites, you know, whatever we can
8 suggest to make them do that. However, this is a
9 collocation application.

10 DR. EISENSTEIN: Right.

11 MR. SHAW: It's not a new -- it's not
12 an original -- it's not an original site.

13 MR. NAU: So it's better to go in a
14 residential even though it's coexisting than a
15 municipal or a town spot?

16 MR. SHAW: Well, I would say this
17 particular property is owned by the municipality.

18 MR. NAU: But it's in a residential
19 zone, correct?

20 MR. SHAW: I suspect that the other
21 property is also in a residential zone.

22 MR. NAU: I'm just asking the question
23 because it was brought up by a Board member.

24 MR. SHAW: Well --

25 MR. NAU: I'm not the one that brought

1 it up originally.

2 MR. SHAW: Okay.

3 CHAIRMAN VIVONA: Any other questions
4 for Mr. Feehan?

5 (No response)

6 CHAIRMAN VIVONA: No? Okay.

7 MR. SHAW: This might be a good point
8 to note that we have another major cellular
9 application on the agenda this evening. It's now
10 9:00.

11 You're going to be presenting your
12 planner testimony?

13 MS. KNARICH: Correct.

14 MR. SHAW: There'll be questions to
15 the planner and then the public will have an
16 opportunity to comment.

17 (Whereupon the Board briefly deals with
18 another matter.)

19 CHAIRMAN VIVONA: Okay, you want to
20 bring on your next witness?

21 MS. KNARICH: Certainly. My next
22 witness is Tim Kronk, who will be testifying in the
23 capacity of Professional Planner.

24 CHAIRMAN VIVONA: You were sworn in
25 last time or...

1 MR. KRONK: No, I wasn't.

2 CHAIRMAN VIVONA: At another meeting
3 maybe.

4 MR. KRONK: It was another meeting.
5 They all blend together.

6 T I M O T H Y K R O N K, first having been duly
7 sworn, testified as follows:

8 CHAIRMAN VIVONA: Please state your
9 name and qualifications for the record.

10 MR. FEEHAN: Timothy M. Kronk,
11 K-R-O-N-K. I am a New Jersey licensed Professional
12 Planner, I have a Bachelor of Science from the
13 University of Massachusetts, I have 25 years of land
14 use experience predominantly in New Jersey, I've
15 been accepted as an expert planner throughout the
16 state, including in front of this Board.

17 CHAIRMAN VIVONA: Okay, thank you.

18 MS. KNARICH: And your license is
19 still in good standing?

20 MR. KRONK: And my license is still in
21 good standing.

22 MS. KNARICH: Thank you.

23 DIRECT EXAMINATION BY MS. KNARICH:

24 Q. Mr. Kronk, you reviewed some documents
25 in preparation for your testimony?

1 A. Yes, I have. I have reviewed the
2 application, I have reviewed the site plans, I have
3 reviewed the municipal wireless ordinance, I have
4 reviewed the federal Middle Class Tax Relief and Job
5 Creation Act of 2015, visited the subject property
6 on several occasions including March 2 of 2017 and
7 that's when the photos were taken for the
8 preparation of the visual analysis package that was
9 submitted to the Board with the photo simulations of
10 the proposed installation superimposed on the
11 existing conditions photos of the subject property.

12 Q. Thank you. And from a planner's
13 perspective, would you just give the Board your
14 opinion with regard to collocating on an existing
15 JCP&L tower with current Verizon antennas and what
16 we're proposing here?

17 A. Yes. The subject property is located
18 in the R-2 zone, there is a 135-foot-wide JCP&L
19 easement that goes across the property. The
20 property is 20.85 acres. The subject JCP&L tower is
21 a 134-foot-high tower with the highest height on the
22 tower 138 feet, which is the top of the Verizon
23 Wireless antennas. Verizon Wireless received use
24 variance approval for this installation on July 19
25 of 2007 for an application that included the

1 equipment that is currently located there, the
2 transmount, which is the interior support structure
3 on the top of the tower, as well as 12 -- they were
4 approved for 12 antennas on the original
5 application.

6 T-Mobile is proposing nine antennas as
7 part of this application with a maximum height of
8 150 feet. At the base of the tower, there's no
9 expansion of the compound proposed but currently
10 there is a structure between the legs of the tower
11 where Verizon Wireless is located and T-Mobile's
12 installation will be in that same area with just
13 some additional grading added, and at the base of
14 the tower, they are proposing one of their equipment
15 cabinets, one fiber cabinet and one electrical
16 service cabinet.

17 After that, I pretty much would like to
18 concur with Dr. Eisenstein's planning testimony
19 regarding the federal 6409(a).

20 DR. EISENSTEIN: I got a promotion.

21 A. The Middle Class Tax Relief and Job
22 Creation Act of 2015, I certainly do believe would
23 apply to this application and that no use variance
24 is required for this installation. The prongs that
25 were discussed on determining the eligibility of a

1 facility to follow this federal regulation first
2 comes down to is the site eligible -- is this an
3 eligible facility. There are three types of
4 applications that would be eligible for this relief
5 under this -- the TRA, which is short for the Tax
6 Relief Act. First would be a collocation of new
7 transmission equipment. That's what this
8 application is. The other one would be removal of
9 transmission equipment and the third one would be
10 replacement of transmission equipment. So since we
11 are a new -- adding new transmission equipment to a
12 facility where there is an existing use variance --
13 as I stated, Verizon Wireless was approved for a use
14 variance in 2007 -- we would be eligible under that
15 prong of the analysis subject to meeting the
16 substantial change requirements, and under that,
17 those are the same requirements that Dr. Eisenstein
18 discussed a few minutes ago. The first one was that
19 we do not exceed the maximum existing height of the
20 existing tower by more than 10 percent of the height
21 of the tower or 20 feet. In this case, we are going
22 to be below -- less than 10 percent, the maximum
23 height on the Verizon Wireless is 138 feet, so we
24 would be allowed a 10 percent increase to a hundred
25 and -- or 13.8 feet, which would bring us to 151.8

1 and we are proposing a maximum height of 150. And
2 the third, which relates to the equipment cabinet,
3 is that we do not have a substantial change to the
4 equipment at the base of the tower. The standard is
5 that the application involves an installation of a
6 standard number of new equipment cabinets for the
7 technology involved but not to exceed more than
8 four. In terms of equipment cabinets, this is
9 actually a small installation for T-Mobile, they're
10 only proposing one radio equipment cabinet here, so
11 it certainly does comply with the non-substantial-
12 change component of the TRA analysis.

13 So under the TRA, I do believe this
14 proposal meets the requirements and does constitute
15 an eligible facilities request because they're
16 proposing to collocate new transmission equipment
17 and there is no substantial change to the physical
18 dimensions of the tower upon which the antenna and
19 equipment would be installed as interpreted by the
20 FCC.

21 MS. KNARICH: Thank you.

22 I have no further questions of this
23 witness.

24 CHAIRMAN VIVONA: You have no
25 questions?

1 MR. SHAW: Mr. Kronk, do you have any
2 -- aside from 6409(a), do you have any comment
3 relative to the other variance relief which was
4 advertised for?

5 MR. KRONK: I do believe that the --
6 those variances would be bulk variances from the
7 wireless telecommunications ordinance related to the
8 antenna size. The maximum antenna height in the
9 ordinance is five feet. We've now modified the
10 application to accept the maximum antenna size of
11 six feet.

12 The other deviation from the Chatham
13 Township telecommunications ordinance is related to
14 the equipment separation where we have a maximum --
15 or a minimum separation of five feet, and in this
16 case, I do believe that those would normally be
17 subsumed under the 6409, but I mean, they could be
18 treated as bulk variances, as a flexible C2
19 deviation. In this case, T-Mobile does not have a
20 five-foot antenna that would work in this area and I
21 think the Board has heard this on numerous
22 applications, that most of the carriers don't have
23 that antenna size as when Chatham originally adopted
24 their telecommunications ordinance, so in this case,
25 we have an antenna that is not available, it does

1 not exist in T-Mobile's repertoire of the technology
2 that they're deploying in this area, and with
3 relation to the equipment setbacks, we're certainly
4 trying to work within the confines of the existing
5 equipment platform of the tower and so that's where
6 the setbacks of the equipment were to not have to
7 have met any ground disturbance or expand the
8 platform of the tower.

9 With regard to the negative criteria on
10 both, the antenna size being one foot longer than is
11 permitted by ordinance at a height of 150 feet, I
12 don't believe I could tell the difference and I
13 don't believe most people in the, you know,
14 traveling public would be able to even differentiate
15 a five-foot from a six-foot antenna at a height of
16 150 feet.

17 And with regard to the equipment
18 setback, this is just about centrally located on a
19 20-acre property. I don't believe anybody is going
20 to notice the deviation of the equipment cabinet, so
21 I do believe there is a better planning alternative
22 to use the five-foot antenna -- or six-foot antenna,
23 as the Board requested the applicant to reduce from
24 the 7.7-foot size, it's certainly a better planning
25 alternative because it has less impact, and in terms

1 of the ground -- the ground equipment, it's a better
2 alternative to condense the equipment and stay
3 inside of the legs of the tower and not have to have
4 any more ground disturbance or to expand and have to
5 have another platform for the T-Mobile equipment.

6 MR. KNARICH: As far as aesthetic
7 impact, there was a comment from one of the Board
8 members with regard to painting to match the --
9 painting the wires and the antennas to match the
10 existing tower.

11 MR. KRONK: Yes. Certainly, I do
12 believe that painting the equipment to make it blend
13 into the tower is a better solution.

14 MR. SHAW: Are there wires that are
15 going to be used on the exterior to connect?
16 Because we were previously told that the best you
17 can do is to go for a previously colored wire as
18 opposed to painting them.

19 MR. KRONK: Yeah, and that's actually
20 what I was thinking about. Normally, just like
21 we've done on the new, uh, the new PSE&G towers, the
22 galvanized towers when the coax was on the outside,
23 we've been ordering the gray. On this tower, I
24 really don't think you're going to get a color to --
25 I don't think you're going to get that greenish-gray

1 rust color, so I don't know what -- I don't know
2 what the best solution is on the coax in this
3 situation on the GPU tower, but certainly doing the
4 steel gray painting of the antennas to blend into
5 the steel gray skies of New Jersey certainly would
6 be appropriate in this situation.

7 CHAIRMAN VIVONA: Yeah, with the
8 wires, I know that the tower's old, but without
9 having something red, yellow or black --

10 MS. KNARICH: A neutral color.

11 CHAIRMAN VIVONA: -- that you'll see.
12 I think that the gray wires are --

13 MR. KRONK: Probably -- if we're
14 painting the antennas grey, then probably the gray
15 on the --

16 CHAIRMAN VIVONA: Right.

17 MR. KRONK: -- tower would be the best
18 answer.

19 CHAIRMAN VIVONA: No generators.

20 MR. KRONK: Correct.

21 CHAIRMAN VIVONA: You met all the
22 noise requirements for your equipment. I think you
23 don't use the -- there's no air-conditioning,
24 there's only cooling fans, and you only have one box
25 that's going to be containing the electronic

1 equipment that needs cooling, the other one's just
2 electrical so it doesn't need cooling.

3 MR. KRONK: One electrical, one fiber,
4 yes.

5 CHAIRMAN VIVONA: And the reason
6 they're close is so you don't have to expand the
7 platform.

8 Is there going to be -- I guess it's
9 surrounded by a chain-link fence, the platform
10 itself? I think I remember seeing that.

11 MR. KRONK: It's railing.

12 CHAIRMAN VIVONA: Just a railing?

13 MR. KRONK: Railing.

14 CHAIRMAN VIVONA: So you don't think
15 any sound buffering is needed?

16 MR. KRONK: It's a large lot --

17 CHAIRMAN VIVONA: This lot --

18 MR. KRONK: Yeah, we're a large lot
19 with, you know, the minimal noise; as you know, that
20 fan is in the -- when there's no air-conditioning,
21 the fan's, you know, like one of those small
22 computer fans, so no, I really don't believe that
23 there would be any sound buffer required for this
24 application.

25 CHAIRMAN VIVONA: Right, and you're

1 more than 200 feet --

2 MR. KRONK: Over 200 feet to the
3 nearest.

4 CHAIRMAN VIVONA: -- from the nearest
5 property line.

6 MR. KRONK: Yup, um-hum.

7 CHAIRMAN VIVONA: Okay, I don't have
8 anything else right now.

9 MR. WESTON: I have a question.

10 MR. KRONK: Yes.

11 MR. WESTON: The question probably is
12 for your RF engineer or Dr. Eisenstein, but it was
13 triggered by a comment you had made. I suspect this
14 is probably not going to be the last cell phone
15 tower that comes in front of us. You had made a
16 reference -- the zoning ordinance has a limit of
17 five feet on the antenna size. You indicated that
18 five foot is not in the repertoire of equipment.
19 Are we dealing with laws of physics here? Is it
20 possible to get smaller antennas in five feet that
21 are functional, do they exist? You may not use them
22 but...

23 MR. KRONK: I can't even answer -- I
24 can't even answer that question.

25 MR. WESTON: Do they get smaller?

1 DR. EISENSTEIN: The answer -- of
2 course. You could get antennas in almost any size,
3 and if you look at it in the other direction, the
4 purpose of these antennas is to communicate with
5 your handheld cell phone and that has an antenna in
6 it and that antenna's about this big (indicating),
7 I'm showing about 2-1/2 inches, so you could have
8 antennas of any size, from a couple inches to seven,
9 eight, nine, ten feet. What happens is, as you make
10 an antenna bigger, larger, physically larger, you're
11 able to shape the coverage, the beam of coverage. A
12 small antenna is going to have what we call an omni
13 pattern, it's just uniform all around and it doesn't
14 really -- you can't really shape it. By making
15 antennas bigger, and bigger as compared to the
16 wavelength of the radiation you're working at,
17 you're able to shape the beam, so what happens is,
18 when the RF engineer is designing the system, they
19 want to cover a certain area and they shape the beam
20 accordingly and what that does is it dictates the
21 size, the physical size, of the antenna.

22 MR. WESTON: I'm just curious if
23 there's a happy medium between a two-inch antenna
24 and a five-foot antenna.

25 DR. EISENSTEIN: Well, you know, in a

1 lot of the installations, you'll see they were using
2 four-foot antennas for a long while, some of the
3 antennas are multiband antennas they're putting up
4 now and there's a variety of them but, you know,
5 what happens, and I think that's something that I
6 wouldn't want to do personally, is to get involved
7 in the details of how a particular company picks
8 their design for their antennas or where they buy
9 them from or, you know, how they use them, I mean,
10 that's really -- according to the FCC view of this,
11 each of the providers is entitled to define how they
12 want to implement their technology and it's not for
13 us to comment on that.

14 MR. SHAW: Which is another way of
15 saying, though, Jon, if it came down to a design
16 criteria that a carrier had and they said, "Well,
17 this is our design criteria and it requires a 6-foot
18 antenna," if it's their design criteria, we are
19 obligated to allow them to use their criteria.

20 MR. WESTON: No, I understand the
21 concept and I don't want to belabor the point but it
22 does tie into something -- a concept I've raised in
23 a variety of other issues on a variety of other
24 projects, is we understand there's a five-foot limit
25 in our zoning ordinance and we have an RF engineer

1 from the company testifying there's a very small
2 difference in gain, and we talk about the horizontal
3 and we all not knowingly, and then we get to the
4 point of going "It doesn't matter," so okay, I get
5 it.

6 DR. EISENSTEIN: Well, the difference
7 was -- what I said in that case was the difference
8 didn't seem to matter. It's a very small
9 difference.

10 MR. WESTON: No, but I think the
11 origin of my question, I understand that we can't
12 tell the carriers how to do their business or spec
13 their antennas out, but if we get from, the origin
14 is, 7-3/4 to 6 foot, I agree, at a hundred and some-
15 odd feet, you can't tell the difference, but if you
16 were to get to, say, 3 foot or 2 foot, that antenna
17 would essentially be invisible. I'm not saying you
18 have to do it, I understand you have the right to
19 not even answer the question. My comment stands,
20 though, as -- I was just curious as to whether we're
21 dealing with any laws of physics here, just for my
22 own understanding going forward that we have a
23 5-foot rule, you know, they're typically 6, 7 feet
24 that come before us, we listen to the technical and
25 we go "Sounds good to me." Sounds good to me.

1 MR. KRONK: But I certainly think this
2 is the case where, you know, the applicant did see
3 that there was not a huge difference in the coverage
4 from the 7.7 feet down to the 6 and that's where
5 they're willing, you know, to certainly make that
6 concession based upon the concerns of the Board and
7 the public.

8 MR. WESTON: So be it.

9 DR. EISENSTEIN: To go back to your
10 point, the reason that they need the beam shaping on
11 the base station on the antennas we're talking about
12 is because there's no beam shaping on the handheld
13 device, and in order for the tower to be able to
14 communicate, it has to be able to receive the
15 signal, a very weak signal, from that tiny antenna
16 that's in your phone.

17 MR. WESTON: No, I understand. That's
18 why there's an array around the tower. It's not
19 putting up a simple whip antenna at the top.

20 DR. EISENSTEIN: No, no, but it's more
21 than that, that's why they have to have a certain
22 size, because that size gives them the antenna gain.

23 MR. WESTON: Yes.

24 DR. EISENSTEIN: So if you cut it
25 down, you gave the example of a three-foot antenna.

1 What you're doing is you're now sucking the range
2 in. You're pulling the range of that antenna in
3 because then a hand-held device some distance away
4 would not be able to reach the tower.

5 MR. WESTON: Okay. That was my
6 question about are we talking about rules of physics
7 here.

8 DR. EISENSTEIN: Yeah, we are.

9 MR. WESTON: And you've answered it.

10 DR. EISENSTEIN: That's beam shaping.

11 MR. WESTON: Thank you.

12 CHAIRMAN VIVONA: Anybody else have
13 any questions for Mr. Kronk?

14 MR. MICHAELS: I just have one. Mr.
15 Kronk, you submitted a visual analysis for this?

16 MR. KRONK: Yes, um-hum.

17 MR. MICHAELS: But your position is
18 that you're not presenting this at this time because
19 you feel that no variance is needed or why -- what
20 was the purpose of the visual analysis?

21 MR. KRONK: I believe the visual
22 analysis was a checklist item.

23 MR. MICHAELS: Okay.

24 MR. KRONK: I have them here, I can
25 present them. Now that we've accepted the condition

1 of reducing the larger antenna, they're not
2 necessarily as accurate. If you want to see them,
3 I'll present them.

4 MR. MICHAELS: No, I just wanted to
5 raise the issue. I'll leave it up to the Board.

6 MR. SHAW: I still think the Board
7 would see what the visual presentation looks like.

8 MR. KRONK: That's no problem.

9 MR. SHAW: Are these the same
10 photographs that you had depicted but -- presented
11 but they've now been placed on boards?

12 MR. KRONK: Yes, these are the same --
13 there's four -- four photo boards. They were the
14 same ones that were submitted as part of the
15 application package. As I stated, the existing-
16 conditions photos are from March 2 of this year and
17 the package was dated March 8 of this year, the
18 submittal package.

19 MS. KNARICH: Mr. Shaw, do you want to
20 mark those separately?

21 MR. SHAW: You can just mark them the
22 same.

23 MS. KNARICH: As a group?

24 MR. SHAW: Yeah, A-17, four
25 photographs.

1 MS. KNARICH: Okay.

2 (Three photo boards containing two
3 photographs on each are marked as Exhibit A-17.)

4 MR. KRONK: Okay, first exhibit in
5 A-17 is a board with a view from 449 River Road. On
6 this exhibit -- I'll pass it around to the public
7 after the Board has it -- we have two photos. The
8 photo on the left is the existing-conditions photo
9 and the photo on the right is a computer simulation.
10 In the computer simulation, the 12-foot extension
11 for the T-Mobile installation has been inserted via
12 computer simulation above the Verizon installation,
13 and the nine antennas as they were originally
14 proposed have been inserted into the photograph.

15 The second photo board in A-17, this is
16 a view from Cardinal Hill, Building A, looking
17 towards the subject tower with the Verizon
18 installation above the top on the transmount
19 reinforcement, and then on the right-hand side, the
20 computer simulation with the additional 12 feet with
21 the T-Mobile installations above the Verizon
22 Wireless with the nine antennas as they were
23 originally proposed. And as you'll look at it,
24 you'll see that the one antenna was larger and that
25 would now no longer be noticeable by dropping down

1 from the 7.7 to 6 feet.

2 The third photo board in A-17 is a view
3 from 417 River Road with the existing-conditions
4 photo on the left with the tower behind the
5 residential structure, and then on the right, the
6 computer simulation with the T-Mobile square
7 platform with the three sectors, nine antennas,
8 inserted above the existing Verizon.

9 And the last of the four of A-17, this
10 is a view from Passaic Avenue on the bridge going
11 over the river looking down the JCP&L 135-foot-wide
12 utility easement and this is the one location that
13 you do have a clear view of the equipment at the
14 base of the tower, and as you see in the simulation
15 from the one place you have a clear shot to the
16 compound, there really is not -- it is really a
17 minimal change in equipment that would be visible at
18 that location.

19 DR. EISENSTEIN: Mr. Chairman, you
20 want me to pass this to the public?

21 CHAIRMAN VIVONA: Yeah, that would be
22 great. Did you want to add anything else?

23 DR. EISENSTEIN: No.

24 CHAIRMAN VIVONA: I don't know
25 simulations, they also are depicting the 8-foot or

1 7-3/4-foot --

2 MR. KRONK: Yes, that's what I said,
3 the one -- in each sector, that one antenna that is
4 depicted as being the larger one, that one would be
5 reduced down to something that would be comparable
6 to the other antennas and any deviation and that
7 will be negligible and --

8 CHAIRMAN VIVONA: Right.

9 MR. KRONK: -- nearly unable to
10 differentiate from ground level.

11 CHAIRMAN VIVONA: Now, I don't know if
12 this was asked before and I don't know if you're the
13 right person to ask, but the other six antennas are
14 all -- so now all nine are the same size or the
15 other six, they're all nine the same size now.

16 MS. KNARICH: Yup.

17 CHAIRMAN VIVONA: Okay.

18 MS. KNARICH: And consistent with
19 Verizon's size antennas.

20 CHAIRMAN VIVONA: Um-hum. Anybody
21 else have any questions for Mr. Kronk?

22 (No response)

23 CHAIRMAN VIVONA: John, all the DEP
24 stuff was good?

25 MR. RUSCHKE: Yeah.

1 CHAIRMAN VIVONA: There's no problems
2 or...

3 MR. RUSCHKE: No, they've applied,
4 they haven't gotten their permit yet.

5 CHAIRMAN VIVONA: So this is all
6 contingent upon the --

7 MR. RUSCHKE: Correct.

8 CHAIRMAN VIVONA: -- DEP process.
9 Okay. Public?

10 MR. SHAW: Yeah, open to the public
11 for any questions.

12 CHAIRMAN VIVONA: All right, so right
13 now, if you have any questions for Mr. Kronk's
14 planning testimony, you may ask Mr. Kronk questions
15 about his planning testimony.

16 MS. MAGISTRO: From the public?

17 CHAIRMAN VIVONA: The public, yes,
18 ma'am.

19 MS. MAGISTRO: Theresa Magistro, 138
20 Passaic Street.

21 The first question is about the
22 underground telecommunications conduits beyond the
23 limit of the existing gravel driveway. Did you get
24 a permit for that?

25 MR. KRONK: The permits from the DEP

1 have been filed, they're not approved.

2 MS. MAGISTRO: Okay. And also, have
3 you verified whether the proposal is regulated by
4 the U.S. Fish and Wildlife Services? Do you need to
5 be in compliance with their regulations because of
6 the special nature of this property?

7 MS. KNARICH: That would be more of a
8 question for the engineer.

9 MR. KRONK: Well, that would be
10 environment compliance.

11 MS. KNARICH: Yeah. Which we did
12 submit.

13 MR. KRONK: NEPA?

14 MS. KNARICH: No, not NEPA. That was
15 pursuant -- that was under your report, correct?

16 MR. RUSCHKE: Correct. Usually made
17 with the DEP.

18 MR. KRONK: I can tell you that that
19 is something that would be triggered by the NEPA,
20 which is the National Environmental Protection Act.

21 MS. MAGISTRO: Um-hum.

22 MR. KRONK: Because the carrier's a
23 licensed FCC provider, they are required to meet the
24 NEPA compliance. The T-Mobile Environmental
25 Regulatory Department would file that on all sites.

1 I am not familiar -- I have not seen it. If it
2 hasn't been done yet, that's something that they
3 would have to do, but that's not something that's
4 normally submitted for a Board review.

5 MS. MAGISTRO: This isn't a normal
6 site, you know.

7 MR. KRONK: I'm just answering your
8 question with the information that I know.

9 MS. MAGISTRO: So you don't know
10 whether you're in compliance or not.

11 MR. KRONK: I cannot tell you the
12 status of that review.

13 MS. MAGISTRO: Okay, and my last
14 question is: In order to get the variances on this
15 special site because it's a Heritage Greenway, you
16 have to show exceptional and undue hardship and what
17 would that be?

18 MR. KRONK: I -- I do not believe that
19 that standard would apply in the situation here
20 where we do have a -- as I described, we are
21 applying for a federal exemption under the 6409(a),
22 so I do not believe that analysis would be what we
23 are applying for here.

24 MS. MAGISTRO: So you would bypass our
25 zoning regulations?

1 MR. KRONK: In this situation, there
2 is federal regulations for certain tele-
3 communications sites and the standards I went
4 through were to show that this site does comply with
5 the federal regulations for collocation, so, you
6 know, we -- there is a little curve with the zoning
7 regulations of local municipalities. We're still
8 here presenting in front of the Board but we're
9 basing it on the federal standards.

10 MS. MAGISTRO: But the aesthetic
11 standards are the same on the federal level and your
12 Environmental Impact Statement showed that there was
13 no change in aesthetics while you showed in the
14 photographs that there are changes in the
15 aesthetics, so I'm confused about that. How could
16 you say no change in aesthetics on the Environmental
17 Impact Statement?

18 MR. KRONK: I did not prepare the
19 Environmental Impact Statement.

20 MS. MAGISTRO: Did your company?

21 MR. KRONK: My company?

22 MS. MAGISTRO: Or T-Mobile?

23 MR. KRONK: I did not see an
24 Environmental Impact Statement, so...

25 MS. MAGISTRO: Well --

1 MR. HYLAND: Am I allowed to ask a
2 question of the public?

3 MS. MAGISTRO: I got a copy of it.

4 MR. SHAW: Yeah, go ahead.

5 MR. HYLAND: Miss -- is it Mrs.
6 Magistro?

7 MS. MAGISTRO: Yes.

8 MR. HYLAND: Okay. I'm intrigued by
9 your questions.

10 MS. MAGISTRO: Yes.

11 MR. HYLAND: What are you referring to
12 when you talk about the burdens of proof that they
13 have to meet? What statute or what Greenway --

14 MS. MAGISTRO: Okay, I have it -- I
15 have a presentation that I was making and I directly
16 state the statutes and I've been reading your zoning
17 regulations and I'm not a professional but I've
18 tried to go through the zoning regulations. This is
19 a very unusual site because of the wildlife
20 population, the birds are phenomenal and the
21 animals, and certainly the wetlands, and when you're
22 going to do the digging for the conduits for the
23 electrical wires, you're going to affect the
24 wetlands in this area, so you do need a permit
25 because you are disturbing the area very close to

1 the river so that's why I'm a little confused about
2 not requiring these permits and not having these
3 permits --

4 MR. KRONK: No, no, I said the
5 application was submitted to the DEP on October 9 of
6 this year. So an application has been submitted for
7 special activity transition area waiver for
8 redevelopment.

9 MS. MAGISTRO: So then this Board
10 cannot vote on that until the permit is --

11 MR. SHAW: No, that's a DEP.

12 MS. MAGISTRO: How does that work?

13 MR. SHAW: We would vote on something
14 and it's -- an applicant has the right to proceed
15 with DEP approvals after Board action.

16 MS. KNARICH: But it would be a
17 condition of the approval.

18 MS. MAGISTRO: It's conditional.

19 MR. SHAW: So our approval would be
20 conditioned on --

21 MS. KNARICH: It would be a condition.

22 MR. SHAW: -- their receiving any
23 necessary DEP...

24 MS. MAGISTRO: And I'm just looking at
25 the application section of 3099.9 where there are

1 different requirements for this particular piece of
2 land, and when I have an opportunity to speak up,
3 I'll register all of that information. Thank you.

4 MR. KRONK: Thank you.

5 CHAIRMAN VIVONA: Any other questions
6 for Mr. Kronk's testimony?

7 MR. NAU: I just have one simple
8 question. So there's nine antennas that are going
9 on there. It seems like three are pointing in the
10 direction that are trying to be addressed, the ones
11 that are kind of pointing towards River Road, so are
12 those necessary, those additional three antennas?

13 CHAIRMAN VIVONA: The three antennas,
14 there's one of each type --

15 MR. NAU: There's like a tripod.

16 CHAIRMAN VIVONA: -- in each
17 direction. All three 700s are not facing one
18 direction, there's one in each quadrant.

19 MR. KRONK: So it's a square platform
20 but they're only using three sides.

21 MR. NAU: Okay, and they're not
22 pointing -- okay, so nothing's pointing towards
23 River Road.

24 MR. KRONK: Correct.

25 MR. NAU: It just looks like that.

1 CHAIRMAN VIVONA: Correct, and the
2 reason for that is because they can't get over the
3 ridge so there's no point in putting one there.

4 MR. NAU: There's no point in putting
5 one there?

6 CHAIRMAN VIVONA: Yes, sir.

7 MR. NAU: So you're not doing what I
8 was asking. Okay.

9 MR. KRONK: Correct.

10 CHAIRMAN VIVONA: Yes, ma'am.

11 MS. ZWICK: Susan Zwick, 417 River
12 Road.

13 I would like to know why the Board in
14 Chatham Township is even hearing this application
15 when there are zero customers for T-Mobile in
16 Chatham Township along River Road.

17 CHAIRMAN VIVONA: Well --

18 MS. ZWICK: The customers are in
19 another county, across the river, in another town.

20 MR. SHAW: I can tell you, as a matter
21 of law, the Board is required to deal with the needs
22 for cellular throughout the area, not simply related
23 to Chatham Township. We're not allowed to deny an
24 application for that reason.

25 MS. ZWICK: Even if there are no

1 customers in Chatham for this particular antenna
2 array, you have to --

3 MR. SHAW: Yes.

4 CHAIRMAN VIVONA: Yes, because it's
5 drive-by customers who use the roads, it's for
6 emergency signal if someone else's tower is not
7 working, it's emergency --

8 MS. ZWICK: But the antenna points
9 across the river into another county.

10 CHAIRMAN VIVONA: It doesn't matter.
11 You're also receiving cellular signal from the other
12 county facing your direction. You can't stop the
13 direction of the waves, the waves fan out. They're
14 obligated to cover any place that has a gap, and
15 even if there's not a gap, they're obligated to
16 cover their area, whether it's a person living in a
17 house or a person driving by the house that lives in
18 California.

19 MS. ZWICK: Okay.

20 CHAIRMAN VIVONA: If they're a
21 T-Mobile customer, T-Mobile must provide coverage.

22 MS. ZWICK: Okay. So then T-Mobile
23 can locate a tower in New Providence where their
24 customers reside.

25 CHAIRMAN VIVONA: Well, you can't go

1 by that, you have to go by who uses T-Mobile in that
2 area. It's not just who lives there. It's who is
3 traveling by it.

4 MR. SHAW: We're dealing with a
5 gradation here. If this was a new tower coming in
6 --

7 MS. ZWICK: Yeah.

8 MR. SHAW: -- and they had to prove
9 that there were no alternative locations available,
10 we would be requiring them to say "Well, isn't there
11 a tower existing somewhere in New Providence or
12 someplace that might be better than this?" I mean,
13 that alternative analysis is what the Board does
14 when you're dealing with a tower which has not been
15 constructed yet, but when you're dealing with a
16 collocation situation, we're not looking to see if
17 there's an alternate tower in New Providence.

18 MS. ZWICK: Well, I agree that that's
19 not your job, but I think it's their job to look
20 elsewhere when their customers are elsewhere. Zero
21 Chatham customers exist in this application.

22 CHAIRMAN VIVONA: I don't know where
23 you're getting your information from but it doesn't
24 matter where they live, it matters where they are.
25 If they're driving by --

1 MS. ZWICK: Yes.

2 CHAIRMAN VIVONA: -- on River Road --

3 MS. ZWICK: Yes.

4 CHAIRMAN VIVONA: -- if your neighbor
5 comes or your friend comes from California and parks
6 in your driveway and they have T-Mobile, they expect
7 to get service and that's --

8 MS. ZWICK: But the T-Mobile service
9 is being pointed away from River Road.

10 CHAIRMAN VIVONA: It's being pointed
11 away from River Road because it can't go over the
12 Mountain. River Road backs up to that Mountain, so
13 they're not -- I mean, they can put four antennas up
14 there if you'd like and have 12 instead of nine.

15 MS. ZWICK: Well, they already have
16 coverage in the area. We're already covered by
17 T-Mobile. So I don't understand why this
18 application --

19 CHAIRMAN VIVONA: All right, do you
20 have a question for the planner's testimony?
21 Because now we're getting into a debate.

22 MS. ZWICK: So my point is that, first
23 of all, I don't think this application should be
24 entertained by Chatham Township because there are no
25 customers being served here.

1 MS. KNARICH: That's a comment.

2 MR. SHAW: Yeah, again, that's a
3 comment.

4 MS. ZWICK: Okay.

5 MR. SHAW: That should be --

6 CHAIRMAN VIVONA: Is there a question
7 about his testimony?

8 MS. ZWICK: Okay.

9 CHAIRMAN VIVONA: If you don't have a
10 question, we are basically going to move on.

11 MS. ZWICK: Okay. When do we raise
12 the issue of aesthetics?

13 CHAIRMAN VIVONA: When this is all
14 done.

15 MS. ZWICK: Okay.

16 CHAIRMAN VIVONA: At the very end, you
17 can make your statements.

18 MS. ZWICK: Okay.

19 CHAIRMAN VIVONA: This is questions
20 about Mr. Kronk's testimony.

21 Does anybody else have questions about
22 what Mr. Kronk has spoken about?

23 (No response)

24 CHAIRMAN VIVONA: No? Anybody else on
25 the Board?

1 (No response)

2 CHAIRMAN VIVONA: Thank you, Mr.
3 Kronk.

4 MR. KRONK: Thank you.

5 CHAIRMAN VIVONA: Do you have anybody
6 else you'd like to bring up?

7 MS. KNARICH: That concludes my
8 testimony for this evening.

9 CHAIRMAN VIVONA: Okay.

10 MEMBER OF THE PUBLIC: I'd like to ask
11 him if he lives under a cell tower.

12 CHAIRMAN VIVONA: Would you like to do
13 your closing?

14 MS. KNARICH: Well, I would usually do
15 that after public comment.

16 CHAIRMAN VIVONA: Public comment?

17 MR. SHAW: Yeah.

18 CHAIRMAN VIVONA: All right, at this
19 point, there will be public comment. It is quarter
20 to 10, we leave at 11. If you have 55 pages of
21 stuff you want to read, it's not going to happen
22 tonight, we'll have to carry it to the next meeting.
23 You're welcome to make your public comments, it's --
24 yes, ma'am.

25 MS. ZWICK: Susan Zwick again.

1 MR. SHAW: Could you come up forward

2 --

3 MS. ZWICK: You want me to come
4 forward?

5 MR. SHAW: -- to make the comments?
6 Come forward, yeah.

7 MS. ZWICK: Sure.

8 MR. SHAW: Aside from which, I'm sure
9 it's easier to look at the papers --

10 MS. ZWICK: Do you want me up here?

11 MR. SHAW: Yeah, that's fine.

12 MS. ZWICK: Okay.

13 Interestingly, I went out and took some
14 photographs and I took very similar photographs to
15 Mr. Kronk's photos.

16 MS. KNARICH: Are you going to -- if
17 you're going to present them, I think a foundation
18 needs to be laid for that.

19 MR. SHAW: Are you --

20 MS. ZWICK: I will submit them.

21 MR. SHAW: Well, I mean, you have to
22 --

23 MS. ZWICK: My name's on them, I have
24 them --

25 MR. SHAW: Show them to counsel first

1 so she could see them --

2 MS. ZWICK: Okay.

3 MR. SHAW: -- and then you can tell us
4 how you took the pictures and we can take it from
5 there, so let's --

6 MS. ZWICK: Okay.

7 MR. SHAW: Just let her --

8 MS. KNARICH: Just give me a second to
9 read this.

10 MS. ZWICK: Okay.

11 MS. KNARICH: Well, first off, I'm
12 going to object to these being entered. The photos,
13 yes, but the comments, the public comment up here on
14 top, "consider it unsightly, a high density
15 arrangement," so I obviously object to that opinion
16 being entered into the record.

17 Do you just have the photos themselves?

18 MS. ZWICK: I could reprint this, but
19 that's my opinion. My name and address are on
20 there, that's my opinion.

21 MS. KNARICH: I understand that but
22 I'm objecting to it.

23 MR. SHAW: Well, the Board could be
24 directed to not consider what the opinions are that
25 are expressed on it and to look at the pictures, so

1 if you could then, you know, explain when the
2 pictures were taken, how they were taken, what they
3 depict.

4 MS. ZWICK: Okay.

5 MS. SMITH: I could get a scissors and
6 cut the comment off.

7 MR. SHAW: No, that's all right.

8 MS. KNARICH: I just wanted to put my
9 objection on the record.

10 MS. ZWICK: Well, actually, Mr.
11 Kronk's pictures are better than mine. I used a
12 little point-and-shoot camera yesterday morning, it
13 was very sunny so there was a lot of backlighting
14 and my pictures are poor, but in my opinion and in
15 neighbors', people I've been talking to, it's an
16 eyesore already and extending the tower to have a
17 higher level is more visible. From our own yards,
18 we see that, and when you have a tower of this
19 height and you have trees of this height and you're
20 on the ground over here (indicating), we can still
21 see the tower, so when you are driving up and down
22 River Road, everybody else sees it. When you come
23 into town, into Chatham, over the bridge from New
24 Providence on Passaic Street -- I have a picture in
25 that direction as well as Mr. Kronk did -- as well

1 as a mile away down Central Avenue. You see the
2 power lines. The power lines are kind of light and
3 airy, they're an existing use, necessary, they were
4 there when we all bought our homes; however, the
5 cell phone arrays were not and it is known wide and
6 far. No one wants to live next to a cell tower, no
7 one wants to buy real estate next to a cell tower.
8 Anybody --

9 MS. KNARICH: I'm going to object to
10 that generalization.

11 MS. ZWICK: It's not a generalization.

12 MS. KNARICH: But I'm going to make
13 the objection --

14 MS. ZWICK: Okay.

15 MS. KNARICH: -- for the record.

16 MS. ZWICK: Okay. Anybody driving up
17 and down will see the cell tower and it will
18 dissuade people from purchasing real estate nearby.

19 MS. KNARICH: I'm going to object to
20 that again.

21 MS. ZWICK: I would not have purchased
22 my house if there was a cell tower existing, then
23 when I moved in in 1991, I would not have purchased
24 that home.

25 MR. SHAW: Do the photographs really

1 add very much to what your description is? I mean
2 --

3 MS. ZWICK: Mr. Kronk's photos are
4 better and the same -- similar addresses are
5 presented.

6 MR. SHAW: So the adverse visual
7 impacts that you perceive are demonstrated on Mr.
8 Kronk's photographs?

9 MS. ZWICK: Generally, yes.

10 MR. SHAW: So we don't really --

11 MS. ZWICK: This is kind of redundant.

12 MR. SHAW: So we don't really have to
13 pass it around and look at it? We can rely on Mr.
14 Kronk's -- you can rely on Mr. Kronk's photographs
15 to support what your testimony is?

16 MS. ZWICK: Yes, because I think it's
17 an eyesore to start with and then adding to it is
18 worse. It is more visible because it will be even
19 higher up and it's already above the tree line. So,
20 aesthetically, you know, I do not intend to stay in
21 Chatham, I am very unhappy with what I've been
22 seeing in recent years with the development and I'm
23 sorry to say that but -- I love the area, I love the
24 Great Swamp, that's what drew me to the area, so...
25 I don't like what I see in direction with the

1 development and the allowance of such things. I
2 think the homeowners, the property owners, are who
3 should really be answered to regarding development.
4 It's our town.

5 MEMBER OF THE PUBLIC: No, it isn't.
6 Lesson number one.

7 MR. SHAW: Okay.

8 CHAIRMAN VIVONA: Okay? Thank you.

9 MS. ZWICK: And one more comment.
10 Residential zoning, 35-foot elevation limit for
11 development. Power lines, of course, are taller.
12 We're piggybacking on power lines, but the power
13 lines are of a certain uniform height and the cell
14 service is going above and beyond so it will stick
15 out like a sore thumb.

16 The law that says homeowners within 200
17 feet of the property need to be notified. I think
18 that's fine if somebody's adding on to their house
19 or a deck or something like that, a land use, but
20 when it comes to an aerial, you know, extrication of
21 something, this -- this is different. I don't think
22 that a 200-foot notification rule is really
23 appropriate.

24 MR. SHAW: Unfortunately, that's what
25 the MLUL provides and we are prohibited from

1 requiring anything more than it states.

2 MS. ZWICK: Okay.

3 MR. SHAW: I certainly understand what
4 your concerns are for regional impacts that may be
5 greater than 200 feet, but we're restricted by the
6 MLUL to the 200-foot notice of the property.

7 MS. ZWICK: Okay.

8 MR. SHAW: Plus newspaper publication.

9 MS. ZWICK: Okay. Okay, thank you.

10 CHAIRMAN VIVONA: All right, thank
11 you. Yes, ma'am.

12 MS. MAGISTRO: May I present?

13 CHAIRMAN VIVONA: Um-hum.

14 MS. MAGISTRO: My presentation is five
15 pages and I apologize but I asked if I could just
16 present it to the Board and I was told I couldn't so
17 I will try to read it as quickly as possible, it
18 might be helpful.

19 Okay, my name is Theresa Magistro, I'm
20 a property owner at 138 Passaic Street in New
21 Providence. My understanding is that T-Mobile
22 requires a number of variances in order to construct
23 the project. Among other things, it's asking the
24 Board for approval to increase the height of the
25 cellular tower up to 150 feet, that's about 15

1 stories, which is well beyond the limits imposed by
2 the code, and to do so on the site that is right in
3 the middle of a residential area even though the
4 code does not allow such structures to be located
5 closer than 100 feet from the boundary of a
6 residential area. My understanding is that it would
7 be illegal for the Board to grant these approvals
8 unless the applicant demonstrated, among other
9 things, that there are special circumstances, some
10 extraordinary and exceptional situations affecting
11 the property, that would cause T-Mobile to suffer
12 exceptional and undue hardship if the application is
13 not granted.

14 I cannot imagine how T-Mobile would be
15 able to make this case, because the only things that
16 are unique about the property are characteristics
17 that make it wholly inappropriate for the increase
18 in the cell tower. The land for this proposed
19 project is richly-wooded parcel located directly on
20 the banks of the Passaic River and is home to
21 abundant wildlife living in this area and I believe,
22 given its location and natural resources, that it
23 qualifies as a critical area with special protection
24 under the zoning code. This area is, in fact,
25 designated a Heritage Greenway. My understanding is

1 that such areas are not to be disturbed under the
2 code unless there is no practical alternative in
3 doing so. In addition, the only undue hardship that
4 would be suffered if this project is approved is the
5 hardship that would be dealt to the affected
6 residential community. The 100-foot buffer
7 requirement was put into the code for good reason,
8 because studies have documented deleterious effects
9 that cell phone towers have on nearby residential
10 property values, while other studies have indicated
11 that electromagnetic radiation generated by these
12 facilities may cause adverse health effects if they
13 are located too close to homes.

14 MS. KNARICH: I'm going to object to
15 that statement.

16 MS. MAGISTRO: Okay. I have some
17 documentation here that I'll be happy to present.

18 MS. KNARICH: I'm going to object to
19 it.

20 MS. MAGISTRO: Diminished property
21 values and aesthetics, which we haven't really
22 talked about very much here. The Federal
23 Communications Act of 1996 states that diminished
24 property values and aesthetics are valid reasons for
25 a municipality to deny zoning approval for a cell

1 tower.

2 Next: A survey by the National
3 Institute of Science, Law and Public Policy, found
4 that 94 percent of people surveyed would not rent or
5 buy a house near a cellular tower.

6 Next: A New York Times article dated
7 August 27, 2010 by Marcelle Fisher reports the
8 negative impact of cell phone towers on Long Island
9 real estate.

10 Next: The Fall 2007 issue of the
11 Appraisal Journal documents "The Impact of Cell
12 Phone Towers on Home Prices on Residential
13 Neighborhoods" based on a study by Sandy Bond,
14 Ph.D., and Ko Kang Wang. After conducting a
15 substantial survey and market sales analysis, the
16 authors have found that cellular phone base
17 stations, CPBS's, have a negative impact on prices
18 of houses in the study area.

19 In connection with a proceeding
20 involving a T-Mobile cell tower application in
21 Bridgewater, New Jersey, a qualified real estate
22 appraiser, Robert Hefferman, stated: "I believe the
23 tower will have an adverse impact on the surrounding
24 properties." My understanding is that this proposed
25 project did not go forward.

1 In April 2015, a state appellate court
2 sided with Bernardsville, New Jersey's denial of
3 Verizon Wireless' proposal to build a 150-foot cell
4 tower in a residential neighborhood, stating that
5 "Verizon did not provide a significant amount of
6 evidence that the tower would boost cell phone
7 coverage enough to outweigh significant harm to the
8 neighborhood and the local zoning plan."

9 But it's not necessary to cite studies
10 or surveys to make the point that the project
11 proposed by T-Mobile would reduce the value of
12 nearby homes. One simply has to observe a cell
13 phone tower in a residential area to see the
14 presence of such a 150-foot structure with as many
15 antennae would substantially diminish the people's
16 visual enjoyment of the properties. This fact alone
17 is a good reason for denying the application
18 because, under code, a preliminary site plan
19 approval is not supposed to be granted for a project
20 that would unduly affect the use and enjoyment of
21 surrounding properties.

22 Now we talk about possible health
23 effects and Mr. -- Dr. Eisenstein, I found your
24 testimony online interesting.

25 The danger of living near cell phone

1 towers are being studied and documented around the
2 world. Unfortunately, the United States lags well
3 behind other nations in assessing the harmful
4 effects of electromagnetic radiation. The Safe
5 Wireless Initiative of Science and Public Policy
6 Institute in Washington, D.C. is beginning to
7 examine this public health issue. For the U.S., the
8 legal level of cell site radiation is 1,000
9 microwatts per square centimeter while in China --
10 China -- Switzerland and Italy, it's 10 microwatts,
11 and in some countries, it's as low as 1 Mike watt.
12 The increase in cancer rates as a result of radio-
13 frequency electromagnetic radiation has been
14 seriously studied by other countries. One study in
15 Germany, the City of Naila, saw three times cancer
16 rate increase from 1993 to 1997. These cancers
17 include breast, prostate, pancreas, bowels, skin,
18 melanoma, lung and blood.

19 Israel study - Tel Aviv University
20 Netanya Clinic saw eight different kinds of cancers
21 for 622 people living three to seven years within
22 350 meters, which is 1,148 feet radius, from the
23 transmitter in 1996.

24 Brazil study - In Belo Horizonte, over
25 80 percent of cancer cases lived a third of a mile

1 -- lived a mile -- a third of a mile from the cancer
2 phone towers [sic].

3 New Zealand study - Dr. Neil Cherry of
4 the Lincoln University has documented miscarriage,
5 cardiac disruption, sleep disturbance, chronic
6 fatigue, symptoms of reduced immune system
7 competence and cancers.

8 The International Association for
9 Research on Cancer (IARC), in a 2012 report written
10 by a group of international scientists, have put an
11 unequivocal health warning against exposure of EMF.

12 I am not citing these studies to
13 convince the Board that there is a significantly
14 proven link between cell phone towers and cancer or
15 other diseases. Time and additional studies will
16 determine whether this is the case.

17 I want this to be a matter of public
18 record that health issues were raised. My point is
19 that health concerns being documented around the
20 world provide another strong reason to enforce the
21 zoning code as written and not allow such facilities
22 closer than 100 feet from residential areas to be
23 expanded. With five grandchildren living in this
24 area, I am extremely concerned about any added
25 health risks. I'm almost finished.

1 The need for environmental impact
2 statement: I understand the applicant is requesting
3 a waiver from the requirement that an Environmental
4 Impact Statement, EIS, be prepared to study the
5 impacts of the expanded facility. I strongly object
6 to that waiver because the EIS that was originally
7 prepared in connection with Verizon -- with a
8 Verizon approval failed to recognize or provide a
9 proper inventory of the important resources and did
10 not assess the aesthetic impact on the surrounding
11 area of a hundred-foot structure extending above the
12 tree line. On review of the EIS dated October 11,
13 2017, it is noted, in quotes, "No Change for Storm
14 Water, Air Pollution and Aesthetics." How is this
15 possible in light of the description of the project
16 and the response of the township engineer's report?
17 It seems that a properly prepared EIS should be
18 submitted before the Board takes any action on the
19 application.

20 After attending the November 14, 2017
21 -- this should be corrected -- meeting of the
22 Chatham Environmental Commission, I was concerned to
23 learn that the Commission members were not aware of
24 this proposal and the need for several variances in
25 this critical area. Can the waivers to the EIS be

1 granted without first seeking the views of your
2 Environmental Commission?

3 The project does not meet the buffer
4 requirements in the code for cellular towers.
5 According to the application, Section 30-99.9 of the
6 code requires that appropriate screening and
7 buffering must be provided for a cellular tower in
8 order to reduce its visual impact. Also, it's
9 auxiliary structures, so not just the tower but also
10 the antenna.

11 However, it goes on to say that no
12 buffering is required for the project -- this is the
13 response -- because the supporting transmission
14 tower already exists, but this ignores the fact that
15 if the application is approved, the cellular
16 equipment will be visible above the trees, causing
17 much greater visual impacts than now exist. No
18 attention whatsoever has been paid to whether and
19 how the extended equipment can be screened in order
20 to reduce its visual impact on its nearby
21 residential neighbors. Just painting those a
22 different color does not do the trick. This affects
23 all of our property values.

24 In closing, I am voicing my objection
25 to the T-Mobile application because, one, the

1 standards required for granting the requested
2 variances cannot be met given the conditions on the
3 property as I understand them. Two, the project
4 would adversely affect the use and enjoyment of my
5 property and the property of my neighbors by
6 diminishing our property values, disrupting a
7 critical area and posing the potential health risks
8 and causing visual impacts that go well beyond those
9 that currently exist. All of this could be avoided
10 by maintaining and enforcing the buffer requirement
11 imposed by the code.

12 I thank you for your important work to
13 the community and all the time you give for us and I
14 know you've had a long day. Thank you very much and
15 I apologize for this long response. Good evening.

16 (Applause by members of the public)

17 MR. HYLAND: Ms. Magistro, can you
18 stay there for a second?

19 MS. MAGISTRO: Sure.

20 MR. HYLAND: Because I know I have a
21 few questions --

22 MS. MAGISTRO: Sure.

23 MR. HYLAND: -- but I didn't want to
24 jump in front of anybody else.

25 CHAIRMAN VIVONA: Go ahead.

1 MS. MAGISTRO: Okay.

2 MR. HYLAND: You refer to the Heritage
3 Greenway.

4 MS. MAGISTRO: Yes.

5 MR. HYLAND: Where does that
6 definition come from? Is that a township definition
7 or is that something in some other ordinance?

8 MS. MAGISTRO: There's a sign up right
9 there. It's a plaque, right on River Road where
10 this area is, there's a plaque. I'm new to this
11 area. We moved from Connecticut two years ago and
12 I'm just learning about the area and we moved to
13 this site because it's especially beautiful. And
14 there is a plaque right on River Road where this
15 strip of land is --

16 MR. HYLAND: Okay.

17 MS. MAGISTRO: -- and that's where I
18 got it.

19 MR. HYLAND: And -- this would be for
20 Dr. Eisenstein, perhaps you, Steve. She referred to
21 the Federal Communications Act of 1996?

22 MS. MAGISTRO: Um-hum.

23 MR. HYLAND: When saying that adverse
24 impacts on housing prices could be a reason to
25 decline an application?

1 MR. SHAW: You'd have to prove it.

2 MR. HYLAND: Okay. But did that ever
3 get overwritten in any of the other laws?

4 DR. EISENSTEIN: I'm not aware of a
5 section of the 1996 Telecommunications Act that says
6 that. Now, I may have -- the sections that I read
7 have been on the regulations for the radio frequency
8 and there may be something else somewhere else, but
9 in the sections I've read of the Telecommunications
10 Act, I have not seen any of that.

11 MS. MAGISTRO: I found this
12 information on the internet for the Federal
13 Communications Act of 1996.

14 DR. EISENSTEIN: But the citation is
15 47 CFR, Code of Federal Regulations, and I've been
16 through all Section 47, which is quite voluminous,
17 I've never seen it. That doesn't mean it's not
18 there, it doesn't mean it's not somewhere else, I
19 mean, there are thousands -- ten thousand pages of
20 regulations.

21 MS. MAGISTRO: Um-hum.

22 DR. EISENSTEIN: I read what I think
23 is pertinent.

24 MS. KNARICH: Do you have the exact
25 section that you could cite to?

1 MS. MAGISTRO: I don't because I'm not
2 an attorney, I'm a layman who uses the internet, and
3 what I did is I went to that particular act -- to
4 that particular law and just put in "decline in
5 property values for cellular towers on properties."

6 MS. KNARICH: And it should have put
7 you to a section but you don't have that section
8 number?

9 MS. MAGISTRO: No, I don't.

10 MS. KNARICH: All right, you didn't
11 take that down.

12 MS. MAGISTRO: No.

13 MS. KNARICH: Okay.

14 MR. HYLAND: There's nothing in the
15 record.

16 MS. KNARICH: I'll tell you --

17 MR. SHAW: As far as I know, there's
18 no provision which, you know, you have to take
19 aesthetics into account --

20 MR. HYLAND: Okay.

21 MR. SHAW: -- and economic impacts are
22 things that you have to take into account but you
23 have to submit, you know --

24 MR. CHIARAVALLOTI: Testimony.

25 MR. SHAW: -- testimony and proofs to

1 establish that.

2 MR. CHIARAVALLOTI: That's right.

3 MR. HYLAND: You got a fan club.

4 MS. MAGISTRO: You might look at the
5 Appraisal Journal document of fall of 2007 because
6 that survey was quite substantial and they did a lot
7 of work, it was pages and pages, and I didn't write
8 down all of the information they had, but if you
9 want to refer to it, it is there. I'd be happy to
10 make this available to anyone.

11 MR. SHAW: Well, unfortunately, the
12 time for making it available is at the hearing.

13 MS. MAGISTRO: Should I look it up on
14 my phone right now and bring it to your...

15 MS. KNARICH: I would submit that we
16 would need a hard copy of it.

17 MS. MAGISTRO: I can run home and run
18 it off if you want. You're leaving at 11, I --

19 MR. HYLAND: It's okay. I thought the
20 speech was great and it gave me a lot to think
21 about. Thank you.

22 MS. MAGISTRO: Um-hum. Thank you, and
23 I appreciate your work.

24 CHAIRMAN VIVONA: Okay, thank you.

25 MS. MAGISTRO: Thank you.

1 CHAIRMAN VIVONA: Does anybody else
2 have a statement they'd like to make for the record?
3 Yes, sir.

4 MR. CHIARAVALLOTI: Just a general
5 comment. Do you want me to come up as well?

6 CHAIRMAN VIVONA: Sure. Just because
7 the microphone doesn't reach back there.

8 MR. CHIARAVALLOTI: That's fine. I
9 probably don't need one.

10 My name is Michael, I'll spell my last
11 name, it's very long, C-H-I-A-R-A-V-A-L-L-O-T-I, and
12 I live at 39 Stonewyck Drive.

13 The first thing I want to do is echo
14 the comments. I want to thank everyone, to begin
15 with. This is certainly probably not the highlight
16 of your day and, certainly, it's a long day, so I
17 appreciate you guys putting the time. I come in
18 here, frankly, to educate myself. I don't know all
19 the rules, I was very impressed with the various
20 questions that were asked and the context and color
21 that was given by the Board, so clearly, you guys
22 are well versed in the issues, certainly more than I
23 am, so again, I appreciate the education tonight.
24 But I had a couple questions for the Board and one
25 of them was, it seems like this is obviously an --

1 and I'm recovering from having a cold so I
2 apologize. There's a lot of these applications that
3 are coming through, and I'm assuming you've seen
4 some more applications over the years. Has there
5 ever been any thought to potentially having detailed
6 ordinances that deal specifically with this or is
7 this something that's not permitted? Mr. Shaw, you
8 mentioned --

9 MR. SHAW: We do have an ordinance
10 that regulates it but --

11 MR. CHIARAVALLOTI: But not
12 specific --

13 MR. SHAW: -- it's restricted in terms
14 of the number of properties where a tele-
15 communications facility is allowed as a conditional
16 use so that when you hear talking about all these
17 standards, these are standards that if you had a
18 piece of property which was in a location where it
19 was a conditional use, those standards would apply.
20 Nonetheless, we apply those standards anyway to any
21 telecommunications facilities that come in. But we
22 do have an ordinance on the books which is -- which
23 was necessary for most municipalities to have to do
24 to protect themselves from being able to still be
25 able to deny applications.

1 MR. CHIARAVALLOTI: Is this the MLUL
2 reference or...

3 MR. SHAW: It's Section 99 of our
4 ordinances, which are conditional uses, and it
5 identifies all the standards for telecommunications
6 facilities. But again --

7 MR. CHIARAVALLOTI: Is it generic,
8 though, or is it specific to cell towers?

9 MR. SHAW: No, there's specific
10 standards for telecommunications facilities.

11 MR. CHIARAVALLOTI: Got it. Okay.

12 MR. HYLAND: The MLUL is the Municipal
13 Land Use Law.

14 MR. CHIARAVALLOTI: Correct.

15 MR. SHAW: And the MLUL, the Municipal
16 Land Use Law, that has a number of provisions in it
17 dealing with collocation also, which predate the
18 federal regulation that everybody was talking to,
19 but they also permit collocation of telecommunica-
20 tion facilities once something is already there
21 without even requiring a -- that's what still
22 triggers local review, but even under the New Jersey
23 Statute, collocation is very heavily favored.

24 MR. CHIARAVALLOTI: And then my next
25 question, just, again, following the guidance that

1 you guys left, which I appreciate, there's
2 references to C variance relief, D-1 variance
3 relief. What are the various companies coming in
4 and asking for? Is it the C variance --

5 MR. SHAW: When you have an
6 application coming in for a site which has never had
7 an approval before, those sites will come in for use
8 variance approvals and height variance approval,
9 which are all D variances. There are also things
10 which are called -- which requires a supermajority
11 of the Board to approve that requires five
12 affirmative votes. There are also what we call C or
13 bulk variances --

14 MR. CHIARAVALLOTTI: Um-hum.

15 MR. SHAW: -- that deals with
16 proximity of a structure perhaps to where a
17 residential property line might be.

18 MR. CHIARAVALLOTTI: But the folks who
19 are here tonight, are they here for Cs or Ds?

20 MR. SHAW: Well, they have basically
21 elected to proceed with their application under the
22 federal regulation, which provides that if a
23 telecommunications facility has been approved for a
24 site, then they can collocate on that site provided
25 they meet certain federal criteria which were

1 adopted by the FCC.

2 MR. CHIARAVALLLOTI: Um-hum.

3 MR. SHAW: As a result, because there
4 was already a use variance granted for this property
5 for a telecommunications facility, it does not
6 require another use variance, or if you did treat it
7 as requiring a use variance, the Board would be
8 obligated to grant it because it's mandated that it
9 has to be approved under the federal regulations.
10 Similarly with a height variance, this is going to
11 be taller than, you know, you could treat this as a
12 height variance, but if you did treat it as a height
13 variance, since it meets the federal standards, the
14 Board does not have the ability to deny that
15 application; in essence, the federal rule
16 establishes that there is a general welfare benefit
17 for collocation and as long as you meet those
18 requirements, then the variance relief has to be
19 granted. So I believe this application --

20 MR. HYLAND: That's the 10 percent or
21 20 feet?

22 MR. SHAW: Pardon?

23 MR. HYLAND: That's the 10 percent or
24 20 feet?

25 MR. SHAW: Right.

1 MS. KNARICH: Also the number of
2 cabinets.

3 MR. SHAW: And this application, I
4 believe, may have been advertised for all variance
5 relief requested in addition to the FCC requirement,
6 and again, I mean, what I would end up doing in
7 terms of a resolution, you know, were the Board to
8 approve this application under the federal
9 regulations, I would find that any use variance or
10 height variance relief required was required to be
11 granted by the federal regulations.

12 MR. CHIARAVALLOTI: Again, I wasn't
13 asking specifically for this application --

14 MR. SHAW: No, but, I mean, that's a
15 general --

16 MR. CHIARAVALLOTI: I'm asking in
17 general --

18 MR. SHAW: That's colo -- I described
19 the kind of relief that normally would be involved
20 in other applications.

21 MR. CHIARAVALLOTI: Understood. And
22 again, we'll come back on December 21 because it
23 just -- there's this sense -- as I look through this
24 -- your regular meeting agenda, these are going to
25 keep coming, and you mentioned that as capacity

1 grows, they're just going to continue to expand and
2 I would ask the Board, the Board members who have
3 the votes, to really think about, if the towers are
4 already there and they need to be expanded, so be
5 it, but I guess what I am concerned with is a
6 broader spreading of these towers, and as you sort
7 of think through your vote and what makes the most
8 sense for the town, potentially -- and again, I
9 certainly can't speak to the MLUL and I understand
10 what you're saying as far as your hands being tied
11 as it relates to certain towers that are in
12 existence and you have limited recourse or you
13 potentially are going to get sued by AT&T or
14 T-Mobile or whomever.

15 MS. KNARICH: We're T-Mobile.

16 MR. CHIARAVALLOTI: But I do think --
17 what's that?

18 MS. KNARICH: We're T-Mobile.

19 MR. CHIARAVALLOTI: T-Mobile. I do
20 think there is merit in some of the arguments that
21 were delivered today and I think you have to balance
22 that as best you can, within the rules that have
23 been promulgated. I understand -- I looked at the
24 sites you had already told me a few weeks ago and I
25 understand where you guys are coming from and how

1 you do have some limits to sort of what you can and
2 can't do. I think you referenced -- sorry to keep
3 you. You referenced the -- sort of the "shall." I
4 get it, like, the Board, to a certain degree, has
5 its hands tied, but you just can't necessarily roll
6 over and I do think there is a balance, there can be
7 a balance between giving these companies additional
8 broadband in places that exist today versus sort of
9 having it spread throughout the different parcels of
10 land throughout Chatham Township. That would be my
11 ask for the Board to consider.

12 MR. SHAW: Okay, thank you.

13 MR. WILLIAMS: Thank you.

14 MR. CHIARAVALLOTI: I know you guys
15 have to get home tonight.

16 CHAIRMAN VIVONA: Is that it?

17 MR. CHIARAVALLOTI: I'm good.

18 CHAIRMAN VIVONA: Okay. Anybody else
19 that would like to make a statement? Yes.

20 MR. MAGISTRO: From here or there?

21 MR. SHAW: From up here.

22 MR. HYLAND: Come on up.

23 MR. MAGISTRO: By way of progress --

24 COURT REPORTER: Could you spell your
25 name for me, please?

1 MR. MAGISTRO: M-A-G-I-S-T-R-O.

2 COURT REPORTER: Thank you.

3 MR. MAGISTRO: Okay. My wife has
4 asked me to be calm and I will do my best to be
5 calm. I thought I lived in a free country but I can
6 see that the FCC, controlled by these companies, has
7 far more power over my community and the citizens of
8 that community. Very, very sad and I'm surprised
9 you take it, I'm surprised you don't rebel against
10 it.

11 Okay. Having said that, I've been
12 asked to ask you if you could provide in your
13 direction to the company a request for adequate
14 screening both at the base and at the top. I'm sure
15 you have seen in your travels towers that have near
16 the antenna what looks like branches. It mitigates
17 the horror. So I'm just asking you if you would
18 explore with the company, if they get to do this,
19 which it seems that they will, if they could do
20 everything in their power to mitigate the impact of
21 the tower. Thank you.

22 CHAIRMAN VIVONA: Thank you. Anyone
23 else?

24 (No response)

25 CHAIRMAN VIVONA: As far as screening,

1 I don't know if the branch system would work on a
2 lattice tower. Those towers are specifically
3 designed, it's a monopole that has the branches,
4 it's a single unit, it's not a power pull or
5 anything, it is specifically designed to be a cell
6 tower and the branches are engineered onto that
7 tower. I don't think it can happen with the lattice
8 type because there's no place to anchor it and it
9 wouldn't look like a tree. The whole purpose of
10 that is to make the monopole look like a pine tree
11 and, otherwise, I think it'd be a big metal lattice
12 tower with antennas and black things sticking on it.
13 I don't think it would work. What we have found and
14 the only way we can really camouflage it is to sort
15 of blend it in with the skyline or the colors of the
16 towers. In other cases, we require the wires to be,
17 like Upson water tower, everything was going to be
18 painted the exact same color as the tower, the water
19 tower, so it would be less noticeable. On something
20 like this, the antenna can be painted a sky blue or
21 a gray-blue to sort of blend in and not be a big
22 black box in the sky. We would make that a
23 condition of the approval. Again, with the wires,
24 the wires are visible on the towers and we would
25 request that those also be colored to blend in to be

1 as least visible as possible.

2 As far as underneath the -- there's
3 already some sort of a chain-link fence with slots
4 in it, I believe, that would cover the existing
5 boxes that are underneath. It is in a utility
6 corridor, there are natural bufferings in there,
7 there's -- granted that some people can see it, it
8 is not, you know, blatantly open like when you look
9 at it from River Road where it's not blocked. On
10 the other two sides of the utility corridor, there
11 are plenty of trees that will buffer it, but we've
12 also found the more stuff you put up to hide
13 something, the more you see what you're hiding,
14 so...

15 Also, the power company limits what can
16 be planted around a lot of the facilities. Each
17 time we get a new application, there's some other
18 thing we try to do to make it as, I wouldn't say
19 "pleasing" but less unpleasing. And we've come up
20 with a couple of good ideas and since all these new
21 monopoles went up, we've -- this is probably our
22 eighth cell tower application or more. There's only
23 so much we can do and we try to look out for our
24 residents. Nobody wants these things around us but
25 we all want to have the convenience of having the

1 phones and the internet and all the other stuff.
2 It's a necessary evil and our hands are tied, to a
3 great extent, and basically, I feel that all we're
4 allowed to do is put lipstick on a pig. We can't
5 stop it. We've tried. We tried at Buxton, they --
6 we denied the application and it went for months in
7 court and it got overturned. It got overturned and
8 we appealed, it got overturned again, and we just --
9 we have limited resources and it's, you know, it's a
10 federally mandated thing. Nobody likes it and we
11 try our best to limit it so we don't have, you know,
12 20 poles. We might have 20 sets of antennas but on
13 eight poles; otherwise, if we didn't do that, we'd
14 have 20 poles with one set of antennas on it, it's
15 sort of like a necessary evil. I know everybody
16 here wants us to say "No, you can't have it" and we
17 could all do that, but all it does is go to court
18 and the state trumps us, state and federal. So we
19 want to do what's best for our community because we
20 live here too and we see the same things. I live a
21 thousand feet from here, I see the pole right here
22 every day, and nothing I can do about that, and I'm
23 the boss and I can't do anything about it. The
24 federal government and the state government trumps
25 local government, so basically, I'm sorry but what

1 we can do is put as many limitations on it as
2 possible, but if they make their proofs and they're
3 within all their guidelines, we're sort of -- sort
4 of stuck with it.

5 MS. GRAMMER: So we need to assume
6 that they are getting their approval to raise it --

7 CHAIRMAN VIVONA: We're going to vote
8 on it.

9 MS. GRAMMER: -- another 15 feet and
10 we're going to look at it and enjoy it every day.

11 CHAIRMAN VIVONA: Well, unfortunately,
12 it might not be today but it'll be --

13 MS. GRAMMER: It's coming.

14 CHAIRMAN VIVONA: -- within a year.

15 MS. GRAMMER: Correct.

16 CHAIRMAN VIVONA: And we can fight it
17 as long as we can, but inevitably, that will go up.

18 MS. GRAMMER: So it's just done as
19 T-Mobile.

20 CHAIRMAN VIVONA: It doesn't matter,
21 you have -- Verizon's on the same pole --

22 MS. GRAMMER: I understand that, but
23 that's not fair.

24 CHAIRMAN VIVONA: -- and every other
25 cell company is around there and they're required to

1 provide service, especially for drive-by service if
2 someone has an accident and they're driving from
3 somebody else -- somewhere else and they have an
4 accident, they want to be able to call 911 and have
5 an ambulance come out there and that's just --
6 that's how it is. But we will vote on it, we will
7 continue our fight to save our communities, but I
8 don't want anyone to leave here thinking that this
9 is a -- something that we take lightly.

10 MS. GRAMMER: No, I truly -- I'm
11 walking out this door and I know your answer to us
12 and I find it disgraceful because Chatham's a great
13 little town.

14 MS. KNARICH: Could we just get her
15 name?

16 CHAIRMAN VIVONA: Yeah, I'm sorry,
17 would you just state your name for the record,
18 please?

19 MS. GRAMMER: Debbie Grammer. And I
20 know your answer to us, I was here the last time and
21 I'm looking at your faces and I'm watching her
22 behavior and it saddens me and I live right across
23 the street from it. It really does.

24 CHAIRMAN VIVONA: One more comment.

25 MS. ZWICK: I have one more comment,

1 believe it or not. Susan Zwick.

2 CHAIRMAN VIVONA: Hi, Susan.

3 MS. ZWICK: Hi.

4 CHAIRMAN VIVONA: Haven't heard from
5 you in a while.

6 MS. ZWICK: Boiling down everything,
7 would a petition signed by homeowners -- it has to
8 be homeowners as opposed to a gazillion renters in
9 Cardinal Hill -- who have to look at this thing,
10 would that have any impact on your decision?

11 MR. SHAW: It would not even be
12 admissible.

13 MS. ZWICK: Not admissible.

14 MS. GRAMMER: No, because the FCC regs
15 overrule them.

16 MS. ZWICK: Right, but you can still
17 decline, even though there's an FCC reg that says
18 "Go ahead and do it," but the common sense for this
19 particular application is not to allow it on this
20 pole because it does not address fulfilling the
21 customers' needs in the area where the customers
22 don't have service. This area in question already
23 has service. If there was a pole located across the
24 river maybe a mile away in New Providence, it would
25 cover the distribution area that they want to

1 achieve. As it is, they're going to get a little
2 slice with this tower proposal and then they still
3 have to add another tower elsewhere, that was
4 mentioned last, uh, last meeting, across the valley
5 on the other side towards the Mountain, they were
6 going to add another one. Why not put one in the
7 middle for radial distribution and cover everything
8 instead of having two against two mountain ridges,
9 when we are only addressing maybe about 40 percent
10 of an area, because the other map for the high
11 frequency showed that they would maybe gain 40
12 percent out of the distribution area because about
13 60 percent was already covered.

14 CHAIRMAN VIVONA: As a community, you
15 can do whatever you like. You can petition, you can
16 strike, you can march. As Board members, we have to
17 go by what we know. We know there's certain laws
18 and rules we have to follow and certain things we
19 can accept and not accept. As a community, you can
20 sue T-Mobile. You can do whatever you'd like. We
21 cannot. We have to just weigh the facts against the
22 evidence and against the regulations and it's the
23 regulations that trump everybody. Or Hillary
24 everybody, depending on how you voted.

25 MS. ZWICK: I think the coverage maps

1 really speak for themselves, in that this pole
2 location does not address the need that they want to
3 cover.

4 CHAIRMAN VIVONA: Well --

5 MS. ZWICK: If you look at the
6 overlays again --

7 MR. WILLIAMS: But that's one --
8 you're picking a specific example. We have listened
9 to many of these and we're getting more and more.
10 Cell companies are going to be wanting to put poles
11 on -- antennas on every single tower in every single
12 community around here because they cannot keep up
13 with the demand. That's just the way it is, and we
14 don't like it, really, much either, but that's the
15 way it is.

16 MS. GRAMMER: And how high can they
17 go? And I asked this the last time.

18 COURT REPORTER: Your name again?

19 MS. GRAMMER: Debbie Grammer --

20 COURT REPORTER: Thank you.

21 MS. GRAMMER: -- like English grammar
22 but misspelled, E-R.

23 COURT REPORTER: Thank you.

24 MS. GRAMMER: How high can they go,
25 how many companies can go on top, on top, on top?

1 This gentleman said usually one.

2 MR. SHAW: Well, what --

3 MS. GRAMMER: Are we guaranteed?

4 MR. SHAW: What we're dealing with
5 right now are all of the PSE&G monopolies that you've
6 seen gone up in a couple other places. There, they
7 have standards that PSE&G has imposed which
8 basically prevents more than two collocation [sic]
9 on any of their facilities by --

10 MS. GRAMMER: Who owns that tower
11 then?

12 CHAIRMAN VIVONA: PSE&G.

13 MR. SHAW: PSE&G.

14 MS. GRAMMER: And apparently, it's in
15 bad condition, it's rusting and it's --

16 MS. KNARICH: Oh, this is JCP&L.

17 MR. SHAW: JCP&L.

18 MS. KNARICH: This one is JCP&L, not
19 PSE&G.

20 MS. GRAMMER: Okay.

21 MR. SHAW: It's not aesthetically
22 pleasing but I don't think it's --

23 MS. GRAMMER: Is there anything the
24 town can --

25 MR. SHAW: -- structurally unsound.

1 MS. GRAMMER: Is there anything the
2 town can do about that?

3 MR. SHAW: No, it's a public utility.

4 MS. GRAMMER: Gotch ya. So it can
5 fall?

6 MR. SHAW: If it's structurally
7 unsafe, I'm sure that someone from the building
8 department would become involved, but I don't know
9 if there's anything to say that it's structurally
10 unsafe --

11 MS. GRAMMER: It's rusting.

12 MR. SHAW: -- and before -- and before
13 they could get an approval to go on, they have to go
14 get a building permit from the construction
15 official, who's going to certainly look at the
16 condition of it --

17 MS. GRAMMER: Right.

18 MR. SHAW: -- when it goes up.

19 MS. GRAMMER: So there's no guarantee
20 as to how many companies can piggyback on top of the
21 tower.

22 MR. SHAW: At the moment, we know that
23 there are two that will be collocating, and
24 depending on how one interprets the FCC regulation,
25 you get one collocate, in which case they're done.

1 Theoretically, it could be interpreted differently
2 than that but you have to deal with the structural
3 capacity of the tower. And I could tell you,
4 certainly, all the PSE&G towers that you see and the
5 monopoles cannot have any more than two tele-
6 communications facilities on it because of the
7 restrictions that they have placed on the number of
8 --

9 CHAIRMAN VIVONA: Wires.

10 MR. SHAW: -- wires that you're
11 allowed to have.

12 MS. ZWICK: Yeah, collocation is the
13 easy path to success, yes.

14 MS. GRAMMER: Thank you.

15 CHAIRMAN VIVONA: Any other comments
16 before we wrap this up?

17 MS. MAGISTRO: Just a question, Mr.
18 Vivona. You explained why those trees on top of the
19 tower wouldn't work, but would it be possible to ask
20 T-Mobile if their creative department could come up
21 with something that would be appropriate for this
22 kind of structure?

23 CHAIRMAN VIVONA: I think the problem
24 is more the power company won't allow it. The cell
25 phone companies want to put them everywhere, they'll

1 do whatever they can possibly do to make it -- to
2 make it work.

3 MS. MAGISTRO: Um-hum.

4 CHAIRMAN VIVONA: That type of tower
5 can't handle it, there's no place to anchor it --

6 MS. MAGISTRO: Just at the top of it,
7 because some of them just have something at the top.

8 CHAIRMAN VIVONA: No. Because it's
9 more wind resistance, it can attract other things to
10 it, it would actually -- the only way to hide them,
11 hide the antennas, is to put it in front of the
12 antennas, then the antennas don't work, so now you
13 make them higher, and they either put higher
14 branches, it just -- that pole is not -- that tower
15 is not designed to accept that type of ornamentation
16 even though it might be nice if it would work. The
17 other towers that have the branches are specifically
18 designed where the branches actually are part of the
19 antenna.

20 MS. MAGISTRO: Thank you.

21 CHAIRMAN VIVONA: Anybody else?

22 (No response)

23 CHAIRMAN VIVONA: Okay, you have a
24 summation?

25 MS. KNARICH: I do. I'll try to make

1 it as brief as possible since it's such a late hour.

2 First off, I want to thank the Board
3 for their time and the public's interest as well.
4 You heard testimony from several experts throughout
5 the course of this hearing, engineer, RF engineer,
6 RF compliance and a planner. I've shown through
7 this testimony the applicant is asking the Board to
8 deem the application approved based upon the federal
9 collocation law as an eligible facilities request.
10 I just want to -- I know your Board attorney did a
11 great job of explaining the federal collocation law
12 but I just want to stress, because some public
13 comment was made about a different standard, and
14 again, you did a good job of explaining the
15 different standards, but I want to be clear that
16 under the federal communications law, when it
17 constitutes an eligible facilities request, "A state
18 or local government may not deny and shall approve
19 any eligible facilities request." Based on the
20 testimony that you heard this evening and also back
21 in October, we have met that standard under the FCC.
22 We are proposing to collocate new transmission
23 equipment, we're not increasing the height by more
24 than what is permitted, we're more than -- and
25 there's no substantial changes to the physical

1 dimensions of the tower upon which the antennas and
2 equipment will be installed, as interpreted by the
3 FCC. Although the applicant is not required, when
4 applying under the FCC collocation law, to present
5 RF testimony, we still did when seeking this
6 approval, due to the gap in coverage.

7 The case law is very clear, both state
8 and federal, that the Board must allow a carrier to
9 find locations for which it can provide the services
10 needed to cover gaps in coverage and that includes
11 locations in a residential zone.

12 You heard testimony that emissions from
13 the facility is being well within all state and
14 federal standards and that the site will operate
15 well within the law for frequency exposure pursuant
16 to FCC guidelines. As the Board is aware, health
17 effects are preempted by the FCC guidelines.

18 And you heard testimony from our
19 planner regarding the benefits of the service and
20 the placement on an existing JCP&L tower, which
21 would significantly reduce any aesthetic impact as
22 compared to putting up a new tower. The courts in
23 New Jersey found that, generally, the issuance of an
24 FCC license should suffice for a carrier to
25 establish that use as long as it serves the general

1 welfare. We actually maintain four such licenses
2 with the FCC.

3 We submit there are no detriments
4 because there's no traffic, noise, odor, vibration,
5 glare. Weighing the evidence presented in court of
6 the application and based upon the proofs that were
7 presented by my professionals, we respectfully
8 request approval of the application to extend the
9 tower and mount its antenna to an overall height of
10 150 with the proposed wholly located within the four
11 legs and we would ask that the Board grant approval
12 for same as testified throughout the hearing.

13 That's it.

14 DR. EISENSTEIN: Conditions being
15 6-foot antennas, color coated near whatever; we can
16 make it as inconspicuous as possible.

17 MS. KNARICH: Neutral.

18 CHAIRMAN VIVONA: Neutral so it will
19 blend in as well as possible, especially the
20 antennas themselves. I don't think steel gray, I
21 think it should be a light gray or a very, very
22 light blue so it blends in better, not just gray.

23 MS. KNARICH: Yup.

24 MS. ROMANO: The same with the wires,
25 right?

1 CHAIRMAN VIVONA: Yeah, the wires will
2 be color coated, perhaps even the actual structure,
3 the mast, whatever you call it --

4 MS. KNARICH: Yup.

5 CHAIRMAN VIVONA: -- will be all color
6 coated so it --

7 MS. KNARICH: Blends in as much as
8 possible.

9 CHAIRMAN VIVONA: -- blends in with
10 the sky, what people are seeing.

11 As far as the base of the tower, I just
12 can't remember from the site visit if the other
13 units were hidden in some way.

14 MR. SHAW: They were within -- they
15 were within the structure of the lattice. They're
16 on an elevated floor --

17 MS. KNARICH: Yup.

18 MR. SHAW: -- within the structure of
19 the lattice.

20 MS. KNARICH: Raised platform.

21 CHAIRMAN VIVONA: Yeah.

22 (The Chairman reviewed a document.)

23 CHAIRMAN VIVONA: All right. Yeah, I
24 think -- if it's similar to what the Verizon housing
25 is like, that should suffice where it's got the

1 little roof over it and it has some shielding
2 effect.

3 Any disturbance in the ground is
4 temporary and it was actually just going to be a
5 simple 10-inch-wide trench to lay a pipe then
6 covered back up then restored. Anything around the
7 base of the tower will be restored to its existing
8 condition, and that's according to the building
9 guides. That's not a condition of approval, that's
10 just standard procedure.

11 I can't think of any other conditions
12 that we need to consider. Those are the main ones.

13 MR. RUSCHKE: Just in my report
14 regarding obtaining NJDEP --

15 CHAIRMAN VIVONA: Yeah.

16 MR. RUSCHKE: -- permits, obtaining a
17 permit from the U.S Fish and Wildlife if
18 appropriate, and the appropriate structural
19 calculations that the tower is suitable for the
20 extension.

21 MS. KNARICH: Got it.

22 CHAIRMAN VIVONA: Okay?

23 MS. KNARICH: Yup.

24 CHAIRMAN VIVONA: At this time, we can
25 make a motion.

1 MR. WILLIAMS: I move that we approve
2 T-Mobile's request.

3 CHAIRMAN VIVONA: With the conditions?

4 MR. WILLIAMS: With the conditions as
5 specified.

6 MS. ROMANO: Can I see one more
7 overlay? Could I see the 2100 again? I'm sorry.

8 CHAIRMAN VIVONA: Sure. Mr. Feehan,
9 could you show the 2100 overlay?

10 MR. FEEHAN: Sure.

11 MR. HYLAND: What did we ever decide
12 about putting up one tower for everybody to use?

13 CHAIRMAN VIVONA: It would have to be
14 like 500 feet tall.

15 MR. HYLAND: Right. So that wasn't
16 something that we wanted to --

17 CHAIRMAN VIVONA: No. And it would
18 take up five acres of space with the guy-wires.

19 MR. WILLIAMS: Isn't the most you've
20 ever seen one of those JCP&L towers with three?

21 CHAIRMAN VIVONA: The lattice tower,
22 not the monos.

23 MR. WILLIAMS: The lattice tower, they
24 said you can put three carriers on it, at the most?

25 MR. HYLAND: Yeah, I just -- it sounds

1 like the community's getting more and more mobilized
2 and so to the extent the people are looking for
3 ideas, instead of doing these one-off towers, maybe
4 the town could vote for a 500-foot-tall, five-acre
5 --

6 CHAIRMAN VIVONA: That the whole town
7 could see?

8 MR. HYLAND: That the whole town could
9 see and benefit from.

10 CHAIRMAN VIVONA: And enjoy it?

11 DR. EISENSTEIN: Can I comment on
12 that? They don't want it tall. You're
13 misunderstanding the whole purpose of cell phone
14 service. This is not a broadcast service, this is a
15 cellular service. They want it only tall enough to
16 work within the cell. If you make it too tall, it
17 bridges over to other cells and then that doesn't
18 work.

19 MR. HYLAND: That's why my friend
20 taught me the down-casting.

21 DR. EISENSTEIN: Well, if you're at
22 500 feet, you can't -- well, okay, not on the record
23 but back in the early days of mobile phones, which
24 go back to the 1930s -- people don't realize that --
25 there was one transmitter on top of the Empire State

1 Building which handled all of New York and northern
2 New Jersey down as far as Camden. My father owned a
3 truck or rode a truck and he told me he had in the
4 back of his truck a mobile phone and it was
5 obviously a party line; when he would pick up the
6 phone to make a call, there were other people
7 chatting away on the thing and he'd have to shout
8 through to get the operator, tell the operator what
9 number he wanted, and the operator would make a
10 connection, it would be just mayhem, so, you know,
11 we could still get by with one tower -- one site on
12 top of the Empire State Building, but in those days,
13 there was probably about a hundred users and today
14 there's probably, in the United States alone, about
15 350 million users. So it just changes a little bit.

16 CHAIRMAN VIVONA: Are you good?

17 MS. ROMANO: I'm good. I'm sorry.

18 Yes. Thank you.

19 CHAIRMAN VIVONA: Thank you for
20 sharing that.

21 MR. SHAW: So there's a motion. Is
22 there a second?

23 CHAIRMAN VIVONA: We're looking for a
24 second.

25 MR. STYPLE: Second.

1 CHAIRMAN VIVONA: Roll call, please?

2 MS. SMITH: I'm sorry, who was that?

3 CHAIRMAN VIVONA: Styple.

4 MR. STYPLE: Second.

5 MR. SHAW: Does anyone want to talk
6 about it?

7 CHAIRMAN VIVONA: Anybody want to make
8 a statement to the public?

9 MR. SHAW: Or just vote?

10 CHAIRMAN VIVONA: Or just vote?

11 MR. WILLIAMS: I already made mine.

12 MS. LaBADIE: I just want to add, I
13 appreciate everyone's comments, I mean, it's nice
14 that you take the time.

15 CHAIRMAN VIVONA: Okay. Roll call.

16 MS. SMITH: Mr. Vivona?

17 CHAIRMAN VIVONA: Yes.

18 MS. SMITH: Mr. Weston?

19 MR. WESTON: Yes.

20 MS. SMITH: Mr. Williams?

21 MR. WILLIAMS: Yes.

22 MS. SMITH: Ms. Romano?

23 MS. ROMANO: Yes.

24 MS. SMITH: Mr. Styple?

25 MR. STYPLE: Yes.

1 MS. SMITH: Mr. Hyland?

2 MR. HYLAND: Yes.

3 MS. SMITH: Ms. LaBadie?

4 MS. LaBADIE: Yes.

5 MS. KNARICH: Thank you very much,
6 Chairman --

7 CHAIRMAN VIVONA: Thank you.

8 MS. KNARICH: -- ladies and gentlemen
9 of the Board.

10 MR. SHAW: I'll have a resolution for
11 the 21st.

12 MS. KNARICH: And you'll need the
13 transcript.

14 MR. SHAW: I think so.

15 MS. KNARICH: I'll get that to you
16 guys.

17 (Hearing concluded at 10:42 p.m.)

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C E R T I F I C A T E

I, MICHELE QUICK, a Certified Court Reporter, Registered Merit Reporter, Certified Realtime Reporter of the State of New Jersey, authorized to administer oaths pursuant to R.S. 41:2-1, 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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