

1 ZONING BOARD OF APPEALS

TOWN OF BERLIN

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In the matter of the Application of:

MARINER TOWER

Town of Berlin, Rensselaer County, New York

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STENOGRAPHIC MINUTES OF MEETING conducted on the  
21st day of January, 2010, at the Berlin Town Hall, Berlin,  
New York commencing at 7:30 p.m.

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ZONING BOARD OF APPEALS:

- DONALD FRENCH, Chairman
- MARYELLEN GILROY, Board Member
- VICTOR LEWIN, Board Member
- J. NICHOLAS ADAMS, Board Member
- DAVID THERAULT, Board Member
- PETER HENNER, Attorney

APPLICANT REPRESENTATION:

CHRISTOPHER F. CIOLFI, Chief Development Officer  
374 South Street  
Suite 202  
Pittsfield, Massachusetts 01201

REPORTED BY: SADIE L. HERBERT  
Court Reporter and Notary Public

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P R O C E E D I N G S

CHAIRMAN FRENCH: I officially call the meeting tonight. We have with us Peter Henner and Mark Hutchins our engineer, who is going to present the report.

Currently, the way things look to proceed for the future, we have this meeting tonight. Next month, we'll have the public hearing, people can come and ask questions and so on and so forth. And then in April, we will have the SEQRA review of the whole process. We're skipping a month because, in part, Maryellen is going to be gone, and we'd like to have our official secretary here as well as probably the regular stenographer, as we did last time. So that's the way things look at the moment.

Maryellen.

BOARD MEMBER GILROY: Just a couple of items. We did not have a ZBA meeting in December. However, the ZBA and Planning Board met on 12/3 to discuss fees. The decision, and it was approved by the Town Board, is that special use permits on various requests would be a charge of \$25, effective that board meeting.

1 The forms are now on file with Ann  
2 Maxin(phonetic), so if anyone asks you about  
3 them, please direct them to Ann. She has the  
4 form. It lists everything, the documenting  
5 material that they need for that. You'll bring  
6 it back to Ann with the \$25 fee, and then she  
7 will get the documents to us for whenever our  
8 next meeting is. And then you covered the  
9 meetings in terms of March. I'll get a notice in  
10 the Eastwick.

11 CHAIRMAN FRENCH: Did the Board set up a  
12 fund for these monies for legal expenses in the  
13 future?

14 VOICE: You have money in your budget for  
15 legal expenses. You can set money aside for  
16 conventional fee items.

17 BOARD MEMBER LEWIN: Was it \$5,000 or  
18 something or an I off or what or --

19 VOICE: It got pared back from that, but you  
20 have -- I believe we left \$1,500 or \$2,000 in  
21 each the Planning Board and the Zoning Board, and  
22 that doesn't account for the tower because that's  
23 a separate entity. They have their own --

24 CHAIRMAN FRENCH: Well, that's a start. It

1           wouldn't go too far if we got in trouble,  
2           probably.

3                   VOICE: Conventional, we have the name of  
4           Mr. King on Route 7. He bills at a hundred an  
5           hour for town -- it's basically a donation. He  
6           does town work for Planning and Zoning at a  
7           hundred an hour.

8                   CHAIRMAN FRENCH: Okay. Well, I just had a  
9           question on that.

10                   If there is no further information, we'll  
11           turn the meeting over to Mark.

12                   MARK HUTCHINS: I've received -- and you now  
13           have my report. I received information from both  
14           the Applicant, Mariner Tower, and subsequently  
15           lots from Verizon Wireless showing not only  
16           before and after coverage using the proposed  
17           tower location, but looking at four alternate  
18           sites, which you had provided to me. I looked  
19           again at the use of the county tower and the HEC  
20           tower. They're not too far away. If you  
21           remember from when we did this last spring, we  
22           saw and we'll -- as I go through the plots, we  
23           can see evidence of that again, that we don't  
24           really have good enough coverage from those two

1 existing towers. I had also looked in the  
2 proceeding last spring at a number of towers,  
3 you'll remember that those were mostly in the  
4 Berlin Village area, a few, as we started to get  
5 down to Cherry Plain. And I also looked at  
6 the -- what had been filed at the time as a  
7 second application. It was sort of on hold, as  
8 you know, from Verizon Wireless. But we were  
9 able to conclude that the need was going to be  
10 there for two sites, not just for Verizon  
11 Wireless, but for most personal wireless  
12 providers through a combination of the  
13 topography, the land cover, and where the  
14 existing towers were. It was not going to be  
15 possible to use -- practically, to use any town  
16 property, which is one of the requirements of  
17 your regulations. Since then, the first tower  
18 has been approved, and my understanding is it's  
19 operational. I noticed when I came down that  
20 it's been built.

21 And so what I did in going through my own  
22 analysis, which I did separately from the Verizon  
23 Wireless. If you have your reports, I started  
24 out -- and this is shown beginning with Figure 2,

1 looking at existing coverage and then adding the  
2 first tower, we've really got quite a white area  
3 as we get down toward Cherry Plain. There are  
4 towers in Stephentown, which are not really  
5 producing any usable signal. There is signal  
6 there. It shows up, actually, better on the  
7 Verizon Wireless plots, but it's not going to  
8 give the kind of overlap that we would need as a  
9 user moves through the area. And remember that  
10 the big concern is Route 22. And so much of the  
11 population in the town, which is close to 22, we  
12 are still going to have a lack of coverage if  
13 this is approved, particularly in the  
14 northwestern corner of the town. And I'm not  
15 sure what's going to be a solution for coverage  
16 there. The southwestern part may be able to get  
17 some help from a facility, the Stephentown tower,  
18 although it doesn't look like it's going to help  
19 Verizon.

20 But looking at Figure 3, that was the first  
21 one that I did, and it's hard to tell, actually  
22 looking at that tower -- I went up to look at it  
23 today, and it looks like a tower that maybe could  
24 be added to, but it's been there for a while and

1           it's not clear to me that -- how easy that would  
2           be or how practical to increase the height on  
3           that tower. But what I decided is if -- let's  
4           assume that we could, you probably would not want  
5           to entertain an application above 200 feet,  
6           primarily because of the lighting that's  
7           required. And even at a 200-foot tower -- it  
8           says 195, that's where the antenna's center of  
9           radiation would be -- we don't really do much in  
10          terms of improving coverage.

11                     In Figures 4 and 5: 4 is using the county  
12                     tower. That's even less favorable, in terms of  
13                     Cherry Plain. But then looking at the original  
14                     Verizon Wireless site, that's pretty good. And  
15                     there's a gap that's -- correct me if I'm  
16                     wrong -- but it looks like it's very near, I  
17                     think it's Lower Stagecoach Road.

18                     CHAIRMAN FRENCH: Yes.

19                     MARK HUTCHINS: That's an area that my gap  
20                     shows up a little bit more than the Applicant's  
21                     did from their plots, but was still in that same  
22                     area. And they seem to be willing to live with a  
23                     little bit of a gap there, but it may not be as  
24                     bad as that. But that's -- that was from what



1 was proposed, but we're now going to be looking  
2 at the proposed site, the current proposal.

3 But before we do that, on Figure 6, I  
4 started to go through the four alternates that  
5 have been proposed. And Alternate 1 and 2,  
6 that's Figures 6 and 7, there is not a complete  
7 closure of the gaps. And even though you see one  
8 shade of gray, what Verizon Wireless really wants  
9 is the minus 85 or higher, and that's the darkest  
10 of the three shades. And 22 is not -- it's not  
11 very well closed. And as I explained in my  
12 original analysis, I went over it again in this  
13 analysis, I think that minus 85 is actually  
14 pretty conservative. And I think even more so,  
15 we've got more and more evidence all the time  
16 that people, where they can, are getting rid of  
17 their wired service. I know that's maybe hard to  
18 believe here where there hasn't been really good  
19 cell service, but once it's there and people have  
20 a choice of one or the other, they're really  
21 getting -- and I think it's one of the reasons  
22 that over where I live in Vermont, where Verizon  
23 sold their wired service to a company called  
24 FairPoint, which has now gone bankrupt, that

1           that's not a growth business right now. And I  
2           think the problem with that -- and it's not  
3           really a problem, it's just a reality -- that  
4           when people are depending upon their wireless and  
5           they want to have it to access the internet, they  
6           want phone service wherever they go in their  
7           house, that they're a lot less patient with the  
8           lower shades of gray in terms of coverage. And  
9           we can even make a case, as some other providers  
10          do, that minus 85 isn't even good enough. But  
11          what we see with Alternates 1, 2 and 4, and 4 is  
12          over on the next set, on Figure 10, is we've got  
13          pretty big gaps, particularly Alternate 4.  
14          What's happened with Alternate 4 is we've moved  
15          so far down that ridgeline that the ridge to the  
16          north of Alternate 4 is interfering with our  
17          ability to get a signal up on 22. Although 4  
18          does a better job going to the south, the -- it  
19          still doesn't do it.

20                 Now, Alternate 3, of the four alternates is  
21          probably the least problematic. Verizon  
22          Wireless, in their submission, said that that was  
23          acceptable to them. My feeling is if that's  
24          acceptable, why don't we look at what happens if

1 we go down 25 feet, which is something I did last  
2 spring. We started out at a lower height. What  
3 if we have a location that can go higher, go up  
4 to the higher height, so instead of the 146 --  
5 and 146 is for 150 foot tower, I also looked at  
6 the 25 foot lower coverage, and that was not  
7 really a lot worse for Alternate 3, although I  
8 felt that that was beginning to become a problem,  
9 as far as I'm concerned. Because one of the  
10 things we'll find, when we're trying to cover,  
11 you'll notice there's that white area that's  
12 northeast of Alternate 3, is that if we make a  
13 choice to tilt or somehow send more of the signal  
14 downward, we can probably do that, although  
15 clearing the trees may be a problem at 121 feet.  
16 But as we do that, we're going to change the  
17 antenna, so we're not going to have as good  
18 coverage that goes farther out. And farther out  
19 is exactly what we want from these locations, in  
20 terms of going both north and south on 22. So to  
21 really get the fill in coverage close in, I think  
22 we'd see quite a bit of deterioration at a  
23 distance. But I think Alternate 3 is the only  
24 one that looks like it would be capable of

1 working.

2 Now, we can have the Applicant further  
3 address some non-RF issues. Apparently there are  
4 some reasons that may be very valid why it's  
5 going to be a problem to develop any of the  
6 alternates, including Alternate 3. But from an  
7 RF standpoint, I agree with Verizon Wireless that  
8 three would probably work, if that were the only  
9 site available.

10 The advantage to the proposed site, and  
11 that's what you see in Figure 11, is that if you  
12 know where that is, that's just up the hillside,  
13 and it's not at the top of the ridge. You can  
14 see it in the figure one shaded relief map. It  
15 sort of almost juts out toward the road in a way  
16 that lets you -- remember radio waves are -- tend  
17 to line of sight, so if you imagine yourself up  
18 there and looking to the north and trying to look  
19 to the south, at that particular point because of  
20 that -- it's almost like a little bluff that  
21 comes out, that gives you a good look up 22 and  
22 down 22. The coverage over to the west is not  
23 really as good, so that's -- at some point may be  
24 a problem. But that is fairly -- as you know,

1           fairly sparsely populated, but it seems to do, I  
2           think, the best job. We're seeing a little area  
3           to the north of minus 90 to minus 85, but that  
4           still -- I think is going to be good enough for  
5           most people who are in a vehicle. And if they're  
6           doing it regularly and they really want to have  
7           vehicular coverage, they may find they can use an  
8           antenna or something like that. I did address  
9           how the vehicular coverage is very controversial  
10          right now. But at the same time, we've got  
11          systems that don't involve people trying to drive  
12          and text at the same time. People are buying  
13          cars that are quite popular that have these  
14          systems built into them, which, actually, Verizon  
15          Wireless is one of the -- they have been using  
16          800 megahertz, the GM OnStar is a good example of  
17          that.

18                 So I think that the proposed site is a  
19                 pretty good one. But because there is still that  
20                 gap to the north near Lower Stagecoach Road, I'm  
21                 concerned about going any lower. The reason  
22                 being very similar to what we saw when we went  
23                 down 25 feet is we're going to -- the gap is not  
24                 going to get any better. It's going to start to

1 run into problems with interference from the rest  
2 of the ridge, from the trees. But I think we  
3 want to keep in mind that this site will be  
4 pretty desirable for other providers than Verizon  
5 Wireless, so my guess is that the proposed number  
6 of providers on the tower is a reasonable one,  
7 and so I think that justifies the requested  
8 150-foot structural height.

9 I also talked about where we are with things  
10 like RF interference, RF radiation. That's  
11 pretty much unchanged. This board really can't  
12 deal with RF interference, but it is so unlikely  
13 with the spectrum being used by these providers  
14 and because there really -- it's not going to be  
15 close to the ground, it's not going to be near  
16 neighbors. The interference almost always is a  
17 problem to other people that get onto the tower.  
18 That is very easy to take care of. But the FCC  
19 says, you can't -- that's our department. If  
20 terms of RF radiation, as long as it meets the  
21 FCC guidelines, which this does as long as we've  
22 got adequate fencing and warning signs so that  
23 people won't be climbing the tower, the only  
24 place we would exceed the guidelines would be

1 very, very close to the antenna. So it is more  
2 of an occupational problem, which the applicant  
3 has procedures for making sure that the tower is  
4 climbed by qualified people.

5 MR. HENNER: Mark, in your report, you talk  
6 about -- Page 11 -- conclusions and proposed  
7 finding of fact 6(d), "the proposed overall  
8 height of 150 feet above ground level is less  
9 than ideal from a coverage standpoint.  
10 Nonetheless, the tower at 150 feet will provide  
11 adequate coverage for almost the entirety of  
12 Route 22 within the town and provide colocation  
13 for four additional personal wireless services  
14 providers, given the rule of thumb separation of  
15 10 vertical feet for provider antenna levels."  
16 Would it be -- you say it's less than ideal, what  
17 could happen and would it be advisable or what  
18 could we do if we thought about -- or would there  
19 be a reason for us to consider a variance to make  
20 the overall height higher than 150 feet? Would  
21 we gain anything from that?

22 MARK HUTCHINS: A little bit.

23 MR. HENNER: What would we gain.

24 MARK HUTCHINS: We'd probably get some more

1 closure on that gap that's near Lower Stagecoach  
2 Road. That's a tough one for the new tower that  
3 you've already approved, because there's quite a  
4 hill that -- and then 22 sort of goes around that  
5 hill, so the signal coming down from the new  
6 tower is really being blocked. So the only way  
7 to fill the gap is going to be from the south.

8 MR. HENNER: We gain something in terms of  
9 filling that gap.

10 MARK HUTCHINS: I think you probably gain  
11 something. I did not look at that because it  
12 seems that you are really interested in trying to  
13 keep it at 150.

14 MR. HENNER: Well, our local law says that  
15 the maximum should be 150 feet, unless it's  
16 waived by the board for good cause. So the  
17 question which the board may consider is: Do we  
18 have good cause to --

19 MARK HUTCHINS: I think the municipal  
20 antennas would be a good reason to do that. And  
21 that is going to take the overall height --

22 BOARD MEMBER LEWIN: So keep it at 150, you  
23 are saying, put these whip antennas up; is that  
24 what you just said, Mark?



1                   MARK HUTCHINS: Does the applicant want  
2                   to --

3                   MR. CIOLFI: We really applied -- for the  
4                   record, Chris Ciolfi, C-I-O-L-F-I, Mariner  
5                   Tower -- we applied for the 150 and Verizon  
6                   reviewed it and did a propagation analysis based  
7                   on the 150 because that was the maximum height.  
8                   I think we all agree that there is still a small  
9                   gap or small weakening of signal to the north,  
10                  that a tower that's a bit taller would help  
11                  alleviate that gap. At this point, we're not  
12                  asking for an increase. We would be willing to  
13                  work with the board and build it -- I think this  
14                  rule is dual purpose. The town wants to minimize  
15                  the number of towers in town and they want to  
16                  minimize the visual impact, but they also want to  
17                  provide the greatest amount of service. And I  
18                  think we all agree with that. So we would be  
19                  willing to build it taller to help achieve those  
20                  goals or build the tower extendable and let  
21                  Verizon and maybe the second and maybe a third  
22                  carrier take the 146, 136, 126 slot, and then if  
23                  we had a fourth carrier, rather than having the  
24                  town see a new tower and claim that 116 doesn't

1 work for us, we're going to have to build another  
2 tower. So that Mariner Tower is extendable in  
3 two ten foot increments, so you could go to 156,  
4 and then if somebody else came along, 166 with  
5 maybe a maximum of 170. So we could handle it  
6 something like that. We could build the  
7 foundation large enough at the time of  
8 construction and put a flange on the top of the  
9 tower so we could bolt on two ten foot  
10 extensions. We've handled it that way in the  
11 past when we get similar requests from the board,  
12 and that achieves a couple of goals, by reducing  
13 the number of towers and, you know, to take a  
14 whole tower down and put another one up, that's  
15 not going to happen to add another ten feet. The  
16 costs are too astronomical. So that's a  
17 reasonable way. If the board so desires, we  
18 could accommodate that.

19 BOARD MEMBER LEWIN: But no matter, we're  
20 still going to have a little -- not going to have  
21 full coverage there, roughly at Stagecoach Road;  
22 right?

23 MARK HUTCHINS: Yes.

24 BOARD MEMBER LEWIN: Chris, would another

1           20 feet, let's say -- it would still be a  
2           little --

3           MR. CIOLFI: Unless we modeled it, maybe if  
4           we went right to the 170, so the 167 and 157 or  
5           166 and 156, the first two carriers, they might  
6           close that gap, maybe that gap would be closed  
7           and we could model that. But then the other, you  
8           know, four carriers, there might still be a  
9           little bit of a drop there. So that's a tough  
10          spot to cover. There are other ways to  
11          accommodate it, if we were in a more urban  
12          environment with the population and the call  
13          volume warranted it. That's where a microcell or  
14          some kind of a repeater or something might go on  
15          a rooftop there and just blast a little bit of  
16          signal into that area. But I think nowadays --  
17          and Mark, correct me if I'm wrong -- if you had a  
18          business or a home there and you wanted to rely  
19          on your cell phone or wireless phone and you were  
20          in that general neighborhood, you might be able  
21          to get even a little bit of a booster, so you  
22          make your cell phone more like a landline phone.  
23          It's still the same service, but you could boost  
24          the service a bit. If you recall, back in the

1           day, when these towers or phones first came out,  
2           we all carried around the 3-watt bag phone, the  
3           size almost of a notebook, and they were 3 watts.  
4           And they had a big antenna. The phones that we  
5           carry nowadays are an eighth of a watt, less than  
6           one watt. So they do a whole lot more, but  
7           they're so much lower powered that they're so  
8           weak. So in a spot like that, you might be able  
9           to say, put a little booster in the house or  
10          whatever, and then maybe the weak signal isn't as  
11          much of a problem. Is that where you live?

12                   CHAIRMAN FRENCH: Well, I'm with AT & T, so  
13           the tower is five miles away, but the hill is in  
14           the way. So I have a booster in the house, which  
15           brings it in around most of the house, so I can  
16           get cell service without rounqing(phonetic)  
17           around the field, oh, here you are.

18                   MR. CIOLFI: We would be open to that as a  
19           condition. I don't know how the board or legally  
20           how we would handle that. We've applied for 150.  
21           We don't want to reapply, redo the application,  
22           but if the board --

23                   CHAIRMAN FRENCH: If it was an extendable,  
24           the possibility of extending that, would we even

1 need a variance to make it that way?

2 MR. HENNER: I would think we would, because  
3 our law says that the maximum height shall be 150  
4 unless waived by the board. So amending your  
5 application -- to answer that question -- is an  
6 easy enough thing, and we would simply say or  
7 even we might say, we want you to make it -- but  
8 if we were going to do that, we would have to at  
9 least demonstrate good cause -- at least the  
10 board would have to be demonstrated that there  
11 was good cause for that increase in height,  
12 whether on the basis of your say so or the basis  
13 of our own -- well, we'd have to make our own  
14 conclusion, but obviously we couldn't -- on the  
15 other hand, if you say, we don't want to make it  
16 170 feet, we can't force you.

17 MR. CIOLFI: Right.

18 MR. HENNER: But nevertheless, we'd have to  
19 at least say, to exceed 150 feet, we have to  
20 have -- show good cause as part of our decision  
21 granting approval.

22 BOARD MEMBER THERAULT: This is Dave  
23 Therault, Alternate Zoning Board of Appeals  
24 member.

1           Could we get some modeling done on that,  
2           Chris? Mark?

3           MR. CIOLFI: At this point, we're not  
4           requesting that, so it's really if the board  
5           wants us to prepare that or demonstrate that, you  
6           know, it's up to the board. We're not here to  
7           ask for that. We're here to ask for the 150. If  
8           you would like us to --

9           MR. HENNER: Well, it sounds like there are  
10          three separate things: One is you could build  
11          it -- just the three options, if I -- it's a  
12          technical question, a question more than  
13          anything, nothing else -- 150, 150 expandable to  
14          170 or building it originally to 170, and that's  
15          the three ways you could build it. Your  
16          application is to build it 150. The question, I  
17          suppose, of the board is: Would we gain enough  
18          from 170 that we should either consider it for a  
19          possibility for a later expansion or  
20          alternatively, yes, let's do it at 170 as part of  
21          the approval process. And I guess the question  
22          which I would ask Mark is: Is it worth doing the  
23          modeling to find out how much we would gain, or  
24          do we know roughly? And do we have a sense of

1           whether it might or might not be worth it?

2           MARK HUTCHINS: Well, I think there's  
3           actually two things. One is how much do we gain,  
4           but I'm pretty confident -- I could do some  
5           modeling on this -- we talk about what would be  
6           the lowest of colocation, it could be down as low  
7           as --

8           BOARD MEMBER THERAULT: 106.

9           MARK HUTCHINS: Or 116. And I talked a  
10          little bit about wireless internet providers.  
11          This is somebody who would be using unlicensed  
12          spectrum, so we know -- that's actually tough  
13          when you model, because it's so low power.  
14          Although the customers will have an external  
15          antenna, the way you were talking about for an  
16          extender that they use. For Verizon Wireless,  
17          they have something out-of-doors, so it's not  
18          quite as critical. But I think as we start to  
19          get down to 116, we know we're going to be a lot  
20          closer to skimming trees. That's going to cause  
21          a problem further north.

22          MR. HENNER: It's a question, for four  
23          colocations, do we want the lowest at 136 or the  
24          lowest at 116. At 170 would be 136, 46, 56 and

1           66, as opposed to 116, 26, 36 and 46, so does  
2           that mean that the modeling in question would be  
3           properly done -- well, we've already done the  
4           modeling at 150 and lower, so the only -- we  
5           already know what the modeling would be at the  
6           lowest of those colocations --

7           MARK HUTCHINS: Well, I didn't look at it on  
8           the proposed tower. I looked at it on alternate  
9           three.

10          MR. HENNER: Okay.

11          MARK HUTCHINS: And what we see is  
12          deterioration. It's not tremendous. One thing I  
13          like about this particular location, it's a very  
14          good one to begin with, but we still need to  
15          clear the trees, and that's where I'm not as  
16          confident. You've probably done some looking at  
17          the trees and maybe some of you have a better  
18          feel for what kind of tree heights we're dealing  
19          with right close to the site, because what we  
20          don't want to do is clear cut a big patch so that  
21          we get the clear path.

22          MR. CIOLFI: What do you think is the tree  
23          height there? 60, 50?

24          VOICE: About that, yeah.



1 MR. CIOLFI: Maybe 70 feet tops?

2 VOICE: At most.

3 MR. CIOLFI: In the 60 foot range, probably.

4 MR. HENNER: But if the extra modeling that  
5 we would do -- because we've already modeled the  
6 proposed site at 150.

7 BOARD MEMBER THERAULT: 146.

8 MR. HENNER: Well, that's for a 150-foot  
9 structure. And that model doesn't specifically  
10 contemplate -- or does it -- what happens at the  
11 lowest colocation, which is 116? The question  
12 is: What additional information would we gain  
13 from doing the modeling at 170 if the real  
14 benefit is for the -- is not so much for the  
15 difference between 170 and 150 but between 116  
16 and 136, we already have some sense of that. So  
17 maybe the extra modeling isn't going to tell us  
18 that much. You tell me. I'm just trying to  
19 think this out, throw out some ideas so the board  
20 can --

21 CHAIRMAN FRENCH: How much difference in  
22 expense and that kind of thing would it be for a  
23 tower that just went to 150 foot, versus one that  
24 could be expanded an additional 20 feet?

1 MR. CIOLFI: There's absolutely an  
2 additional expense. It's primarily in the  
3 foundation and something in the structural steel  
4 for something we may never use. Down further on  
5 22 at the Thruway, you know, there's six carrier  
6 sites. I would love that six tenants go in this  
7 site, but I think that will be some time before  
8 we see that happen. But again, when we've been  
9 asked to do something like that, it's, I think, a  
10 reasonable enough investment and the costs aren't  
11 that different to have that kind of insurance  
12 policy that it could be extended. To be quite  
13 honest, it's probably less expensive or more, I'd  
14 say -- it's probably a better use of funds to  
15 build it to 170 at the outset than to have to get  
16 a crane back in and put the extensions in. Some  
17 of those costs can be deferred, if a tenant comes  
18 on and they want to do the extension, then they  
19 have to pay for the crane, so we can defer some  
20 of those costs. So it's funny, you are seeing an  
21 issue that we struggle with a lot. And when we  
22 do our initial modeling, you know, a tenant may  
23 ask us, I've looked at your site over here, we  
24 need it 'X' height, and we do just that, we model

1 the lowest height because we have to think of  
2 long-term, we have to think if this is a six  
3 bedroom apartment, we have to make sure all six  
4 apartments are nice enough that they can be  
5 rented out. Because if you have two apartments  
6 that are falling apart and nobody is ever going  
7 to rent those, what's the point? And so if we  
8 build a tower and the available heights are so  
9 low that nobody is ever going to use them, then  
10 there's no function there. But still, at 106 --  
11 106 is probably close. But with 106, that's  
12 where the wireless internet and those providers,  
13 their signal carries quite some distance. At 116  
14 and why we like this site is because, as Mark  
15 said, it is kind of out on the bend and we see up  
16 and down, so if we have 60-foot on average, less  
17 than, high trees and we're still 116 feet in the  
18 air, we think we do have, even with 150, four  
19 good marketable spots. Would 126 be better than  
20 116, sure. Would 156 be better than 146, sure,  
21 absolutely. But it's your law. We can only  
22 follow your law.

23 CHAIRMAN FRENCH: Let me ask you this: It's  
24 also the community. They've had the balloon test

1 at 150. Now, if we extend it 20 feet and there's  
2 some people that are upset at seeing it there, so  
3 my sense is, if we're going to proceed with this,  
4 maybe we best leave well enough alone. The other  
5 would be more desirable, but it isn't enough more  
6 desirable to risk --

7 MR. CIOLFI: One way, maybe, to handle it,  
8 and just suggesting, is condition it or give us  
9 the option, and then we would decide if we want  
10 to build it extendable, to say that we've  
11 reviewed this, we're moving forward with the  
12 150 feet; however, at a later date, if you wanted  
13 to come back in as an extension, we'd have to do  
14 a public hearing, we would have to do balloon  
15 floats or put a flag up on top to the height,  
16 whatever, and it wouldn't be forbidden or write  
17 some language, then the community would have  
18 another opportunity. The tower is up, you are  
19 looking at a balloon, you are looking at the  
20 actual structure, it's been there for a while,  
21 and the additional 10 feet may very well prevent  
22 another whole structure.

23 CHAIRMAN FRENCH: So you would be willing to  
24 go along with something like that, build it to go

1 to 170 feet, if desired, but we would have to  
2 issue a variance at that time? That should  
3 solve --

4 MR. CIOLFI: Then we don't have to  
5 readvertise. Let's keep going. We would love to  
6 keep moving forward.

7 CHAIRMAN FRENCH: Does that sound reasonable  
8 to you?

9 MR. HENNER: Yeah, that would be a  
10 possibility. Again, certainly, if the applicant  
11 is willing to take a risk --

12 MR. CIOLFI: I'll check with the office, so  
13 see what the risk is. But I think that would be  
14 one way to build in some expansion.

15 MR. HENNER: But then if you came back at  
16 some point, we would have a question that I'm not  
17 going to try to answer right now off the top of  
18 my head because it's too dangerous and I might  
19 get it wrong, as to whether or not the expansion  
20 of an existing tower to 20 feet higher counts as  
21 a new application or if that can be part of an  
22 existing application. And you are entitled an  
23 answer to that question before you actually make  
24 a commitment. Or at least the best advice that I

1 can give you, because ten years from now, who  
2 knows, but I can at least give you the best -- I  
3 think you would want to know the answer to that  
4 question.

5 BOARD MEMBER LEWIN: Go back to the trees  
6 and the ten years from now, are those 60-foot  
7 trees going to grow, keep growing beyond 60 or  
8 70?

9 BOARD MEMBER THERAULT: I don't think we  
10 have too many trees around here that grow over  
11 60 feet.

12 BOARD MEMBER LEWIN: That's why I'm asking,  
13 Dave. Timmy, some of you people that know better  
14 than I would, maybe, how far are they going to  
15 keep growing or how high?

16 VOICE: I don't think they're going to get  
17 much higher than they are now. Those trees there  
18 have been there a long time, very mature.

19 MR. CIOLFI: Not a lot of soil up there.

20 VOICE: You don't see the forest height  
21 overall increase that much year to year in an old  
22 forest like that.

23 BOARD MEMBER GILROY: How far away are we in  
24 terms of satellites, how far is the technology

1 with that? Where do you see that; 1 year, 10  
2 years, 25?

3 MARK HUTCHINS: Don't hold me to 25 because  
4 I'm having trouble with 5 years.

5 BOARD MEMBER LEWIN: Let me interrupt just a  
6 minute, I talked with Maryellen the other day and  
7 my boy does that kind of work, and I was wrong  
8 about what he said. He said he doesn't think it  
9 will ever happen because it's too expensive to  
10 send those satellites up, not in our lifetime.

11 CHAIRMAN FRENCH: That isn't very long.

12 BOARD MEMBER LEWIN: This is what he said.

13 BOARD MEMBER GILROY: I want to hear from  
14 the engineer, I want to hear from Mark.

15 BOARD MEMBER LEWIN: Well, some of them,  
16 they're a little younger.

17 MARK HUTCHINS: His boy is right, basically.  
18 Is that -- there are two issues: One is does it  
19 work technically, and there's just not enough  
20 capacity for anything that anybody can imagine.  
21 And maybe I will go out on a limb and say 25  
22 years because we're having to -- how do we launch  
23 these, where do we park them, if they're not  
24 parked, where are they going to be orbiting and

1 all of those things that are going to be  
2 satellites. The satellite system that's up there  
3 works very well, that's why I was able to watch  
4 NBC news right after the earthquake because that  
5 was -- he was on a satellite phone, and they were  
6 using satellite feed, such as it was, it works.  
7 But it really doesn't have the capacity for what  
8 people want in their homes and being able to walk  
9 around with it. And if you saw the phone that  
10 the news anchors were using, they have to have a  
11 pretty large device, and it has to have an  
12 antenna that has some -- he was out on the tarmac  
13 of the airport to get the satellite access. The  
14 second point is that the FCC doesn't really  
15 consider that that's an alternative. And I think  
16 with good reason. That we really got to provide  
17 for that. So I think we need to park the  
18 thoughts about satellite. If you have somebody  
19 that's way out on the west end of town and they  
20 need phone service and they need internet, and I  
21 know people in my part of Vermont who can't get  
22 high-speed internet are getting it through  
23 satellite, but that's not really an alternative  
24 for phone service.



1 BOARD MEMBER LEWIN: Do we want to discuss  
2 that or do we want Mark to finish his report, if  
3 he's not finished?

4 CHAIRMAN FRENCH: I think he answered the  
5 satellite part, as far as --

6 BOARD MEMBER LEWIN: No, no, no. I meant as  
7 far as we go 170 or stick at 150.

8 CHAIRMAN FRENCH: I thought Peter was going  
9 to check on the legality because he doesn't want  
10 to do it off the top of his head, and I don't  
11 blame him. And maybe, you can consult with Chris  
12 as to where they're at and what his people think,  
13 and then get back to us so we can have some kind  
14 of an answer before the public hearing, and it  
15 can be mentioned then in the public hearing.

16 MR. HENNER: Yeah, we'll be in touch before  
17 that.

18 MR. CIOLFI: Sure.

19 MR. HENNER: My only concern is that --  
20 whatever the board's pleasure is on this, if  
21 we're thinking about exceeding the 150-foot,  
22 either now or in the future, we should at least  
23 somewhere in the course of our deliberations make  
24 some record showing that we demonstrate good

1           cause for such a variance.  Whether the board's  
2           pleasure is to do this or not is --

3           CHAIRMAN FRENCH:  We don't have to do a  
4           variance for this, if it's just --

5           MR. HENNER:  No, we would not.

6           CHAIRMAN FRENCH:  It makes the ability of  
7           it.  The variance would come at the time you  
8           requested the additional heighth?

9           MR. HENNER:  That would be correct.

10          CHAIRMAN FRENCH:  So we don't have to get  
11          into that now, but it should be looked at to see  
12          how to do it in a legal way and one that is going  
13          to make everybody happy.

14          MR. HENNER:  Okay.  So we will be in touch.  
15          And I will make a report and I'll be in touch  
16          with Don before the meeting.

17          CHAIRMAN FRENCH:  Is the rest of the board  
18          all right with that?

19          (Affirmative response.)

20          BOARD MEMBER GILROY:  That would also answer  
21          the question in terms of if it does go higher,  
22          that would be a new balloon process, a new  
23          hearing, et cetera.  I think that's what --

24          MR. HENNER:  Because the question that I did

1 not want to give an off the top of my head answer  
2 on is if we come back later, we raise it, is that  
3 a new hearing or not, and the problem, I suspect,  
4 is I'm not going to find the answer directly in  
5 the law, which is going to get involved in  
6 questions of interpretation, which is why I want  
7 to take some time, maybe even read a case or two,  
8 maybe even spend some time with my friends in the  
9 Association of Towns and getting their guidance  
10 before I say anything.

11 MR. CIOLFI: We wouldn't hold you to it.  
12 There's no record -- oh, there is a record.

13 (Laughing.)

14 CHAIRMAN FRENCH: Mark, you got more to give  
15 us or are you --

16 MARK HUTCHINS: I'm pretty much finished.  
17 I'd like to answer other questions, if there are  
18 any.

19 CHAIRMAN FRENCH: Any questions from the  
20 board?

21 (No affirmative response.)

22 CHAIRMAN FRENCH: Any questions from the  
23 audience?

24 (No affirmative response.)

1                   CHAIRMAN FRENCH: I guess that takes care of  
2 things until we meet next month for the public  
3 hearing for people to -- and that will be at the  
4 high school, Cherry Plain High School at 7:30.

5                   MR. CIOLFI: Before you break, if I could  
6 just --

7                   CHAIRMAN FRENCH: Yup.

8                   MR. CIOLFI: Just to wrap up. Maybe my  
9 reading and listening to Mark this evening was  
10 when you were asked to look at the four  
11 alternative sites that Mr. Therault had offered  
12 up, although -- and Verizon looked at those as  
13 well -- number three could be acceptable and  
14 could provide some coverage, there are still some  
15 benefits and advantages to our proposed site.  
16 And it was my understanding from our last  
17 meeting, unless one of the four sites that were  
18 presented was demonstrably better, then we were  
19 going to stay with this application.

20                   CHAIRMAN FRENCH: That was my understanding  
21 also.

22                   MR. CIOLFI: And from hearing Mark tonight  
23 and from reading his report, it doesn't sound  
24 like any of the four are really considered

1           demonstrably better than what we're proposing; am  
2           I accurate?

3           MARK HUTCHINS: The best that we can say is  
4           that alternate three is roughly equivalent.

5           MR. CIOLFI: Okay. Fantastic. So we'll  
6           move forward with ours. That's great.

7           BOARD MEMBER THERAULT: I just had a couple  
8           of items here. I went through the Environmental  
9           Assessment Form, and there's just a couple of  
10          things that -- let's see, here -- just some  
11          things that you might have missed or something  
12          that I might have --

13          MR. CIOLFI: Is this on the original one or  
14          the one that was submitted --

15          BOARD MEMBER THERAULT: No, the one that I  
16          got that you sent over.

17          Number four, just no answer and --

18          CHAIRMAN FRENCH: What page are you on?

19          BOARD MEMBER LEWIN: Are you on page three?

20          BOARD MEMBER THERAULT: I'm on page 3 of 21,  
21          yes.

22          Yes and no has not been checked.

23          MR. CIOLFI: Page 3 of 21, what number?

24          BOARD MEMBER THERAULT: Yes?

1 MR. CIOLFI: What number?

2 BOARD MEMBER THERAULT: Number four.

3 MR. CIOLFI: Okay. Yes, yes. This is an  
4 online form that we fill out. And the first one  
5 I submitted with our original application, I  
6 saved it, printed it, PDF, and when I went  
7 through it, I saw half of these weren't checked,  
8 so we did it again, and I thought I caught them.  
9 But yes, there is definitely bedrock outcroppings  
10 there, so number four on page three should be  
11 checked yes.

12 BOARD MEMBER LEWIN: How about ten, it says  
13 "do hunting, fishing" -- shelling fish, no -- but  
14 you have no, but wouldn't there be deer hunting  
15 or things up there, Doug, or not or doesn't it  
16 matter?

17 MR. CIOLFI: Well, again, we could say yes,  
18 but then it said, you know, shell fishing and  
19 other, so --

20 BOARD MEMBER LEWIN: So you are grouping  
21 them?

22 MR. CIOLFI: Yeah. There's no shell  
23 fishing, there's no fishing, but there could be  
24 hunting up there.

1 BOARD MEMBER LEWIN: Okay.

2 MR. CIOLFI: So however you would like us to  
3 respond to that.

4 BOARD MEMBER LEWIN: If you group it, no.

5 MR. CIOLFI: That's how I read it.

6 BOARD MEMBER LEWIN: Okay.

7 MR. HENNER: I would have said you should  
8 probably err on the side of inclusivity and put  
9 yes.

10 MR. CIOLFI: Okay. So let's --

11 MR. HENNER: We're going to be considering  
12 whether or not this project has any impact on the  
13 environment and, obviously, if it adversely -- at  
14 some point, we're going to say, yes, if you build  
15 this tower, it would decrease the hunting  
16 opportunities on the -- it's not a big issue, I  
17 wouldn't imagine, but we want to at least show  
18 that we've considered it.

19 MR. CIOLFI: For ten, let's make it yes.

20 And the project area is a hundred by a  
21 hundred.

22 MR. HENNER: Yeah. I understand it's a  
23 small area.

24 MR. CIOLFI: So as long as you know --

1 MR. HENNER: I understand. My concern is  
2 just to make sure that you're being thorough.

3 MR. CIOLFI: That's fine. We'll make number  
4 ten yes.

5 BOARD MEMBER LEWIN: Okay.

6 BOARD MEMBER THERAULT: Continuing on in  
7 Part A, number 14, "does the site include scenic  
8 views known to be important to the community?"  
9 You've answered, "no, not applicable". I just  
10 wonder how you came to that --

11 MR. CIOLFI: Well, it's private property.  
12 And my reading was views from that, not views of  
13 that. So this is private property, and that's a  
14 scenic view important to the community, so if  
15 this was a park, if this was public property with  
16 hiking trails or whatnot, so that's -- that was  
17 my interpretation.

18 BOARD MEMBER THERAULT: There's no formal  
19 way to answer that question, it's more of an  
20 interpretation on your part?

21 MR. CIOLFI: That was my response.

22 MR. HENNER: Just as a point of information,  
23 this is part one of the EAF, which is the  
24 responsibility of the applicant to fill out, so



1           if they say that they've looked at it and they  
2           believe -- that doesn't mean when the board goes  
3           through part two, we can't make different  
4           assumptions or different conclusions, but their  
5           job here is to submit a part one EAF for our  
6           consideration and to show that they have at  
7           least --

8           CHAIRMAN FRENCH: I don't remember whether  
9           it was done on Satterlee Hollow, it would be the  
10          same situation as Satterlee Hollow, from my point  
11          of view. I'll have to...

12          BOARD MEMBER LEWIN: How about page 6,  
13          number 8 about blasting, you have yes for that.  
14          Is that going to be --

15          MR. CIOLFI: My guess is it's going to be --

16          BOARD MEMBER LEWIN: Rock me out of my chair  
17          or what?

18          MR. CIOLFI: No. It would obviously be a  
19          controlled blast. But my guess is yes. Some  
20          companies will put their facilities up with rock  
21          anchors. Some of these wind turbines are set  
22          with rock anchors. I'm more conventional. I  
23          like to see the hole that's nice and clean and  
24          pour the concrete and not have to worry about

1           mechanical fasteners. So when I build sites, I  
2           prefer to have a nice level area, build it clean.  
3           And so if we have to do some controlled blasting  
4           to accomplish that, then that's what we plan on.

5           BOARD MEMBER LEWIN: And that's fine? But  
6           should the community know that you are going to  
7           be blasting on this certain day, Chris, or isn't  
8           it that bad?

9           MR. CIOLFI: No, it wouldn't be that bad.  
10          No, not at all.

11          BOARD MEMBER LEWIN: All right.

12          MR. CIOLFI: And we would talk with the fire  
13          company and everything before we do that. It  
14          would be a controlled blast. It would be done by  
15          a licensed company. They set the horns off, they  
16          monitor the area. And it's not open pit rocks  
17          flying everywhere.

18          CHAIRMAN FRENCH: They have a rubber mat  
19          they put down.

20          MR. CIOLFI: That's right. They put mats  
21          down. So basically, it's just a puff.

22          BOARD MEMBER LEWIN: Well, as long as it  
23          goes over towards Watson Road, I don't mind so  
24          much.

1 BOARD MEMBER THERAULT: Continuing on,  
2 number 25 in part B, there's a couple of boxes --

3 BOARD MEMBER LEWIN: What page, David?

4 BOARD MEMBER THERAULT: Page 8 of 21,  
5 approvals required, a couple of unchecked boxes,  
6 yes, no.

7 CHAIRMAN FRENCH: 8 of 21?

8 MR. CIOLFI: What I checked was yes for the  
9 town board special use permit, so that's the town  
10 zoning board. I checked yes for a building  
11 permit for other local agencies, counting that as  
12 the either code enforcement officer or building  
13 inspector. Submittal date, I put to be  
14 determined. We have to get the state agencies,  
15 the state electrical permit, potentially a storm  
16 water pollution and prevention plan, and then  
17 federal agencies under the National Environmental  
18 Policy Act, an FAA determination. Do you see  
19 that I'm missing something?

20 BOARD MEMBER THERAULT: City, town and  
21 village board would be a no on the top?

22 MR. CIOLFI: So just the fact that they're  
23 empty, okay.

24 BOARD MEMBER THERAULT: That would be a no?

1 Below that would be a no?

2 MR. CIOLFI: No.

3 BOARD MEMBER THERAULT: And state and county  
4 health department would be a no?

5 MR. CIOLFI: Special use permit was January?

6 BOARD MEMBER GILROY: That's when you sent  
7 it to me.

8 MR. CIOLFI: Okay. Do you have a date on  
9 that?

10 BOARD MEMBER THERAULT: Other regional  
11 agencies would be a no?

12 MR. CIOLFI: And we're checking the date on  
13 the special use permit. I have it on my  
14 application date of --

15 BOARD MEMBER GILROY: January 4.

16 MR. CIOLFI: January 4th.

17 BOARD MEMBER LEWIN: How about that  
18 variance, Don, has that been taken care of? I  
19 know -- up above there with other local  
20 agencies -- no, I mean zoning boards, special use  
21 permit is 10/15/09 and rear yard variance, that's  
22 been taken care of with Junior?

23 MR. CIOLFI: No. And that's one of the  
24 things we wanted to talk about. We had prepared

1 a variance application. I e-mailed it to  
2 Maryellen. I have three copies with me tonight.  
3 I don't know if you want to count that as one and  
4 two others.

5 BOARD MEMBER GILROY: I have three here.

6 MR. CIOLFI: Okay. Maryellen had asked that  
7 we get a letter from the neighbor. I don't know  
8 if the neighbors were notified for tonight's  
9 meeting or if it's for next month.

10 BOARD MEMBER GILROY: It's been in the  
11 public, it's been in the Eastwick Press for two  
12 weeks, they will be notified, so they'll get it  
13 shortly.

14 MR. CIOLFI: To discuss the variance and --

15 BOARD MEMBER GILROY: It will be a public  
16 hearing and the variance.

17 MR. CIOLFI: Okay.

18 CHAIRMAN FRENCH: A letter isn't required.

19 MR. CIOLFI: A letter is not required. Doug  
20 has spoken with the adjacent landowner. The  
21 landowner has communicated that he does not have  
22 any problem with it. I don't see where it  
23 requires -- the landowner to be notified, but not  
24 that the adjacent landowner respond. I don't

1 know if we could ask counsel. If the landowner  
2 meets with the applicant, says I don't have any  
3 problem, the applicant asks for a letter based on  
4 a request from the board, and the landowner says,  
5 no, I'm not going to give you a letter. We've  
6 notified him -- you, actually, the town, notifies  
7 him, and I think we've done our part.

8 CHAIRMAN FRENCH: That's all that has to be  
9 done. If he has a problem with it, he comes and  
10 expresses his problem.

11 MR. CIOLFI: He has an opportunity to show  
12 up.

13 CHAIRMAN FRENCH: And there's no reason --  
14 unless he wished to, he could submit a letter  
15 saying -- but it's not something that should be  
16 demanded or required of him.

17 MR. CIOLFI: That was my thought.

18 CHAIRMAN FRENCH: Correct me if I'm wrong.

19 MR. HENNER: No, that's exactly right. The  
20 board has both the authority and the obligation  
21 to make the ultimate decision of whether or not  
22 the variance will be granted. And certainly, the  
23 board would take into consideration anything that  
24 the adjacent landowner might say or not say, and

1           that could go in any which way. It could be that  
2           he might say, I don't like this. And you might  
3           say, you know, you may not like it, but we think  
4           it meets the relevant standards for a variance  
5           and we'll grant it. He might say, I like it.  
6           You might say, well, you may like it, but we  
7           still don't like it. Certainly, we would  
8           consider whatever he had to say and certainly we  
9           want to make sure that -- and our law  
10          specifically requires that he be given an  
11          opportunity to be heard and have notice and have  
12          a chance to come forward. Whether -- I don't  
13          think it matters much whether you tell us -- I  
14          mean, you tell us, well, he said he's okay with  
15          it, he won't give us the letter or -- if he comes  
16          forward, we will consider what he says. If he  
17          doesn't come forward, we can't consider it. But  
18          we will consider the impact on him as part of our  
19          deliberation.

20                   CHAIRMAN FRENCH: Anything else?

21                   BOARD MEMBER THERAULT: Yes. In the main  
22          application, here, in section five, you list a  
23          number of sites --

24                   BOARD MEMBER LEWIN: Which of the pages,

1 David; one, two, three?

2 MR. HENNER: We've got exhibit letters.

3 BOARD MEMBER THERAULT: Right.

4 We're in section five, the search summary.  
5 You list candidates, but you only show  
6 propagation studies for the county tower and Town  
7 of Berlin property on Sand Bank Road. Were you  
8 going to include the propagation studies for the  
9 candidates listed or no?

10 MR. CIOLFI: No, we did not plan to. We  
11 have a narrative explaining each one. So there  
12 are two propagation for two of the existing sites  
13 or one of the existing sites and one other  
14 property, and then the existing coverage and  
15 proposed or predicted coverage. And I believe at  
16 the original meeting or presentation, we  
17 indicated that, again, those two propagation  
18 studies -- actually, all four of these were  
19 prepared by Verizon Wireless as part of the --  
20 the first two were from the previous application,  
21 the last two were prepared in support of this  
22 application.

23 BOARD MEMBER THERAULT: And still on section  
24 five, there's no page numbers, but we'll call it



1 page two, the bottom paragraph, "Verizon Wireless  
2 also independently reviewed this property,  
3 developed similar conclusions, see Exhibit E."  
4 Well, there's no Exhibit E. Is that going to be  
5 part of this application? It ends at Exhibit D.

6 MR. HENNER: There are two pages after  
7 Exhibit D. Are those --

8 BOARD MEMBER THERAULT: Neither of them are  
9 labeled Exhibit E.

10 MR. HENNER: That's right. Is that a  
11 labeling error?

12 MR. CIOLFI: I believe this is labeled  
13 elsewhere, so we should call the coverage  
14 Exhibit E. Yes, so the last page of tab five  
15 should be labeled Exhibit E.

16 MR. HENNER: Is that last page --

17 BOARD MEMBER THERAULT: That's actually --  
18 Exhibit E is 110 Cherry Plain Square, town owned  
19 property.

20 MR. CIOLFI: I think that whole paragraph is  
21 a typo. I think that's -- because we said in the  
22 paragraph before that, "additionally, as  
23 previously" -- "as a previous application is  
24 Exhibit D" --

1 MR. HENNER: Well, the last paragraph on  
2 that page talks about Exhibit E is for a  
3 propagation study demonstrating the anticipated  
4 coverage from a facility developed at this  
5 property.

6 MR. CIOLFI: Right.

7 MR. HENNER: The last map in the exhibit,  
8 which says predicted coverage, and that seems to  
9 correspond to what you mean as Exhibit E, even  
10 though it's not labeled.

11 MR. CIOLFI: It does. But then if you look  
12 at the small paragraph two above that,  
13 "additionally, as part of a previous application,  
14 see Exhibit D for propagation study."

15 BOARD MEMBER THERAULT: "Mariner also  
16 reviewed a municipally owned property, 110 Cherry  
17 Plain Square."

18 MR. CIOLFI: No, no, the one before that.

19 BOARD MEMBER THERAULT: Yup. We have  
20 Exhibit D. That's included in the application.

21 MR. HENNER: Are you saying, here, that  
22 there were two separate reviews by Verizon  
23 Wireless?

24 MR. CIOLFI: No. That's what I want to

1 clarify.

2 MR. HENNER: Two separate paragraphs, one  
3 uses the word independent, one does not. One  
4 talks about a previous application. That implies  
5 there was a new study that was done in addition  
6 to the old one that was done by Verizon.

7 MR. CIOLFI: That's correct. So if you look  
8 at the difference between D and then the last  
9 page, which would be E, the D does not have the  
10 blue that is coming from the towers in  
11 Stephentown. So D and E, although the green and  
12 yellow is similar on D and E, D does not contain  
13 the blue. So it is correct. The only error here  
14 is that the final page is not labeled Exhibit E.  
15 So that's a good catch that the final page be  
16 labeled Exhibit E.

17 MR. HENNER: Now, at the risk of confusing  
18 you, but I'm just trying to make sure we  
19 understand what we're talking about, if I could  
20 ask you to take a look at -- do you have in front  
21 of you a copy of Mark's report?

22 MR. CIOLFI: I can get it.

23 MR. HENNER: Okay.

24 MR. CIOLFI: Yup. Page?

1 MR. HENNER: Take a look at page nine.

2 MR. CIOLFI: Yup.

3 MR. HENNER: 4(g) talks about "figure five  
4 shows results from the original VZW  
5 application" --

6 MR. CIOLFI: Yeah, I see what you are  
7 saying. I believe in --

8 MR. HENNER: What I was going to ask you is  
9 if figure five and figure four correspond to  
10 Exhibits D and E?

11 MR. CIOLFI: No. In Verizon's previous  
12 application, they modeled multiple sites, and  
13 they looked at the Guttermuth(phonetic) site as  
14 well. We had entered into discussions with them,  
15 so they have -- they had supplied the information  
16 for these propagation studies as well. So I was  
17 trying to communicate that we did not  
18 independently prepare these studies. These were  
19 prepared by Verizon, and we were using them with  
20 their permission. So that's what we were trying  
21 to say is that they were previously prepared by  
22 Verizon. And then Exhibit E, the last two pages  
23 that are not labeled with an exhibit number, it  
24 says, "existing coverage" in the bottom right and

1 "predicted coverage" in the bottom right. These  
2 were prepared and originally presented -- and I  
3 may have them with me -- those were prepared by  
4 Verizon to demonstrate the actual Guttermuth site  
5 as was presently proposed and what the existing  
6 coverage is and what the proposed coverage would  
7 be. So they're referring to that in the green,  
8 Cherry Plain, Mariner. So that's what you see.  
9 You know, this is our site, this is an old  
10 Verizon site.

11 But to answer Mr. Therault, that should be  
12 labeled Exhibit E.

13 BOARD MEMBER THERAULT: I would hate to  
14 disagree with you over -- but it's just  
15 housekeeping. What you are talking about is  
16 property at 110 Cherry Plain Square, which is  
17 town owned property, that whole paragraph, and  
18 then the final paragraph, "Verizon Wireless also  
19 independently reviewed the spot and developed  
20 similar conclusions, see Exhibit E for a  
21 propagation study by Verizon Wireless  
22 demonstrating the anticipated coverage from a  
23 facility developed at this property."

24 MR. CIOLFI: That's labeled Exhibit D. And

1           if you look at Exhibit D, that's the Cherry Plain  
2           Square site.

3           BOARD MEMBER THERAULT: Exhibit D looks to  
4           be Sand Bank Road. Cherry Plain Square is  
5           considerably further south than that. Sand Bank  
6           Road is another town owned property.

7           BOARD MEMBER LEWIN: You look at the rivers  
8           on there, David, the lines on D, and looking at E  
9           and those rivers that come out of Madison Hollow  
10          and George Allen Hollow, I believe that's the  
11          ones we're looking at and I think --

12          BOARD MEMBER THERAULT: I don't think  
13          there's -- are there any rivers on here?

14          BOARD MEMBER LEWIN: Well, these lines,  
15          black lines.

16          CHAIRMAN FRENCH: Well, the river is by  
17          there.

18          BOARD MEMBER LEWIN: If you look at D and E  
19          and they match as far as --

20          BOARD MEMBER THERAULT: I don't have an E,  
21          so I don't know what you are matching.

22          CHAIRMAN FRENCH: The last page.

23          BOARD MEMBER LEWIN: I don't know if this  
24          answers your question or not, but if you take

1           these, right --

2           BOARD MEMBER THERAULT: Here is Cherry Plain  
3           Square.

4           BOARD MEMBER LEWIN: If you take these and  
5           you go onto here, aren't they the same? This is  
6           the Cherry Plain Square one, which would be right  
7           here.

8           BOARD MEMBER THERAULT: No, if this were the  
9           Cherry Plain Square one. But this is the Cherry  
10          Plain Mariner site.

11          BOARD MEMBER LEWIN: Yeah, so I'm not --

12          BOARD MEMBER THERAULT: The 110 Cherry Plain  
13          Square would be located down there somewhere  
14          (indicating), so we're missing Exhibit E, as  
15          little as it means.

16          BOARD MEMBER LEWIN: It doesn't mean  
17          anything, I don't think, does it, really?

18          MR. HENNER: Are we missing Exhibit E or is  
19          it just that Exhibit E is just not labeled as  
20          Exhibit E?

21          BOARD MEMBER THERAULT: No, we're missing  
22          Exhibit E.

23          MR. CIOLFI: If I could submit into the  
24          record the missing Exhibit E.

1 BOARD MEMBER THERAULT: Did you find it?

2 MR. CIOLFI: In my application, it's labeled  
3 110 Cherry Plain.

4 BOARD MEMBER THERAULT: Yup, that's it.

5 MR. CIOLFI: And I can make copies.

6 CHAIRMAN FRENCH: It's not in these.

7 MR. CIOLFI: It was stuck in my application,  
8 so I'm looking at it and you are not.

9 CHAIRMAN FRENCH: Can you get us copy of  
10 this?

11 MR. CIOLFI: I will make you copies.

12 BOARD MEMBER THERAULT: Section four,  
13 cartographic and photographic interpretations.

14 MR. CIOLFI: Seven, how many copies?

15 BOARD MEMBER GILROY: You might want to make  
16 ten. There's the library, the town clerk, us,  
17 planning board.

18 MR. CIOLFI: Okay. What page?

19 BOARD MEMBER THERAULT: We are in section  
20 four, cartographic and photographic  
21 representation. Photo five is misidentified.  
22 It's identified as taken from the side of New  
23 York 22, Berlin Community Cemetery, which is two  
24 miles up the road. So unless we had a telephoto



1 lens working there, photo five is incorrectly  
2 labeled.

3 MR. CIOLFI: Okay. And we'll check those  
4 coordinates to see if the coordinates are  
5 correct.

6 BOARD MEMBER LEWIN: What is it called,  
7 David, Cherry Plain Community Cemetery?

8 BOARD MEMBER THERAULT: That's what it's  
9 labeled, photo five, but that's two miles from  
10 the site.

11 BOARD MEMBER LEWIN: I understand that.  
12 What's the name of that cemetery down there,  
13 Doug, across from the post office?

14 BOARD MEMBER THERAULT: No, no, the Berlin  
15 Community Cemetery is in Center Berlin.

16 BOARD MEMBER LEWIN: Yes, it is.

17 BOARD MEMBER THERAULT: And that's what this  
18 one is labeled.

19 MR. CIOLFI: So that's mislabeled. So the  
20 correct label should be -- what's the name of it,  
21 Cherry Plain?

22 BOARD MEMBER THERAULT: Well, I don't know.  
23 We've got one --

24 VOICE: Which cemetery are we talking now?

1 BOARD MEMBER LEWIN: The one across from the  
2 post office.

3 MR. CIOLFI: We'll verify the coordinates  
4 because they list the coordinates from where the  
5 photo was taken.

6 BOARD MEMBER LEWIN: Because it's .16-miles  
7 from that cemetery to Doug's hill to the  
8 proposed --

9 VOICE: The dead don't care anyway. I went  
10 over and talked to them, they don't care.

11 MR. CIOLFI: We'll confirm the label on  
12 photo five in section four.

13 BOARD MEMBER THERAULT: And can we get one  
14 of these predetermined images with the full array  
15 of antennas, is that too much to ask, before the  
16 public hearing?

17 MR. CIOLFI: The photo simulation?

18 BOARD MEMBER THERAULT: The four or five  
19 antenna providers, two or three.

20 BOARD MEMBER ADAMS: Isn't there one in it?

21 BOARD MEMBER THERAULT: They've got it with  
22 one provider. I want it with full build out as  
23 he's shown in his elevations on his plans.

24 MR. CIOLFI: If I could ask a point of

1 clarification. I believe at the last meeting,  
2 correct me if I'm wrong, did Mr. Therault recuse  
3 himself after he submitted his own properties in  
4 for submission and review? And so is he sitting  
5 as a board member? Is he a private citizen?

6 BOARD MEMBER GILROY: He's an alternate.

7 CHAIRMAN FRENCH: He's an alternate. I  
8 think since his sites have, in effect, been  
9 removed from --

10 MR. CIOLFI: But there's no bias there now  
11 that his sites were rejected?

12 CHAIRMAN FRENCH: Well --

13 MR. HENNER: Well, if there was a question  
14 of his voting on something, your implicit point  
15 would be well taken. But at the moment, he's  
16 merely asking questions about the application and  
17 to the extent to which -- I think the questions  
18 are reasonable -- the questions, although  
19 arguably picky, are still questions that are --

20 MR. CIOLFI: We're happy to answer them. I  
21 just want a point of clarification. I thought at  
22 the last meeting when he offered up his  
23 properties to be reviewed, he said, I'll step  
24 down and recuse myself. I don't remember the

1 exact words --

2 CHAIRMAN FRENCH: We're not considering his  
3 properties, so that no longer, from my point of  
4 view, is --

5 MR. HENNER: Well, there's a legal question,  
6 which we're not going to address right now, which  
7 is whether or not, if having once been --  
8 previously having had an interest in it and  
9 having recused himself, he can now, quote,  
10 unrecuse himself, which is a question you are  
11 asking, which we're not going to address right  
12 now because hopefully when this matter comes  
13 before the full board, it will be decided by the  
14 board members without Mr. Therault's -- he'll  
15 vote as an alternate -- but we won't have to  
16 address the question of whether he needs to  
17 recuse himself at that point. And if we do, then  
18 the board will -- it's ultimately his decision  
19 whether or not to recuse himself, although I  
20 will, in my capacity as counsel to the board,  
21 give him my advice as to whether he should or  
22 should not recuse himself before -- if it comes  
23 to that point. But I understand the point that  
24 you are making. The record has been made on that

1 point.

2 MR. CIOLFI: We're happy to provide any  
3 information, answer the question, but I just  
4 wanted some clarification.

5 BOARD MEMBER THERAULT: That was just a  
6 request that I had, Chris, but I'll leave it to  
7 the rest of the board.

8 MR. CIOLFI: That's fine. Do you have a  
9 particular photo?

10 BOARD MEMBER THERAULT: Two or three. Any  
11 of the ones you've already predetermined would be  
12 fine. It doesn't matter to me, as long as we get  
13 one.

14 CHAIRMAN FRENCH: I'm not sure I understand  
15 what you are asking.

16 BOARD MEMBER THERAULT: I'm asking him to do  
17 an image --

18 MR. CIOLFI: A photo simulation.

19 BOARD MEMBER THERAULT: So far he's got a  
20 simulation with one provider on it and he plans  
21 on putting four or five, four additional  
22 providers on the tower. So I'm just asking him  
23 to produce one image with all of the providers on  
24 it.

1 MR. CIOLFI: We haven't done any  
2 simulations.

3 BOARD MEMBER GILROY: Yeah, there's sims in  
4 here. I think what Dave is pointing out is --  
5 he's catching a lot of details that it would have  
6 been nice if the application was complete. This  
7 is a different issue, though, that we're asking  
8 you for.

9 MR. CIOLFI: Here we go. Simulations.

10 BOARD MEMBER THERAULT: You have three or  
11 four simulations.

12 BOARD MEMBER LEWIN: I think Verizon did  
13 that in their application.

14 BOARD MEMBER THERAULT: I don't recall.

15 BOARD MEMBER LEWIN: They had the pictures,  
16 also, of what it would look like.

17 BOARD MEMBER THERAULT: Yeah, they had the  
18 simulations, right.

19 BOARD MEMBER LEWIN: And that's what you are  
20 asking for; right?

21 BOARD MEMBER THERAULT: Well, we've got  
22 simulations with one provider on it. He's  
23 planning on putting three or four more, I just  
24 want one image.

1 MR. CIOLFI: There's one at 8 and 25 at the  
2 back.

3 BOARD MEMBER THERAULT: Ten from the high  
4 school.

5 MR. CIOLFI: Again, we had some  
6 predetermined locations that we took photos from,  
7 and we thought those were representative. If you  
8 want another one, we can do that.

9 CHAIRMAN FRENCH: Did you have a particular  
10 picture you wanted it --

11 BOARD MEMBER THERAULT: Any of the ones  
12 where you had a simulation would be fine.

13 CHAIRMAN FRENCH: What about ten?

14 BOARD MEMBER THERAULT: Ten is good.

15 CHAIRMAN FRENCH: That's already there.

16 BOARD MEMBER THERAULT: All I'm asking is --

17 MR. CIOLFI: The additional ones. I'm --

18 BOARD MEMBER THERAULT: So we have a full  
19 build out.

20 CHAIRMAN FRENCH: Is that a problem?

21 MR. CIOLFI: That's not a problem.

22 CHAIRMAN FRENCH: I just wanted to make  
23 sure --

24 MR. CIOLFI: Rather than doing it on one

1           that's already been done, pick numbers two or  
2           three, if that's okay with the board.

3           CHAIRMAN FRENCH:   Number ten?

4           BOARD MEMBER THERAULT:   Well, he suggested  
5           doing it on one that it hadn't been previously  
6           done.

7           CHAIRMAN FRENCH:   Whichever you want.

8           BOARD MEMBER THERAULT:   Two or three, either  
9           one.

10          BOARD MEMBER GILROY:    Could you just do one  
11          from that George Allen Hollow Road.

12          MR. CIOLFI:    Which one is that?

13          BOARD MEMBER GILROY:    Is it 292?

14          MR. CIOLFI:    Is there a photo.

15          BOARD MEMBER GILROY:    Yeah.   Hold on.   I  
16          think, yeah, in relation to the Carr(phonetic)  
17          properties, we had the request.

18          MR. CIOLFI:    We can do that.   But that's  
19          such a speck on the horizon, I'm not sure that  
20          we'll even be able to model that.   On my end, I  
21          have like big red dots so I can find them.   I was  
22          up there the day of the balloon float, it's such  
23          a spec that --

24          BOARD MEMBER THERAULT:   Perfect example



1 (indicating).

2 MR. CIOLFI: Yeah, that's why --

3 BOARD MEMBER THERAULT: You can't hardly see  
4 the thing.

5 BOARD MEMBER GILROY: So we're fine with  
6 that.

7 MR. CIOLFI: We had a good conversation with  
8 several members of the Carr family, and I left  
9 there encouraged. I didn't have any --

10 CHAIRMAN FRENCH: Why don't you do page ten.  
11 The other ones are so small you can't see it.  
12 You can see ten.

13 MR. CIOLFI: How about if we do ten and  
14 three.

15 CHAIRMAN FRENCH: Okay. That's fine.

16 MR. CIOLFI: Dave, does that work?

17 BOARD MEMBER THERAULT: That's fine, yup.  
18 Just so we get a feel what the finished project  
19 five years down the road may look like.

20 CHAIRMAN FRENCH: Anything else?

21 MARK HUTCHINS: I have just one thing, and  
22 this is really minor compared to the other stuff.  
23 In the supplemental from the Verizon Wireless  
24 plot, Exhibit S-6, if it's referred to correctly,

1 the legend is correct, it has town alt four, and  
2 it shows town alt four theoretical facility at  
3 town alt location three. I think we know that  
4 that's four.

5 BOARD MEMBER THERAULT: That's in your  
6 report?

7 MARK HUTCHINS: This is supplemental S-6,  
8 that came from Verizon Wireless.

9 BOARD MEMBER THERAULT: Okay.

10 MARK HUTCHINS: It's very clear that that's  
11 four.

12 BOARD MEMBER THERAULT: Not three.

13 MARK HUTCHINS: Yup.

14 MR. CIOLFI: S-6, correct. That's from  
15 location number four, not three.

16 And also did I correct something in the  
17 cover letter? I think I had the color wrong.

18 MARK HUTCHINS: Yeah, I see you've got green  
19 as town alt two and that's four.

20 MR. CIOLFI: I think I referenced that in  
21 the cover letter.

22 MARK HUTCHINS: Boy, I'd like it if they  
23 used green. This orange, it's tough to see  
24 between the orange and the white for my aging

1           eyes. I think the green gives better contrast.  
2           On two, that's two.

3                   CHAIRMAN FRENCH: Do you have an additional  
4           point, Chris?

5                   MR. CIOLFI: I may be wrong. Bear with me  
6           one second, please.

7                   CHAIRMAN FRENCH: Okay.

8                   MR. CIOLFI: No, we're good. Sorry. We're  
9           good.

10                  CHAIRMAN FRENCH: Anything else?

11                  BOARD MEMBER THERAULT: I'm good.

12                  CHAIRMAN FRENCH: Okay. So meeting stands  
13           adjourned until next month. What's the dates?  
14           The 18th, is it?

15                  MR. HENNER: February 18th.

16                  CHAIRMAN FRENCH: February 18th, 7:30 at the  
17           high school. Thank you for coming out tonight.

18                   (Whereupon, the proceedings in the  
19           above-entitled matter adjourned at 8:51 p.m.)

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C E R T I F I C A T I O N

I, SADIE L. HERBERT, Shorthand Reporter and  
Notary Public in and for the State of New York,  
do hereby CERTIFY that the foregoing record taken  
by me at the time and place noted in the heading  
hereof is a true and accurate transcript of same,  
to the best of my ability and belief.

---

SADIE L. HERBERT

Dated: February 9, 2010

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