

1 ZONING BOARD OF APPEALS

TOWN OF BERLIN

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In the matter of the Application of:

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MARINER TOWER

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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,

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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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