

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

STENOGRAPHIC MINUTES OF MEETING conducted on the
15th day of April, 2010, at the Berlin Town Hall, Berlin,
New York commencing at 7:26 p.m.

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ZONING BOARD OF APPEALS:

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

APPLICANT REPRESENTATION:

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

ALSO PRESENT:

RICK ANDRAS, RF Engineer, Verizon Wireless

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

(Whereupon, the following proceedings occurred prior to the ZBA Meeting being called into session.)

MS. GREEN: Most people know me, I'm Kristi Green(phonetic). On March 14th coming home, I lost control of my van and went off the road just by Berlin Lumber. My van rolled. When I stopped, I was upside down and I was pinned in the van, I couldn't get out. I tried calling 911. I had no cell service. And I was waving my hands trying to get service.

In the end, when the dispatcher called me two weeks later, I had attempted to call them 13 times. They were seeing that I was calling, but there was not enough service for voice. By pure luck, I was able to get a text out to a family member who eventually got it. I went off the road at approximately about 12:30 a.m. and my dad found me at 3:00 a.m. When they -- you know, 911 was called, finally. The sheriff showed up first. They ended up using the jaws of life to get me out. I was air lifted to Albany Med and my core temperature was down to 93 degrees, so

1 that was their first concern. And eventually,
2 once that was taken care of, they did other
3 tests. I have no new injuries, but that was my
4 adventure.

5 CHAIRMAN FRENCH: Okay.

6 BOARDMEMBER THERAULT: Where are you from,
7 Kristi?

8 MS. GREEN: Petersburg. I live right off of
9 22. I was only roughly seven minutes from home.

10 BOARDMEMBER THERAULT: You got a text out to
11 your dad, you said?

12 MS. GREEN: I got a text to a family member
13 whom I had just dropped off in Stephentown. She
14 did not get it right away. When she went
15 downstairs because the wind was so bad in
16 Stephentown, she got the text. Called my dad to
17 see if I made it home safely. I did not. My dad
18 ended up leaving headed south. Her fiance headed
19 north. My dad ended up going by Berlin Lumber,
20 he did not see where I went off. You could not
21 see me from the road. I was down in. I was
22 upside down. And what caught his eye was my
23 hubcaps up in the air is how I caught his eye, so
24 that's how he found me.

1 BOARDMEMBER THERAULT: Terrifying.

2 CHAIRMAN FRENCH: We're glad it turned out
3 well. It's obviously a reason for having the
4 service.

5 MS. GREEN: I have Verizon. I was very
6 surprised that there was no service there.

7 CHAIRMAN FRENCH: That's one of the dead
8 zones. I happen to live up the road on Browns
9 Hollow just above where you were.

10 MS. GREEN: Okay.

11 CHAIRMAN FRENCH: That's one of the problems
12 we have.

13 All right. Almost time.

14 MR. CIOLFI: Thanks for coming out.

15 MS. GREEN: Does anybody have any questions
16 or anything?

17 BOARDMEMBER LEWIN: We've got a minute. How
18 does text work and cell phone doesn't? I don't
19 understand that. And if it takes too long,
20 forget it because we've got to get on with our
21 meeting.

22 MR. CIOLFI: It can be quick.

23 MR. ANDRAS: It's on a different channel.

24 I'm an engineer for Verizon Wireless. It's on a

1 different channel and it keeps trying till it
2 gets through, where voice doesn't.

3 BOARDMEMBER LEWIN: Okay.

4 CHAIRMAN FRENCH: One of the questions is
5 why you hadn't tried 911, well you answered that,
6 obviously, so...

7 MS. GREEN: And when they called me two
8 weeks later, they -- he was calling to follow up,
9 and he said it was extremely frustrating because
10 they realized there was obviously something wrong
11 but they could not -- you know, there was no
12 voice.

13 CHAIRMAN FRENCH: Understood. We appreciate
14 you coming down and sharing that with us.

15 MS. GREEN: No problem.

16 (Whereupon, the ZBA Meeting was called into
17 session.)

18 CHAIRMAN FRENCH: With that, I'll bring the
19 meeting into session, and we can proceed.

20 So I guess you are the doctor.

21 MR. HENNER: Okay. At last month's meeting,
22 we went through the -- we did the SEQRA review,
23 the State Environmental Quality Review Act. We
24 completed the Environmental Assessment Form and

1 the Board resolved to authorize Chairman French
2 to sign a negative declaration under the purposes
3 of SEQRA saying that there are no significant
4 environmental impacts, and that any impacts that
5 had been identified had been minimized to the
6 maximum extent practicable.

7 The only other issue before we can proceed
8 to the consideration of the decision with respect
9 to the special use permit for the cell tower and
10 also for the associated zoning variance, there
11 was an issue that needed to have the matter
12 reviewed by the County planning agency because
13 this was in an agricultural zone. We
14 submitted -- after last month's meeting, we
15 submitted the written -- the necessary documents
16 to the County for their review. The County under
17 Section 239-L of the General Municipal Law could
18 do one of several things. The law specifically
19 says they can make recommendations either to
20 accept, to modify, or they can make a
21 recommendation that there are no issues of
22 County-wide concern and only issues of local
23 impact, which is the resolution that they did do,
24 and therefore, they sent it back to us to, as the

1 Zoning Board of Appeals, take whatever action we
2 deem fit, regardless of the County transaction.

3 They did make a statement on the referral
4 form, which is something we're going to spend
5 some time going over tonight. They did make a
6 statement to the effect that this might be a good
7 site for a "Super Pine", which is basically a --
8 what you do is in addition to -- you put up the
9 tower, but you mask it, essentially, by making it
10 look like a pine tree, or at least that's the
11 intention of it. So one of the questions that we
12 now have is whether or not we should in fact say
13 to the Applicant, and it is within our authority
14 to do so, as the ZBA, to say, okay, as a
15 condition of granting the application, you should
16 put up a "Super Pine" as an alternative to the
17 monopole which is proposed.

18 Now, we don't have to do that, and there are
19 a couple of questions that we have to look at.
20 The first question, which I think the Board will
21 consider, is, okay, nevermind what the County
22 said, let's look at these two options; the
23 monopole and the "Super Pine", as it were, and
24 which one is really better. Is the "Super Pine"

1 really an aesthetic improvement? As a result of
2 putting up the "Super Pine", will it be less of
3 an aesthetic impact? And if the answer to that
4 is no, it's not, then obviously there's no reason
5 to do it.

6 The second question that the Board will
7 consider is, okay, if it gets to that point, even
8 if it is minimizing the impact of it, is it a
9 hardship? Is it something that isn't practical
10 to require the Applicant to use a "Super Pine"?
11 There are certain considerations that the Board
12 will consider, and I believe we'll hear something
13 from the Applicant about this as to whether or
14 not it's going to, by putting up the pine, the so
15 called "Super Pine", it may interfere with the
16 coverage, it will certainly cost more money, it
17 may make the project impractical, we may end up,
18 as a result of requiring the "Super Pine", not
19 having a project. These are issues that -- and
20 I'm just identifying issues. I'm not prejudging
21 them, I'm not stating what the Board is going to
22 do with it, but I'm just explaining the kind of
23 issues the Board should and will consider.

24 What is going to happen tonight is that

1 Chris Ciolfi is going to make a presentation as
2 to the visual impact. We've asked him to come
3 here with some pictures to show what it is, what
4 the impact of the "Super Pine" will be and to
5 explain it to us, and then we'll put the matter
6 up to the Board for discussion.

7 After we do that, we'll then proceed to the
8 consideration of the application itself. And I
9 have drafted, and it has been on the website for
10 about two days, a draft decision. If you've seen
11 the draft, this is a draft presented only for
12 discussion purposes, only for the convenience of
13 the Board. Again, it is not a prejudging of the
14 issues. It is just simply something that the
15 Board may start with, react to, and to give
16 something to react against; possibly to adopt,
17 possibly to modify, possibly to reject. That's
18 entirely, of course, up to the Board's
19 consideration and to do with it as they see fit.

20 With that, I guess we'll turn it over to
21 Chris to describe the visual impacts.

22 MR. CIOLFI: Good evening. For the record,
23 Chris Ciolfi with Mariner Tower. I appreciate
24 the opportunity to talk a little bit about the --

1 I did for Mr. French just a letter with some
2 photographs, and that is a copy of that. I
3 submitted this for our copy, in case people
4 didn't have a chance to print them out. And I
5 have a copy here for the folks in the audience,
6 if anybody would like to pass these around, of
7 what we're thinking of for what the Board is
8 asking us to consider doing is making it look
9 like what they call a "Super Pine" or a pine
10 tree. And what we've done is these are
11 simulations, and this compares what a traditional
12 tower would look like. And this is what's in
13 Stephentown and up in Berlin and throughout the
14 valley. And this compares it to what a pine tree
15 will look like.

16 What we found is in certain situations the
17 pine tree, "Monopine", "Super Pine", whatever you
18 may call it, in certain applications they work.
19 If it's at an entrance to a park, if it's about
20 70 feet tall and the trees are 60 feet tall and
21 it can blend in there, there are certain
22 applications where it would. I don't believe
23 this is one of those applications. We've talked
24 with some of the local folks that spend time in

1 the woods what the tree heights are, they're
2 anywhere from 50 to 60 feet tall and we can agree
3 that most of the trees up there are pretty mature
4 or the larger ones aren't going to get a lot
5 taller, and they're only in the, maybe, 50 to
6 60 foot range, and we're talking about a 150 foot
7 tower, so 90 to 100 feet above the existing
8 trees. So at certain locations, you may catch it
9 and it may blend in there. The way that that --
10 again, Mark Hutchins spoke to the benefit of this
11 site is that it sticks out a little bit on the
12 edge of the property and catches Route 22. And
13 so by doing that, a fake pine tree is not going
14 to blend in. It's not going to be hidden by the
15 backdrop of a hill, in my opinion. If it were
16 down on the side of a mountain and you were
17 looking at it, maybe it would offer some visual
18 screening. I don't think that's the case here.

19 Yes.

20 CHAIRMAN FRENCH: I called and talked to
21 Mark Hutchins about this, and if I understood him
22 correctly -- and I think I did -- the "Super
23 Pine" that you've shown here is actually -- with
24 the antenna is actually too high. You would have

1 to have it 10 or 12 foot lower than this in order
2 to have the peak of the pine come up above -- and
3 we're already marginal at 150 feet, so if we drop
4 it down 10 to 12 feet in order to make the rest
5 of the pine tree, we've defeated a lot of the
6 viability of the antenna. And he felt that the
7 branches that are on there tended in a lot of
8 instances to interfere with the signal, they
9 particularly do with the microwave.

10 MR. CIOLFI: I couldn't have said it better.

11 Some towns talk about dropping the height of
12 the tower down to get the conical shape. Other
13 towns talk about increasing the height. So now
14 we're already at the maximum, we're at 150 so to
15 make it 160, 165 just to get a shape, again, is
16 defeating the purpose of the local law to keep
17 towers down and to minimize the number of towers.
18 Rick Andras, Verizon Wireless' radio frequency
19 engineer, can certainly speak to it, if the Board
20 needs to hear it, but about the degradation in
21 signal quality. And we're trying to encourage
22 Verizon, we're trying to encourage other tenants
23 to come and use the site, we're trying to get
24 them here as efficiently as we can, rather than

1 make it more difficult for them.

2 From a practical matter, as the tower owner,
3 they're extremely expensive. The wind loading on
4 the monopine tower is increased dramatically
5 resulting in a much larger foundation to support
6 the wind of the structure. And also, from a
7 safety issue, we have technicians working at
8 these sites, the branches break, they fall off.
9 They're metal rods with fiberglass fake pine
10 needles on them, almost like the old fashioned
11 pipe cleaners, but with bushes, and we find them
12 on the ground, if technicians are on the site --
13 typically, if a technician is on a site and
14 there's no one on the tower, they don't have to
15 wear their hard hats if they're just working on
16 the ground. For a site with a monopine,
17 everybody has to be suited up all the time, even
18 if you are outside the compound, because you
19 don't know if these branches are going to come
20 falling off. I think they're a bad idea. I
21 don't think this is an appropriate site for them
22 for many reasons. And hopefully, the Board will
23 agree that it's beyond just a visual impact, it's
24 a practical matter, it's a technical matter, and

1 from a safety standpoint, I don't think this is a
2 good application for that.

3 BOARDMEMBER LEWIN: A winter storm with ice
4 and heavy snow would probably do like it does
5 real trees.

6 MR. CIOLFI: That's right.

7 BOARDMEMBER LEWIN: A lot of damage.

8 MR. CIOLFI: It does a lot of damage. And
9 again, the ice loading on the fake branches and
10 then you add the ice loading onto the antennas,
11 there is some decrease in efficiency when the ice
12 goes on the antennas. Now you are adding to
13 that. You are just adding more variables to
14 cause a problem. And again, we're trying to
15 promote the service, promote competition and
16 promote other users, here. And this just makes
17 it more difficult.

18 When a technician goes to climb a monopine
19 to service an antenna, oftentimes they can't get
20 in amongst the trees, amongst the branches to
21 service that, so you may have to bring a small
22 crane in with a bucket to get up there and
23 service that. Again, just complicating and
24 adding unnecessary risks and problems. Every

1 time there's heavy equipment on site, we follow
2 OSHA regulations and safety is tantamount.
3 That's why they call them accidents. Why
4 increase the likelihood for accidents and
5 problems if you don't have to. And I don't think
6 you are benefiting anything from that. Again, if
7 there were an application where we're talking
8 about a 70-foot structure and it was up against
9 the side of a hill and you were looking into it,
10 you can make them work. There are some instances
11 where they paint the structures and do different
12 things. I think, as we can see throughout the
13 valley, the other towers that are monopoles,
14 within a year or two they weather to a dull gray,
15 they blend in with the changing sky. Is it an
16 attractive structure? I make my living at it, I
17 won't pass judgment on it. But I don't think
18 they're unattractive. The reason why we go with
19 the monopoles is because it's a slender,
20 efficient design. And quite honestly, they're
21 more expensive than a lattice tower. The
22 monopoles are more expensive, but we think it's a
23 cleaner, slimmer design. It's not as versatile
24 as a lattice tower. On a lattice tower, you can

1 mount equipment just about anywhere to it. A
2 monopole, you can't. You have to predesign and
3 pre-engineer that. But that's okay, we've done
4 that, we think that's the appropriate design for
5 this location.

6 The one thing I did just want to add, give
7 to the Board, I did call Linda from the County
8 based on the comment about the "Super Pine" to
9 confirm with her that it was a comment and not a
10 suggestion. I took it as a comment, not a
11 suggestion, but just -- or a recommendation.

12 CHAIRMAN FRENCH: Something to consider.

13 MR. CIOLFI: Right.

14 CHAIRMAN FRENCH: Is what she's saying.

15 MR. CIOLFI: So I have an e-mail, I'd like
16 to add to the record, just verifying what she
17 said in our conversation. She went on to say,
18 the following paragraph at the top of the
19 referral response is the actual recommendation,
20 and that's where she said local consideration
21 should prevail. The balance of it was just a
22 comment. So if there was any question about
23 whether it was a recommendation or a comment, I
24 just wanted to clarify that.

1 BOARDMEMBER THERAULT: Well, let me say,
2 Chris, that I agree with you. The "Super Pine"
3 or whatever you call them, camouflage, I think
4 are almost horrific. I've seen one in person,
5 and I couldn't take my eyes off it. It was just
6 such a freaky looking, bizarre structure. In
7 certain instances they might work, but I don't
8 think this is one of them.

9 But the issue, Chris, that has been
10 bothering me, and at the public hearing we heard
11 plenty of people talk about coverage, we've heard
12 very few comments about visual impacts. It's all
13 about coverage. People want coverage. They want
14 it on their horses, they want it on the ATVs,
15 they want it in the woods, the byways, the
16 highways. There's a limitation on every tower.
17 This one is at the low end of the scale right
18 now. And Kristi's testimony just brought it
19 right back home to me. Where don't we want to
20 put coverage, Chris, right. We want it
21 everywhere if we could. But this is at the low
22 end of the scale. This is the least amount of
23 coverage you are going to get out of a tower.

24 MR. CIOLFI: I beg to disagree.

1 BOARDMEMBER THERAULT: Well, it's smaller
2 than the original site that Verizon submitted,
3 the coverage area.

4 MR. CIOLFI: No, it's not. It's different.

5 BOARDMEMBER THERAULT: Well, we've still got
6 a gap in service. Admittedly?

7 MR. CIOLFI: Absolutely.

8 BOARDMEMBER LEWIN: Mark Hutchins said that.
9 This is nothing new.

10 BOARDMEMBER THERAULT: This is nothing new.
11 Where do we want the gaps? Where don't we want
12 Kristi going off the road?

13 BOARDMEMBER LEWIN: Well, the only gap
14 according to Mark is down here by --

15 BOARDMEMBER THERAULT: Right. I'm just
16 saying.

17 BOARDMEMBER LEWIN: -- Saunders there or
18 Stagecoach Road.

19 BOARDMEMBER THERAULT: Whatever it is, a
20 quarter of a mile, a half a mile.

21 CHAIRMAN FRENCH: Well, that was going to be
22 a gap in that area. It's less of a gap with this
23 tower, as I understand it, than it would have
24 been with Verizon.

1 BOARDMEMBER THERAULT: Right.

2 CHAIRMAN FRENCH: That was another reason
3 for going with this site. Not the only reason.

4 MR. CIOLFI: And what we're saying is there
5 is not a -- with the new tower, with Verizon
6 Wireless going on the tower, it is not a complete
7 white dead zone gap in coverage. It is below the
8 threshold that they're designing to. So there
9 will still be some coverage where there's none
10 that exists now in that corridor.

11 Now, the Town's consultant also suggested
12 raising the height of the tower. Your bylaw
13 allows for 150 feet. We've complied with your
14 local law and asked for the maximum height.
15 Could we ask for 170 or 190 feet and could that
16 help close the gap --

17 BOARDMEMBER THERAULT: We don't know.

18 MR. CIOLFI: Your law doesn't allow that.

19 BOARDMEMBER THERAULT: Right. But we don't
20 know, and I believe you didn't want to do any
21 modeling to see it.

22 MR. CIOLFI: No, Mark Hutchins suggested,
23 and I believe the Town was going to have their
24 consultant model it, rather than take our word

1 for it was my understanding.

2 BOARDMEMBER THERAULT: I don't think that's
3 happened, has it?

4 MR. HENNER: No, what happened was we had
5 some discussion about whether or not we should
6 ask the Applicant to build the tower with the
7 capability of later adding up to the additional
8 20 feet, but we decided, at least informally, I
9 don't think there was a formal resolution --

10 BOARDMEMBER THERAULT: No, I don't think so.

11 MR. HENNER: -- but at least there was some
12 discussion and nobody made any motion to do
13 anything to further investigate the possibility
14 of a higher tower, although at some point it may
15 be a possibility to --

16 MR. CIOLFI: We try to play the cards that
17 we're dealt. And if a Town picked a number and
18 said we can build it up to 150 feet, that's what
19 we've asked for. And I believe with the previous
20 application that Verizon had on the east side of
21 22, I think theirs was 140 feet or --

22 CHAIRMAN FRENCH: 120 originally.

23 MR. CIOLFI: It was lower, so --

24 BOARDMEMBER THERAULT: It had a higher base

1 elevation.

2 MR. CIOLFI: But still, we've tried to
3 provide enough steel for colocation, as the law
4 requires and encourages. So we tried to provide
5 additional spots. We are in discussions with a
6 second customer. We don't have any formal
7 agreement with them yet. So it will improve
8 dramatically, the coverage. And we've also
9 talked, where there is that hole or a potential
10 for a lessening or weakening of service between
11 Berlin and Cherry Plain, there's also other
12 options that don't require towers. So typically,
13 what we would do in a corridor is build the macro
14 sites. We have one, hopefully we'll have a
15 second one. Build the macro sites, get them
16 active and see what the coverage looks like. And
17 then look at where there's a gap. And if there's
18 a sufficient enough gap, that can be handled with
19 a MicroCell or a small unit that can be placed on
20 a barn or silo or on a rooftop that wouldn't
21 necessarily require a full cell with a full
22 tower, okay. A MicroCell application is not
23 sufficient to provide the macro coverage that the
24 proposed site is going to --

1 BOARDMEMBER THERAULT: I'm following you.

2 MR. CIOLFI: -- but it could fill in a
3 little spot or a little gap somewhere if somebody
4 had -- whether it be at a farm or at a business,
5 say you know what, I still don't get it, but I
6 kind of get it outside, is there a way we could
7 boost the signal in this area. And there are
8 ways to do that without a whole new tower. So to
9 do it the most efficiently is to do it with as
10 few towers as possible. And it's always a
11 balance that we have. Verizon has it from a
12 provider standpoint because they want to provide
13 the best coverage for their customers, but they
14 also want to be good to the community and not
15 have towers taller than they need so that -- oh,
16 there's that ugly Verizon tower.

17 Mariner has a similar but a little different
18 take on it. We make our money as a real estate
19 company building towers as tall as possible to
20 accommodate as many tenants as possible. But we
21 have to work within the bounds of the law. And
22 if your law says we can only go to 150 feet, we
23 can only go to 150 feet.

24 BOARDMEMBER THERAULT: So tell me how that

1 would happen if indeed we follow through on that,
2 we find that there's an unacceptable gap in
3 service and is that -- what did you call it,
4 MicroCell?

5 MR. CIOLFI: I think it would be a MicroCell
6 or some of the new technology --

7 MR. ANDRAS: Repeaters.

8 BOARDMEMBER THERAULT: Repeater? So does
9 every provider have to come in and do that?

10 MR. CIOLFI: It depends who is requiring or
11 who is requesting the coverage. If you drive
12 through an area and it's common knowledge that
13 you go through an area and there is a spot that
14 it's not populated and, oh, yeah, when you go
15 through that spot it's weak for about a minute
16 and then it picks up again, it may not need any
17 attention. Again, remembering, there will be
18 some coverage now, as is demonstrated on the
19 propagation studies that are in the record, that
20 it may not be to the level that we've designed
21 these others, so it may not be a neg 84, a neg 76
22 strength; it may be a neg 95 or a neg 105, but
23 there will still be some coverage for the most
24 part. And then if there's a small gap in

1 coverage, it could be a personal thing that a
2 person could contact one of the carriers of their
3 choosing directly and work out an arrangement
4 with them.

5 BOARDMEMBER THERAULT: Similar to what you
6 have?

7 CHAIRMAN FRENCH: I have a booster in my
8 house, which makes --

9 MR. CIOLFI: That's a perfect example.

10 CHAIRMAN FRENCH: It wasn't as good with
11 Verizon right now as it was with AT & T because
12 AT & T's tower is -- but it still boosts it so I
13 get service in my house.

14 MR. CIOLFI: So that's the answer right
15 there, very similar to that.

16 CHAIRMAN FRENCH: It's inside the house,
17 nobody sees it.

18 MR. ANDRAS: If I may speak to the -- the
19 connection to the north isn't going to be an
20 issue. It would be to the south. And that's
21 more or less just terrain. So to raise this
22 tower 20, 30, 40 feet, it's not going to help it.
23 It would have to go way, way, way higher.

24 BOARDMEMBER THERAULT: Yeah, I didn't think

1 it would.

2 CHAIRMAN FRENCH: Any other members of the
3 Board have questions at this point? If not, then
4 we should go on.

5 MR. HENNER: Okay. Well, the way I drafted
6 the draft of the -- the language that's in there,
7 which I'll read for the record, describing what
8 the County's -- the County's comment and also
9 describing a tentative way for the Board to
10 address this, which the Board may or may not
11 accept --

12 BOARDMEMBER LEWIN: What page are you on,
13 Peter?

14 MR. HENNER: Page 5.

15 BOARDMEMBER LEWIN: 5.

16 MR. HENNER: "The Bureau did offer the
17 comment that the site lends itself nicely to have
18 the tower resemble a 'Super Pine' as a camouflage
19 method. However, this comment was not in the
20 form of a recommended modification to the Board's
21 proposed action, and therefore, did not trigger
22 the requirement of Section 239-M(5) for a super
23 majority of the Board. The Board has considered
24 the Bureau's comment and has determined not to

1 require the Applicant to construct a "Super Pine"
2 tower because the Board has determined that such
3 a tower will not mitigate the visual impact of
4 the project and because the imposition of such a
5 requirement would impose an unnecessary hardship
6 upon the Applicant without providing any benefit
7 to the Town."

8 Now, again, that's only a draft of language.
9 The reason I read that is I'm going to ask the
10 Board, before anybody on the Board wants to make
11 a motion with respect to adopting this draft
12 decision, what we can do, if it is the pleasure
13 of the Board, is we can change that language any
14 way the Board wants. I will write it, but the
15 Board will make the decision as to what to write,
16 if there's a need to change that language in any
17 way before making a motion to adopt the decision.
18 If there is no suggested changes, then the next
19 thing would be if someone on the Board wants to
20 make a motion to adopt the decision, it's an
21 eight page decision, I don't think we need to
22 read the decision. And the decision, what it
23 does, I will summarize it briefly, it grants a
24 special use permit. It also grants a hardship

1 variance with respect to a setback requirement.
2 The setback requirement in question is the --
3 under the Telecommunications Law, there's a
4 requirement of a setback of equal to either
5 50 feet in the zone or the height of the tower,
6 whichever is greater. In this case, the height
7 of the tower is 150 feet, so that is the greater
8 setback from the adjoining property line.
9 Because the tower is proposed to be 50 feet from
10 the adjoining property line, a variance is
11 required. The draft decision grants that
12 variance. The draft decision also says that we
13 don't need a variance from a fence height
14 requirement because the height of the fence will
15 be set at 8 feet rather than 6 feet. The zoning
16 regulations talk about 6 feet, but the
17 Telecommunications Law describes a need to have a
18 fence of sufficient height for safety and
19 security purposes, and we think that's at least 8
20 to 9 feet, and the draft decision so states. And
21 finally, the draft decision provides a variance
22 from the provisions of the Telecommunications Law
23 with respect to insurance because the way the law
24 would require the Applicant to name the Town as a

1 named insured, which would give the Town certain
2 rights with respect to being able to cancel the
3 insurance, and so the draft decision says the
4 Town will be an additional insured, not a named
5 insured, which will protect the Town. So that's
6 the problem of giving the Town power that the
7 Town doesn't want and the Applicant doesn't want
8 the Town to have. But that's what the draft
9 decision does, it recites the history of the
10 application, it summarizes the balloon test, the
11 public hearing, the comments of the public
12 hearing, refers to the SEQRA review, describes
13 all the history, and resolves to approve the
14 permit, describes what will be in the
15 application, the types of equipment that will be
16 used, it provides that Verizon will be allowed to
17 be on the tower since they've been involved in
18 this process and it will be their equipment that
19 we're approving, and it says that other carriers
20 can colocate, but that the Board will review
21 those applications as they come before us.

22 With that said, does anybody want to make a
23 motion?

24 BOARDMEMBER LEWIN: I'll make that motion.

1 MR. HENNER: Okay. The motion being made
2 that --

3 BOARDMEMBER LEWIN: We accept this eight
4 page document.

5 MR. HENNER: -- the ZBA hereby adopts the
6 decision of the Zoning Board of Appeals about
7 special use permit and hardship variance as
8 drafted.

9 CHAIRMAN FRENCH: Do we have a second?

10 BOARDMEMBER ADAMS: I'll second.

11 CHAIRMAN FRENCH: Nick seconds it.

12 Is there discussion by the members of the
13 Board on the proposed document?

14 (No affirmative response.)

15 CHAIRMAN FRENCH: If there is none, I call
16 for a vote. Then all in favor.

17 BOARDMEMBER LEWIN: Aye.

18 CHAIRMAN FRENCH: Aye.

19 BOARDMEMBER ADAMS: Aye.

20 CHAIRMAN FRENCH: Opposed?

21 BOARDMEMBER GILROY: (Affirmative response.)

22 BOARDMEMBER THERAULT: (Affirmative
23 response.)

24 CHAIRMAN FRENCH: It's 3-2. Motion carries.

1 MR. CIOLFI: Thank you.

2 MR. HENNER: So the next step would be for
3 the Chairman to sign the statement, and this can
4 be filed with the Town Clerk.

5 CHAIRMAN FRENCH: Is there anything else
6 that needs to come before the Board tonight?

7 (No response.)

8 CHAIRMAN FRENCH: If not, then we'll adjourn
9 the meeting. And thank you all for coming out
10 and let's hope this does what we want it to do.

11 (Whereupon, the proceedings in the
12 above-entitled matter adjourned at 8:00 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: May 3, 2010

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