

VILLAGE OF HASTINGS-ON-HUDSON
ZONING BOARD OF APPEALS MEETING
SEVEN MAPLE AVENUE
HASTINGS-ON-HUDSON, NEW YORK 10706

Held January 28, 2010 at 8:00 P.M.

PRESENT:

- Brian Murphy, Chairman
- Marc Leaf, Board Member
- David Forbes-Watkins, Board Member
- Ray H. Dovell, Jr., Board Member
- Marianne Stecich, Counsel
- Deven Sharma, Building Inspector



ALSO PRESENT:

- SNYDER & SYNDER, LLP
- Attorneys for T-Mobile Northeast LLC
- 94 White Plains
- Tarrytown, New York 10591

BY: DOUGLAS W. WARDEN, ESQ.

20 Citizens

REPORTED BY: PATRICIA TORIAN, REPORTER

2

1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 MR. MURPHY: Let's get

3 started. We are going to get

4 started. Take your seats, please.

5 Good evening. We are here for

6 the January 28, 2010 Zoning Board

7 of Appeals meeting. We have one

8 case tonight on the docket. It's

9 the application of T-Mobile

10 Northeast, LLC for permission to

11 install personal wireless

12 services, cell phone antennas, at

13 555, 565 Broadway,

14 Hastings-on-Hudson, also known as

15 Hudson Terrace.

16 Before we start the

17 proceedings, our counsel,

18 Ms. Stecich does want to, I

19 think, clarify what is on the

20 agenda for tonight so that the

21 Board members, and also everyone

22 in the audience is clear on the

23 limited role, and the limited

24 decision that we have to make

25 tonight, okay.

4

1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 the Zoning Board has to find that

3 there is reason for it to be

4 outside the overlay district, and

5 so we need a variance from the

6 Zoning Board, and I'm going to

7 read from the code what the Zoning

8 Board has to find, okay.

9 It should be permitted to be

10 outside the overlay district only

11 if a New York State License

12 professional engineer specializing

13 in electrical engineering and a

14 qualified radio technician

15 establishes to the satisfaction of

16 the Board, one, that the personal

17 wireless service facility is

18 needed to provide coverage to an

19 area of the Village that currently

20 has inadequate coverage, and is of

21 the minimum height and aesthetic

22 intrusion necessary to provide

23 that coverage.

24 Two, that all reasonable

25 measures inside the personal

3

1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 So with that, Marianne, if you

3 could just kind of lay the

4 groundwork for us, I would

5 appreciate it.

6 MS. STECICH: Yes. Personal

7 wireless services facilities can

8 only come into the Village by

9 special permit, and that special

10 permit is granted by the Planning

11 Board. The main decision is

12 really the Planning Board's

13 decision, and if this application

14 were for an antenna, and I will

15 call it an antenna, for a location

16 within the personal wireless

17 service facility's overlay

18 district it wouldn't even be

19 before this Board.

20 It's because it's outside the

21 district, it's outside the overlay

22 district.

23 So in addition to this special

24 permit, and before the Planning

25 Board gets to the special permit

5

1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 wireless services facility within

3 the PWSF overlay District have

4 been exhausted, and three, the

5 technical or space limitations

6 prevent location or co-location in

7 the personal wireless service

8 facilities overlay district, okay.

9 So let's say you decide, you

10 know, listen, there are places in

11 the overlay district that this

12 will work, then they don't get the

13 variance, and gets rid of it for

14 now, this application, but let's

15 say you find that they have made

16 their showing of the three factors

17 that I just mentioned, I just

18 read, then it will go to the

19 Planning Board to make all the

20 other determinations.

21 There is one other

22 determination although you will be

23 making, which might be a little

24 bit jumping the gun. This is in

25 the view preservation district,

6

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 correct?
 3 MR. SHARMA: I am not sure
 4 whether it is.
 5 MS. STECICH: Oh, it's not.
 6 We will have to check that. It
 7 doesn't matter because it would be
 8 premature. If it is in the view
 9 preservation district -- okay, I
 10 think we should be able to check
 11 it easy enough because some of the
 12 questions may relate to that.
 13 The one other thing you should
 14 know, and the Board is not going
 15 to be able to make a decision on
 16 this tonight because the
 17 Village -- there is a statement,
 18 there are statements in the
 19 application as to why the antennas
 20 need to be here, and why the
 21 overlay district doesn't work, and
 22 they are made by their engineer
 23 but the Village has to have its
 24 own radio frequency, and whatever,
 25 engineer, take a look at it, and

8

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 MR. MURPHY: -- for the next
 3 meeting.
 4 MS. STECICH: Because they
 5 sent the stuff right out to him.
 6 Unless some huge issue comes up
 7 and it's going to take him longer
 8 than that, but presumably it will
 9 be the next meeting.
 10 MR. MURPHY: Okay, Marianne,
 11 thank you.
 12 MS. STECICH: Does anyone have
 13 any questions about that
 14 procedure?
 15 MR. WATKINS: I'm concerned
 16 simply if we don't have the
 17 engineering report that confirms
 18 or denies, for that matter, what
 19 T-Mobile is proposing, we are
 20 being asked to determine something
 21 is needed when there could be an
 22 engineering report saying it
 23 isn't.
 24 MS. STECICH: You are not
 25 going to make that determination

7

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 at the December Planning Board
 3 meeting, when they were before the
 4 Planning Board in December, the
 5 Planning Board made a particular
 6 consultant they wanted to use, one
 7 we have used in the past; Dick
 8 Cone, his company. I forget what
 9 it is called, and so he has got to
 10 take a look at this, but the
 11 applicant didn't fund the escrow
 12 for that review until Monday. So
 13 as soon as the escrow was funded,
 14 I did call Dick Cone to say,
 15 listen, could you make this
 16 determination at the meeting on
 17 Thursday, and he said there is no
 18 way to make it because they have
 19 to go out and check the different
 20 areas, and see whether --
 21 MR. MURPHY: Okay. So we will
 22 get the benefit of his input --
 23 MS. STECICH: I think you
 24 should have it by the next
 25 meeting.

9

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 tonight. The other thing I should
 3 say is, I did suggest to the
 4 applicant that maybe you don't
 5 want to go forward tonight because
 6 the Board is not going to be able
 7 to make any decision until we have
 8 our engineer's report on a couple
 9 of those issues, but they were
 10 already on the agenda, had been
 11 noticed, and they said they prefer
 12 to come tonight just to, I guess,
 13 give you an introduction to their
 14 proposal, and then obviously, the
 15 public heard.
 16 MR. WATKINS: It would be
 17 better if we had five members to
 18 hear this.
 19 MR. MURPHY: That was my
 20 question, Marianne, and one for
 21 the applicant. Is it Mr. Warden
 22 going to speak for --
 23 MR. WARDEN: Good evening.
 24 MR. MURPHY: A point of
 25 procedure that's probably

10

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 2 important in this case, the Board,
 3 the full Board is generally five
 4 members. Our alternate member,
 5 Mr. Collins, had to recuse
 6 himself, and he had to recuse
 7 himself because he is involved in
 8 the industry. Mr. Pycior, who is
 9 normally here, would be our fifth
 10 Board member, he is our regular
 11 Board member, but he couldn't be
 12 with us tonight.
 13 Although I have no reason to
 14 think he won't be here for our
 15 next meeting, the end of, the
 16 fourth Thursday in February, but
 17 seeing he is not here tonight,
 18 does that preclude Stanley from
 19 voting ultimately on the
 20 application?
 21 MS. STECICH: No, this is all
 22 recorded. He can watch the
 23 recording, he can read the
 24 minutes. I mean, wouldn't even
 25 have to, but I am sure he would.

12

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 2 out, he is going to be able to
 3 review the proceeding.
 4 MR. MURPHY: With that being
 5 said, before we start, Mr. Sharma,
 6 are all the mailings in order?
 7 MR. SHARMA: All of the
 8 mailings are in order.
 9 MR. MURPHY: I do note that
 10 someone left on the desk here a
 11 series of e-mails mostly directed
 12 to you about this application.
 13 Are they also being made a part of
 14 the record?
 15 MR. SHARMA: Yes, yes, I did.
 16 MR. MURPHY: So Mr. Warden,
 17 why don't you proceed to kind of
 18 lay out the project for everyone.
 19 The Board has had the opportunity
 20 to read all of the materials,
 21 including the exhibits, with the
 22 proposed antenna locations, the
 23 equipment locations, mocked up
 24 photo images, if you will, as well
 25 as the blueprints, but, of course,

11

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 2 So he would have the benefit of
 3 everything that is said tonight.
 4 MR. MURPHY: Mr. Warden, just
 5 so you understand, Mr. Pycior will
 6 be here, I believe, for the
 7 February meeting, and he will have
 8 access to the record from tonight,
 9 as well as all the materials that
 10 you submit.
 11 MR. WARDEN: Two things; I
 12 agree with your counsel's legal
 13 conclusion on that point, and also
 14 I think because you don't have
 15 your engineer here, our engineer
 16 may or may not be able to get
 17 here, tonight is really just an
 18 introduction, introducing you to
 19 the project, introducing me to
 20 you.
 21 So I don't think that your
 22 absent member is going to be
 23 terribly prejudiced by not having
 24 been at this meeting, and in any
 25 event, as your counsel pointed

13

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 2 the audience hasn't had that
 3 opportunity.
 4 So if you could, take your
 5 time, use the microphone. We do
 6 have a portable microphone. If
 7 you want to point things out on
 8 the diagram. So when you get to
 9 that point, and just a reminder to
 10 take your time, let everybody see
 11 as best you can what you are
 12 pointing to as you walk us through
 13 the equipment that's being
 14 proposed, where it's going to be
 15 proposed to be located, and what
 16 the issues are in terms of being
 17 either inside or outside the
 18 overlay district.
 19 MR. WARDEN: Okay. Well,
 20 again, good evening. My name is
 21 Doug Warden, I'm an attorney with
 22 the law firm of Snyder & Snyder
 23 appearing tonight on behalf of
 24 T-Mobile.
 25 As your counsel pointed out we

<p style="text-align: right;">14</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 don't have the benefit of</p> <p>3 technical consultants here this</p> <p>4 evening, but I think we can still</p> <p>5 use this meeting to good effect.</p> <p>6 So let me just start by telling</p> <p>7 you what we are proposing.</p> <p>8 First of all, we are not</p> <p>9 proposing a cell tower. What we</p> <p>10 are proposing is a nine panel</p> <p>11 antennas on the top of the</p> <p>12 existing building at 565 Broadway.</p> <p>13 I think there may have been some</p> <p>14 confusion within the community as</p> <p>15 to whether or not we were</p> <p>16 proposing them on both buildings</p> <p>17 or something like that. No, just</p> <p>18 565, and all we are proposing are</p> <p>19 nine panel antennas, and related</p> <p>20 equipment. The panels are each</p> <p>21 53 inches tall, just to give you a</p> <p>22 sense of their dimensions,</p> <p>23 13 inches wide, and three inches</p> <p>24 deep. The panel antennas will be</p> <p>25 located in three sectors. There</p>	<p style="text-align: right;">15</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 will be a north sector, a south</p> <p>3 sector. This is rough because the</p> <p>4 building is not quite in a true</p> <p>5 north alliance.</p> <p>6 MR. MURPHY: What you are</p> <p>7 proposing, as I understand it, are</p> <p>8 three groupings of three antennas</p> <p>9 each?</p> <p>10 MR. WARDEN: That's correct.</p> <p>11 Three groupings of three antennas.</p> <p>12 MR. MURPHY: When you get to</p> <p>13 the point, if you could use the</p> <p>14 drawings so that people can</p> <p>15 understand at what position on the</p> <p>16 top of the building, and I think</p> <p>17 that's one of the big issues. So</p> <p>18 everyone will understand where on</p> <p>19 the building each of the three</p> <p>20 groupings would be.</p> <p>21 MR. WARDEN: Okay. Let me</p> <p>22 see. Our engineers do this kind</p> <p>23 of --</p> <p>24 MR. MURPHY: Yes, I agree.</p> <p>25 MR. WARDEN: -- thing. I can</p>
<p style="text-align: right;">16</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 take a stab at it. I will be glad</p> <p>3 to. Okay. So we have three</p> <p>4 groupings --</p> <p>5 AUDIENCE MEMBER: Excuse me,</p> <p>6 can you turn it so that the</p> <p>7 audience can see it.</p> <p>8 MR. MURPHY: That's fine. I</p> <p>9 am just asking for some quiet.</p> <p>10 Mr. Warden, would you please turn</p> <p>11 that sign. Thank you. Okay.</p> <p>12 Mr. Warden.</p> <p>13 MR. WARDEN: So we have three</p> <p>14 groupings of three antennas. The</p> <p>15 antennas, as I mentioned, are each</p> <p>16 53 inches tall.</p> <p>17 AUDIENCE MEMBER: How many</p> <p>18 feet is that? How many feet is</p> <p>19 that?</p> <p>20 MR. MURPHY: Pardon me, sir,</p> <p>21 there is a procedure we follow,</p> <p>22 and the procedure is you will</p> <p>23 absolutely, I promise, have a</p> <p>24 chance to speak.</p> <p>25 AUDIENCE MEMBER: Okay.</p>	<p style="text-align: right;">17</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 MR. MURPHY: But while</p> <p>3 Mr. Warden is speaking I don't</p> <p>4 want to hear the audience speak</p> <p>5 because then no one can hear him.</p> <p>6 AUDIENCE MEMBER: Thank you.</p> <p>7 MR. WARDEN: So we have three</p> <p>8 groupings of three antennas,</p> <p>9 53 inches tall and 13-inches wide,</p> <p>10 three inches deep. They will be</p> <p>11 grouped roughly in the north,</p> <p>12 south, and east sectors.</p> <p>13 So this is what we are calling</p> <p>14 the north sector because it is</p> <p>15 pointing -- you can see these</p> <p>16 arrows pointing roughly north,</p> <p>17 this one pointing roughly south,</p> <p>18 and this one roughly east or</p> <p>19 northeast. Now the north and the</p> <p>20 south antennas are going to be</p> <p>21 parapet wall mounted. So they</p> <p>22 will be mounted in such fashion as</p> <p>23 you can see here, that they will</p> <p>24 stick up a small bit above the</p> <p>25 existing parapet. The existing</p>

18

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2 parapet is about 64 feet tall.

3 They will stick up to about

4 71 feet tall, a seven-foot

5 difference. It doesn't exceed --

6 I'm sorry --

7 MR. MURPHY: Just so I'm

8 clear, so the top of the existing

9 parapet is 64 feet?

10 MR. WARDEN: 64 feet,

11 nine inches.

12 MR. MURPHY: Right, from

13 street level?

14 MR. WARDEN: Yes, above

15 ground, yes.

16 MR. MURPHY: Your proposed

17 antennas, once it's attached

18 inside the parapet wall, will

19 extend above that wall, each of

20 the three antennas, and each of

21 the three groupings, about seven

22 feet?

23 MR. WARDEN: That's correct.

24 MR. MURPHY: Okay.

25 MR. WARDEN: Not the center

19

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2 wall. In support of our

3 application we submitted to the

4 Board a memorandum in support of

5 our application. That memorandum

6 has at Exhibit 2 a visual analysis

7 which shows what the proposed

8 facility will look like from

9 various viewpoints around the

10 village and which includes

11 computer-generated simulations.

12 So we put a great deal of work

13 into that. If the Board is

14 interested in looking at that

15 while I am speaking I promise I

16 will not take umbrage that you are

17 not looking at me, but as I

18 continue to describe this, but

19 it's a very good depiction of what

20 is being proposed. I just wanted

21 to put that up as an aside.

22 So to continue, the north and

23 south sectors will be wall mounted

24 as we discussed at a height of

25 seven feet above the existing

20

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2 parapet, which is not the highest

3 point of the building, which will

4 not exceed the highest point of

5 the building. The highest point

6 of the building is the chimney

7 which is roughly 71 feet above the

8 building, not the chimney, the

9 penthouse, and that is where the

10 last sector which is the sector

11 depicted here is going to be

12 located. Three antennas, flush

13 mounted below the top of the

14 existing chimney so they don't

15 intrude above the highest point of

16 the building, and I keep saying

17 chimney, I mean penthouse.

18 The application also involves

19 the location of related

20 equipment --

21 MR. MURPHY: Just so I'm

22 clear, the penthouse is in roughly

23 the center of the roof?

24 MR. WARDEN: Yes, sir, that's

25 correct.

21

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2 MR. MURPHY: That's the

3 highest point of the building, as

4 it exists now, right?

5 MR. WARDEN: Visually the

6 penthouse is right here. This is

7 north, okay, this is south. That

8 is the penthouse with a small

9 depiction of the antennas that we

10 are proposing right now.

11 MR. MURPHY: Okay.

12 MR. WARDEN: Now the

13 application also involves the

14 location of related equipment

15 which will be located on a steel

16 dunnage platform, and the reason

17 for the steel dunnage is to make

18 sure all weight is distributed in

19 conformance with the building

20 code, both state and local, and

21 that the rooftop is structurally

22 sound, and that would be located

23 right here, and the equipment

24 cabinets that provide

25 telecommunications and other

22

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 support for the antennas
 3 themselves, and that is the visual
 4 layout of this, and that's the
 5 physical layout of what we are
 6 proposing this evening.
 7 Does the Board have any
 8 questions at this point?
 9 MR. MURPHY: No, keep going.
 10 MR. WARDEN: So since we are
 11 not discussing, I mean, now we are
 12 getting to an area which is more
 13 technical, and so, you know,
 14 probably it's something that we
 15 would need our engineers here to
 16 speak on, but I will give you sort
 17 of an overview of what they will
 18 be discussing, what the dialogue
 19 is going to sound like.
 20 First, this issue of how we
 21 are going to or whether or not we
 22 need to be in the wireless overlay
 23 district. If you look at our
 24 memorandum in support, at Exhibit
 25 F of that memorandum -- excuse me,

24

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 2 What you will find there is
 3 kind of some groupings of overlay
 4 district areas. It's not one
 5 single district, it's actually
 6 several; to the east, to the west,
 7 and to the south. To the south,
 8 and when you read our affidavit
 9 what you are going to see is that
 10 we cannot locate in the overlay
 11 district of the south one because
 12 it's quite far away. Radio
 13 signals only propagate so far, and
 14 what you will also find is that
 15 there already is an existing site
 16 down there, 185 Broadway, I think
 17 may be the address, within the
 18 overlay district. So to go there
 19 would provide redundant coverage.
 20 It wouldn't do anything. In fact,
 21 it would probably create some
 22 interference because there would
 23 basically be antennas doing the
 24 same thing. That is why we can't
 25 go in a southern portion of the

23

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 2 Exhibit 1 of that memorandum, you
 3 will find a report from the
 4 T-Mobile radio frequency engineer
 5 which has been certified by a
 6 professional engineer as required
 7 by Section 29585N. That's the
 8 section, that's nothing new.
 9 That's the section that your
 10 counsel was reading from before.
 11 MR. MURPHY: Right.
 12 MR. WARDEN: So what you have
 13 there is an affidavit from an
 14 engineer, and the affidavit from
 15 the engineer describes why we
 16 cannot go in the overlay district.
 17 Again, your consultants are going
 18 to advise you on this. I just
 19 want to sort of give you an
 20 overlay of what's in this.
 21 Exhibit F of that, if I recall
 22 correctly, of that affidavit. So,
 23 Exhibit F of Exhibit 1 is
 24 basically a map of your overlay
 25 district, okay.

25

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 2 overlay district.
 3 I think what you will also see
 4 when you review the affidavit from
 5 our engineer is that we can't go
 6 in the overlay district to the
 7 east because it is terrain
 8 blocked. The existing -- the
 9 proposed site is at a height of
 10 about 130 feet above main sea
 11 level, and I think that what you
 12 will find is that there is a bit
 13 of a ridge in between the easterly
 14 overlay district and where we are
 15 proposing, which is at a height of
 16 about 320 feet above main sea
 17 level, and that is borne out by
 18 some topographical maps that I
 19 believe are included at Exhibit D
 20 and E.
 21 I don't know how technical you
 22 want me to get with this, or how
 23 in depth, so stop me if you think
 24 you want me to give just a general
 25 overview if I am getting too

26

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 2 detailed.
 3 MR. MURPHY: Just so I am
 4 clear, and the Board is clear, and
 5 the audience members are clear,
 6 there are a certain limited number
 7 of areas in the Village where
 8 wireless carriers are permitted to
 9 erect cell phone antennas. Those
 10 are called, so called, overlay
 11 districts. If an applicant such
 12 as T-Mobile goes through an
 13 analysis and decides they cannot
 14 get adequate coverage in certain
 15 areas of the Village for their
 16 service, what it means is that
 17 they can't provide cell phone
 18 service to their customers in
 19 certain areas of the Village
 20 unless they move the location of
 21 the antennas, and to do that they
 22 have to make an application, which
 23 is what they are doing tonight, to
 24 go outside what's called the
 25 overlay district, which means it's

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 2 because I just explained why the
 3 southern overlay district is not
 4 technologically feasible, and why
 5 the eastern overlay districts are
 6 not, and that brings us to one
 7 other portion of the overlay
 8 district which is right here,
 9 Village Hall.
 10 Now Village Hall is at a
 11 height of about 60 feet above mean
 12 sea level, and the proposed site
 13 is about 130 feet above mean sea
 14 level. Remember, these signals
 15 travel by line of sight. If there
 16 is something intervening, visual
 17 or otherwise in between it it's
 18 not going to reach it's
 19 destination and provide the
 20 coverage that is required. We
 21 believe that we can fill our
 22 significant gap in the coverage
 23 from Village Hall, but it would
 24 require a tower that would have to
 25 be very tall, or a flagpole or

27

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 2 outside -- there are four or five
 3 fairly confined areas, including
 4 this building, the Village Hall.
 5 In case you hadn't noticed, up on
 6 the roof is the site of very many
 7 cell phone antennas already, from
 8 other providers, and so, for
 9 example, Village Hall is one of
 10 the small areas in the Village
 11 that is within an overlay district
 12 where it's permissible without
 13 this type of application or
 14 variance, if you will, to erect a
 15 cell phone, set of cell phone
 16 antennas and all the attending
 17 equipment that goes with it.
 18 There are a few other areas
 19 too, but that's what we are
 20 talking about, that's what
 21 Mr. Warden is talking about, when
 22 he says he wants to go outside the
 23 overlay district, okay.
 24 MR. WARDEN: And I think
 25 that's a good natural progression

29

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 2 something that's designed as a
 3 flagpole, and that again, because
 4 we have a 70 foot difference, and
 5 because the building that we are
 6 proposing to locate it on is
 7 roughly 70 feet, the flagpole
 8 would have to be about 147 feet.
 9 So that is an option but I don't
 10 know that the Village is
 11 interested in pursuing that. So I
 12 want to put that out there.
 13 Anyway, so that's an overview
 14 of what our radio frequency
 15 engineer's affidavit says. The
 16 last thing it says is just showing
 17 that we have a gap in coverage,
 18 and you will see before and after
 19 maps, and you will see our
 20 existing coverage, and then a map
 21 of our proposed coverage which
 22 will establish that we need the
 23 site. I think that is about all
 24 the materials we have submitted.
 25 We also submitted a report

30

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 2 from a structural engineer
 3 indicating that the property is
 4 structurally capable of supporting
 5 the application, and then the last
 6 thing we submitted is an antenna
 7 site, FCC, RFP compliance
 8 assessment report. It's basically
 9 an assessment of the radio
 10 frequency emissions, and how they
 11 comport and comply with the
 12 Federal requirements as far as
 13 radio frequency emissions are
 14 concerned, and this area of
 15 inquiry, by the way, is Federally
 16 preempted, as I think your counsel
 17 will tell you. It's not something
 18 that the Board is empowered to
 19 discuss, but nevertheless, we
 20 wanted to put something in there
 21 which will address how compliant
 22 we are.
 23 On page eleven of that report
 24 which is found in Exhibit 3.
 25 MR. MURPHY: Exhibit 3?

32

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 2 That's really it for my
 3 overview. If the Board has any
 4 questions, I will certainly be
 5 happy to answer them.
 6 MR. MURPHY: Yes, on your last
 7 point, what you are saying is that
 8 you are well within the guidelines
 9 for frequency exposure according
 10 to these calculations, right?
 11 MR. WARDEN: 400 times.
 12 MR. MURPHY: Okay.
 13 MR. WATKINS: Could you
 14 clarify that particular point a
 15 little bit. On page, I believe
 16 it's four of that same exhibit it
 17 stated that -- well, it goes
 18 through a discussion of the
 19 calculations and how you get to
 20 that point, 2498 percent, but that
 21 .2498 percent is described as
 22 being six and a half feet above
 23 ground level.
 24 Now radiation attenuates as it
 25 goes through the air. I would

31

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 MR. WARDEN: Yes, Exhibit 3,
 3 page eleven, you will find a
 4 conclusion section. There is just
 5 one conclusion paragraph there
 6 which I think bears reading. That
 7 says as follows: As described the
 8 maximum calculated RF level from
 9 the proposed T-Mobile antenna
 10 operation is .2498 percent of the
 11 FCC and ME limit.
 12 In other words, even with the
 13 significant degree of conservatism
 14 in the analysis the worst case
 15 calculated RF level is still more
 16 than 400 times below the FCC
 17 limit. The results of the
 18 calculations indicate clear
 19 compliance with the FCC and MPB
 20 limit.
 21 In other words, we will be
 22 broadcasting or emitting a very,
 23 very small, small portion of what
 24 we are allowed to legally and
 25 safely emit.

33

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 like to know what would the
 3 radiation level be at the sixth
 4 floor of this apartment building?
 5 That's where health and safety
 6 comes to a question.
 7 Do you have an answer for me?
 8 MR. WARDEN: I haven't
 9 calculated off the top of my head.
 10 I didn't, you know, if I had been
 11 provided in advance I would have
 12 done the appropriate research.
 13 I want to remind you that I,
 14 like you, am a lay person. We do
 15 have an expert that we can bring
 16 in to discuss some very serious
 17 sort of brass tacks calculations
 18 if you would like to engage in
 19 that kind of --
 20 MR. WATKINS: I don't need to
 21 go through calculations. I would
 22 like to see the results. I would
 23 like to see them certified by the
 24 certified engineer also who
 25 certifies to the 2498 percentage.

34

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 So, obviously, the calculation as
 3 math is fine. I don't have a
 4 problem with that. I just have a
 5 problem with the amount of
 6 radiation we are talking about. I
 7 would like to know what it is.
 8 MR. WARDEN: I would be glad
 9 to bring in an engineer, as
 10 necessary. I do want to point out
 11 to the Board that that is a
 12 Federally preempted issue.
 13 MR. WATKINS: I will state
 14 right from the surface, as a
 15 member of this Board, even though
 16 I am preempted from it, as a
 17 citizen of the United States I
 18 feel I have a right to know that.
 19 MR. WARDEN: In any event, we
 20 have already, I think, shown a
 21 willingness to have this dialogue,
 22 so we would be glad --
 23 MR. MURPHY: So take it as a
 24 request from the Board for that
 25 information.

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 Tecliferi --
 3 MS. STECICH: It might, yes,
 4 Al Tecliferi said he was coming.
 5 One of them.
 6 MR. MURPHY: When it comes to,
 7 I think, the technical questions,
 8 I think we would all be better
 9 served to take our own
 10 professional counsel first, so we
 11 can ask the right kind of
 12 questions, and get the information
 13 we need, but there are some things
 14 we can certainly talk about
 15 tonight, and I think the big issue
 16 is location. All right.
 17 Now the basis for the
 18 application, as I understand it,
 19 is that with these colored maps
 20 that you have submitted,
 21 Mr. Warden, in Exhibit 1. For
 22 example, 1A, the first map, do you
 23 happen to have extra color copies
 24 or an extra version of this with
 25 you?

35

1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 MR. WATKINS: Can I pursue one
 3 other area. The maps of
 4 coverage --
 5 MR. MURPHY: Can I just jump
 6 in for a minute?
 7 MR. WATKINS: Sure.
 8 MR. MURPHY: About the
 9 transition into questions for all
 10 of us because I think we all have
 11 a lot of questions, but apart from
 12 the technical questions which we
 13 are going to have, I think it's
 14 prudent for this Board to wait
 15 until we have a chance to speak to
 16 our own consulting engineer.
 17 Sorry, Marianne, what was the
 18 gentleman's name again?
 19 MS. STECICH: Richard Cone,
 20 although I am not sure he will be
 21 the one at the meetings.
 22 MR. MURPHY: Okay.
 23 MS. STECICH: What is the
 24 company's name?
 25 MR. MURPHY: Is Al

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 MR. WARDEN: Oh, no. We
 3 submitted eleven copies. I didn't
 4 bring additional with me.
 5 MR. MURPHY: Okay. Jen.
 6 VIDEOGRAPHER: Give me one
 7 second.
 8 MR. MURPHY: I know this is
 9 hard for everyone to see but this
 10 is a map of our Village. It is
 11 color coded, and what is green is
 12 the coverage for T-Mobile's
 13 current service. The white area,
 14 and if I could describe it as more
 15 or less east of Broadway and
 16 Farragut, as you proceed north, if
 17 you will, up Farragut Parkway to
 18 Broadway. The east side, or the
 19 right side of that road, all the
 20 way up from south and north
 21 through the Village, that's this
 22 white area in here, and what the
 23 applicant is saying is that there
 24 is a natural bow or lower
 25 elevation in the white area that

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
2 they can't cover currently.
3 So they are proposing to put
4 the antenna on top of 565 to try
5 to increase coverage over this
6 white area that's currently not
7 getting cell coverage under the
8 T-Mobile service, if that helps
9 people, because it's hard to see,
10 but if you look at that,
11 Mr. Warden, the first thing we
12 did, so the whole point of the
13 application is if you need or you
14 are requesting, an accommodation
15 to increase the coverage, how much
16 of the current area that's
17 uncovered would in fact be covered
18 with the antenna on the building,
19 because the way I look at it,
20 which is just, again, just by eye.
21 It's not -- it doesn't have the
22 technical benefit of an engineer's
23 calculation, but it looks like
24 maybe half, maybe less than half
25 of the area that currently has no

40

1 ZONING BOARD MEETING OF JANUARY 28, 2010
2 MR. WARDEN: Yes, the existing
3 coverage is on A, proposed is on
4 B, existing and proposed is on C.
5 So you are reading that correctly.
6 MR. MURPHY: Understood. So
7 by putting the antenna, if you
8 were to put the antenna on 565 you
9 would get a fair amount of overlap
10 with existing coverage, and you
11 would also gain some additional
12 coverage, again, just by eye, it
13 looks to be a little bit less than
14 half the outstanding area that
15 currently T-Mobile has no
16 coverage.
17 MR. WARDEN: Visually that's
18 correct. I want to point out,
19 though, that that may not be
20 completely telling the entire
21 story because what you are looking
22 at is coverage of a major
23 thoroughfare that goes through the
24 Village, and what you are looking
25 at is connecting it to a site to

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
2 service or coverage. Less than
3 half of that would, in fact, gain
4 coverage by putting the antenna on
5 565.
6 MR. WATKINS: Exhibit C.
7 MR. MURPHY: So my question
8 is, am I looking at this
9 correctly, just so I understand,
10 in other words, what you are going
11 to gain, what your clients are
12 going to gain if this application
13 were approved would be the green
14 area that is indicated on 1C,
15 which is the additional coverage.
16 MR. WARDEN: Technically, the
17 green area on 1C is the additional
18 coverage and the existing
19 coverage.
20 MR. MURPHY: I understand.
21 MR. WARDEN: The additional
22 coverage is depicted on B.
23 MR. MURPHY: Everything east
24 of Farragut and Broadway,
25 basically?

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
2 the north. You see if you look on
3 Exhibit A.
4 MR. MURPHY: Okay.
5 MR. WARDEN: There are these
6 three -- these three groupings,
7 these groupings of three
8 triangles. The one grouping to
9 the north of the proposed site
10 is -- represents the site
11 immediately adjacent. So what you
12 will see is that it closes that
13 gap in between the coverage to the
14 south, and to that northern
15 grouping of coverage. So what it
16 does, it completes coverage along
17 the major thoroughfare within the
18 Village, which is where a very
19 great, very large portion of the
20 calls that are made in the Village
21 come from.
22 MR. MURPHY: So that's along
23 the area east and west of the
24 aqueduct, running between Hastings
25 and Dobbs, basically.

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 MR. WARDEN: I think that's

3 right, you know. I refer to the

4 map, but if that's your

5 characterization, you have good

6 knowledge of the area.

7 MR. MURPHY: So that area will

8 be picked up, right, or added if

9 this antenna were to be placed

10 where you requested, and it looks

11 like, just so people have an idea,

12 the area around Edgars Lane,

13 Euclid, Villard, it looks like

14 Fairlane, those areas would

15 receive additional coverage. They

16 don't currently have coverage

17 under the service, but there would

18 still be no service in the higher

19 elevations up around Hollywood,

20 Kitchen, Scenic Drive, Bellaire,

21 those areas of the Village, if

22 that helps people place what we

23 are talking about.

24 Am I reading the map

25 correctly? That's how I am

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 furthest to the north, and in your

3 description it's one of the

4 eastern locations, overlay

5 locations, the so-called Desert

6 Drive loop?

7 MR. WARDEN: That's right.

8 MR. MURPHY: Is there a

9 proposal to put anything up there?

10 MR. WARDEN: No, we do not

11 have any other proposals besides

12 the one before you today, to

13 provide coverage within the

14 Village.

15 MR. MURPHY: Thanks, but I

16 guess one question is that that's

17 a permissible overlay district

18 where antennas could be erected.

19 Given their location and height,

20 would a set of antennas in that

21 overlay district cover the area of

22 Hollywood, Scenic, Kitchen, the

23 areas that will remain uncovered

24 if the antenna goes up on 565?

25 MR. WARDEN: You know, I don't

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 looking at it.

3 MR. WARDEN: That's accurate.

4 MR. MURPHY: Okay. If this

5 were to happen, and you still had

6 areas of no coverage, you know,

7 Kitchen, Scenic Drive, Hollywood

8 Drive, those parts of the Village,

9 is there any proposal, either now

10 or in the future, to cover those

11 areas, how could they be covered?

12 MR. WARDEN: I don't think we

13 have -- we don't have a proposal

14 right now. Could there be one in

15 the future, yes, but as it stands

16 right now we don't have a proposal

17 for that area, if that answers

18 your question.

19 MR. MURPHY: Well, sort of. I

20 mean, what I am really driving at,

21 the one thing that struck me is in

22 the overlay district, which is

23 1F --

24 MR. WARDEN: That's right.

25 MR. MURPHY: -- the area

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 know the answer to that question.

3 Maybe it would. That's not the

4 coverage objective that we are

5 seeking to fill right now. The

6 significant gap in coverage that

7 this facility seeks to remedy is

8 one along this major thoroughfare

9 which has --

10 MR. MURPHY: Understood. That

11 is a question I would like

12 answered.

13 MR. WARDEN: Whether it could?

14 MR. MURPHY: I understand you

15 don't have the answers to make,

16 this is part of a dialogue, but at

17 least to my mind, part of the

18 balancing, the assessment of

19 weighing the application according

20 to the standards that our counsel

21 read at the beginning of the

22 meeting, you know, part of it is

23 how much are you going to gain,

24 and what's going to still be

25 uncovered in terms of cell

<p style="text-align: right;">46</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 service, if we were to approve the</p> <p>3 application.</p> <p>4 So the flip side of that is,</p> <p>5 well, what could be done, within</p> <p>6 an overlay district to help</p> <p>7 T-Mobile basically increase their</p> <p>8 coverage area, because I</p> <p>9 understand, they are trying to</p> <p>10 serve their customers who want</p> <p>11 service wherever they are, and in</p> <p>12 this particular Village, this area</p> <p>13 that we are speaking of, this</p> <p>14 uncovered by T-Mobile service. I</p> <p>15 understand that.</p> <p>16 So our first duty is, okay,</p> <p>17 where are the overlay districts,</p> <p>18 where could you put the antennas</p> <p>19 up, or your client put them up,</p> <p>20 without a variance, and what are</p> <p>21 the options. So one option, and</p> <p>22 we don't have to explore every</p> <p>23 option, but there are two</p> <p>24 reasonable options that we are --</p> <p>25 it's incumbent upon us as a Board</p>	<p style="text-align: right;">47</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 to at least explore and get</p> <p>3 answers to. We will get answers</p> <p>4 from our technical people but we</p> <p>5 would certainly like input from</p> <p>6 your client. We want to hear your</p> <p>7 client, we want to hear what they</p> <p>8 have to say.</p> <p>9 So it seems to me there is two</p> <p>10 places; the Village Hall, where we</p> <p>11 have had multiple applications in</p> <p>12 the past for -- ATT is up there,</p> <p>13 Metro PCS is up there. We have</p> <p>14 got a jungle of antennas, wires, a</p> <p>15 mess, as far as I'm concerned on</p> <p>16 the Village Hall, but it's part of</p> <p>17 the overlay district, and it</p> <p>18 works.</p> <p>19 So, there is two areas where</p> <p>20 coming back to the next meeting I</p> <p>21 would absolutely like additional</p> <p>22 input, and that is if antennas</p> <p>23 were to go in these two particular</p> <p>24 overlay districts, the Village</p> <p>25 Hall up here, but also on this</p>
<p style="text-align: right;">48</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 plateau area, the Dessent Drive</p> <p>3 loop, what would be covered</p> <p>4 because it would be nice to see</p> <p>5 the same type of color coded map</p> <p>6 and say, okay, if we were to put</p> <p>7 an antenna here we would gain so</p> <p>8 much coverage but for sake of</p> <p>9 argument your position might be</p> <p>10 but it's really not enough, or</p> <p>11 it's not as good as putting the</p> <p>12 antenna where you propose to put</p> <p>13 it at 565. You know what I mean?</p> <p>14 So that way it's easier for me</p> <p>15 to say, you know what, like the</p> <p>16 ATT commercial with Verizon. That</p> <p>17 is a pretty good impression when</p> <p>18 you see the maps. That's the kind</p> <p>19 of map, easily the best thing you</p> <p>20 submitted were these maps. So I</p> <p>21 can say, okay, you got a problem</p> <p>22 here. You got a big area, I</p> <p>23 understand it's in a depressed or</p> <p>24 bowl or lower elevation surrounded</p> <p>25 by hills east and west, you are</p>	<p style="text-align: right;">49</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 trying to cover that area. Where</p> <p>3 is the optimal place to put your</p> <p>4 antennas to try and cover the most</p> <p>5 of that area as you can, right?</p> <p>6 That's what we are trying to</p> <p>7 accomplish here.</p> <p>8 So the question is, what are</p> <p>9 the ways in which you might</p> <p>10 accomplish that.</p> <p>11 MR. DOVELL: And what</p> <p>12 strategies have other companies</p> <p>13 used to obtain coverage in that</p> <p>14 area? There is cell phone</p> <p>15 coverage in all this white area,</p> <p>16 maybe not by Metro PCS, but what</p> <p>17 strategies did they use to get</p> <p>18 coverage in there within the</p> <p>19 context of the permitted area?</p> <p>20 MR. WARDEN: May I respond?</p> <p>21 There has sort of been a lot said.</p> <p>22 MR. MURPHY: Yes, go ahead.</p> <p>23 MR. WARDEN: I just want to</p> <p>24 unpack, and make sure that I get</p> <p>25 to everything so we can have a</p>

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 dialogue that will hopefully

3 address the points that you would

4 like us to address.

5 The first thing I want to say

6 is that you have requested maps

7 from that Dessert Loop area and

8 also from Village Hall which we

9 will be glad to provide.

10 MR. MURPHY: Right.

11 MR. WARDEN: I do just want to

12 say, I do somewhat disagree with

13 perhaps the premise behind the

14 question, though, because the

15 Dessert Loop Road area is from our

16 perspective irrelevant because it

17 does not provide coverage to the

18 significant gap that we are

19 seeking to fill right now.

20 The question is not whether or

21 not we can come up with some

22 master plan to ultimately cover

23 every single inch. The question

24 is what can be done to fill this

25 significant gap in coverage, can

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 it be filled from within the

3 overlay district. That's my

4 reading of the legal standard.

5 That having been said, you

6 requested these things, and we

7 will be glad to provide them. You

8 know, our role here is to work

9 with you on this process. That is

10 the first thing.

11 Would you please remind me of

12 your, sir, Mr. Dovell --

13 MR. DOVELL: I misspoke. I

14 identified your company

15 incorrectly, but all I am saying

16 is that within the white zone that

17 you have on your diagram there is

18 cell phone service from a number

19 of different providers. What

20 strategies did they use to obtain

21 coverage in these areas using the

22 permitted areas for antenna

23 location?

24 MR. WARDEN: Okay. There is a

25 couple of ways, you know, to

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 respond to that. First, the

3 wireless law requires us to take a

4 look at -- the phrase is

5 co-location, locating on other

6 carriers facilities outside of the

7 overlay district, to the extent

8 that there are any. There aren't

9 any, and we have discussed with

10 your very capable building

11 inspector what facilities there

12 are, and what his inventory

13 facilities are. There aren't any.

14 That's the first point.

15 The second point I want to

16 point out -- is that correct?

17 MR. MURPHY: Go ahead.

18 MR. WARDEN: I'm telling you

19 that has been what our

20 conversations have yielded. If it

21 is other than that, we will

22 certainly -- that is the first

23 point. The second point is that

24 different companies have different

25 technologies, and there is a

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 relevance problem there because

3 the way that their signals travel

4 are different than the way that

5 our signals travel based upon what

6 portion of the spectrum they

7 occupy. We don't know what they

8 do. I don't -- I am not

9 representing them here. I am here

10 representing my client.

11 Then another, just another

12 nuance to that, is I think the

13 courts are very clear in saying

14 that the standard that applies is

15 the standard for your company, and

16 not some other company.

17 That having been said I

18 understand your impulse, which is

19 you want to see, well, you know,

20 what other companies have done,

21 and towards that end we have had

22 the dialogue that the wireless law

23 requires us to have with the

24 building inspector about some of

25 the other strategies that other

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 companies may or may not have
 3 used, and there haven't been
 4 anything that have -- that would
 5 help us in our efforts to fill our
 6 significant gap in coverage in the
 7 vicinity of the proposed site.
 8 That's a mouthful but --
 9 MR. MURPHY: Let me stop you
 10 there for a moment. Mr. Sharma,
 11 perhaps you could be a little more
 12 specific, and tell us the nature
 13 of these discussions about
 14 T-Mobile's efforts and inquiry as
 15 to the possibility of putting the
 16 cell, antennas, and the equipment
 17 within the overlay district, for
 18 example, you know, Village Hall or
 19 one of the other permitted areas?
 20 MR. SHARMA: To the best of my
 21 recollection, I don't think we
 22 have had that discussion.
 23 MR. WARDEN: I think we are
 24 talking about another discussion.
 25 The discussion that I had just

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 it's not technologically feasible
 3 for us to do so.
 4 We do have one existing site
 5 within the overlay district. I
 6 believe it's at 185 Broadway. So
 7 we are already there --
 8 MR. MURPHY: Let me ask you a
 9 question, because that kind of
 10 gets to the nub of it. You can
 11 say, and I have no basis to
 12 question you about whether it's
 13 technologically feasible. I have
 14 no idea. That's what we are
 15 trying to get some better
 16 informations on, more particulars.
 17 So we will need that from the
 18 engineers on both sides.
 19 One question I had, when the
 20 assumption is made that if an
 21 antenna was placed in Village
 22 Hall, I think it was 60 feet, was
 23 noted as 60 feet above mean sea
 24 level, was the figure used in the
 25 application, where is that? Is

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 referenced was whether or not
 3 there were any other wireless
 4 telecommunication facilities
 5 outside of the overlay district,
 6 and it is my, I believe that our
 7 site acquisition consultant had a
 8 discussion with you on that topic,
 9 and that there aren't any. If
 10 there are any --
 11 MR. MURPHY: No, that's not
 12 the issue. We know there aren't
 13 any because no one has ever
 14 applied for this variance before.
 15 So what we are interested in is
 16 what discussions or efforts have
 17 been made to co-locate within the
 18 overlay district?
 19 MR. WARDEN: I mean, that's
 20 the sum and substance of the
 21 affidavit that we gave you, that
 22 says, you know, that said that
 23 it's not technologically feasible
 24 for us to locate there. We
 25 haven't pursued any leases because

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 that, in other words, is that to
 3 the roof line, is it to the top of
 4 the parapet, is it to where the
 5 antenna would be located, attached
 6 to the parapet, is it on the
 7 highest point possible? You know,
 8 what would happen if there was a
 9 ten-foot power set in the middle
 10 of this roof where we consolidated
 11 maybe the 30 antennas that are
 12 already up there?
 13 MS. STECICH: Actually, it
 14 says it would have to be 147 feet.
 15 MR. MURPHY: Well, I
 16 understand that.
 17 MS. STECICH: Oh, I thought
 18 you said 60 feet.
 19 MR. MURPHY: But what I'm
 20 questioning is, that's compared to
 21 an assumption that it would only
 22 be 60 feet above sea level if it
 23 was placed on the top of Village
 24 Hall.
 25 MR. WARDEN: I think I may

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 understand where you are going but

3 I just want to -- that 60 feet,

4 that referred to the ground level

5 roughly at Village Hall, above

6 main sea level. So 60 foot

7 elevation, so --

8 MR. MURPHY: Oh, I see, but

9 it's the same thing with the 147

10 number; is it apples to apples?

11 MR. WARDEN: Yes, in order to

12 provide coverage that would fill

13 our significant gap in coverage in

14 the vicinity of the Village Hall

15 site in the manner that it's --

16 adequately, we need a tower of 147

17 feet tall.

18 MR. MURPHY: I think what

19 would help, certainly me, and the

20 Board members, is what we would

21 like to see is, on Village Hall,

22 as one permissible location, if

23 the antennas were to go up on the

24 roof, whatever the height is, I

25 have no idea what that height is

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 to get your assessment as to the

3 minimum height above the roof that

4 you would require to be able to

5 solve the problem you say you want

6 to solve I think is service to the

7 Broadway corridor, so that -- to

8 close the gap along Broadway,

9 running north or south through

10 Hastings, into Dobbs; that's what

11 I hear you saying, that you want

12 to close the gap on Broadway.

13 MR. WARDEN: Right.

14 MR. MURPHY: Just one second.

15 Yes, Rafael?

16 MR. ZARATZIAN: There is one

17 other site that may work a little

18 bit better for everybody, and that

19 is the light poles at the pool,

20 which are high enough to go over

21 the ridge, and aim the antennas

22 down to that area.

23 They are roughly the same

24 height as the Anders home, and the

25 pool is only used four months out

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 above mean sea level, what would

3 that get you in terms of coverage?

4 MR. WARDEN: Okay.

5 MR. MURPHY: I mean, I don't

6 know what the answer is.

7 MR. WARDEN: I think you may

8 have already sort of indicated the

9 desire for --

10 MR. MURPHY: That's what we

11 need.

12 MR. WARDEN: -- and I want to

13 reiterate our willingness to

14 provide that.

15 MR. MURPHY: My only point was

16 the height. Obviously, it makes a

17 difference which height you pick.

18 I don't know what is reasonable

19 for this particular location.

20 MR. WARDEN: Well, if you like

21 we can show you 147 feet and we

22 can also show you rooftop height.

23 MR. MURPHY: Yes, that's

24 probably useful.

25 MR. LEAF: It might be useful

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2 of the year, and the rest of the

3 year it has ample power, via --

4 they could put a shed down,

5 wouldn't affect anybody. The

6 extra revenue could go towards the

7 pool for lower rates, and so

8 forth.

9 MR. MURPHY: That's a good

10 idea.

11 MR. SHARMA: Mr. Chairman,

12 that was pointed out to Mr. Warden

13 to explore the possibility, and

14 come back to --

15 MR. MURPHY: Mr. Warden, as a

16 suggestion, it seems like a

17 reasonable good one. I don't know

18 if you have had a chance to

19 consider that with your client.

20 It's from our perspective it makes

21 sense to at least consider it, and

22 hear what you have to say about

23 whether that might work or not.

24 MR. WARDEN: I said it before,

25 and I will say it again, we are

<p style="text-align: right;">62</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 interested in working with the</p> <p>3 Village as much as possible.</p> <p>4 Mr. Sharma had raised that as a</p> <p>5 possibility. We have been looking</p> <p>6 into it, and perhaps the best way</p> <p>7 for us to address this is because,</p> <p>8 since the visual maps that we have</p> <p>9 been providing have been sort of</p> <p>10 helpful for the Board in</p> <p>11 conceptualizing this we will get</p> <p>12 you some maps from some heights at</p> <p>13 the Chemka Pool also, because we</p> <p>14 have been looking into that one.</p> <p>15 We are trying to be proactive on</p> <p>16 this and find something that is</p> <p>17 going to satisfy everybody. So in</p> <p>18 our next exhibition we will</p> <p>19 include those as well.</p> <p>20 MR. MURPHY: Thank you, that</p> <p>21 would be helpful. Rafael, thank</p> <p>22 you.</p> <p>23 Just one other point, in terms</p> <p>24 of the visual mock-ups, this is an</p> <p>25 exhibit too, Mr. Warden, you</p>	<p style="text-align: right;">63</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 referenced them earlier in your</p> <p>3 talk. For example, on the -- it's</p> <p>4 been labeled the VP3 simulation.</p> <p>5 They are three, five, and seven,</p> <p>6 the odd number series show what</p> <p>7 the proposed antennas would look</p> <p>8 like from different vantage points</p> <p>9 on top of the building?</p> <p>10 MR. WARDEN: That's right.</p> <p>11 MR. MURPHY: The VP7, because</p> <p>12 it's a little closer, is more</p> <p>13 useful for me to get a better</p> <p>14 sense of perspective, if you will,</p> <p>15 about the size, relative size of</p> <p>16 what it's going to look like.</p> <p>17 VIDEOGRAPHER: Can you give me</p> <p>18 the wireless mike, I have to</p> <p>19 change the batteries. That's the</p> <p>20 sound you heard.</p> <p>21 MR. WARDEN: Before you</p> <p>22 continue, I just want to -- we</p> <p>23 will take a look at the light</p> <p>24 poles but we may need some higher</p> <p>25 elevation at the Chemka Pool, and</p>
<p style="text-align: right;">64</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 so if you would consider that, we</p> <p>3 will, and if that is necessary, we</p> <p>4 will include a depiction of the</p> <p>5 propagation that would result from</p> <p>6 such a facility; is that</p> <p>7 acceptable to the Board?</p> <p>8 MR. MURPHY: Yes, the light</p> <p>9 poles are there whether you like</p> <p>10 them or not, they are there, and</p> <p>11 they are going to be there for a</p> <p>12 long time. So if they are</p> <p>13 useful --</p> <p>14 MR. WARDEN: My point is we</p> <p>15 may use something larger. So we</p> <p>16 will show you a depiction of what</p> <p>17 that would look like, and you can</p> <p>18 decide.</p> <p>19 MR. MURPHY: Our thought was</p> <p>20 use the poles that are there, if</p> <p>21 you can.</p> <p>22 MR. SHARMA: Different kind of</p> <p>23 pole.</p> <p>24 MR. MURPHY: I understand.</p> <p>25 MS. STECICH: That's in the</p>	<p style="text-align: right;">65</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 overlay district.</p> <p>3 MR. SHARMA: No, it's not.</p> <p>4 MS. STECICH: Oh, it's not.</p> <p>5 MR. LEAF: There is a water</p> <p>6 tower there, as well.</p> <p>7 MR. MURPHY: It does not</p> <p>8 appear to be --</p> <p>9 MS. STECICH: I thought it</p> <p>10 was, okay.</p> <p>11 MR. MURPHY: Right, there are</p> <p>12 water towers up there, as well.</p> <p>13 We are not trying to -- we are</p> <p>14 just saying that is the concept,</p> <p>15 to see if -- if something like</p> <p>16 that might work for you, but it's</p> <p>17 also outside the overlay district.</p> <p>18 So my only question was,</p> <p>19 coming back to VP7, just because</p> <p>20 it's a closer shot, is it possible</p> <p>21 to do simulations of the other two</p> <p>22 locations from essentially the</p> <p>23 same distance? You know what I am</p> <p>24 saying?</p> <p>25 MR. WARDEN: We have a happy</p>

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 problem here which is that it's
 3 not visible from everywhere in the
 4 Village.
 5 MR. MURPHY: That's good then.
 6 That helps me, and it helps you,
 7 it helps me because part of
 8 this -- ultimately, goes up then
 9 we have to do a view preservation.
 10 We are not doing that tonight but
 11 part of the view preservation
 12 review any way.
 13 MR. WARDEN: Can you hold on a
 14 moment, I just want to discuss
 15 something.
 16 MR. MURPHY: Yes, of course.
 17 MR. WARDEN: As far as
 18 additional simulations there are
 19 some costs and difficulties
 20 involved but if the Board has some
 21 specific locations from which they
 22 would like us to take, to do
 23 renderings then we can do that,
 24 because otherwise you wind up with
 25 a situation where we come in, and

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 stop. You know where the traffic
 3 light is?
 4 MR. WARDEN: Yes.
 5 MR. MURPHY: From that area,
 6 right near the A&P.
 7 MR. WARDEN: There is a visual
 8 of the A&P; isn't there?
 9 MR. WATKINS: That's way down
 10 in the parking lot, I believe.
 11 MR. MURPHY: We have VP3 in
 12 Farragut, approaching Broadway,
 13 and the five corners. So that's
 14 pretty far away, that's all I am
 15 saying.
 16 So if you look with me at VP3,
 17 Mr. Warden, okay, and this picture
 18 you are heading north on Farragut
 19 towards the intersection. So all
 20 I am saying is if you get closer,
 21 basically, towards the
 22 intersection, and on the other --
 23 where the A&P, big green roof,
 24 that's the corner where people
 25 would see this stuff, and notice

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 then it's well, this doesn't
 3 really -- we don't like this, is
 4 there another location.
 5 So if you were giving us the
 6 direction then we think we can do
 7 that.
 8 MR. MURPHY: Yes, I mean, I
 9 think at least from my perspective
 10 it would be from a comparable
 11 distance to the distance used in
 12 VP7. So basically anywhere along
 13 Broadway or Main Street would be
 14 the two most heavily trafficked
 15 areas where you might see them,
 16 but Broadway --
 17 MR. WARDEN: Could you, I
 18 really would like to have some
 19 solid locations and intersections.
 20 Do you think you could convey them
 21 to Mr. Sharma and who can convey
 22 them to me?
 23 MR. MURPHY: We can try. It
 24 seems to me that the five corners
 25 is the main spot because people

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 it.
 3 MR. WARDEN: Could we go with
 4 that procedure, where you will
 5 provide some sort of specific
 6 coordinates to Mr. Sharma, and he
 7 will get them to me, and that way
 8 we will assure that we have
 9 100 percent complied with the
 10 board's wishes.
 11 MR. MURPHY: Sure. That's
 12 fine. We will consult with
 13 Mr. Sharma. We will pick a couple
 14 of spots that make sense.
 15 MR. WARDEN: You know, since
 16 we want to do this on top of the
 17 next meeting, so sooner would be
 18 much better.
 19 MR. MURPHY: Part of the
 20 reason I am doing this is because
 21 the legal standard that our
 22 counsel read to us talks about
 23 minimum height, aesthetic
 24 intrusion, and it talks about
 25 exhausting the efforts to try and

<p style="text-align: right;">70</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 use the overlay district because</p> <p>3 that's why they are designated as</p> <p>4 overlay districts. So that's what</p> <p>5 we are trying to do.</p> <p>6 MR. WARDEN: I understand</p> <p>7 that. I do want to just add one</p> <p>8 little observation to that. I</p> <p>9 hope the Board will keep in the</p> <p>10 forefront of its mind during the</p> <p>11 process, and that is that the code</p> <p>12 requires us to use existing tall</p> <p>13 structures. So 295 requires us to</p> <p>14 use existing tall structures, and</p> <p>15 that make sense because it</p> <p>16 eliminates the proliferation of</p> <p>17 unnecessary towers throughout the</p> <p>18 Village, and some people find a</p> <p>19 lot more unsightly than nine or</p> <p>20 ten panels.</p> <p>21 As far as minimum impact,</p> <p>22 minimum height, minimum change to</p> <p>23 the community, the code recognizes</p> <p>24 that the community is well served</p> <p>25 by its preference for existing</p>	<p style="text-align: right;">71</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 tall structures, and we are trying</p> <p>3 to dignify that and comply with</p> <p>4 that.</p> <p>5 MR. MURPHY: I appreciate</p> <p>6 that. Nobody wants a 150 foot</p> <p>7 tall tower anywhere in town, if we</p> <p>8 can help it.</p> <p>9 MR. WARDEN: One last point;</p> <p>10 the reason why we have to go on</p> <p>11 tall structures, because short</p> <p>12 structures don't work.</p> <p>13 MR. DOVELL: What you are</p> <p>14 showing on your roof planner are</p> <p>15 three arrays of three antennas</p> <p>16 each, all on different locations</p> <p>17 on the building.</p> <p>18 Why are they in different</p> <p>19 locations if they could be</p> <p>20 consolidated in one?</p> <p>21 MR. WARDEN: Well, you have to</p> <p>22 deal with issues like the shadow</p> <p>23 of the roof, you know, itself.</p> <p>24 So, for example, if you are</p> <p>25 looking to provide</p>
<p style="text-align: right;">72</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 telecommunications services</p> <p>3 downwards, and you are towards the</p> <p>4 middle of the roof, and that lip</p> <p>5 may block your provision of</p> <p>6 certain services. That's just an</p> <p>7 example.</p> <p>8 MR. DOVELL: But you have an</p> <p>9 interesting opportunity on that</p> <p>10 building which is the bulkhead.</p> <p>11 Why couldn't that have been used</p> <p>12 for all three arrays? You know,</p> <p>13 even if the risk of raising it up</p> <p>14 a little bit?</p> <p>15 MR. WARDEN: You know, I may</p> <p>16 have a -- let's do this. We are</p> <p>17 obviously meeting again. We will</p> <p>18 have somebody come in here and do</p> <p>19 a detailed explanation as to why</p> <p>20 it can or cannot be done, and to</p> <p>21 the extent that it can be done, if</p> <p>22 it would please the Board, and</p> <p>23 that, you know, certainly</p> <p>24 something that we would be willing</p> <p>25 to consider if it can be done</p>	<p style="text-align: right;">73</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 technologically.</p> <p>3 MR. MURPHY: Ray, just so I'm</p> <p>4 clear, which part in particular?</p> <p>5 MR. DOVELL: It's the one from</p> <p>6 VP7. If you look at VP7. It's</p> <p>7 the one coming down Villard,</p> <p>8 looking down from Villard. You</p> <p>9 have three antennas with a brace</p> <p>10 on it. It's quite a obtrusive</p> <p>11 display there, and why couldn't</p> <p>12 that be pushed back, pushed back</p> <p>13 even at the risk of pushing it</p> <p>14 higher. It's kind of a crenelated</p> <p>15 effect that it produces which is</p> <p>16 offensive.</p> <p>17 MR. MURPHY: Right. This is</p> <p>18 the same discussion we have had in</p> <p>19 earlier applications, which is the</p> <p>20 visual impact is certainly</p> <p>21 lessened. People are mostly</p> <p>22 concerned with the visual impact.</p> <p>23 It could be lessened even if the</p> <p>24 antennas were raised up. If it</p> <p>25 were pushed back towards the</p>

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 center of the buildings you
 3 probably wouldn't see it as much,
 4 if we pushed it back far enough.
 5 We have had that discussion about
 6 trying to do that, for example, on
 7 top of Village Hall, without
 8 success. So maybe we will be
 9 successful here.
 10 MR. WARDEN: I don't know if
 11 it would technologically work. We
 12 will, of course, consider it. Let
 13 me point out that one of the
 14 strictures of the wireless law, is
 15 that I think you can't increase
 16 the height of the existing tall
 17 structure. Let me double-check
 18 that, but that may be a component
 19 of the answer that we give it. If
 20 it comes down to a variance for
 21 that or something than perhaps, so
 22 be it, but I want to just put that
 23 out there as one of the things
 24 that informs our decision as far
 25 as how to move forward.

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 connected, tied to the bulkhead,
 3 and they are pushing up higher
 4 than the top of it.
 5 MR. WARDEN: Would you tell me
 6 which viewpoint again?
 7 MR. DOVELL: VP5, or maybe
 8 that they are just crowding the
 9 chimney, that may be what it is.
 10 MR. WARDEN: I will discuss
 11 that with the engineer who did the
 12 visual analysis, but I am fairly
 13 sure that that is not -- that we
 14 are not going to be exceeding that
 15 height when you look at it level
 16 on.
 17 MR. LEAF: When you are
 18 talking about the penthouse or the
 19 bulkhead, do you know what that
 20 structure is used for? Is that a
 21 residential structure or is that
 22 mechanical equipment inside there?
 23 MR. WARDEN: I don't believe
 24 it's residential. We can look
 25 into that too. If you give me a

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 MR. DOVELL: Your antennas
 3 located on the bulkhead are higher
 4 than the bulkhead.
 5 MR. WARDEN: The overall
 6 height. The highest point of the
 7 existing building I think is the
 8 phrase of the wireless --
 9 MR. DOVELL: But you are
 10 pushing up above the bulkhead?
 11 MR. WARDEN: Pushing up
 12 above -- is that right?
 13 MR. DOVELL: VP5, it looks
 14 like you are pushing up above the
 15 bulkhead.
 16 MR. WARDEN: I think what you
 17 are looking at is the difference
 18 in perspective because what
 19 happens is the antennas stick out
 20 just a little bit from the
 21 bulkhead. So if you are looking
 22 at it from the ground it will
 23 appear as though it goes up higher
 24 but we don't intend to do that.
 25 MR. DOVELL: No, they are

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 moment to read both of these
 3 things.
 4 MR. LEAF: It appears to be an
 5 elevator bulkhead.
 6 MR. WARDEN: If it would
 7 please the Board I would like to
 8 move over to that microphone so I
 9 don't have to hold this.
 10 MR. MURPHY: Yes, by all
 11 means. Just to be clear, because
 12 I know we are throwing a lot of
 13 questions and options at you, and
 14 we are just trying to get the best
 15 information we can, but
 16 Mr. Dovell's point is, the point
 17 we discussed before with other
 18 carriers here, which is, it seemed
 19 like a good thing for us, to push
 20 the antennas -- even if you were
 21 going to keep them on the proposed
 22 building, 565, if they were pushed
 23 back sufficiently towards the
 24 center of the building, towards
 25 that, I guess you would call it

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 the penthouse, whatever, but not
 3 on the penthouse. You know what I
 4 am saying? On the roof, even if
 5 it were raised up enough to get
 6 you a little extra height, right?
 7 The point is if it's not visible
 8 or significantly less visible,
 9 it's an improvement from our
 10 perspective. That happened here
 11 with some of the equipment
 12 cabinets that are sitting up above
 13 us tonight on the roof with one of
 14 the carriers. I forgot who it
 15 was, and I think it was
 16 Mr. Dovell, with his expertise who
 17 suggested it, and it actually
 18 helped a lot.
 19 So they came back with a
 20 second simulation because we were
 21 doing the view preservation
 22 discussion at the time, and
 23 because it got pushed back so many
 24 feet, I forget how many feet it
 25 was, it actually became much less

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 provide the service that you need.
 3 I also want to point out one
 4 other thing. In terms of
 5 everybody's daily usage of their
 6 area, and driving. People that
 7 are driving and walking are
 8 very -- most often looking at eye
 9 level. Yes, people look up, of
 10 course, but what I hope that the
 11 Board will consider in evaluating
 12 the visual impact of this
 13 facility, that people don't look
 14 up as much as, perhaps they should
 15 or whatever.
 16 So I want the Board to
 17 hopefully take a really realistic
 18 look at what the impact on
 19 people's daily viewpoints are
 20 going to be.
 21 MR. DOVELL: But what they do
 22 see is the facades of buildings,
 23 and everybody looks at the facades
 24 of buildings, and this building
 25 has it, it's fairly simple, but

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 visible which was great.
 3 Everybody was kind of happy with
 4 that, and the provider said that
 5 was fine with them. They could
 6 get what they needed. Of course,
 7 that was equipment, it wasn't the
 8 antennas. That was different.
 9 MR. WARDEN: I think that's a
 10 very telling point. First of all,
 11 I want to say, of course, we will
 12 be glad to take your concern to
 13 heart, and look at the
 14 feasibility, but it's a very
 15 telling point that we are looking
 16 at equipment that was moved back,
 17 because as I pointed out, this is
 18 line of site technology. It's not
 19 so easy to put --
 20 MR. MURPHY: We understand
 21 that.
 22 MR. WARDEN: -- the antennas.
 23 You can't really say out of sight,
 24 out of mind because if it's out of
 25 sight then it doesn't necessarily

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 it's a recognizable composition,
 3 and the antennas at that level
 4 obstruct that view of that facade,
 5 where if it's pushed back,
 6 understanding that you still have
 7 line of site issues, it's not as a
 8 perceptible obstruction than if
 9 it's located right at the parapet,
 10 front and center, right at the
 11 face of the building.
 12 MR. WARDEN: I hope you don't
 13 think I am disagreeing with that
 14 observation. That's correct,
 15 people do look at facades, and
 16 profiles of buildings.
 17 My observation was only that
 18 people are more likely to look at
 19 facades, and the profile, anything
 20 that's eye level.
 21 MR. DOVELL: As you pointed
 22 out with the perspective even when
 23 it's pushed back off the building
 24 it diminishes in it's apparent
 25 height.

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 MR. WARDEN: Correct, yes. To

3 reiterate, we will give you some

4 feedback on the technological

5 feasibility of that.

6 MR. MURPHY: When we are

7 finished with our hearing tonight

8 it would probably be a good idea

9 to get a transcript. So it will

10 help you remember all of this, the

11 many requests that you have

12 received this evening.

13 Mr. Sharma, I am not sure if

14 you were here when we had a

15 discussion with Mr. Warden. After

16 the meeting we should talk for a

17 few minutes. We want to pick two

18 or three spots to get some new

19 simulations.

20 MR. SHARMA: Certainly.

21 MR. MURPHY: But very specific

22 spots so that the applicant can

23 get it done efficiently, and

24 without wasting a lot of money.

25 MR. SHARMA: Okay.

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 else on your team that you want to

3 have address the Board tonight, or

4 do you want to wait, kind of think

5 about all this, take it in, and

6 then come back next time?

7 MR. WARDEN: The only people

8 on my team that I would be

9 inclined to have address the Board

10 this evening would be doing so

11 from a technological perspective.

12 I think whatever they did or said

13 would have to be reiterated once

14 your communications consultant is

15 brought up.

16 I would just like to make one

17 point. I think we made this in

18 our submission papers. The code

19 requires that we submit materials

20 which are certified by a New York

21 State licensed professional

22 engineer specializing in

23 electrical engineering or a

24 qualified radio technician with

25 expertise in radio communications.

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 MR. LEAF: What were you able

3 to determine, is this facility in

4 the preservation district?

5 MS. STECICH: I'm pretty sure

6 it's in an odd spot on the new

7 preservation map, but I would say

8 I am 97 percent certain. Maybe

9 Deven is 94 percent certain.

10 MR. MURPHY: We should check

11 it before the next meeting.

12 MS. STECICH: But you know

13 what, it's probably the same

14 considerations, because you also

15 have to make sure that it's the

16 minimal impact too. It's probably

17 not that different a set of

18 considerations but my view is that

19 it's in the preservation.

20 MR. SHARMA: I believe it is a

21 preservation issue.

22 MS. STECICH: Yes.

23 MR. MURPHY: Any other

24 questions at the moment?

25 Mr. Warden, is there anyone

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 We have done that, and I hope that

3 if there has been a

4 telecommunications consultant

5 retained that he have the proper

6 technological qualifications,

7 similar technological

8 qualifications. So, just put that

9 out there.

10 MR. MURPHY: We have no reason

11 to doubt anybody's qualifications,

12 but I don't know Mr. Cone, I don't

13 know your fellow, but between the

14 two of them, I'm sure we will --

15 MR. WARDEN: I guess what I am

16 saying, is I hope you will verify

17 that on your end.

18 MR. SHARMA: We will. We are

19 certain, Mr. Cone, himself, may

20 not be doing it. Maybe they hire

21 other qualified engineers to do

22 some --

23 MR. MURPHY: If I understand

24 you correctly, you are raising the

25 point that we need to have a

<p style="text-align: right;">86</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 correctly certified type of</p> <p>3 technical consultant?</p> <p>4 MR. WARDEN: Right, are you</p> <p>5 using an escrow, is it a fiduciary</p> <p>6 obligation to make sure it's</p> <p>7 discharged?</p> <p>8 MR. MURPHY: I am sure counsel</p> <p>9 will make sure we are compliant</p> <p>10 with that. Anything else,</p> <p>11 Mr. Warden?</p> <p>12 MR. WARDEN: No, that's my</p> <p>13 overview this evening.</p> <p>14 MR. MURPHY: Okay.</p> <p>15 Mr. Warden, thank you, appreciate</p> <p>16 it.</p> <p>17 MR. WARDEN: Thank you.</p> <p>18 MR. MURPHY: All right,</p> <p>19 members of the audience, please</p> <p>20 just state your name and address,</p> <p>21 and then go right ahead.</p> <p>22 AUDIENCE MEMBER: My name is</p> <p>23 Michelle Kydd. I live at 565</p> <p>24 Broadway. Thank you for having us</p> <p>25 to be part of the discussion.</p>	<p style="text-align: right;">87</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 Mr. Sharma and Ms. Stecich, I</p> <p>3 might be repeating myself from the</p> <p>4 previous hearing for the planning</p> <p>5 Board, and I apologize, but I just</p> <p>6 want to state that ten years ago</p> <p>7 such applications were before the</p> <p>8 Board, and at that time it was</p> <p>9 Script-Point that were applying,</p> <p>10 Omni-Point is now T-Mobile, and</p> <p>11 their lawyer, who is here today,</p> <p>12 who just spoke to you, had no</p> <p>13 awareness of the fact that</p> <p>14 Omni-Point installed equipment in</p> <p>15 555 Broadway had a stop order, and</p> <p>16 had to remove the equipment.</p> <p>17 I am mentioning that because</p> <p>18 we are here to negotiate in good</p> <p>19 faith for an outcome that works</p> <p>20 for everybody that is within the</p> <p>21 purview of the law. I,</p> <p>22 personally, don't think that's a</p> <p>23 good foot to start on, and I think</p> <p>24 the fact that counsel did not know</p> <p>25 that is not a very good fact.</p>
<p style="text-align: right;">88</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 I want to talk a little bit</p> <p>3 about where we live. We are</p> <p>4 across the street from -- St.</p> <p>5 Matthew's has a school for</p> <p>6 children with special needs.</p> <p>7 Those children have learning</p> <p>8 disabilities, you know, physical</p> <p>9 problems. Do their parents know</p> <p>10 that this proposal is out? I</p> <p>11 would think they would be</p> <p>12 concerned. I would be, if my</p> <p>13 children were there. That's</p> <p>14 something for the Board to</p> <p>15 consider.</p> <p>16 I think that the</p> <p>17 telecommunications act of 1996 may</p> <p>18 be a law that exists that can</p> <p>19 determine what we can and cannot</p> <p>20 discuss, but one cannot deny the</p> <p>21 fact that laws, studies that were</p> <p>22 made in 1996, may not be relevant</p> <p>23 ten years from now, five years</p> <p>24 from now, two years from now.</p> <p>25 Conditions and laws in Europe</p>	<p style="text-align: right;">89</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 are very different than they are</p> <p>3 here. Scotland does not allow</p> <p>4 cell phone towers almost anywhere</p> <p>5 in their residential areas.</p> <p>6 That's an extreme case. We are</p> <p>7 not in Scotland, but we do have to</p> <p>8 do something that's fair and</p> <p>9 equitable. I live on the sixth</p> <p>10 floor at 565 Broadway. The</p> <p>11 terraces are open. They are not</p> <p>12 closed. You may want to check</p> <p>13 this but I believe that when 565</p> <p>14 was built, it was built above</p> <p>15 height code. That already puts us</p> <p>16 up higher that we are supposed to</p> <p>17 be.</p> <p>18 I am concerned about people</p> <p>19 coming into the building who have</p> <p>20 a key to the roof who have access,</p> <p>21 who are not being guided by our</p> <p>22 super, who can come into the</p> <p>23 building at any time. I think</p> <p>24 it's a safety issue. I think</p> <p>25 having height -- there are acts of</p>

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 God which most clauses in
 3 insurance forms say there is no
 4 coverage for, like, if lightening
 5 strikes and knocks one of these
 6 antennas down.
 7 By the way, the penthouse is
 8 the elevator, it's not a
 9 penthouse, and if a lightening
 10 bolt hit one of these things, and
 11 it fell down, and started a fire,
 12 if it hurts somebody, who is
 13 responsible for that? Let alone
 14 the things that we are not allowed
 15 to talk about, which, you know, I
 16 think some of it is ridiculous
 17 because you rely, again, on the
 18 law from 1996, but I am going to
 19 put that aside.
 20 We are people living in a
 21 building. There are children in
 22 the building. There are people
 23 with pacemakers in 555 Broadway.
 24 Mr. Stringus {phonetic}, you read
 25 his letter at the last meeting.

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 He has a pacemaker. He is
 3 concerned, and, you know what,
 4 microwaves do interfere with
 5 pacemakers. We are not talking
 6 out of the telecommunications act.
 7 So I'm just really concerned about
 8 negotiations being fair and
 9 equitable.
 10 We are an existing structure.
 11 We are always going to be a target
 12 for cell phone companies because
 13 of our height. This is the second
 14 time this is happening. Is there
 15 going to be a third and fourth
 16 time. Is there going to be
 17 co-locations. Is 555 Broadway
 18 going to be another place where
 19 antennas go up? Are we going to
 20 become an antenna farm of the
 21 Village? That's what I see. It's
 22 cheaper to build on an existing
 23 structure. Yes, it's in the
 24 purview of the law, et cetera, but
 25 it's cheaper than building a tower

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 or erecting a flagpole, et cetera,
 3 and I think that's something that
 4 needs to be considered. Thank
 5 you.
 6 MR. MURPHY: Thank you. Okay,
 7 just state your name and address
 8 for us.
 9 AUDIENCE MEMBER: Yes, my name
 10 is Kathleen Craig. I live at 555,
 11 and thank you very much for giving
 12 us the opportunity to comment. I
 13 just want to point out that these
 14 are all of our neighbors at both
 15 buildings. Both of which are
 16 obviously very concerned about
 17 this project.
 18 I moved to Hastings about
 19 three and a half years ago. I
 20 have a very good friend who lives
 21 here on Maple Avenue, and one of
 22 the things that I noted the minute
 23 I came into the Village was, as I
 24 came down Farragut Parkway,
 25 towards Main Street was you can

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 literally see the Palisades from
 3 that location, and living at the
 4 565, 555 buildings, we do have a
 5 very beautiful view of the
 6 Palisades, which, I think is
 7 obviously part of the mission of
 8 the preservation view project and
 9 program here.
 10 Our concern -- we have many
 11 concerns, obviously, and I think
 12 we should allow some of the other
 13 members of the buildings to talk
 14 about this, but there are, as
 15 Michelle pointed out very
 16 succinctly, there are some
 17 security issues that people who
 18 represent the applicant would be
 19 permitted to come into the
 20 building without any security
 21 monitoring that would be done by
 22 the building owner, and
 23 specifically, our superintendent.
 24 It's very important to all of
 25 us to maintain a safe environment.

<p style="text-align: right;">94</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 We have a lot of elderly that live</p> <p>3 in our building. So that's a big</p> <p>4 concern that we have. Also, I</p> <p>5 don't know if this is even</p> <p>6 applicable, but there are many</p> <p>7 people who work in these buildings</p> <p>8 who are free-lance workers. They</p> <p>9 work out of their homes. Some of</p> <p>10 them are writers, some of them are</p> <p>11 computer techy people, and they</p> <p>12 are currently using cell service,</p> <p>13 and wireless service. Actually, I</p> <p>14 do some work out of my apartment</p> <p>15 on wireless laptop, and the</p> <p>16 question we had was, will this</p> <p>17 interfere with our service. I use</p> <p>18 a different provider. I don't</p> <p>19 know how many people in the</p> <p>20 building do use T-Mobile, but we</p> <p>21 have concerns about that as well,</p> <p>22 that, you know, our particular</p> <p>23 service would then be impacted by</p> <p>24 having this, you know, direct</p> <p>25 linkage to T-Mobile located, you</p>	<p style="text-align: right;">95</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 know, directly in our facility,</p> <p>3 and I think also, you know, just</p> <p>4 from a quality of life</p> <p>5 perspective, I mean, we enjoy very</p> <p>6 beautiful grounds. There are some</p> <p>7 trees that are just really</p> <p>8 magnificent, and the birds that</p> <p>9 come onto our property are</p> <p>10 amazing. We have other little</p> <p>11 creatures that come on, and, you</p> <p>12 know, to the extent that we can</p> <p>13 maintain that, I think it's very</p> <p>14 important. I think it's important</p> <p>15 to the Village, as well, to really</p> <p>16 keep its areas of green space, you</p> <p>17 know, unencumbered from</p> <p>18 technology. You know, I think we</p> <p>19 all agree that technology is here</p> <p>20 to stay, and there is something</p> <p>21 very wonderful about it but at the</p> <p>22 same time I think we really need</p> <p>23 to think about the impact that it</p> <p>24 has on quality of life, and that</p> <p>25 we very much want to be able to</p>
<p style="text-align: right;">96</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 continue to enjoy our grounds, the</p> <p>3 wildlife that's in the area</p> <p>4 without the intrusion of any kind</p> <p>5 of technology. That is not</p> <p>6 necessary to the maintenance of</p> <p>7 our quality of life, and so I</p> <p>8 think it's important, and I know I</p> <p>9 don't have to point this out to</p> <p>10 you because you are all residents</p> <p>11 of the community, to think very</p> <p>12 seriously about what does this do</p> <p>13 to the quality of life of the</p> <p>14 people that live in Hastings, and,</p> <p>15 you know, one of the reasons I</p> <p>16 moved here was because I know that</p> <p>17 the people that live here are very</p> <p>18 concerned about the environment,</p> <p>19 and want to maintain the quality</p> <p>20 of life. I.</p> <p>21 Think it's just important to</p> <p>22 put that point out there because</p> <p>23 it's very important to all of us.</p> <p>24 So, thank you.</p> <p>25 Oh, one last question,</p>	<p style="text-align: right;">97</p> <p>1 ZONING BOARD MEETING OF JANUARY 28, 2010</p> <p>2 Mr. Murphy, is it possible for us</p> <p>3 to get a copy of this application</p> <p>4 that's put before you? How can we</p> <p>5 actually get a copy of this? We</p> <p>6 haven't seen your maps. We would</p> <p>7 like to be able to see that, if we</p> <p>8 could.</p> <p>9 MR. MURPHY: Mr. Sharma, what</p> <p>10 is the protocol for that?</p> <p>11 MR. SHARMA: I think under the</p> <p>12 Freedom of Information Act they</p> <p>13 are entitled to take whatever we</p> <p>14 have.</p> <p>15 MS. STECICH: You know what, I</p> <p>16 have an extra because I got one</p> <p>17 from the Planning Board and one</p> <p>18 for the Zoning Board, so you can</p> <p>19 have mine.</p> <p>20 AUDIENCE MEMBER: Oh,</p> <p>21 wonderful. Thank you. May I come</p> <p>22 up?</p> <p>23 MR. MURPHY: It's all public</p> <p>24 information. It's just a question</p> <p>25 of getting it copied.</p>

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 MR. WATKINS: The Planning

3 Board and the Zoning Board are

4 different.

5 MS. STECICH: Is it? It's has

6 the same title.

7 MR. WARDEN: If you look at

8 the text you will see the statutes

9 are different, the standards are

10 different, the law is different.

11 I can help you figure it out.

12 MS. STECICH: Let me just make

13 sure these two are the same.

14 MR. MURPHY: Let me make a

15 friendly suggestion, if you have

16 an extra one copy of each, that

17 would be helpful for the

18 community. I think that would a

19 good thing to do.

20 MR. WARDEN: I didn't bring

21 extras today. I will be glad to

22 submit them.

23 MR. MURPHY: That is fine,

24 whenever it is convenient.

25 MR. SHARMA: I was going to

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2 me.

3 MR. MURPHY: Thank you.

4 Anyone else? Everyone is welcome.

5 Just state your name and address,

6 please. We will be happy to hear

7 from you.

8 AUDIENCE MEMBER: Good

9 evening, my name is Jessica

10 Baptiste. I live at 565 Broadway.

11 I live on the sixth floor, and as

12 is becoming increasingly obvious

13 these days I am very pregnant at

14 this point.

15 This is a major concern for me

16 as a new mom. I am also a

17 teacher. So anything having to do

18 with children is always very near

19 and dear to my heart. I

20 understand that the levels of

21 radiations are within Federal

22 requirements, et cetera, but I

23 think also that cell phones are a

24 relatively new technology. We

25 don't really have enough

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1 ZONING BOARD MEETING OF JANUARY 28, 2010

2 ask you for a few extra copies.

3 MR. MURPHY: Ms. Craig, thank

4 you. Yes, sir.

5 AUDIENCE MEMBER: My name is

6 Adam Olson. I am at 555 Broadway

7 with my wife and one daughter. I

8 think it's an important point that

9 was brought up before is, this

10 won't be the first applicant, if

11 it gets going, and you decided on

12 top of this building it is a mess,

13 is the quote.

14 Ultimately we are going to

15 have a second mess up there, and I

16 am also -- it's unusual that other

17 companies are able to provide

18 adequate service everywhere,

19 without having to have exceptions

20 as to where they are placed.

21 Again, I give a leg up, I

22 guess, basically, or a helping

23 hand to this company. I think the

24 town should benefit in some way

25 very significantly. That's it for

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2 conclusive evidence about these

3 affects on people, and certainly

4 on children. So I think any level

5 of radiation is really quite a

6 concern, and especially being on

7 the sixth floor that my husband

8 and I would really be in closest

9 proximity to these antenna,

10 towers, whatever you want to call

11 them. It is really quite

12 troublesome.

13 My other sort of question was,

14 since this proposal is about the

15 first antenna that would be not in

16 the overlay districts in Hastings,

17 I was also wondering if there are

18 any other cell phone companies

19 that have antenna on residential

20 buildings or if it would also be a

21 first case scenario in that

22 situation?

23 MS. STECICH: There are some

24 on Andrews.

25 MR. MURPHY: Andrews. Okay,

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2 thank you, and congratulations.

3 Anyone else like to be heard,

4 please. We have got plenty of

5 time and be happy to hear from

6 you.

7 AUDIENCE MEMBER: Thanks, my

8 name is Aaron Baton {phonetic}, I

9 live in 565 Broadway on the sixth

10 floor.

11 One thing, I was wondering

12 what determines adequate coverage?

13 So, for the maps that were given

14 to the Board showing where the

15 coverage was, and, you know, the

16 areas that were white and the

17 areas that were green, how are

18 those levels determined?

19 As I looked, obviously, if you

20 go to T-Mobile's website, they

21 have some maps that show coverage

22 for voice and data, and it shows

23 their signal strength as being

24 rated as either best, good, fair

25 or none, and according to these

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2 maps, which, you know, again, they

3 used the same green and white

4 determination, and they are in

5 different, you know, they show

6 different zoom levels between

7 being a one mile radius, two mile

8 radius, so on and so forth. It

9 doesn't show, you know, what is

10 the difference between the maps

11 that they are showing you, and the

12 maps that they are showing the

13 customer, and which maps are

14 actually correct or incorrect.

15 Also, would be wondering when

16 they talk about the technical and

17 feasibility of their service,

18 what's the difference between

19 their radio frequency that they

20 use and the frequency of

21 competitors. So what is the

22 difference in penetration rate,

23 what is the difference in -- their

24 ability to actually -- if they

25 were to put their tower in a

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2 different area. Is there a

3 difference in their capability to

4 send their signal, to penetrate as

5 far as one of their competitors,

6 and what amp they are using, and

7 what would be the end result if

8 T-Mobile was denied the variance

9 to have the towers put on this

10 building. Thank you.

11 MR. MURPHY: Thank you. Okay.

12 Sir, yes, please.

13 AUDIENCE MEMBER: Owen Mason

14 {Phonetic}, I live on the top

15 floor of 565 Broadway with my

16 wife, two sons, and my daughter.

17 Just curious as far as the

18 antennas go. It was discussed at

19 a minimal level. What controls

20 are put in place to control that

21 level if it ever was approved, and

22 if the levels agreed upon, or

23 whatever it was, what is the case

24 to maintain that number, knowing

25 the next day, turn the volume up.

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2 MR. MURPHY: You mean the

3 level of emission?

4 AUDIENCE MEMBER: Yes.

5 MR. MURPHY: I don't know the

6 answer but I believe I understand

7 the question.

8 AUDIENCE MEMBER: More of a

9 building department concern, as

10 well as the building itself is

11 modularly powered at best, with

12 electricity. How much more of a

13 demand will these apply on that,

14 if we already have -- creating a

15 potential fire hazard from

16 electrical in the building.

17 MR. MURPHY: Thank you.

18 MR. SHARMA: Mr. Chairman,

19 Marianne, they have to submit

20 recertifications. I have been

21 getting this kind of reports from

22 some of the other facilities that

23 are -- on this roof and --

24 MR. MURPHY: Recertification

25 of what?

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 MR. SHARMA: Levels of
 3 emission.
 4 MR. MURPHY: Okay, anyone
 5 else? Any questions?
 6 AUDIENCE MEMBER: My name is
 7 Laura Inman. I have lived at 555
 8 Broadway with my two children
 9 since 1998. I would just like to
 10 second what has been said by other
 11 building residents so eloquently
 12 already, that I am very concerned
 13 about the issues that they have
 14 raised, the security issue, the
 15 possible interference with
 16 pacemakers, the affect on views,
 17 and our quality of life, and the
 18 electrical demands, and a possible
 19 fire hazard, and all of those need
 20 to be considered. Thank you.
 21 MR. MURPHY: Thank you.
 22 MS. STECICH: Can I just say
 23 one more thing?
 24 MR. MURPHY: Yes, by all
 25 means.

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 2 need for antenna coverage.
 3 Looking out of our apartment on
 4 the sixth floor, you look out on
 5 the hills. The hills are much
 6 higher than our building, and they
 7 are not that far away. I mean, up
 8 by the high school, for example,
 9 or in the areas that you were
 10 talking about where there is not
 11 coverage now.
 12 It seems like it would be much
 13 more sensible, if it's not the
 14 swimming pool, because of existing
 15 poles, or even somewhere else,
 16 perhaps. Is there another area in
 17 the overlay district where they
 18 would have to construct a much
 19 lower antenna than 143 feet, or
 20 whatever you said.
 21 So since you are utilizing
 22 that elevation you get the
 23 coverage without even having to
 24 put it on a residential building.
 25 MR. MURPHY: That was one of

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 2 MS. STECICH: Just so people
 3 understand, that assuming this
 4 application gets approval from the
 5 Zoning Board, which is a giant
 6 assumption, but if it did, you
 7 should understand that the
 8 comments that you make tonight are
 9 also relevant to the Planning
 10 Board's determination, and the
 11 Planning Board won't have this
 12 record, unless -- so, just so you
 13 know, but you probably are going
 14 to have to come and speak again,
 15 and submit something again.
 16 MR. MURPHY: Okay, thanks,
 17 Marianne. Anyone else have any
 18 comments or questions that they
 19 want to make? Nobody else?
 20 Oh, yes. Go ahead.
 21 AUDIENCE MEMBER: My name is
 22 E.J. Kydd, 565 Broadway. Just one
 23 thing I had, talking about the
 24 minimum height, that's the
 25 required height that they say they

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 2 the requests we made for one of
 3 the overlay districts.
 4 AUDIENCE MEMBER: Right, but
 5 you said the swimming pool is not
 6 part of the overlay district.
 7 MR. MURPHY: Well, the
 8 swimming is not.
 9 AUDIENCE MEMBER: Yes. I'm
 10 just thinking that -- hopefully,
 11 looking at any possibilities that
 12 are in the overlay district that
 13 could be utilized that would make
 14 more sense than putting it in a
 15 residential building. That is our
 16 opinion. Thank you.
 17 MR. MURPHY: Thank you. All
 18 right, anyone? Mr. Warden, sure,
 19 by all means.
 20 MR. WARDEN: I just wanted to
 21 make one final point. There have
 22 been a number of -- obviously
 23 everybody has come here tonight,
 24 and put some real thought into
 25 what they have to say, and it's

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2 the democratic process. That is

3 what sets us apart from a lot of

4 people, a lot of cultures, but I

5 want to point out that we are here

6 looking at very specific

7 standards, very specific issues,

8 and the issue is whether or not we

9 can go to the overlay district or

10 not.

11 So I just wanted, I think

12 counsel may have sort of alluded

13 to this a little bit in her

14 comments, I just want to urge the

15 Board to focus on those issues

16 because that's what the law

17 requires us to do.

18 Other than that, I don't have

19 anything to say, except to thank

20 you all for your time this

21 evening.

22 MR. MURPHY: All right. Okay.

23 Last call for anyone who wants to

24 make a comment before we move on.

25 I appreciate everyone showing up

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2 gentlemen, we do need to finish

3 our meeting.

4 We do have a number of

5 technical edits and corrections to

6 the December 10, 2009 meeting.

7 MR. LEAF: The first is on,

8 for me, page three, line 13.

9 There is a reference here to

10 S-E-C-C-R-A, and I think that is a

11 reference to SEQRA, all caps.

12 Other than that, I just, I am

13 not going to mention the ones that

14 don't matter to me.

15 MR. MURPHY: Go ahead.

16 MR. LEAF: Page 24, line six,

17 the word president, should

18 actually be precedent,

19 P-R-E-C-E-D-E-N-T. On page 28,

20 line 18, the word lineated, but it

21 should be obviated,

22 O-B-V-I-A-T-E-D. Then on page 36,

23 line one, the word prevent should

24 be permit, and the others are just

25 typos. They don't change the

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2 tonight. Thank you for your

3 patience.

4 We don't have any other cases

5 tonight, and we are not making any

6 decisions tonight. So, we will

7 just be kind of finishing up our

8 meeting, and I think we have to

9 elect a chair person.

10 Other than that, thank you

11 again, I appreciate your coming.

12 We will be back, I guess, next

13 meeting will be the fourth

14 Thursday in February.

15 Again, Mr. Warden, I encourage

16 you to get the transcript. Off

17 the record.

18 (Whereupon, there was a

19 discussion held off the record.)

20 MR. MURPHY: We are going to

21 finish up our meeting, and the

22 next order of business is to

23 review and correct the minutes

24 from last month's meeting.

25 Excuse me, ladies and

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2 meaning.

3 Do you have others,

4 Mr. Murphy?

5 MR. MURPHY: Yes, I do. I

6 have just a couple of others.

7 Back on page three, line 12,

8 instead of reaction, it should be

9 action, and on page 3, line 16,

10 instead of confinement it should

11 be covenant. On page 34, line

12 four, it says 20 feet, but it

13 should say 22 feet, and beginning

14 on page 38, presentation, for

15 example, page 38, line 15, it says

16 Ms. Fergun, but it should be

17 Ms. Griffin. That was Christina

18 Griffin, who was making the

19 presentation.

20 So, if you could change that

21 everywhere Ms. Griffin was

22 speaking, and that's it.

23 Subject to those changes can I

24 have a motion to approve the

25 meeting minutes of December 10,

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 2 2009.
 3 MR. LEAF: So moved.
 4 MR. MURPHY: Second?
 5 MR. DOVELL: I will second.
 6 MR. MURPHY: All in favor? So
 7 moved. Okay, the last order of
 8 business. I received instructions
 9 from the Village that the first
 10 meeting of each year each Board
 11 should elect or re-elect the chair
 12 person.
 13 I am happy to continue, if
 14 others are happy with me, and if
 15 anyone would like to volunteer to
 16 be chair person, that's fine too,
 17 but I guess technically we need to
 18 have a motion, a second, and a
 19 vote for a chair person for this
 20 year's Zoning Board of Appeals.
 21 MR. WATKINS: I so move the
 22 designation of Brian Murphy as
 23 chair person.
 24 MR. LEAF: I second.
 25 MR. MURPHY: All in favor? So

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1 ZONING BOARD MEETING OF JANUARY 28, 2010
 2 moved. Thank you.
 3 With that our next meeting
 4 should be Thursday, February 25th,
 5 I believe, and with that this
 6 meeting is adjourned. Thank you.
 7 (Whereupon, the meeting was
 8 adjourned at 10:00 p.m.)
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C E R T I F I C A T I O N
 STATE OF NEW YORK)
) SS.
 COUNTY OF ROCKLAND)

I, PATRICIA TORIAN, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:
 That this is a true and accurate record of the proceedings held on this 28th day of January, 2010.
 I further certify that I am not related to any of the parties to this action by blood or marriage and I am in no way interested in the outcome of this matter.
 IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of February, 2010.

 PATRICIA TORIAN

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THE FOLLOWING CORRECTIONS SHOULD BE NOTED IN THE FOREGOING TRANSCRIPT OF THE MEETING:

PAGE LINE SHOULD READ

Subscribed and sworn to before me
 this ____ day of _____ 2009.

 NOTARY PUBLIC