

THE STATE OF NEW HAMPSHIRE

TOWN OF NORTH HAMPTON

ZONING BOARD OF ADJUSTMENT

IN THE MATTER OF:

GRIDCOM/CINGULAR

WIRELESS

APPLICATION FOR

VARIANCE

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NO. 2005:14

SITE 002-050-000

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CONTINUED HEARING

TRANSCRIPT OF HEARING, ELECTRONICALLY RECORDED AT THE MEETING OF
THE NORTH HAMPTON ZONING BOARD OF ADJUSTMENT HELD AT NORTH
HAMPTON, NEW HAMPSHIRE, ON OCTOBER 11, 2005.

Appearances:

For the Applicant:

BOSEN & SPRINGER, PLLC

By: Jonathan S. Springer, Esq.
1 New Hampshire Avenue
Portsmouth, NH 03801

And

JAMES T. LOMBARDI, ESQ.
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Manchester, NH 03102
(Of record but not present)

For Abutters, David
and Terry Donsker:

COLLIANDER, FIELD & BROWN, P.A.
By: Robert B. Field, Jr., Esq.
126 Daniel Street
Portsmouth, NH 03801

For Abutters, Dennis
and Donna Kokernak:

PETER J. LOUGHLIN, ESQ.
144 Washington Street
P. O. Box 1111
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And

ORR & RENO, P.A.
By: James P. Bassett, Esq.
and Jeffrey C. Spear, Esq.
1 Eagle Square

P. O. Box 3550
Concord, NH 03302

Members of the Board:

John Anthony Simmons, Chairman
Michele Peckham, Vice Chairperson
Jennifer Lermer
Ted Turchan

Also Present:

Richard Mabey, Building Inspector
Russell Hilliard, Esquire

Transcriptionist:

Judith A. Park

(Meeting called to order)

THE CHAIRMAN: Six-fifteen. Get underway. We are here this evening on the Woodland Road application. Under preliminary matters we have several requests to sort of straighten out where it is that we think we are in the process and how tonight's meeting will go in terms of time management and document submission and all that.

So let's start first things first. This seemed to have worked at the last meeting, so I'm going to try to do it again this meeting. My sense is that--I want to use an accurate imagery here--we may not be able to see the finish line or maybe we can, but I guess I'm going to try to gauge and see how much more time everybody thinks they need in terms of meeting time to submit the materials and comments that they believe are still relevant and that they want to get before the board. So before we--and that will help me sort of structure the meeting to see how far we think we can get this evening.

Who still needs to speak and how long? Counsel?

MR. SPRINGER: I think they're still presenting, are they not?

MR. FIELD: Responding.

MR. SPRINGER: Responding.

THE CHAIRMAN: Okay.

MR. SPRINGER: Presenting a response.

THE CHAIRMAN: Okay. From everybody here on my left, how long do we think--do you have any handle on how long you think this--

MR. LOUGHLIN: I think this could be up to three hours.

THE CHAIRMAN: Up to three hours. Okay. And that's as a team, as a collective body between--

MR. FIELD: I'm going to defer to the Kokernak side tonight; they have much to say. My wrap-up, depending upon what information comes out, hopefully will be quite brief and just add some key points, Mr. chairman.

THE CHAIRMAN: Okay.

MR. FIELD: So maybe a half an hour, hopefully not more than 45 minutes.

THE CHAIRMAN: Sir, you had your hand up?

MR. VERN GARDENER: No.

THE CHAIRMAN: Okay. Anyone else? Okay. And then, of course, until you hear it, you don't know, right?

MR. SPRINGER: That's correct.

THE CHAIRMAN: Okay. Okay. Answer your question there?

MR. SPRINGER: Yes.

THE CHAIRMAN: Okay. The next thing I think we need to do is get straight our tab assignments and materials that have been submitted. I'm going through a manila folder that was in my mailbox here, and there seems to only be two tabs with anything that had documents with them. I've placed those in; I think they were D-20 and D-21. I just have a bunch of tabs with no documents with them, and I also have a couple of documents with no tabs. So, Russ, do you think you can explain to us where we're at on--

MR. HILLIARD: I don't know who compiled the tabs today.

THE CHAIRMAN: Okay.

MR. HILLIARD: I think--can I just look at your tabs.

THE CHAIRMAN: You sure can, yes.

MR. HILLIARD: Well, let me look at that for a while and then we'll move forward.

(Looking through folders and notebooks)

THE CHAIRMAN: I think I may have answered my own question here, Russ.

MR. HILLIARD: Okay.

THE CHAIRMAN: The one that said "20" on it has like a seven and a nine and a three and an 18 or whatever, so--

(Continuing to look through folders and discussing tabs)

THE CHAIRMAN: Well, how do you we want to do--do we want to just skip this part of the meeting, and we'll regroup later on how to get everybody's binders current? Okay.

The next question was Attorney Field wanted to know whether we were going to submit documents sort of all en masse right now or wait until the presentations. I think what we'll do is wait and present them as you're going to be talking about them or to them or referencing them, just so we can get the meeting

underway and have forward progress here.

Are there any other preliminary--oh, for the record, we should note that Susan Smith is not here this evening. We knew this ahead of time when we scheduled the meeting. She has made arrangements, I believe, through the videographer to get a hold of the videotape when she gets back and to view the meeting on video. So I just wanted to note that for the record so everyone knows that. Other than that, we're all here. Our counsel, Russ Hilliard, is here; Jennifer Lermer; I'm the chairman, John Anthony Simmons; vice-chairwoman, Michele Peckham; Ted Turchan; and in place of Carla as our recording secretary, this evening we have Kathy. She's here with the laptop, so documents that are sort of extras or for the town's record can go to her; Building Inspector/Code Enforcement Officer behind her, Richard Mabey.

So I think that's all the introductions we have for tonight. And Rules of Procedure, we of course have rules of procedure that we have adopted. As I've said in the past, if anyone has any questions about procedure, just please raise your hand and we'll explain our rules to you. And I know somewhere around here they're available for inspection, as well.

Swearing in of witnesses, it's our custom to swear in witnesses, so if you plan on speaking this evening, would you please stand and raise your right hand and prepare to be sworn in as a witness? Do you swear everything you say this evening will be the truth, the whole truth and nothing but the truth, so help you God?

SEVERAL: I do.

THE CHAIRMAN: Thank you. You may be seated. Recording secretary's report, Red has been pinch-hitting here for a few months, so--

MR. RICHARD MABEY: The agenda was posted September 30th at the library, post office, town clerk, and web posting.

THE CHAIRMAN: Okay. I guess the next thing to decide, we have quite a few sets of minutes before us that we've put on the agenda to adopt this evening. We're in need of doing that. I'm going to float out an idea, and we'll see whether it stands the weight of my peers here or not, but I would rather do the minutes now, while our minds are fresh and we have some ability to pay attention to detail. So if for no other reason other than attention spans--and I don't want to back-end this till the end

of the meeting and the--we've all sort of circulated drafts, I hope it won't take terribly long. But I don't want the meeting to go on fairly late into the evening and have our attention spans go or not have left enough time at the end. So those are my thoughts.

MS. JENNIFER LERMER: Well, I agree, because the reason I have too many minutes are because we keep trying to be courteous to our applicants, and now we really are in a bind, because--

THE CHAIRMAN: Okay. Let's do it.

THE CHAIRMAN: Okay. Michele, are you okay with that?

MS. MICHELE PECKHAM: Yeah, that's fine with me.

THE CHAIRMAN: Okay. All right. So with our forbearance, folks, we know this is a tedious part of meetings, but we think this is important enough to get this done.

I think what we'll do is start May 18th. Does everybody have those? I don't know, Michele, you and I really are the only ones that have ever circulated any edits or comments or changes. Is this--

MS. PECKHAM: Yeah. I didn't have anything.

THE CHAIRMAN: --a set that any changes were--

MS. PECKHAM: I believe we already accepted the minutes concerning Crown Properties on--

MS. LERMER: (unintelligible)

MS. PECKHAM: I believe we already did for that one.

THE CHAIRMAN: Okay. Sure. Okay.

MS. LERMER: (unintelligible)

THE CHAIRMAN: One-fifteen?

MS. LERMER: (unintelligible) through the whole thing, really.

THE CHAIRMAN: Okay. What we can do is we'll reference Line 15 and all places where it appears just to make sure that they have that properly recorded. Jennifer, that's a good catch, certainly.

Does anyone have any other changes to this? So it's just as submitted, really. Okay.

I just want to make sure, because I know (unintelligible)

is in here, so I'll--well, those have already been adopted, right?

MS. LERMER: Right.

THE CHAIRMAN: Okay. So when we adopted those, I would have abstained on that, too. I guess I don't need to do that because the motion's going to be for everything but that tonight, right? Okay.

MR. HILLIARD: And the rest of the minutes that haven't been processed.

THE CHAIRMAN: Okay. Okay. Well, do we have a motion, then?

MR. TURCHAN: I make a motion we adopt the rest of the May 18th, 2005, minutes that haven't been already previously approved.

THE CHAIRMAN: Is there a second?

MS. LERMER: I'll second it.

THE CHAIRMAN: Seconded by Lermer.

Ted, is that with the condition that a spell check will be run to spell "Lermer" correctly throughout?

MR. TURCHAN: Yes.

THE CHAIRMAN: Okay. And that's your second, as well?

MS. LERMER: Yes.

THE CHAIRMAN: Okay. Just so nobody finds it as a surprise, I'm going to abstain. There are a couple of other applications in here that I recused on, so I'm going to leave you with a 3-0 vote, but I just wanted to make sure everybody understood that.

MS. LERMER: I just want to remind everyone Line 28, though.

THE CHAIRMAN: Okay. So the motion's been made and seconded. Any further discussion? If not, I'll call the vote. Those in favor say "aye."

SEVERAL: Aye.

THE CHAIRMAN: Those opposed?

(No verbal response)

THE CHAIRMAN: Those abstaining?

(No verbal response)

THE CHAIRMAN: Three to zero to one, Kathy, with my abstention being for the reasons that I stated earlier.

Okay. June 28th.

(Members talking among selves)

MS. PECKHAM: This does not look to be the one--the minutes that I submitted at the last meeting which we adopted.

THE CHAIRMAN: Okay. Good.

MS. PECKHAM: So we'll exclude these.

THE CHAIRMAN: Okay. Did you change any other ones on that 9/7? So even though it's the wrong copy, it's the right copy, right? Okay.

MS. PECKHAM: I don't think we can adopt minutes that have spaces.

THE CHAIRMAN: Well, we can strike them. I mean--

MS. LERMER: Yeah, but you know, and the problem is that we had different sound systems all summer long.

THE CHAIRMAN: Well, like, usually where they--like, on Page 7, Line 293, Mr. (unintelligible) and then blank, I'm

sure that's where he gave his address and she just didn't catch it or something, but--

MS. PECKHAM: Well, here, that also, you know--

THE CHAIRMAN: Yeah.

MS. PECKHAM: I mean, I guess we can take them as they are and find out what they said.

THE CHAIRMAN: Okay.

MS. PECKHAM: Other than that, it's fine with me.

THE CHAIRMAN: So what do you want to do when those blanks appear, Michele, leave them or--

MS. PECKHAM: Just leave them and, you know, if the tape is inaudible or--

THE CHAIRMAN: Okay. I guess the only suggestion I would have, an amendment, rather, would be on Page 8, this must be with the changes that I had suggested because at Line 237 in parentheses it's a reminder to myself, it says, "JSQ, is this right?" So I'd move to strike that because it was simply an editing procedure by me to remember to check on that. And I, quite frankly, don't know whether I ever did follow up on that

or not, but--

And then down on Line 353 it says, "Note from Maureen," she was our--Maureen? Okay. I mean, I don't believe notes from our recording secretary should be in there, so I would move to strike Lines 353 and 354. Other than that, I guess at this point I'm taking on face that all the versions with edits that we circulated are now in this because this isn't redlined, so I just--I don't know, but--

With that line of hope I'm, I guess, ready to go forward.

MR. TURCHAN: Since you made the changes, why don't you make a motion?

THE CHAIRMAN: What's that?

MR. TURCHAN: Why don't you make a motion? You've got the changes there, if you--

THE CHAIRMAN: Go ahead. I'll entertain a motion. Oh, you--oh, I see what you're saying, Ted. I make a motion to accept this version not to include Lines 83 to 194, because those have already been adopted. I move to accept with the following amendments: Page 8, Line 337, strike everything after

"2005"; and Lines 353 and 354, strike in their entirety. That's my motion. Do I hear a second?

MS. PECKHAM: And I'll second it.

THE CHAIRMAN: Seconded by Peckham. Further discussion?

Made and seconded. Any further discussion? Those in favor, say "aye."

SEVERAL: Aye.

THE CHAIRMAN: Those opposed?

(No verbal response)

THE CHAIRMAN: Those abstaining.

(No verbal response)

THE CHAIRMAN: Okay. Four to zero.

MR. HILLIARD: Mr. chairman.

THE CHAIRMAN: Yes.

MR. HILLIARD: Have you already done the June 20th yet? Looking over your shoulder I saw a reference in the June 28th that you'd approved June 20th.

THE CHAIRMAN: It's probably true.

MR. HILLIARD: Okay. All right.

THE CHAIRMAN: Okay. I'm going to step down from the board at this point, Michele, so you can do the minutes from July 6th--

MS. PECKHAM: I was not available. I was not here.

THE CHAIRMAN: Oh, okay. Then Ted. That leaves it up to two people, doesn't it?

MS. PECKHAM: Yeah, so don't adopt them today. We'll deal when--it's only with regards to Crown, anyway, so when Susan comes back.

THE CHAIRMAN: Okay.

MR. TURCHAN: With regards to the July 6th, 2005, meeting, we're going to have to postpone approval of the minutes till Susan gets back because we don't have enough people to vote it. Do you agree?

MS. PECKHAM: Yes, I agree.

MR. TURCHAN: Done.

THE CHAIRMAN: Okay. July 18. Okay. That's this matter. So that was actually a special, wasn't it? So this is all on the current--on the Woodland, right? And it looks to be redlined, so I feel fairly confident with the changes that either Michele or I noted would be in here.

MS. PECKHAM: I was a little confused as to what this particular reference is on just about every page, it says, "Missing Page 4 from binder," after each issue, Issue A, Issue B, C--on page--I'm sorry--Page 3--

THE CHAIRMAN: Oh, I can't see it in the minutes, but I can tell you right now what that issue was. Remember we were-- it was Attorney Field's letter and there were some things that we were talking about, whether the applicant was going to provide certain information or not, and we all went racing to Attorney Field's letter in the record. And lo and behold, the one exact page that we needed was gone, and that was Page 4.

MS. PECKHAM: Okay. Thank you.

THE CHAIRMAN: Okay.

MS. PECKHAM: I've read it and I don't have any changes.

THE CHAIRMAN: Okay. I'll entertain a motion, then.

MR. HILLIARD: Mr. chairman, I'd ask if we can try to keep--on Page 7 of 8, under Other Business, I'm still confused about the status of the June 20 minutes. This one says that acceptance was postponed.

MS. PECKHAM: If I can--I remember this. We thought that they were accepted. They were not accepted because we went back and we found that it still said "draft." We had Red go upstairs, we researched a little bit; we decided they had not been accepted. And then I'm not sure if we went forward to accept them or not, because I can't remember. But when we said that they were accepted the first time, they actually had not been.

MR. HILLIARD: Okay. So we need to continue to look at this and see whether you--

MS. PECKHAM: And see where they ended up, yeah.

THE CHAIRMAN: Okay. So what we need further action on for minutes, then, is June 20, we just need a status; and if they aren't, then adopt them, right? And what was it, July 6th we just postponed, as well?

MS. PECKHAM: Mm-hmm.

THE CHAIRMAN: Okay.

(Several voices at once)

THE CHAIRMAN: Okay. Do we have a motion on July 18th?

MS. PECKHAM: I move that we accept the July 18th minutes as provided.

THE CHAIRMAN: Moved by Peckham. Do I hear a second?

MS. LERMER: I'll second it.

THE CHAIRMAN: Seconded by Lermer. Any discussion?

Those in favor, say "aye."

SEVERAL: Aye.

THE CHAIRMAN: Those opposed?

(No verbal response)

THE CHAIRMAN: Those abstaining?

(No verbal response)

THE CHAIRMAN: Ted abstaining.

MR. TURCHAN: I wasn't here.

THE CHAIRMAN: Right. Okay. July 26th. This is--Ted, were you here? You were here?

MR. TURCHAN: No.

THE CHAIRMAN: You weren't. All right. Well, if I'm going to be recusing in part, then you ought to at least--

MS. PECKHAM: Well, can't we accept it in part, or is that too difficult?

MS. LERMER: Well, we're going to have to.

MS. PECKHAM: In other words, just accept this as to the relevant cases.

MR. TURCHAN: We're going to have to, anyway. There was only three.

THE CHAIRMAN: Right. He wasn't here, so anytime-- well, either you or I don't--

MS. PECKHAM: Well, this isn't pertaining to any of the cell-tower cases, is it, or--

THE CHAIRMAN: It's Crown, which I was not on.

MS. PECKHAM: (unintelligible) Line 40.

MR. TURCHAN: This is postponed until--

MS. PECKHAM: Oh, okay.

So we can postpone all of this, I guess.

MR. TURCHAN: You have to.

MS. PECKHAM: Till Susan gets back.

MR. TURCHAN: (unintelligible)

THE CHAIRMAN: Okay. All right. August 16th, Pages 1 of 24. Absent, Ted Turchan; and I naturally recused on the Fuller, so--

MS. PECKHAM: No, you didn't (unintelligible)

THE CHAIRMAN: Well, I must be carrying that (unintelligible) I didn't, right. I'm sorry.

MS. PECKHAM: (unintelligible)

THE CHAIRMAN: It came in the same night as Crown, so-

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All right. So we've got--anyway, we've got this matter, which goes all the way to the end--

MS. PECKHAM: This also has some blank spots, but it

just means she didn't have--(Stopped talking)

THE CHAIRMAN: Okay. The problem is is that on Page 21 it starts giving computer gobbledy-gook through the rest and then picks up on Page 24, "--tower or any tower." So I don't know what we're missing in the interim there, if anything.

MS. PECKHAM: You mean the dBm levels? Oh, that computer gobbledy-gook at Page 22.

THE CHAIRMAN: Right. I would never characterize anybody's testimony as gobbledy-gook.

MS. PECKHAM: I mean, I thought you mistook it for an error.

THE CHAIRMAN: No, I'm talking about on Page 21, Line 976, is a bunch of boxes, and then on the next page, a bunch of letters and boxes, and it's the same on the next page. And then on Page 24, it picks up again.

MS. LERMER: unintelligible) the Boies property?

THE CHAIRMAN: Well, in a perfect world, we would, I suppose. What page?

MS. LERMER: Three-oh-two. Oh, what page. Seven.

THE CHAIRMAN: It's B-O-I-E-S, right?

MS. PECKHAM: Right. We have no way of knowing whether or not Line 977 actually said anything and 978 all the way to 990. We don't know if text is missing.

MS. LERMER: Well, yes, we do. We have a tape, we have a video.

(Several voices at once)

MS. LERMER: Tonight we don't know that.

MR. TURCHAN: No, tonight (unintelligible)

THE CHAIRMAN: Why do we have--I'm just looking, and on a lot of these pages it's just basically a transcript.

MS. LERMER: Right. She was being more thorough.

THE CHAIRMAN: Okay. But I don't know.

MS. PECKHAM: (unintelligible)

THE CHAIRMAN: Well, it looks like we might be missing some--

MS. LERMER: I suppose there's so much information she probably didn't dare deviate.

THE CHAIRMAN: Well, why don't we just--why don't we pass on this until we can figure out whether we've got--I hate to do it. I was hoping we could kind of get this logjam broken but--

MS. LERMER: I mean, the content doesn't look wrong; it's just it makes you wonder what's missing, so it will take us two seconds once we figure that out.

THE CHAIRMAN: Well, we got some of them out of the way, anyway, right?

MS. PECKHAM: One more.

THE CHAIRMAN: Oh, sorry. August 30. Okay. This was Fuller or a letter about Fuller. Then there's Cellco.

MS. LERMER: Where do you see that it states--reference to Fuller?

THE CHAIRMAN: On the very front page. I think it was when I was just doing correspondence, and so--

MS. LERMER: Oh.

THE CHAIRMAN: Line 29.

MS. PECKHAM: This looks good to me.

THE CHAIRMAN: Okay.

MR. TURCHAN: I make a motion we approve the August 30, 2005, minutes as drafted.

THE CHAIRMAN: There's been a motion to accept as drafted. Is there a second?

MS. LERMER: I'll second it.

THE CHAIRMAN: Seconded by Lerner. Any further discussion? Those in favor say "aye."

SEVERAL: Aye.

THE CHAIRMAN: Those opposed?

(No verbal response)

THE CHAIRMAN: Those abstaining.

(No verbal response)

THE CHAIRMAN: Four to zero. Okay. So we've still got four sets of minutes to do at a future meeting. Kathy, if you could make sure that those are put on for our next meeting, which is going to be the 25th? So, Kathy, on the October 25th meeting should be approval of minutes. And it doesn't need to be

on the agenda, but, Red, could you make sure that the June 20th thing gets looked into? And then just July 6, 26th and August 16th, I think we just--we've got them but we just have to take them up when we get Susan back.

MR. MABEY: I'll check on that.

THE CHAIRMAN: Clear as mud?

MR. MABEY: (unintelligible)

THE CHAIRMAN: Yeah. And which set of minutes was that?

MR. MABEY: It was the (unintelligible)

THE CHAIRMAN: August 16. Okay. All right.

Okay. So that gets rid of minutes.

MR. HILLIARD: And (unintelligible) we don't yet have September 13 minutes? That was the last time we were together--

THE CHAIRMAN: Not--

MR. TURCHAN: --on this case.

THE CHAIRMAN: Not in these boxes.

All right. So we ought to put that down.

Okay. Where were we? We were going to begin a meeting, right? Okay. 2005:14, GridCom Cingular Wireless, 225 Research Drive, Westborough, Mass. 01582, requests a variance, 1, from Article IV, Section 415.3, to locate a 120-foot telecommunications tower on 22 Woodland Road; 2, from Article IV, Section 415.6.A.1, for relief from the fall-zone setback requirements; and, 3, from Article IV, Section 409.9.B, for relief from the 100-foot wetlands setback. Property location, 22 Woodland Road, R-2 Zone District, Tax Map 2-50. This session is a continuation from the September 13th session.

Okay. We appear to be--who's going first this evening, gentlemen?

MR. FIELD: Well, I'm going to defer, but may I--this is a terrific effort, and there is one important document which I submitted to you back on, I think it was, on August 16th that does not appear to have been--excuse me--July 18th--does not appear to have made its way into the book. And I would like leave of the chairman to just call it to your attention and ask it to be.

THE CHAIRMAN: Certainly.

MR. FIELD: That was--you originally designated it as ZBA 120. I don't think it's been converted to one of the documents in the materials prepared by Mr. Hilliard, and it is a letter of John Sokul dated 6/28/05, in which he articulates a lot of the law and arguments in the Chapel Road case, which if you'll recall, Mr. chairman, I suggest it might help you in this case without getting additional documentation. I just think what happened is whoever prepared this did not get it from the Chapel Road case into this book. So I'd ask that you introduce that. And I don't have a designation number on it.

THE CHAIRMAN: Okay. We appreciate that.

MR. FIELD: Thank you.

THE CHAIRMAN: Russ, can you follow up on that for us?

MR. HILLIARD: Yes. We pulled that out back in early August because we thought it was misfiled on the Chapel Road case. But it was your 120 here. We can take care of it.

THE CHAIRMAN: Okay. Great.

MR. FIELD: Thank you.

THE CHAIRMAN: Thank you. Any other--something that's

not-on-the-record type of comment or documentation issues?

If not, counsel, you're up tonight, and you'll be through your introductory remarks by December?

MR. LOUGHLIN: Mr. chairman, members of the board, I'm Peter Loughlin, and I'm here tonight with Jim Bassett and Jeffrey Spear of Orr & Reno, and we're here on behalf of Dennis and Donna Kokernak of Ship Rock Road. And we actually started out here in this room, as you recall, five months ago. And I would guarantee that none of us thought we were going to spend this much time together over the next few months.

I have a couple of procedural things. And you don't need to do anything about this, but I just wanted--I promised I'd correct the record on this. On Exhibit No. 110, which is P-13, one of the P-13 exhibits, it was a map of the abutters who opposed or supported it, and there was a--one of the properties that was on Rockrimmon Road--the name of the abutter escapes me--Paul, maybe--anyway, it's listed as supporting the application. And I'd ask that her name be shown as neutral. I think it's Page 2.

UNIDENTIFIED: Cooper.

MR. LOUGHLIN: Yeah. But I just wanted--I promised I'd clarify the record on that. We can later resubmit that so that will be properly listed.

So I guess that would be P-13, and it was Exhibit 110. And on P-13 it has a number of--all of the exhibits we submitted one night are all lumped under P-13. So that's No. 110 under that.

THE CHAIRMAN: She was listed as pro, but she's neutral. So there's only--which lot number is that?

MR. HILLIARD: 2-57-18.

THE CHAIRMAN: Two point seven-one acre? Oh, all right. Okay. Thank you.

MR. LOUGHLIN: The other thing, you were just talking about the minutes. On, I think it was, September 21st I sent a letter to the chair with a full set of the transcripts of the June, July and August meetings, and I sent those electronically to your counsel, to Jon Springer, so that we all have those. And I just would ask that they be made part of the record and hope that they may be of some assistance. Those have been transcribed from your tapes, audiotapes, and from the video tapes done each night. And we have--so I think you have those three meetings

electronically and on paper. And I have--it just was given to me tonight at five o'clock the minutes of the September 13th meeting, which I submit if that might be of any assistance.

THE CHAIRMAN: The minutes or transcript?

MR. LOUGHLIN: Transcript of the meeting.

THE CHAIRMAN: Sure.

MR. LOUGHLIN: And in fact, I sent that out about five o'clock electronically to Jon and to your counsel, also.

THE CHAIRMAN: So that should be up to date?
Transcripts for all meetings are in at this point?

MR. LOUGHLIN: Yes.

THE CHAIRMAN: Okay. Thank you.

MR. LOUGHLIN: Now, at the August meeting, I stated that the 120-foot tower proposed by GridCom on Woodland Road was the wrong thing in the wrong place, and I indicated the Telecommunications Act does not require nor does your zoning ordinance permit this tower at this location. Jim Bassett is going to speak to you about the Telecommunications Act ramifications tonight, but I'd like to talk about why we feel

the site doesn't qualify for a variance. And I'd like to just go over some of the testimony you received and indicate some of the testimony we'd like to present.

And I would begin by pointing out, as the board is always well aware, the burden on qualifying for a variance lies with the applicant in all instances. And we've had a number of supreme court cases on variances in the last year or so. And the--I'm going to quote from several of them. This one is one that was decided in just April of this year, *Harrington v. Town of Warner*. And in that the court said, "Use variances pose a greater threat to the integrity of a zoning scheme because the fundamental premise of zoning laws is the segregation of land according to uses. Generally, a use variance requires a greater showing of hardship than an area variance because of the potential impact on the overall zoning scheme."

Now, some of the things we want to talk about tonight is the impact on the neighborhood, on the zoning scheme of the variances being requested. The same five conditions apply in this as in every other variance which you deal with, the first one being that the applicant must demonstrate that granting the

variance would not diminish surrounding property values. And we feel that it will. Here's what GridCom said at Page 124 of the June 20th transcript: "Like it or not, you will have to allow these towers into your communities. You have to allow a reasonable opportunity for these to be sited. The fact that somebody can see the top of a tower a mile away doesn't mean that there's a diminished property value. And that's basically the situation we're faced with here. It's a very, very low visual impact." Well, I don't think that's an accurate statement of what the federal law is concerning telecommunications facilities, it's to allow for services, not necessarily for towers. And Jim will talk about that.

In terms of what impact to the values are, you heard Vern Gardner testify, and he submitted a report. We've questioned some of his comparables or all of his comparables, as to whether they were really comparable to the properties that are being affected here in North Hampton. But I think Vern's candid testimony actually supports the position that we're bringing to the board, and that is at the June meeting Board Member Peckham questioned Vern about the effect of a tower on high-end

properties. She specifically asked about that, and his answer was, "Good question. One of the things you'll find is that it depends upon expectation. For example, if I owned an entry-level house, I have certain expectations. I may look out at an unfavorable environment; however, if I am a million-plus, I have other expectations. I expect a pristine, luxury neighborhood, a selective environment, if you will." He went on, "So, yes, it does factor in and I did consider it. In fact, I think I noted it in my opening page in this report, 'Price Range of Subject Neighborhood.' So to answer your question, yes, it does. It wasn't part of my consideration; it does not play into this simply because I believe that the canopy is substantially high enough to screen all of the properties and to reduce the really obvious, in-your-face impact that a cell tower might have."

"There's one other point I would bring up"--this is Vern talking--"and that is there was one aspect that concerned me, and that was the days on the market. And you'll find that some properties with adverse influence had been on the market for some time. I don't think that that is the case here, again, simply because the properties are screened. There is none of

that right upfront, highly visible adverse influence in this particular case that is in other cases. So I'll leave you with that."

Well, the reality is--and we're going to hopefully show this tonight--this tower on Woodland Road as proposed is in your face if you're on one of the lots that's owned by the Kokernaks. And we'll show you, through Jim Verra, the registered land surveyor, where the lots are. They were approved by the North Hampton Planning Board--and where the homes on those lots would have to be as a result of the topography. And I think it will be rather clear that they will be very much impacted by the proposed tower. The lots actually are going to be somewhat closer, substantially closer, than almost any of the lots on Chapel Road.

On the issue of value we also will have Frank Shirley, an award-winning architect from Cambridge, Mass., who will present to you a model that was prepared showing the tower and the surrounding properties. And, again, I think it will show you that, using Vern's words about the in-your-face effect, that there is definitely an impact as a result of that. And, finally-

-not finally, but we'll have Louis Manias, who is an appraiser in the state of New Hampshire, will present a report and discuss his opinion on the impact that this will have on value. And, finally, Dennis Kokernak, the owner of the property that's most affected, will present his view of this from an owner's point of view.

The case *Nestor v. the Town of Meredith*, it's a 1994 New Hampshire Supreme Court case, and the court in that case said, "In arriving at a decision the members of the ZBA can consider their own knowledge resulting in their familiarity with the area involved." And the court went on to say that, "The resolution of conflicts in the evidence is a function of the ZBA." So it all comes down to you, like it does in every case, but we think we have and will present evidence, substantial evidence, that there will be a diminution in the value of surrounding properties. And, as you know, the applicant has to meet all five conditions; and if they miss any one of them, they are not entitled to the variance.

The second requirement for a variance is the applicant must prove that the variance will not be contrary to the public

interest. And here's what GridCom said on that. In Jon's presentation he said, referring to a vote that the selectmen took to explore alternatives to the Woodland Road or Chapel Road site, Jon indicated, "That's," quote, "a tacit admission that this type of service is in the public interest and it, you know, provides the necessary service to everybody. So we think we meet the criteria for all three variances."

There are a couple of problems with that statement, and one of which was the law, even since Jon made the statement, has been clarified by the supreme court. On September 2nd in the case of *Chester Rod & Gun Club v. the Town of Chester*, which coincidentally involved a cellular telecommunications tower, the board had two applications pending, and the town had filed an application for a variance, and the town meeting had voted to grant--to lease town-owned land for a telecommunications tower. So when the private application came before it, the board of adjustment voted it down saying, well, that's not in the public interest because the public has voted to lease land for a cell tower, so this isn't in the public interest. The supreme court rejected the notion that a town meeting vote reflected the

public interest, and it stated--and I'm quoting--"The relevant public interest is set forth in the applicable zoning ordinance."

So the test here is not what the well-meaning board of selectmen is exploring or not exploring but what does your ordinance talk about the public interest being. And it states it pretty clearly. In section 4.15.2 in your telecommunications ordinance, two of the purposes are, under Section B, "to reduce adverse impacts such facilities may create, including but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values." That's one of the purposes. The second one is "to permit the construction of new towers only where all"--"where all other reasonable opportunities have been exhausted, and to encourage the use of towers and antennas and to configure them in a way that minimizes the adverse visual impact of towers and antennas." Clear recognition that towers are, in the hierarchy of things, way down and only as a last resort.

So the protecting of aesthetics, safety and property values is the public interest. And improving wireless service in North Hampton may be in the public good, may be helpful, but the question is here is whether the granting of the variance requested for this particular tower on this particular piece of land satisfies the public interest. And I would suggest, given the impact of this tower, which you'll hear more about tonight, that it's not in the public interest and it isn't consistent with those two conditions or purposes that I just pointed out.

And one strong public interest is in seeing that the ordinance is enforced and that the integrity of zoning districts is maintained. And as in one of the cases I mentioned at the beginning, the separation of uses is one of the critical aspects of zoning.

And GridCom has failed to provide you with information in any detail on the use of alternative structures, as discussed in Section 4.15.3 of the ordinance, which specifically makes alternative structures part of the wireless district and even allows existing structures to increase by 40 feet to accommodate the installation of wireless service. And Dennis is going to

talk, Dennis Maxson from--David Maxson from Broadcast Signal Lab is going to talk about that briefly tonight and some of the developments in that area.

So I'd ask is it really in the public interest to have one or more additional towers when the desire for stronger service can be satisfied by a less obtrusive means? And I submitted, and I put them on the--a set of the--yes, the--and I don't think they were marked yet as exhibits, but one is the Rye Congregational Church in the center of Rye, and the other is the New Castle church, which I'm sure you're all familiar with both of those churches. The church in Rye has telecommunications antenna in the steeple or on the steeple, and there was no detracting from the aesthetics. And in the town of New Castle there is a--that proposal is presently before the zoning board of adjustment. And it's two--I submit them as examples of alternatives that your ordinance contemplates and which haven't been explored in this case. In fact, other than David Maxson presenting testimony, I'm not sure you have any significant testimony before you on what there are for alternatives to wireless towers.

THE CHAIRMAN: Counsel, I don't mean to interrupt you, but in case you mentioned it, I missed it. Did you say who the applicants were in each of these cases?

MR. LOUGHLIN: No, I didn't.

THE CHAIRMAN: Okay. I just wanted to make sure I didn't miss it. I'm not sure--

MR. LOUGHLIN: It may say it on it; I can't tell you.

(Several voices at once)

THE CHAIRMAN: That's okay. I didn't mean to interrupt you. Thank you.

MR. LOUGHLIN: And the New Castle application is still pending.

Okay. The third requirement is concerning the spirit and intent. And the applicant, I would suggest, has failed to establish that the granting of a variance is consistent with the spirit and intent. But what did GridCom say, "We believe that they are within the spirit and intent of the ordinance. It is a very passive use. It meets the co-location requirement." And going on--this is from Jon--"One thing I always look at when

you're talking about spirit and intent of the ordinance is what else is allowed in the zone, what else could Mr. Morton do with his property, and, you know, what use is permitted there. A school, a church. You can get, by special exception, public utility buildings, hospitals, riding stables. This zone allows pretty high use, intensive use. This is not some sort of pristine zone where nothing can ever be built except for high-end housing."

I'm not sure all of those uses are going to fit on Mr. Morton's four acres, which is probably 70 percent wetlands, but I call that argument a "count your blessings" argument, that maybe you don't like this proposal, but count your blessings, it could be a lot worse. Well, I don't think that realistically it can be a lot worse for abutters. And I didn't sense that the board was persuaded by that.

I've just spoken to you about the purpose of the ordinance, and it establishes the hierarchy of locations. First is I-95, second is town-owned land, third is existing structures, and fourth, if other alternatives don't work, would be other locations in the town. Jon pointed out that it meets co-

location, and that's right, it meets one of the purposes. But, for the most part, it just doesn't satisfy the spirit and intent of the ordinance, and there's just no evidence, there's little evidence that GridCom has looked at other (unintelligible), and certainly no evidence that they've exhausted all other reasonable opportunities as your ordinance requires.

We--I would suggest that North Hampton doesn't need this tower, it doesn't need the kind of blight on the landscape that the, for example, the tower on Walnut Street is. It's the--and that in more of a commercial zone, but here we're talking about it is a pristine area. And that's what people expect when they look at lots in the Ship Rock area. When they look at lots in that area, they don't expect to see a large tower.

It wasn't the obligation of the abutters to demonstrate that there are alternatives to this tower. That's the obligation under the ordinance of the applicant. It wasn't being done, and the Kokernaks have brought forward the evidence on that point, not as their obligation but as something that they think is important for this process.

The fourth requirement for a variance is that they have to

demonstrate that the granting of a variance would result in substantial justice. And what GridCom said was, "This is going to bring coverage to an area where there is a significant gap in coverage. The Telecommunications Act says you have to allow a reasonable opportunity for carriers to come and provide coverage. And the ordinance, like it or not, in our opinion, is flawed because you have a narrow strip up by 95 and then you have a few select town-owned properties. And we can't get coverage in this area using those permitted sites."

In fact, we feel the granting of the variance would be a substantial injustice. It will very detrimentally affect the character of the neighborhood and result in a deviation from the permitted uses in the district. Substantial justice does not require that the applicant be allowed to install any facilities it desires or the least expense method for providing services. And something that we probably need to keep in mind is you have two applications before you now for wireless services for what is seen as the need to fill a wireless area or strengthen wireless service now. There's no gap--

THE CHAIRMAN: Excuse me, counsel.

Gentlemen, can I help you?

MR. LOUGHLIN: They're witnesses with us.

THE CHAIRMAN: Okay. Come right across. Okay. We'll take a three-minute break.

(Off record -- on record)

THE CHAIRMAN: I'd like to get a couple of preliminary things talked about here, if we could. First is, Attorney Springer, you have some sort of a wonderful excuse for me why we don't have a survey plan in front of us, right?

MR. JONATHAN SPRINGER: No. I have the plans right here.

THE CHAIRMAN: Oh, you do?

MR. SPRINGER: I didn't want to rain on Mr. Loughlin's parade.

THE CHAIRMAN: Okay. And I don't want to interrupt the flow, Peter, but I guess before the--just so we don't forget that, can we--I mean, is that just a simple submission and--okay.

MR. SPRINGER: That's all I'm going to do.

THE CHAIRMAN: Can we do that now, then, so I don't forget to do that?

MR. SPRINGER: We can do that right now. We have--how many copies do you want?

THE CHAIRMAN: Ten, if you've got them.

MR. SPRINGER: Well, we only have four right now.

THE CHAIRMAN: Okay.

MR. SPRINGER: They came in today. So if you want additional--

THE CHAIRMAN: We'll take them. Keep one for yourself, I think is probably a good idea.

MR. SPRINGER: Right. We'll get the others.

THE CHAIRMAN: Provide one to opposing counsel and two to the town, I guess is--you're just going to have to share and share alike. Is that okay, gentlemen? Can you get that circulated amongst yourselves?

MR. LOUGHLIN: Yes.

THE CHAIRMAN: Okay. One for the record. And I'll

just-I'm not going to look at it now. It's essentially the same we have but just the stamp on it, right?

MR. SPRINGER: Basically, yes.

THE CHAIRMAN: Okay. Basically or it is?

MR. SPRINGER: It's the same plan.

THE CHAIRMAN: Okay. I didn't know if you meant that there were minor changes made to it or--

MS. PECKHAM: Is the surveyor here?

MR. SPRINGER: The surveyor's not here.

THE CHAIRMAN: Okay. Well, I'm sure that will get into the gristmill of ideas and representation here, and if there's something substantial in someone's opinion, it will be brought to our attention.

MR. SPRINGER: I'm sure it will.

THE CHAIRMAN: But as far as you know, it's the same thing, just with a stamp on it?

MR. SPRINGER: Absolutely.

THE CHAIRMAN: Okay. Great. The next thing was, Mr.

Maxson, are you about to make a presentation here or is someone else?

MR. DAVID MAXSON: Attorney Loughlin's just going to--

THE CHAIRMAN: Okay. Could you--and I think you know, counsel, that I've been--try to be very liberal in the allowance of time and creating a record. I think that's important, but I could be getting my meetings mixed up here, too, but it seems to me we've heard from Mr. Maxson, at one application or the other, two or three times at this point. Is there something new?

MR. LOUGHLIN: Yes.

THE CHAIRMAN: Okay. Because I don't want to be cumulative on what we're listening to, so--

MR. LOUGHLIN: It definitely is something new. We understand--

THE CHAIRMAN: Okay. Sure. Well, then, you have the floor. And please proceed.

MR. LOUGHLIN: And just to clarify, the statements that I've been quoting from Jon Springer are all in the transcript of the June 20th meeting, roughly between Pages 120

and 132. And I should probably point out that by quoting Mr. Springer at some length doesn't mean that he's a bad person; he may be a bit misdirected, but he's certainly not a bad person. He's a nice person.

The first requirement is that the applicant--

THE CHAIRMAN: The record will be so noted, and it will also note that he has a wonderful sense of humor, apparently. So-

MR. LOUGHLIN: Let's hope so.

The fifth requirement, the applicant has failed to establish that special conditions exist that the literal enforcement of the ordinance will result in unnecessary hardship. So what does GridCom say? And this is in the transcript of the August 16th meeting at Page 63. It says, "In terms of the use variance, we have to show the *Simplex* criteria, the first of which is, 'The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property considering the unique setting of the property and its environment.' And if you look at the facts of *Simplex*, clearly, the fact that the landowner has one use of his

property, it doesn't bar him or her from seeking a variance for another type of use. That's exactly what *Simplex* is doing. We feel the property here does have some unique characteristics. I don't know the amount of area--well, every property in that area is going to require a variance. If you look at this property, again, the size of it, the location of it, the tree cover and the RF footprint, we feel all show this is a good property to use. The monopole at 125 feet would solve the coverage issue."

In the last year or two the supreme court has been deciding variance cases at a record pace. And--but one thing that's been consistent--and sometimes it may be hard to identify that, what's been consistent in some of the cases--but in *Simplex*, *Rancourt*, *Shopland*, *Boccia*, and *Harrington*, where they upheld variances, the one thing that was consistent was it was something, there were special conditions about this particular property that distinguishes it from other properties. And I would suggest there's really nothing about the Morton property that causes the restriction on industrial cell towers to affect it differently than most other properties.

The court, on April 4th, in the *Harrington* case, gave us

some language that I think helps to understand how to apply-- helped me to understand, at least, how to apply the test of *Simplex*. And the court said, "This factor," referring to the unique-setting requirement--"requires that the property be burdened by the zoning restriction in a manner that is distinct from other similarly-situated properties. It does not, however, require the property to be the only property so burdened; rather, the burden cannot arise as a result of the zoning ordinance's equal burden on all property in the district. In addition, the burden must arise from the property and not the individual plight of the owner. Thus, the landowner must show that the hardship is a result of the specific conditions of the property and not the area in general."

I know there was a discussion with the chair on the subject, but everything that Attorney Springer pointed out about coverage and the RF footprint are requirements that are part of the plight of the owner, not of the property. And I'm sure there are parcels that, probably, parcels that are larger than this one, but I didn't hear articulated anything that really distinguished this parcel from others.

Then the court said, "*Simplex* requires consideration of the surrounding environment." That's the second part of the first test. "This includes evaluating whether the landowner's proposed use would alter the essential character of the neighborhood. Indeed, because the fundamental premise of zoning laws is the segregation of land uses, the impact on the character of the neighborhood is central to the analysis of the use variance."

And I would suggest that placing a large telecommunications tower in this neighborhood--and you'll get a better chance to see what the effects with the model and the plan--but that will have a very significant impact on the neighborhood. So it will affect the character of the neighborhood.

And, finally, the court said--this is in the case of, the case decided in September, the *Chester Rod & Gun Club*--"Another approach to determine whether the granting of a variance would violate basic zoning objectives is to examine whether granting the variance would therefore affect the public health, safety or welfare." And I think it would affect the public welfare. It would also have health and safety effects, as will be discussed, on the impact of these towers and things falling off the towers.

And in terms of the safety issue of it, we're talking about a 124-foot steel tower that's, I don't know, six or eight feet at its base and about 90 feet from a residence that is going to be, presumably, occupied on a 24-hour basis. And I would suggest that that is not in the interest of health, welfare or safety.

I've gone through those conditions rather quickly, being mindful of the time. And what I'd like to do is to go on with our presentation. And I'd like to ask David Maxson of Broadcast Signal Lab to present some new evidence to the board that we've not had before.

MR. DAVID MAXSON: Thank you. I'll try to be as brief as I know how. I do have new information, some of which I think is exciting and will be of interest to the community as well as the board. And what I'd like to touch on today is the state of the Distributed Antenna System industry. We've got some new information relating to the recent Brookline (unintelligible) proposals, and we would like to fill in some blanks that have been left by some of the comments that the applicant has made attempting to dismiss Distributed Antenna Systems as an option. We've been working on developing a design for a Distributed

Antenna System here in North Hampton, and I have some news and some information about that. We conducted a drive test in order to support our design work, and I'd like to talk about that and also compare and contrast that to Cingular's drive test that they conducted on the existing coverage.

This is from the record from August, and this was one of the remarks that the applicant has made attempting to dismiss DAS. In this case it was explaining the reason that actually it was Mr. Kokernak who went down to Nantucket was because "it's about the only place in New England that DAS is being used except for maybe a couple of isolated communities and it's not in widespread use anywhere." And what I'd like to do first is to submit, if I may, to the record a list of some things we've collected--and I'm sure there's more DAS systems out there--but this is a list of DAS systems related to some of the companies that we've been looking into and talking to. As you can see, there's quite a bit going on nationwide with Distributed Antenna Systems.

Specifically, with GridCom's outdoor Distributed Antenna System, in their Brookline, Massachusetts, application, they

indicated that there were three systems that were either constructed, as in the case of Nantucket, or under construction, these other two locations. These are the number of miles that these fibers that they said in their Brookline application that they were putting in for these systems. So that's right in nearby Massachusetts, right here in New England.

We also have one of GridCom's competitors, a company called ClearLinux Systems. And in their application to the town of Brookline they listed many states in the Northeast and in the Central North and literally dozens--that they have dozens of facilities that they're in the process of designing or developing. Hilton Head, South Carolina, has a facility. The company tells me that--the company that supplies some of the equipment for the systems says that Cingular is going on this system if they're not on it already. Brookline, Massachusetts, I mentioned. Hull, Massachusetts, there's a system that has been under construction lately. I'm not sure of its status. Arlington, Massachusetts, has been in discussion with a wireless carrier about putting a system there. So I think the weight of Distributed Antenna Systems' deployment in the United States is

tipping the scale in favor of these systems more and more and against towers more and more, especially where towers really aren't necessary.

In Brookline, Massachusetts, there were three bidders: GridCom, ClearLinux, and Dianet, and the winner was just announced last week, and that company is ClearLinux, one of GridCom's competitors. And we have here, for the record, this is--we do have copies of the application documents, which we'll--or the materials from the Brookline proposals--thank you--for the record. ClearLinux has proposed a 17-to-20 node system to start in order to satisfy what Brookline's been asking for. But they looked at it, and they're seeing that there's more potential from this network for their customers from day one. So they're anticipating perhaps as many as 36 nodes to expand the footprint of that new DAS system as their new customers come on and want to expand perhaps into other nearby spots in Brookline or even across the border into Boston.

Now, in North Hampton we've been working on developing a plan for a Distributed Antenna System. And we've been doing the initial network design work. We conducted our own drive test on

September 26th. We tested seven locations in the general area where Cingular says it has a gap. And we've identified a preliminary layout of four to five nodes that we think would do a good job as an initial Distributed Antenna System in North Hampton.

And the--do this now--this is the field test report, the drive test report. I have seven copies that are three-holed and three more that are bound. I hope that's helpful. And that--I'll talk about that shortly.

The other thing, this is what I think is really very exciting, that the Kokernaks have been very progressive in dealing with this whole problem of a wireless service in this part of town. And under their direction we've put together an application for site plan review, and that was submitted to the planning board, to the town, today. And it's site plan review and conditional use permit application together. And that was submitted to the planning board because there's no variance required for this system. So we're ready to start the process of getting the permits we need to build this network.

MS. LERMER: Who's "we're" ready?

MR. MAXSON: If Mr. Kokernak can address that, I think it would be best.

MR. KOKERNAK: I didn't quite hear the question.

MS. LERMER: I was just curious who's sponsoring this or--

MR. MAXSON: Who is "we"?

MS. LERMER: --who's going to fund it or who's the DAS system? You. Okay. All right.

MR. MAXSON: Okay. And I know there was a question that was raised at the Chapel Road hearing regarding my interest in a Distributed Antenna System.

MS. LERMER: (unintelligible) thinking it again.

MR. MAXSON: That's certainly a fair question. So I'd thought I'd answer it here, because it will certainly be answered in the other case, as well.

MS. LERMER: (unintelligible) asked the question, but-

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MR. MAXSON: And I have no financial interest in owning such a system; I've just been hired by the Kokernaks as

an engineer who's familiar with the technologies and the different trades that are responsible for (unintelligible) this kind of system to get the design developed and to get the thing forward in the application process. And, you know, we'll see where it leads in terms of being a successful alternative to these proposed towers for this area.

THE CHAIRMAN: What's the estimated cost on that?

MR. MAXSON: Well, I've given you some costing figures on the first set of slides that I presented. I did two estimates, one was some figures that I had put together, and the other were some broad-stroke estimates that the engineer for the town of Brookline put together.

THE CHAIRMAN: What was it, like in a per-node--

(Several voices at once)

MR. MAXSON: There are different ways of doing rules of thumb on it. What I prefer to do is to get--we're getting to the next steps, which involve actually identifying the number of feet of fiber we need so that we can get honest to goodness quotations on the price. But we have some ballpark figures that suggest that Distributed Antenna Systems are cost competitive;

they're not necessarily the cheapest solution--

THE CHAIRMAN: No, I remember that from the discussion. I just don't remember what the numbers were.

MR. MAXSON: Yeah.

THE CHAIRMAN: What's it going to cost, Mr. Kokernak?

MR. KOKERNAK: Well, if you design a mutual-post system for all comers to come on. So a lot of it depends on the actual location of the--it's not just the gap that Cingular has but it's the gap that Verizon has and Sprint has, and it's also T-Mobile, typically the four that are around here. So you look at all those, because you want to design a system that's going to co-locate through a DAS network all those.

THE CHAIRMAN: Right.

MR. KOKERNAK: So, for instance, in Brookline the area that was actually, that's being litigated on was a little over one square mile, a very similar type of gap that Cingular presented earlier, where it clearly came out they've got an area that's probably three or four times that because the business actually pushes and the service provider pushes as to what gap's

there. They're not identifying which service provider they (unintelligible) because of confidentiality, but it's a business decision that pushes them. So what I'm saying is you have to look at all those, you have to get accurate depictions of what the gap is for each one of the service providers and then you design it all around there. We've designed this one around the Cingular gap that was presented.

THE CHAIRMAN: Yes. And you've made an application to the North Hampton Planning Board?

MR. KOKERNAK: We have, yes.

THE CHAIRMAN: Right. And what do you think that's going to cost you to build that up?

MR. KOKERNAK: It all depends on which gap you're talking about. If it's the Cingular gap, if it's four to five nodes. You know, and typically you have--and here in competitive prices you have two tower applications before the board right now, so we are--this DAS network is probably more expensive than one, less than two, just to put it in the ballpark.

MR. MAXSON: I would also like to point out, if I may, that the technology--

THE CHAIRMAN: Hold on a second.

MR. MAXSON: It's part of answering the question, if I may?

THE CHAIRMAN: I just want--

MR. MAXSON: Okay. Go ahead. He's not giving you the numbers because he doesn't have exact figures, but--

THE CHAIRMAN: Mr. Maxson, if you can be patient for a second?

MR. MAXSON: I apologize.

THE CHAIRMAN: I didn't understand the last thing, what you said. Could you explain that to me again, please?

MR. KOKERNAK: What I said, that typically a cell tower, at least on the record, is typically 150 to 250 thousand dollars, just for the steel structure and the actual construction of it, not the antennas and the like. And DAS networks have been quoted at something like one and a half to three times the pricing. So if you were to take an average \$200,000 on each one of the towers and \$400,000 for the two towers and we've got something, you know, something in the order

of \$400,000 for a similar price for, you know, two towers, again, it all depends on how big the area that you're going to cover. A lot of these--the fortunate part is that there's two huge tower structures, one on Tide Mill Road, which all four carriers are on, and then typically, the one in Rye on Gove Street. But both of those, you have fixed locations so that the actual gap on all carriers is going to be typically small and relatively the same. They're going to have little variations.

So it's not that difficult. It's not--when I was at the meeting--I was invited to the meeting by the committee that Brookline had set up to evaluate their location. And the gap that was presented there on Verizon and T-Mobile was quite small. What you have in that situation, you have many different towers coming from all different locations. So each--what they do in the design of a DAS network, they take each gap of each service provider and they lay them out and overlap it and then they run the cable routes and they design it accordingly so everyone can be maintained on this DAS network.

THE CHAIRMAN: And what you're proposing before the North Hampton Planning Board is going to cover what both cell

towers on Woodland and Chapel would cover, or--

MR. KOKERNAK: We've designed it specifically for the Cingular gap.

THE CHAIRMAN: Okay.

MR. KOKERNAK: Verizon, on the record, has not presented what actually the gap is in North Hampton. When they presented, they presented the Rye--I'm sorry--the Hampton tower, but when they presented the tower that is--they presented the Rye tower together with the Chapel Road application, and they didn't distinguish. So since Rye is an existing tower, if Verizon were on that tower--and they are on Hampton's--then you'd find exactly what the gap is. But I was talking to the building inspector, and as we were reviewing the record, there's some of the data points missing so that you really cannot totally design the network. I was speaking to ClearLinux also, their CEO, and he said typically is that what they do is they have an independent verifiable type of drive test, that they don't just trust the drive tests that are done by the service providers. So what they do is they do their own drive tests, they compare them, and they want to get the actual gap that's

there. So that's from a DAS provider, ClearLinx.

THE CHAIRMAN: Okay.

MS. PECKHAM: So would your intention be to eventually figure out what the gap is, if there is a gap, concerning Verizon and hook them up onto the system?

MR. KOKERNAK: Absolutely. Yes. You'd want to make it available for everyone. A DAS network can typically take eight service providers. So each one of these towers can typically, I think what's being outlined, is four each. So this one little DAS network that you'll see is clearly capable of going there and beyond into different towns, both in Rye and Hampton. We've looked at ordinances in both towns.

THE CHAIRMAN: But you have an application in, and you're not sure what the gap coverage is, and you're not sure what it's going to cost?

MR. KOKERNAK: We have estimates on the cost. We've designed it around the gap that's been presented to this board in this application.

MR. LOUGHLIN: And I found out, Mr. chairman, that we

were unsuccessful in obtaining at this meeting information concerning the cost (unintelligible) with the GridCom application (unintelligible).

MR. MAXSON: Okay. Thank you.

The thing I was going to add was just that one of the reasons why there's some variability--Dennis has given one of them, which is the exact scope for the network is something that you really want to nail down with the carriers before you get actual figures on it.

The other is the technologies you use. The analog technology for moving information over the fiberoptic cable to the utility poles is less expensive, and so if you can meet the engineering criteria for the system with the analog technology, it's a less expensive system than if you use a digital system instead. So we have to do these kind of design trade-offs before we have a good solid figure, but we're working on the general estimate that we've been talking about in terms of the ratio with respect to one or two towers.

MS. PECKHAM: Can I ask one more question about that application?

MR. MAXSON: Yes.

MS. LERMER: What is the expected time frame? Say you were able to get the application approved, what would be the expected time frame to actually "go live," as they would say, to get people going?

MR. MAXSON: If all things go smoothly, it could be in place and operating by the end of 2006. One of the challenges we have here is that we know some carriers are interested in providing service to this area, but they're not about to sign up with us until they get denials on their applications for the towers. So we have to kind of have some faith that the applications will be denied and that we'll then be able to work with the carriers to develop a system.

Okay. Thank you. Another thing is that GridCom has been emphasizing the fact that telephone poles are structures you can see the antennas, and therefore, they're not concealed. And there does seem to be a little bit of an overlap in interpretation of "conceal" and "camouflage," as if they mean the same thing. And I'd like to point out that that's a little bit different. It's in fact the way the definition of

"alternative tower structure" is written in the ordinance. It first of all, it emphasizes innovative siting techniques and it specifically mentions light poles. Second of all, it talks about these innovative siting techniques camouflaging or concealing the presence of antennas and so forth. And a synonym to "camouflage" would be "disguised." It doesn't have to be hidden from view but it has to be disguised; it has to not be easily recognized for what it is.

And we're all familiar with what a cell tower looks like. But utilities that are already using much of the same equipment on their--and this is a pole across from my office. This is a radio transmitter, this is an antenna, this is some kind of a switching or monitoring point for the power company, that box to this radio transmitter. And power companies have these antennas and these boxes all over the place. Once you become aware that they're using them, now I'm seeing them everywhere. But so this kind of technology is familiar on utility poles.

Similarly, just on Atlantic Avenue alone, there are these--you know, the classic power transformer pole cases they're sometimes called, and also these enclosures for the

telecommunications, the telephone and the cable company, these boxes, big things, some of them much bigger than what you'd see with a DAS system, are hung on these utility poles. This is on Atlantic Avenue. There's another one one or two poles down. And we're familiar with that. I call that a "visual vocabulary." It's something we're used to seeing, so that when you see, as we've shown in previous presentations, pictures of these antennas and things and the cabinets, they'll fit right in as being something that our eyes are used to in terms of visual vocabulary.

But the other factor in this is something that didn't really dawn on me clearly until I started reading the conditional use permit section in order to prepare that conditional use permit application. And one of the requirements, if you're proposing to build a new tower, is you need to supply information on whether the carriers are using what was then known as CMI/HIC, which is the early version of Distributed Antenna System. So this section is contemplating that, if you're going to build a tower and go before the planning board to get permits from them to build that tower, you have to show, in

effect, show cause why isn't it being done another way. And so I think this clearly points to the fact that the ordinance is saying we should be looking at Distributed Antenna Systems before we look at towers.

Next one. Now, the tests that we did in order to corroborate our own analysis for a Distributed Antenna System design, we used a TV news truck with a telescoping mast and an antenna mast that we attached to that. And then we used an SUV with a receiving antenna mounted on the top and some specialized equipment inside to drive around and take measurements. And we did this with a radio channel that's right next to the PCS band. So its propagation characteristics are identical to what a PCS signal would have. And we made sure that we had done it early enough that we still had the leaves on the trees and they were still green, so that we had worst-case conditions for radio propagation.

Now, we put that all together, and we took measurements, as I say, at seven sites. We established five sites that--four or five sites that would be good, compatible locations for nodes attached to the utility poles. But one site that--I say four or

five is optional--is one here at the church, which--or along the road near the church--which--quickly, this is Woodland here, this is Mill, and this is Atlantic--this--

MS. LERMER: Do that again, please?

MR. MAXSON: Okay. Atlantic Avenue here.

MS. LERMER: Right.

MR. MAXSON: And Woodland Road here.

MS. LERMER: Right.

MR. MAXSON: And Mill Road here. Do I have that right?

MS. LERMER: Yep.

MR. MAXSON: Am I off by one?

MS. LERMER: No.

MR. MAXSON: Yeah. This is a phantom road here, this one.

MS. LERMER: Oh, I'm sorry. I'm looking at it the wrong way.

MR. MAXSON: Yeah, that's north.

MS. LERMER: Okay.

MR. MAXSON: Okay. And so just pointing out that the coverage from the church is, it's helpful, it gives us a little extra coverage here, a little extra coverage on Ship Rock and helps fill a little bit of the gap here; but if it weren't critical to a wireless carrier's needs, it might be excluded, at least on the first cut. It might only be a four-node network. Those other nodes are at the vicinity of Atlantic and Mill, Woodland Road near Ship Rock, and Woodland Road a little farther down near Rockrimmon, and then of course, we have the town's boundary down in this area here. And then the last node is the utility pole on Atlantic Avenue on the high ground there. Because it's high ground, you don't need much height; and because there isn't a lot of vegetation, the signal gets out quite nicely down the beach, up the beach, and back towards the other facilities.

So what we have here is the dark color, which is blue, represents Cingular's desired coverage of -82 dBm. And then I put in a second color that I've talked about in the past as showing, in this case, -94, which is referred to as "outdoor threshold." So what we're seeing here is that you've got very

good coverage from these four to five nodes in the area that Cingular says is its gap. And then we have, in addition to that, additional coverage where, just because it's less than -82 doesn't mean it's completely excluded from residences. It may mean that it doesn't penetrate as far into the residence or is quite as reliable 100 percent or 90 percent of the time, and those sorts of variables. So green is--it's helpful to see that we get some additional coverage here beyond what Cingular is using as the -82 dBm threshold.

MS. PECKHAM: Can I ask you a question about that?

MR. MAXSON: Yes, go ahead.

MS. PECKHAM: I notice that your coverage is really in a straight line.

MR. MAXSON: Yes.

MS. PECKHAM: Is that really the reality of the DAS system, or does it fill in all the gaps? In other words, do you want all--everybody covered within that particular area and you just have lines?

MR. MAXSON: Right. This is an additional point, it's

something I should have done at the beginning. A drive test, these are actual measurements driving along these roads. So they're going to follow the roads.

MS. PECKHAM: Okay.

MR. MAXSON: And what we can anticipate is that they're going to be--we can kind of fill in the blanks, to some degree, knowing that. The computer-estimated models don't pay attention to roads or woods; they attempt to compute coverage for every location. So we get greater accuracy with the drive test when it's done correctly, but we get more of a sense of area coverage when we use the computer-estimated plots.

MS. PECKHAM: Okay.

MR. MAXSON: Okay. Next. So if we laid out a Distributed Antenna System, we identify utility poles in each of these areas, we work with the carriers and with the power and telephone companies to identify which poles would be optimal from a construction standpoint and from a coverage standpoint, and those would be the ones that we'd use. And we'd run a fiber route back towards the base station hotel.

Now, we need a base station hotel--next slide. And we have

engaged this Rowell Building Supply building. It's 60 feet long, it's 28 feet wide, it's got plenty of space. It's a nice old building, it's along the railroad tracks. It's in a commercial area; it's perfectly suited to being the base station hotel for this network. The Business Industrial. Thank you.

The utility pole right here reminds us that we have access to bring our fiber up to this and out to Atlantic Avenue and down the road to where it needs to be installed. And so that's the site that is in the application for conditional use permit and site plan review.

Next slide. I want to take a quick side-step because I know we've been perseverating on DAS because we think DAS is the way to go. But early on you may recall my saying that even just using something like the Runnymede barn as a place for an existing alternative tower structure, in other words, put antennas in a cupola or in something attached to the barn in a respectable way could also provide good wireless coverage. So among the tests that we did in our drive test we did a drive test from the Runnymede site right next to the barn, with full permission of the owners, and we took our drive test

measurements, and this is presented with the assumption that a full cell site, in other words, running at full power instead of the lower power that a regular Distributed Antenna System node would run, this is running at full power, we can see that we get Cingular-desired-quality coverage not only up to about where the church is and a little bit up and down Woodland Road from Atlantic in this area here so that it would cover this neighborhood well and get into here, and we're getting coverage up in this direction, Maple and Chapel, if I'm reading these right here. And we're seeing that the gap that Cingular says is a gap with its coverage plot is actually quite well served considering that we're using a relatively low height from the stable at Runnymede.

Now, I'm not recommending this because the Distributed Antenna System gives us more flexibility, more extensibility, it's future proof, it's just a better way to go. But this is a viable alternative for a wireless company to put a cell site, without a variance, at Runnymede stables.

THE CHAIRMAN: How high were the silos that you put in your materials before, about 40 feet?

MR. MAXSON: The silos were--I'm trying to recall--60 or 70, 70 or 80, somewhere in that range, I think. I mean, some of the photographs we've shown, silos have been anywhere from 70 to maybe 100, some of those. But--

THE CHAIRMAN: No, but the ones that you put in pictures sort of superimposing them next to Runnymede, how high were those ones?

MR. KOKERNAK: Those were authentic pictures. Those were from the 1940s, when you saw that silo.

MR. MAXSON: Right. I don't know what the height of those were. I don't think I simulated silos at Runnymede.

THE CHAIRMAN: I thought you did.

MR. MAXSON: I did show photos of other silos, but I made a mistake if I (unintelligible). I don't think so.

But we used a height that was up to the 40-foot limit above the Runnymede structure.

THE CHAIRMAN: How high were the silos that were there once upon a time?

MR. KOKERNAK: I'm not sure. Anyway, I would think

that they were probably about, you know, a third higher than the buildings. So if the building was 40, they were something like 60 or something like that. The cupola was, what, 45, 50--

MR. MAXSON: I'm not certain. The thing, though, is that a cupola is, as I showed with that photograph of the bell tower/cupola thing at Westwood Middle School, a similar kind of thing could be done with a cupola. You'd want to make sure it's architecturally appropriate. That's one way. Another way is to attach a flagpole-like structure to the building in a way that would satisfy design criteria and get some height.

But we did do measurements even from a roof height of the building or close to it and got not quite as good as this but still very good coverage because it's open here; there is not a lot of vegetation around the area and the signal gets out (unintelligible).

Next. So the drive test that we conducted--and this is where I think I briefly touched on the issue of documenting your evidence. And I find myself very frustrated by the information that Cingular's provided for its drive tests. I've given you a full lab report, so to speak, on our drive test. Anybody can

look at that; it's a transparent process. If people have questions, if there's something you want to challenge, it's there and they can do it.

In comparison, there is no documentation supporting Cingular's drive tests, and the information in the legend is limited to orange equals -82 dBm. They in fact have shown us two different drive tests that contradict each other. And in general, when you take field tests like this, there's many places for errors. I have seen them and I have corrected them in other wireless application processes.

Next, please. The first drive test that Cingular showed us was in June, was before late June when they did a second drive test. And that one they didn't submit to the record, as far as I know. I couldn't find a copy of it on the record. But we have taken a photograph of it. The results of that first drive test were comparable to the computer-estimated plots that they're showing us. And I'll show you how in just a second. And they show that the worst coverage in North Hampton is often quite close to -82 dBm and almost suggest that maybe there isn't a gap if you take that drive test literally. There are deeper holes

with lesser coverage in Hampton.

So let's take a look at that. This one is the one that we photographed that was shown in June, discussed in June but not presented to the record. And we can see that, you know, the solid lines are where it's solidly above -82 dBm. Where it cuts in and out you get the dark and the light back and forth. You can see that that suggests that these locations are close to -82 dBm, where they cut in and out. And then occasionally you see a spot where it's a bit longer, more prolonged, and perhaps it falls more below -82 dBm than just hovering around it. And we can see down in Hampton those gaps tend to be larger and more pronounced, even, than they are in North Hampton. But if we look at this, we can see that there's coverage coming into town pretty well from Rye, and the coverage in Hampton gets up fairly close, within, you know, one street of the town boundary. And we'll see that in comparison in a second.

If we look at their computer-estimated plot, this is Atlantic Avenue here; this is the Hampton boundary here; and here's Woodland Road, and you can see that there's a--remember the boot that I was showing you before--it's kind of like that.

And if we see that here, the boot is roughly in this area. So this is comparable to this plot. There's a lot of differences, and you kind of have to get used to reading plots to be comfortable with it. But that's functionally the similarity between the drive test that we saw in June and the computer-estimated plot.

The second drive test shown in August was also submitted to the record. And those results are significantly worse than the first drive test, much more favorable to Cingular's point of view. And they're not in agreement with the computer-estimated plots that we're looking at. If the second drive test is accurate, the gap is much bigger than their computer-estimated plot has told us it is. And it could mean that they need more towers.

Next slide, please. I've taken that plot, which was originally--you may remember the orange and dark-gray, I call these "worm trails" of the drive test. They were originally orange and dark gray, and the problem was that there was no contrast between the two colors. So in Paint Shop we changed the dark gray into a lighter gray tone and we left the orange darker

tone. So this is the exact data that Cingular provided from its second drive test; we've just changed the colors. And we can see now that Atlantic Avenue has, as far as Cingular's concerned, unsatisfactory coverage all the way out. It has unsatisfactory coverage in Rye. It has unsatisfactory coverage not only in Hampton here, but down here. So this is a much more pessimistic drive test. And there may be reasons for that; they may be able to explain that to us.

But what it tells us is that this one tower is not going to satisfy them. And if anything, that's an argument in favor of DAS, because if you have a DAS hotel right up in this area, you can run a fiber up Route 1. Looking at Route 1, half of Route 1 is below their target threshold. Run a fiber up and down there, into the neighborhoods and put in some nodes, we've now put off putting up another tower. We've got--we're making more--leveraging the power of that DAS that you had already put in to serve this area.

So what I find are these inconsistent results from the drive tests, and without the documentary backup, such as I submitted for my drive test, I can't explain it, I can't

rationalize it, and I can't determine whether there's any credibility to either one or the other of the drive tests.

Thank you. Next. So even if Cingular can explain the differences between their two drive tests, we still have the question of, well, which one is right and why; how do we know that, because we don't have the data submitted. What that means is that the only thing we can really rely on for telling us what we think is a gap is the coverage plot, the computer-estimated coverage plot, the orange one we were just looking at a moment ago--can we put that back up for a second? This one here is the only thing that we can rely on. And we know, from having talked about this, that that has a limited precision; the computer-estimated plots are just estimating. And it's single dimensional. It's only showing us -82 dBm. And I've talked in detail before about why it's important to look at the other levels, as well. So we've got a very coarsely defined gap, and it's very hard to work with.

Next. So just to wrap it up, I think we've shown that Distributed Antenna Systems are alive and well and it's a growing industry. ClearLinux is a venture capital-funded company

that has tens of millions of dollars to put into it because they believe DAS is the next thing. We've put in evidence to the record that we think is substantially in favor of DAS. We don't see much evidence opposing DAS in the record, other than some of these remarks.

We feel that granting a variance for any tower in the area will, in effect, let the genie out of the bottle. It will start the stampede for new towers throughout the rest of the town over time. So it guarantees more towers and also cuts away at the market that's available for the DAS. So we'd really like to see an opportunity to make the Distributed Antenna System approach work in town and to set aside variances for towers that really aren't necessary.

Thank you.

THE CHAIRMAN: We're going to take a five-minute break.

(Off record - on record)

MR. LOUGHLIN: Jim Bassett is going to speak now to the Telecommunications Act and the area variance. But I just wanted to read into the record something that seemed to come up

in some of the questions when David was speaking. The last paragraph of our submission to the planning board, in my cover letter to the board indicates, "The genesis of the"--it's submitted in the name of Thera Research, Inc., and "The genesis of Thera Research, Inc.'s proposal is not business profit but a desire to present an alternative to large, unsightly telecommunications towers which are of obvious concern to large sections of the population of North Hampton. We look forward to working with the town on the approval process for a system which we feel will be of significant benefit to the residents of North Hampton." And Dennis is the president of Thera Research, Inc.

MS. PECKHAM: Do you have copies of that to submit to us?

MR. LOUGHLIN: Yes. We just got them.

MS. PECKHAM: Thank you.

MR. BASSETT: Actually, I have three exhibits associated with Mr. Maxon's report. This is the application submitted to the planning board for site plan review and for a conditional use permit. I'm not sure how many--

(Distributed copies to board)

MR. BASSETT: Also for submission into the record is a letter from Mr. Maxson to me also addressing the same issue regarding his ownership interest or lack of same in any entity with an interest in the DAS system.

THE CHAIRMAN: Russ, we're going to--we've had several exhibits here that--

MR. BASSETT: And, then, lastly, in connection with Mr. Maxson's presentation, hard copies of the PowerPoint presentation that he made this evening.

(Distributed copies to the board)

MR. HILLIARD: The stamped survey plan, which you don't all have, is A-22. The single sheet that is the Sprint application involving the church is P-20. The rest of them are all "P" as in Peter.

MR. SPRINGER: What was the survey plan?

MR. HILLIARD: A-22. Your letters are A, so that's A-22. The rest of them are P. P-20 is the Sprint church plan; P-21 is the Omni Point Holdings plan; P-22 is the single sheet, "Widespread Use of Distributed Antenna Systems"; P-23 is a

multipage--

THE CHAIRMAN: Hold on a second. Slow it up a little bit. Okay. This table was what?

MR. HILLIARD: P-22.

THE CHAIRMAN: Okay.

MR. HILLIARD: Next is the Field Test Report, a multipage (unintelligible).

THE CHAIRMAN: And that's what?

MR. HILLIARD: P-23.

THE CHAIRMAN: All right.

MR. HILLIARD: Next is Loughlin October 11 letter to Richard Mabey, P-24.

THE CHAIRMAN: That's the planning board applications?

MR. HILLIARD: Right.

THE CHAIRMAN: Okay.

MR. HILLIARD: Next is the single-page Broadcast Signal Lab September 28 letter, Maxson to Bassett, and that's P-25.

THE CHAIRMAN: Okay.

MR. HILLIARD: And then the PowerPoint hard copy, Supplement 2, that is P-26.

Now, I saw you looking back at this plan which you received earlier. This is part of P-13, replaces a plan that is part of P-13, old Exhibit 110.

THE CHAIRMAN: Okay. Now, counsel, if I'm doing my estimate right, we're at about--we're not quite at halftime on this three-hour--

MR. BASSETT: I've got about an hour and 20 minutes into our presentation. So--

THE CHAIRMAN: You've got another hour-twenty left?

MR. BASSETT: Oh, no, no, no. We're about an hour-twenty into the--

THE CHAIRMAN: Right. Okay. So we're not quite halfway there?

MR. BASSETT: Right. I'll try to be as brief as possible.

MR. SPRINGER: Mr. chairman, can I ask a question? I

just got a copy of the application for site plan review, and I've been trying to take down the lists of exhibits and scan through this, and I don't want to, as I said, rain on Jim's parade, but can I just ask a question to clarify what they're asking for in the site plan? Because I think this is sort of an important point. You're not--can I ask it direct to Peter or Jim? You're only--you're not seeking site plan approval for any of the nodes; you're just seeking site plan approval for the hotel, is that correct? As I read this.

MR. LOUGHLIN: We're seeking site plan approval for, as we understand it, the Distributed Antenna System requires site plan approval, and we're seeking site plan approval for the entire thing, which also requires a conditional use permit.

MR. SPRINGER: Including the site. I mean, I just--

MR. LOUGHLIN: We understand that it's a--this system, even though it's not a tower and the ordinance was kind of designed for towers, is that this system wouldn't be considered to be a wireless communications facility and would require a conditional use permit under the ordinance; and, as I read the ordinance, that also requires site plan approval for an

application.

MR. SPRINGER: Okay. But your application only seeks approval for the hotel itself, not for the outlying nodes?

MR. LOUGHLIN: We think that's all part of the information.

MR. SPRINGER: Okay. All right. Maybe it is. I'll follow up at the next meeting.

THE CHAIRMAN: Sure. Or I'm sure, you know, you two gentlemen seem to work pretty collaboratively in between meetings trying to get letters circulated, so maybe you can--
(Stopped talking)

We're all ears, counsel.

MR. BASSETT: Thank you. I'm going to address two issues tonight. I'll be as brief as I can be, because we've got a lot of other folks who want to speak. The first issue that I'm going to talk about is the Telecommunications Act of 1996 and how it interplays with state law and the local zoning ordinance in regard to this particular application. And then the second issue I'm going to address, Peter's spoken to the issue of the

use variance and why granting the use variance would be inappropriate; and I'm going to speak to the application for the area variance for the fall zone and address some issues related to that.

MS. PECKHAM: Can I just ask you one question before you get to--

MR. BASSETT: Sure.

MS. PECKHAM: Have you submitted some of this in writing before? I think I've seen--

MR. BASSETT: Yes. A long time ago.

MS. PECKHAM: Okay. That's--I just wanted to make sure.

MR. BASSETT: Some of what I'm going to speak of now was contained in my letter to the board of June 20th, and also a letter that I submitted on July 13th. So it's buried somewhere in those volumes. There are some other cases that I'm going to speak of tonight, but the vast bulk of what I'm going to speak to is there.

THE CHAIRMAN: Is this a highlight version or--

MR. BASSETT: And I'm assuming everybody's read that.

MS. PECKHAM: We will.

THE CHAIRMAN: Is this a highlight version or is this the--

MR. BASSETT: No. It's going to be word for word.

THE CHAIRMAN: Okay. Great.

MR. BASSETT: No. It's going to be rather quick.

But, at the outset of this case, Mr. Springer told you that failure to grant this application would amount to an effective prohibition, which would run contrary to the Telecommunications Act. And that's simply not the case, in our view. But the fact is that most of these cases do wind up in federal court, and the law that's applied to these cases is the Telecommunications Act. And it acts as an overlay, like the overlay districts in the zoning in this town, so, too, the TCA acts as an overlay over local and state regulations.

The First Circuit Court of Appeals has stated, and I quote, from the *Southwestern* case, that, "The TCA does not federalize telecommunications land use law; instead, Congress struck a

balance between localities and personal wireless service providers. Under the TCA local governments retain control over decisions regarding the placement, construction and modification of personal wireless services." So while you must apply your zoning ordinance, and that is the local prerogative, it's important that the board also understand the TCA. And I can say, particularly in light of Mr. Springer's comments at the beginning of this case, that it's true that virtually all cases in the federal courts involve two claims. One is the claim that the decision of the board was not supported by substantial evidence in the written record, and that's really an administrative issue, but I'm going to speak to that in a moment. And the test is what is "substantial evidence"? And then, secondly, the legal issue that Mr. Springer's already referred to, the challenge is often mounted that the denial amounts to an effective prohibition of wireless service.

What is the "substantial evidence" standard? The First Circuit Court of Appeals in the *Second Generation* case has said that, "The substantial-evidence standard of review is the same as that traditionally applicable to review of an administrative

agency's findings. Judicial review under this standard is narrow. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." So the standard that will be applied by the federal court to your decision is very deferential, and the supreme court has explained, and I think both Mr. Sokul and Mr. Field have noted this, that the standard for substantial evidence is more than a scintilla and it is "such relevant evidence as a reasonable mind might accept to adequately support the conclusion. The court is not free to substitute its judgment for a local board; it must uphold the decision that has substantial support in the record even if it might differ in its conclusion as to how that evidence might have been interpreted."

What constitutes substantial evidence that courts have found sufficient to uphold the decision of a local board? Aesthetics. And I think that's an important issue in this case. And you should know that, particularly in the First Circuit,

aesthetics has been enough for the decision to be upheld. Now, this reference to the *Southwestern Bell* case, in that case the First Circuit rejected a tower proposal solely on the basis of aesthetic considerations. The court wrote that, "A municipality may decide to reject a wireless project because of aesthetic concerns without justifying that judgment by reference to an economic or other quantifiable impact. The town's aesthetic judgment is valid so long as it is grounded in the specifics of the case and does not reflect generalized negative views that could apply to any wireless technology installation, regardless of location." And I think in this case, and frankly, in the case of the application on Chapel Road, there has been testimony not about wireless facilities in general but about the specific facility proposed for that specific location. And time and time again the First Circuit has applied that standard. So aesthetics are a completely valid basis for this board to make a decision, and we believe the evidence that has been submitted already and will further be submitted can support that finding.

The board may also deny an application if the applicant does not establish that there are no other reasonable and viable

alternatives to provide wireless service. The number, height, type, location of other possible approaches to providing wireless service are all relevant for this board to take into account. And that's really what Mr. Maxson was talking about earlier. The leading case on this in the First Circuit is the *Amherst* case, and the First Circuit wrote this back in 1999: "Ultimately, we are in a land of trade-offs. On one side are the opportunities for the carrier to save costs, pay more to the town and reduce the number of towers. On the other side are more costs, more towers but possibly less-offensive sites and somewhat shorter towers. On the point, the applicant in that case may think that even from an aesthetic standpoint its solution is best; but subject to an outer limit, such choices are just what Congress has reserved for the towns." Now, that case back in 1999, the issue was tall towers against slightly shorter towers. And in this case, technology has moved considerably in the intervening six years, so the choice is not merely between one tall tower and another somewhat shorter tower. And you've heard testimony from Mr. Maxson regarding microsites such as the site at Runnymede that could be used, also the DAS network. So those are both alternatives, and as Mr.

Maxson said and Peter Loughlin said earlier, there's no obligation on the part of either the town or the applicant--or the abutters to bring forward alternatives. It's the applicant's obligation to disprove that there are other alternatives, but we have done so in this case. And the ordinance, in fact, as Peter read earlier, itself applies essentially the same standard that the First Circuit has articulated.

In regard to substantial evidence, the board can also rely on safety considerations. There is a--on the issue that I'm about to address, which is the fall-zone issue, is certainly a safety consideration for this board to consider. The one safety and health consideration that this board cannot consider relates to potential radiation impacts of cell towers, and that's been taken off the table by Congress. But in regard to other safety issues, courts have held as follows. This is a case that we cited on Page 17 of our June 20th letter to you upholding a decision of a local board. "The threat of danger to the public is not mitigated or eliminated merely because, as the applicants contend, there has never been a tower failure in the Northeast or that other failures were less severe than a total failure."

And, obviously, here they're talking about the fall zone. "And clearly, plaintiffs do not suggest that the evidence established that a monopole could never fail more substantially than bending a little bit or collapsing or falling over on itself. There was substantial evidence in the record to support the ZBA's finding that the 150 percent setback requirement and the reduced 75 percent setback requirement were not met. Thus, the ZBA did not violate the Telecommunications Act to the extent that it found that the monopole did not meet the setback requirements." And that's essentially an issue in this case. I'm going to address it in a few minutes. But the courts have found that setbacks, particularly when they're safety related, in and of themselves can form substantial evidence on which a decision can be upheld.

And then, lastly, adverse impact on property values can be the basis for upholding a denial by the board. Mr. Field cited this board to the decision by the 11th Circuit in May of this year, *Linnette v. Wellington*. And there's also a case, *American Tower v. Huntsville*, also an 11th Circuit case, where the testimony in that case, which was upheld by the 11th Circuit, was substantially similar to the way the record now lies in this

case. The applicant there had presented the testimony of an appraiser saying that there would be no impact on abutting properties. The opponents of the application, consisting of abutters and residents and local realtors, testified about the impact that they believed that the tower would have and also the impact that was actually manifested on lost sales in the neighborhood of the tower. And the court in that case rejected the argument put forward by the applicant as follows. It says, "The applicant spends much time pointing to evidence that they've presented to the ZBA supporting their application, including an appraisal study prepared by two certified real estate appraisers and concluded that the proposed communications tower would not affect the value or marketability of property. We look at the whole record." And the record consisted of what I just alluded to, testimony of realtors and neighbors, "and under the substantial-evidence standard, we cannot displace the board's fair estimate of conflicting evidence and cannot freely reweigh the evidence. We only determine whether the substantial evidence exists to support the board's decision." And in that case the 11th Circuit found that that constituted substantial evidence sufficient to sustain the ruling of the local board.

In regard to effective prohibition, the language of the First Circuit--and I will read this because I think they put it best--"Effective prohibition occurs where there is a significant gap in coverage and a local zoning authority either sets or administers criteria which are impossible for an applicant to meet or where the applicant's existing application is the only feasible plan. In invoking the effective-prohibition language, the burden for the carrier is a heavy one to show from the language or circumstances, not just that this application has been rejected, but that further reasonable efforts are so likely to be fruitless that it is a waste of time to even try." And that's the decision of *Second Generation Properties*.

In this case there's ample evidence of alternative sites. The ordinance, in fact, in this case, even though there's been reference to the fact that towers are only allowed west of 95, that's not the case because they are allowed on existing structures provided the extension is not more than 40 feet, and they also are allowed on town property. So here you have substantial evidence that there are lots of alternatives available. And in fact, we've affirmatively presented evidence,

the record is replete with evidence that there are alternatives, so therefore, an effective prohibition claim cannot stand if it were to be made in federal court.

Finally, I would just note in regard to the TCA that in the *Hopkinton* case and which I think Mr. Hilliard's familiar with because his office was involved in it, the court in--the federal court in Concord held that nothing in the TCA required local zoning authorities to permit the construction of a facility within its community in order to serve its neighboring jurisdictions. And I think that's important to keep in mind in this case because a goodly portion if not a majority of the gap in this case is in Hampton. And this board does not have an obligation to find a solution to the gap in Hampton. It's important that the board keep that in mind.

There also--and I won't go through them now--but in my letter of June 20th and again in July I note that there are procedural requirements that this board, and I'm sure with Russ's involvement this board will follow the guidelines issued by the courts in terms of written decisions and written record, but time and time again decisions of boards have been overturned

because the boards issued decisions that are very brief, that are similar to ones that would be issued if someone were seeking a sideline setback from 20 to 15 feet, and those often get rejected in court. So while there don't have to be necessarily findings and rulings by the board, there do need to be detailed findings so that the court can determine what the rationale was, and indeed we would urge this board to be as specific as possible.

Now I'd like to turn briefly to the issue of the area variance for the fall zone. To this point I've talked about legal principles that are equally applicable to both Chapel Road and Woodland Road for the reasons that I've stated that neither of these applications should be approved and for the reasons that Mr. Maxson stated, there are alternatives available which would support a denial of both applications. But the major distinguishing factor between the two applications is that this application calls for an additional variance, which is a variance from the 125 percent setback. And it's set forth in 415.6. It states that, "Towers must be set back a distance equal to 125 percent of the height of the tower from any unaffiliated

structures, parking areas or lots, driveways, roads, developed areas or property lines." In this case I think the application makes clear that the 125 percent zone actually incorporates the town property, it incorporates Mr. Kokernak's property, and it incorporates Mr. Morton's home. And we think that presents a substantial issue of safety.

I would like to pass out to the board at this time copies of a letter, and there are a number of attachments, some of which will be displayed on the screen but some of them will not be. And I apologize; I did not get 10 copies of this made this afternoon, but we'll file more copies. But I think there are enough for the members of the board that are here, and I do have a copy for Jon.

THE CHAIRMAN: And this will be what, Russ?

Counsel, you got one?

MR. SPRINGER: Yes.

MR. HILLIARD: P-27.

(Discussion about exhibit numbering)

THE CHAIRMAN: P-27. Thank you.

Okay. Go ahead. Sorry.

MR. BASSETT: In regard to my letter of October 11th to this board, it really focused on issues related to the fall-zone variance and why in our view, because of significant and legitimate safety concerns, the board should not grant the requested variance, a number of these materials have previously been submitted to the board, but because we're addressing it tonight, I wanted to put them all in one package so that you could follow the presentation. In reference to--I would note, and just following the presentation that I make on Page 2 of my letter, the conservation commission has already written to this board expressing its concern about the incursion of 125 percent fall zone into the Boies Forest. That letter's attached to Tab A to this letter. The commission goes on to caution that, quote, "The possibility of serious injury to life and limb due to a structural failure should raise a concern for the town of North Hampton."

Now, it's also the fact, if you look in the Tab 3 on the package that I just provided to you, when the planning board held hearings on the adoption of the setback ordinance, the

fall-zone ordinance, it was noted that the reason for proposing this was concern of a falling tower and ice falling off, and that safety was the stated intent for adopting the fall-back ordinance. And in fact, safety is the reason that we think that the variance should not be granted.

The package that I have filed before you--and let me just find it--on August 9, which is Tab B, that letter goes through in significant detail the incidents throughout the Northeast where towers have fallen, despite the assurances provided by the applicant that towers indeed do not fall. And I have attached a number of articles to that letter, tabbed Article 4 and 6 and 7-- I won't go through those in detail now--Tab 8. Those are all articles about either towers falling or significant pieces of towers falling off, with the potential to injure persons.

And if we could just--now I want to show you a TV story that ran in connection with a tower that fell in Oswego, New York, several years ago. And this will just run for a minute or two.

(Video played back, noted in italics)

SARAH SEVIER: Fire Chief Edward Geers wants to make sure a

cell phone tower doesn't come crashing into his life or anyone else's again. In November violent winds sent this 165-foot, 55,000-pound tower smack onto his truck. He says it was a miracle he wasn't inside or that it didn't kill people in the area.

CHIEF GEERS: We could have been out in the backyard that day. There was just--a lot of people recognize, you know, what could have happened. You know, and they can say, you know, Gee, that will never happen again. But to me, that's not good enough for me because I watched it happen the first time. And it never should have happened the first time.

SARAH SEVIER: He wants a law passed so anyone who tries to put up a tower has to go through the city. The city would have location, public safety, and appearance requirements for cell towers. The first step is a resolution that would give the city 150 days to decide whether or not to pass the resolution. Supporters say it's important, not just because of what happened at the firehouse, but because in the future city officials expect at least 12 more cell phone towers will have to be put up.

MAYOR JOHN GOSEK: So our fire chief actually started this initiative to disallow that particular tower to go up. But it kind of brought to view a broader scale, if you will, of what our community should have and what the other communities have.

SARAH SEVIER: City officials are looking into putting many different companies' equipment on one tower instead of allowing several to be built. With the help of an advisory group, they're identifying locations where towers can be placed safely.

In Oswego, Sarah Sevier, News 10 Now.

(End video playback)

MR. BASSETT: This was a monopole, just as the proposed tower on Woodland Road is also a monopole. And they do fall over periodically, and there are stories in here about that. And also, pieces do fall off them, which cause safety concerns, as well. As I noted earlier, the planning board, when they adopted, put forward to the town this fall-zone requirement or this ordinance, they referenced the fact of falling ice and safety concerns. And in fact, pieces do fall off these towers.

I have a piece of a tower that Mr. Kokernak actually found.

And if you can put up the picture, this is a tower in Harvard, Massachusetts. Mr. Kokernak went down to see it because representatives from GridCom told him that this was essentially the type of tower that was proposed for the property behind his house. And he went down to see it, and the day that he went down to see it, he found this piece of the faux pine lying on the ground outside of the enclosure, approximately 50 feet from the tower fence. And those pictures have already been submitted in the record; they're part of the materials that I'm providing to you tonight. And we also would like to make this part of the record.

THE CHAIRMAN: Are you sure those aren't reindeer antlers?

MR. BASSETT: Yeah, this is a hunting trophy.

So at this time I'd like to--

THE CHAIRMAN: Rudolph might have got caught in a pine tree, you know. I'd like to know who that is.

MR. BASSETT: So we'd like to offer that into the record, as well as several copies of the video CD for the record, as well.

(Board members examine exhibit)

MR. BASSETT: At this time I would also like to offer this into evidence. I've got a couple of more exhibits--

THE CHAIRMAN: Oh, sure, just fire them on.

MR. HILLIARD: Just a minute, Jim. Are these exhibits on P-27, there's A and B, are 1 through 8 part of B?

MR. BASSETT: Yes.

MR. HILLIARD: Okay.

MR. BASSETT: And I was hoping it could all just come in as one exhibit, for everybody's sake.

MR. HILLIARD: Oh, no, we can't. But what I want to do is mark--we will mark the video tape, the CD, as part of P-27. And P-27 is the video of Tab 4. So it's the video of Tab 4, P-27. And the branch is the real evidence of P-27, Tab 5. Is that right, Jim, that's this--

MR. BASSETT: Yes, correct.

MR. HILLIARD: So the branch is--so that's P-27, Tab 4, B-4. And the branch is P-27, B-5. Okay.

MR. BASSETT: Let me just--in the same vein, this is another tower. This is located just over the Massachusetts border in Salisbury, on Route 1. And this is a tower that Mr. Kokernak visited last week. It's a little different style, but you'll see there's a--we've learned about hanging chads before-- this is a hanging branch. And as you'll see, these hanging branches at some point become lethal projectiles. And here's a picture of Mr. Kokernak at the base, outside the base of this tree, looking like an African hunter with his trophy.

This is a branch. It's a little bit hard to make out, but it's essentially the same as the material that we've already submitted. We did not bring this in as an exhibit, but this is the top. So Mr. Kokernak's about six feet tall, and that's the top of the branch that he found. And his testimony, when he testifies, will be that it was about 10 feet high and weighed approximately 90 pounds and was found outside of the enclosure in the public area near this tower in Salisbury, Massachusetts. And we have copies of--is there another picture with that or not? Okay.

We have those two pictures to introduce into evidence.

MR. HILLIARD: We'll mark the one with the blue sky P-28, and the one with Mr. Kokernak P-29.

MR. KOKERNAK: Jim, before you go onto the next subject, can I just round out this discussion, since I was there?

MR. BASSETT: Sure.

MR. KOKERNAK: There's two parts of it--if we were really to go back--when I first went to this tower, of course, there was both Bill McQuade and the Thera Research engineer was there very early in the process--said that this was one of the best ones around, we should go there. So I went there, really, to observe the aesthetics of it. And if you can imagine, to my surprise, I was walking around the base of it and all of a sudden, I found the piece that you see lying on the ground in the next one. And over the months that the meetings were going on, I thought this is how odd that I would just happen upon a piece of this tower. So I subsequently wanted to go back to Harvard, and I wanted to, for aesthetic reasons, I wanted to calibrate some of my visual images of that you might see later, and I wanted to talk to the planning office to get the history

of this particular piece.

So I went back to the site. When I first went there, I actually went there with the permission of the police, because I asked him about it and I said that GridCom has offered this as a site and for my inspection and they granted me access to it. I went back a second time and I found another six branches around it. I just want you to know that they were all around; it's just I didn't expect them to be falling down, so I didn't really get into them. I have another three or four up here, if you'd like to see them. They're smaller a little bit, but they are--

The next one in Salisbury was relatively recent that I involved this, and I just wanted to, again, for aesthetic reasons, show the different monopines, stealth-pine kind of towers. But now that I had this awareness that the pieces that break off and they're all over the place, I went into this one a little bit more aware. So the first thing I did was I just kind of walked around, and I saw this big--again, I lifted it up, and it was--I have an 80-pound daughter, so I relatively calibrated to that, but it's huge; it's full of cement or some kind of hard resin. So even though it looks, you know, from a frame point of

view, it's very, very heavy. And this is from a tower, again, that's 100--in that case, 130 feet tall.

And so I looked around again some more and just casually looking around, and I have another bag full of three or four branches, if you'd like to see. It's a different shape; if you'd like to feel the texturally different--from the aesthetic point of view, we have them here if you're interested, for display, if you'd like.

MS. PECKHAM: And none of these towers were fenced off to keep the public out or anything like that? You could just--

MR. KOKERNAK: They're not.

MS. PECKHAM: --really walk into the zone, if you would say.

MR. KOKERNAK: You can't go into the enclosure that's around the tower. But all these branches are outside that enclosure.

MS. PECKHAM: Okay.

MR. LOUGHLIN: And that includes (unintelligible)

MR. KOKERNAK: It's how big? I mean, the one in

Harvard, when I went back, I actually looked at the plan and I could measure to the fence, and it was 70 feet from the tower to the edge of the fence. And then I think it's, what I'm showing is 50 feet beyond that, so you can place that. On this one I don't exactly know how far it is--it's hard to judge--from the fence to the tower. The tower is so large.

MS. PECKHAM: Oh, the tower is so large.

MR. KOKERNAK: It's huge. The mass of the tower, when you approach one of these things, it's huge.

MS. PECKHAM: Just a basic question: How long are some of these branches?

MR. KOKERNAK: You have a full branch there. I think the end is broken off, but on this one, at this particular tower in Salisbury, you know, it's a 10-foot branch. I am, again, six feet, and you can see there's--10 feet is conservative, like I said.

MR. BASSETT: And just in regard to this particular problem of falling branches, I would just direct your attention, not for you to read the article now, but at your leisure, the article at B-8 is an article where a piece of an antenna blew

off of a tower into a conservation area. And the observation might be made here, well, most of this land is uninhabited. I mean, Mr. Morton's house is very close, but there's the conservation area. Now, the conservation commission has written to this board and said they're concerned about it. And they don't want to see a tower with a fall zone on the conservation land. And this is the case of a tower piece falling onto conservation land, and the woman who's the head of the conservation commission speaking about her concerns on behalf of the town, for liability reasons, that this tower piece fell onto that land. So the fact that it's conservation land and it might not have a building on it should not ease anyone's concerns about liability.

MS. PECKHAM: Can I ask one question concerning the Boies property that has the conservation easement, do you know if you have public access to that conservation easement?

MR. BASSETT: No, I don't know that.

MR. KOKERNAK: It's my understanding it is. I've spoken to the Boieses before, and actually, when we subdivided, a part of the Boies parcel, the trade for that 57 Woodland Road

piece, we rewrote--Peter Loughlin rewrote the conservation easements on the Boies property. And we made them much stricter, but it clearly allowed public access.

MS. PECKHAM: So you had to actually specify it.

DR. DAVID DONSKER: There's public access off Woodland Road, and there's a sign, actually, describing it as "Boies Woods." If you go by, it's clearly marked. And for a while, the trails were maintained by (unintelligible).

MR. BASSETT: Now I'll close quickly, just moving to the next photograph, this is an aerial photograph of the site, and--

MR. FIELD: May I--I'm sorry to interrupt you--I have the brochure put out by the conservation commission. It's in the materials I gave you. And they say, "Obviously, hunting is not permitted. A trail has been cut through, and the property is suitable for hiking and nature study." I don't know how that relates to the document, but certainly, they advertise it as being available to the public.

MS. PECKHAM: Okay. Thank you.

MR. BASSETT: Thanks, Bob.

And this is an aerial photograph prepared by Jim Verra. He's here, so if you've got questions about it, later you'll have your chance to ask questions. But the fact is that's Mr. Morton's house; it's within the 125-percent setback. This property here is owned by Mr. Kokernak, so it goes into his property. And then virtually half of the setback area is in this area, which is the Boies Forest. And this lot, this lot and this lot, though outside, barely, of the 125-percent setback, these lots are owned by Mr. Kokernak. Mr. Kokernak's home is over here, the Donskers' home is here, and Dennis and Donna own these three lots. But given these incidents that we've presented evidence about, it provides no small comfort that we're just outside of the setback zone, given what can happen and what can blow off of these, clearly.

And just as a matter of contrasting this to the Chapel Road, there are no other properties within the 125-percent setback, and within the 300 feet there's just the barest edge of property. I believe that's the second lot that the Magnants sold on that property. But the 125-percent setback is not an issue on

Chapel Road; that's why they haven't requested a variance. But it's a big issue on Woodland Road.

And then finally, I think that's the last--

THE CHAIRMAN: What's the 300-foot thing do? I think I missed that.

MR. BASSETT: It's just there to give more scale--

THE CHAIRMAN: It's a random number?

MR. BASSETT: --to where the abutting lots are, that's all, just to provide additional scale. It's not a legal requirement; it's just to give some scale to the photograph.

And, finally, the last tab in the package that's submitted to you, also on the issue of the fall zone, the fall zone safety issue was of such significant concern to the town that, in regard to Walnut Ave., where Crown Atlantic was approved to put a tower, and there is in fact a tower now on Walnut Ave., they sought and received a setback variance on Walnut Ave., but the selectmen, on Page 1 of that tab, filed a motion for rehearing. And the motion for rehearing was filed because they did not believe that the safety issues were adequately addressed merely

through the issuance of a variance, in fact, were not addressed at all. And they filed for rehearing stating that if the board were inclined to go forward, there needed to be an easement executed by the owners of the adjacent parcels saying that they would not use their land because of the safety issues involved. And in fact, the approval that was then granted by the planning board, which is Page 4, contains that condition; and Pages 5 through 9 are the easement that was ultimately required to be recorded and ultimately was recorded to further protect the properties that were within the fall-zone easement. And I think that reflects the thinking of the selectmen in the town at that time, that a substantial safety issue existed and that the approval would not have gone ahead absent the consensual easements. And I can state here on the record that there will be no consensual easement granted by Mr. and Mrs. Kokernak on their property.

The safety issues are real. This is not an area variance of the typical sort where it's an approved use without safety implications, where you're talking about 30 feet to 25 feet for a side setback or something like that. In fact, I would argue

that this is not appropriate even for consideration for a variance; but if the board were to consider it, I think we've offered compelling reasons why an area variance should not be granted.

And that's the presentation. Thank you.

THE CHAIRMAN: Okay. How much more of the--

MR. LOUGHLIN: We'd like to have James Verra--

THE CHAIRMAN: Okay. Mr. Verra, how long are you going to speak?

MR. VERRA: About 15 minutes.

THE CHAIRMAN: Let's hear it. And we'll break after that.

And then how many more of the group here, Peter?

MR. LOUGHLIN: Two.

THE CHAIRMAN: Two more, of what length?

MR. LOUGHLIN: (unintelligible)

THE CHAIRMAN: And then how long combined will they be, do you figure?

MR. LOUGHLIN: (unintelligible) Probably about 15 to 20 minutes on each.

THE CHAIRMAN: All right. Ready.

MR. JAMES VERRA: Thank you, Mr. chairman. Mr. chairman, members of the board, members of the public, my name is James Verra from James Verra & Associates in Portsmouth. We were paid to provide survey services on this proposal. The slides we're about to show you have been presented to you as Exhibit 112. The plan set shows the relationship of the properties affected by the proposed tower.

This cover sheet is a compilation of plans prepared in 1986 for the Ship Rock subdivision and the applicant's Sheet Z-1. Now, this is Sheet Z-1 as was initially presented to the planning board. And it shows the proposed houses from the '86 subdivision proposal that were sited on this subdivision, and it shows the relation of the tower to these proposed houses.

Next, this is the cover sheet for the subdivision proposal, and it shows the entire lot layout of the Ship Rock subdivision. We have Woodland Road, we have Ship Rock Road, we have the Ship Rock, and then here is the Morton property, where the proposed

tower is going to be shown.

Next, please. And this is, again, from the proposed subdivision. It shows Lots 1 and 2 of the subdivision with the design location of the houses and the proposed septic systems. We have a house here, septic system; house and septic system, and a fairly large wet area in here. These houses have been sited and designed in this concept to show where they should fit on the lot because of the setbacks.

MS. PECKHAM: Are those empty lots presently?

MR. VERRA: Yes.

MS. PECKHAM: Those are the Kokernak lots?

MR. VERRA: Those are the Kokernak lots.

MR. KOKERNAK: They're in current use. There's eight of them in current use.

MR. VERRA: This is, again, another site grading plan from the subdivision. It shows Lots 3 and 4 of the subdivision with design location of the houses. This is Lot 3 that is owned by Kokernak, and Lot 4 that is owned by Donsker. Now, please notice the wet area that's in here in the front of Lot 3 on that

parcel.

Next, please. And, again, another site grading plan. These were prepared at the time of the subdivision because of wetlands setbacks and where the wetlands were. The town wanted to see where the houses were going or could go, so you have some typical houses, again, and some septic systems and some driveways.

Next. This shows the lots on the northerly side of the road. It shows the lots on the northerly side. This is the Kokernak parcel, and this is the Ship Rock.

Next, please. And this is Lot 3 as it was proposed back when the subdivision was done. You can see where the wet area is on the parcel, the proposed house, the septic system, and in this area is where the proposed tower site.

Next, please. Finally, this one, again, is Lot 3. And you can see we took some time here, because this is the wet area, and now with the 100-foot setback, this is our building envelope in here. So we have been, because of current setback regulations, this has become our building envelope for this parcel. And, again, this is the proposed tower site in here.

So that is on paper what this looks like. And--

MS. PECKHAM: Can I ask one question?

MR. VERRA: Sure.

MS. PECKHAM: That building envelope, is that large enough to support a home?

MR. VERRA: Yes, it is.

MS. PECKHAM: It is?

MR. VERRA: But it's gotten smaller over the years because of the setback--

MS. PECKHAM: Yes. But you can actually put something-

-

MR. VERRA: Yes, you can. It's buildable.

MS. PECKHAM: All right.

MR. VERRA: Now, this is a marked-up copy of Sheet Z-1 that Dennis--that we marked up, and this dealt with, quote, "the boundary issue," the property-line issue. And what we have here is, if you see, this plan is Z-1, as was submitted by the applicant. And, although you can't see it here, that is labeled

"Property Line." Do you see where it says, "Property Line," and it's in quotes? "Property Line"--"Property Boundary"--excuse me. It also says, "Property Boundary" up here, and it says "Property Boundary" down there. And in red I have highlighted a line that is 50 feet parallel to the stone wall up here. And we have this line that the applicant has labeled "Property Line."

Now, the applicant submitted plans tonight that were stamped. And this board had requested that the applicant have the plan stamped. Well, the plan is--if you pull out those sheets and if you look at Sheet Z-1, this line in here is no longer labeled "Property Line"; it's labeled "Line of Occupation." This line is labeled "Line by the assessor's map." These lines up in here are still labeled "Property Line," but this line is labeled "Line of Occupation." It's not labeled as "Property Line" anymore.

MS. PECKHAM: What does that mean?

MR. VERRA: Well, what that means is that the surveyor who stamped it is saying that, he's saying exactly what he labeled it; the line is being occupied by. He's not calling it a property line, he's not saying it's a property line; he's saying

it's a line of occupation.

MS. PECKHAM: Okay. So it means nothing. Legally, it doesn't mean anything?

MR. VERRA: What it means is that's where he's saying that the Morton property is occupied to.

MS. PECKHAM: Has there ever been a survey of the Boies property by itself?

MR. VERRA: I could not find one. I called Thera Search Design Group several months ago during the summer asking them if they had a survey plan, any additional survey plans that they had. And they didn't have anything different than I had at the time. I had copies of the tax map, copies of the Ship Rock subdivision and a survey of the Kokernak parcel which I did several years back.

MS. PECKHAM: So this is a deed that's (unintelligible).

MR. VERRA: Well, I prepared a letter to the board, as requested, and I labeled this line here as "property line for deeds," in these two deeds. And in my letter I state it's my

opinion is that's where the property line is between the town parcel and the Morton parcel. And in this initial survey this was being called the "property boundary," but in now the plan that has been submitted it's called "line of occupation."

THE CHAIRMAN: What's the box there at almost the wide point, is that his garage that he uses?

MR. VERRA: That's their outbuilding, garage.

MR. FIELD: Jim, you described that as an initial survey, but that was not, as I recall, not signed by a surveyor. So is that or is that not a survey?

MR. VERRA: Well, it's not stamped, the initial plan was not stamped by a surveyor.

MR. FIELD: So can we assume that that was not--if it isn't a survey, there's no stamp, is there, and authenticated?

MR. VERRA: You could say that, yes.

Any other questions? I'm done.

THE CHAIRMAN: Thank you, sir.

Okay. We're going to take a brief break, five minutes-ish.

(Off record - on record)

THE CHAIRMAN: Okay. While we're waiting for him, I'm going to announce that apparently we need to be out around 10, in terms of facility management and all that. So I think probably at about--well, I'm trying to do the math here--you said about 15 minutes on each of them. Do you think we can wrap up by five of with the both of them?

MR. LOUGHLIN: We'll try.

Frank Shirley, our architect, Dennis's architect, is going to make a presentation to you.

THE CHAIRMAN: Okay.

MR. LOUGHLIN: You have Mr. Shirley's resume; it is in the exhibit--

THE CHAIRMAN: It is already?

MR. LOUGHLIN: It's in P-13.

THE CHAIRMAN: Okay. Sounds great. All right. And we're all here now, too. Let's do it.

MR. FRANK SHIRLEY: Well, first of all, thank you all for allowing me to present to you this evening. My name is Frank

Shirley, from Frank Shirley Architects. Now I'm working with the Kokernaks (unintelligible) going through these images. I'm going to walk you through some computer and then some physical modeling that my office has done of the cell tower complex and the adjacent residential properties to help explain the visual impact of the proposed cell tower on the neighboring residential lots.

I'm going to start with the computer modeling and we'll go through a series of six slides here. Starting with the first slide which Jim has already introduced to you, I'd like to point out a few things. First of all, again as mentioned, this is the subdivision plan prepared, I believe, in 1987 by the developer at that time. Orientation, this is Lots 1, 2, and 3, this is the Donsker residence, Ship Rock, and the current Kokernak property setback.

A couple of things I want to point out that Jim did not point out. First of all, when this subdivision was planned, the Morton house was already on this site, so the design of the subdivision did take into consideration use of the house and the adjoining property of the Morton property. As you can see, the

developer sited all three houses in his design toward the rear of each property near the rear of the property line. And this was done for both preference and necessity. By necessity, the perc tests were performed for all of these lots, and from those perc tests, suggested acceptable locations for septic systems were located. That, of course, had an impact on where the house can go. The contours from, in terms of preference, these contours or topographic lines suggest the slope of the site, with this being the low point moving to a high point, and it is a common practice and a practice that the developer suggested, too, that he would like it, as well, putting the house on the higher ground, which also tended to put the houses in his design toward the rear of the property.

Finally, as Jim also pointed out before, two of the three properties along the Morton property, Lot 1 and Lot 3, have wetlands. This is the designated wetland line for Lot 1 and Lot 3 here. And when this plan was prepared in 1987, the setback requirement off of wetlands was 75 feet. So these houses respected the 75-foot line off of the wetlands. Now that setback is 100 feet, which means essentially that the house on Lot 1 and

house on Lot 3, will, in order to conform to conservation commission demands and zoning demands, will be placed along this rear property line, along this rear property line. Lot 2 does not have wetlands pressures on it.

Now, we're going to--before we go to the next slide, there's going to be an aerial view looking over this entire area, standing off to the right of the screen and looking down, just to give you an orientation. Now why don't we go to the next slide? Okay.

This is an aerial view that was taken in November of 2000. This is Woodland, it's labeled Ship Rock, the line there. This is the Morton house and property, and where that little arrow is is the site of the tower. Lots 1, 2, and 3 are placed along here. There's the Donsker home, already built when this photograph was taken.

One of the important features that I want to point out in this photograph is where the tower's proposed is in a very long swath of deciduous trees with very little coniferous canopy around it, none around it and very low even near it. This, as you can see in this fall shot where the leaves are down, seeing

the ground even from whatever height this was taken, probably at least 1500 feet above, gray, you can see the shadows of the trees, you can see gray very clearly, the point being when these trees do not have their foliage, they're transparent. See, it's clearly evident. And that should be taken into consideration when we think about this tower sited here at more than twice the height of the deciduous canopy around it, its visibility is not going to be simply what is seen above the canopy but what can be seen through the canopy for more than half of the year.

Let's go to the next one. Now, this is the same slide, the same image, but here we have input, some imagery of the tower and how these lots could be developed. The first thing to point out again, this is the Morton home. Here is the cell-tower complex that's proposed. Obviously, that's the tower, the fence enclosure and the supporting buildings. The deciduous-tree canopy around it, again with this tower being more than twice its height, it dwarfs the deciduous canopy.

MR. FIELD: Excuse me. May I ask a question? Is that dark area to the left of the tree, is that an indi--I see the shadows on some of the other properties with the sun being, I

guess, primarily on the east of this model here, is that supposed to be a shadow?

MR. SHIRLEY: Yes.

MR. FIELD: Oh, thank you.

MR. SHIRLEY: You know, we're talking about this here and this is supposed to indicate a shadow. Houses, then, on Lots 1, 2, 3, are located toward the rear of the property for the high point of the property, as discussed in that previous slide. They're located here by necessity because of wetlands and septic locations, and they're located here because of preference because this puts them on the high points of the properties. So here's a house proposed for Lot 1 and Lot 2 and Lot 3, the other thing, and then the Donsker house seen there on the corner of the slide. These three houses were, they're modeled to try to capture the scale of the homes that are already built in Ship Rock. These are--the developed properties around Ship Rock are million-dollar-plus properties, and these houses are intended to capture, again, that same scale. Furthermore, if we look at other houses around the neighborhood, they have--tend to have expansive lawns with view corridors and here again, for our

three models we wanted to express the same thing, imagining expansive lawns around these homes and view corridors. So you begin to see the density of the residential community that is permitted to grow around where the cell tower is proposed.

MR. LOUGHLIN: Can I ask a question?

MR. SHIRLEY: Sure.

MR. LOUGHLIN: Is there a scale here?

MR. SHIRLEY: It's an actual photograph. So, aside from the houses themselves, everything is physically to scale by the photograph. The houses that we have brought in, for the modeling technique, for what it's worth, were basically captured off of the photograph and used back in the photograph just placed on the lots to create them.

MR. LOUGHLIN: So it's your representation--and I assume you raised your hand, you're under oath--that's a true-scale tower, the tower itself--

MR. SHIRLEY: Yes. It is--

MR. LOUGHLIN: --is also to scale?

MR. SHIRLEY: --our intent within our modeling

abilities on a photo montage to represent things accurately.

THE CHAIRMAN: You might have gotten here late. Were you sworn in as a witness?

MR. SHIRLEY: I was not.

THE CHAIRMAN: Okay. Do you swear everything you're going to say this evening will be the truth, the whole truth and nothing but the truth, so help you God?

MR. SHIRLEY: Absolutely.

THE CHAIRMAN: Goes for the next guy, too?

MR. KOKERNAK: I do.

THE CHAIRMAN: Okay.

MS. LERMER: The shadow's bigger than the trees.

MR. SHIRLEY: Well, we have other drawings that follow that are also, they're CAD-drawings where everything is--it's an elevational drawing where everything is perfectly scaled because that's the ability you have within the program. Again, in these images this is our best approximation of capturing the scale of these homes and the scale of the tower complex. We do have information, for example, on surrounding homes where we were

able to capture scales to gain some proportion systems to determine heights of, again, a tower complex and associated homes.

MR. FIELD: May I ask you another question? Many of the coniferous trees on lots, I think, 2 and 3 have been cleared to develop the lawns that you say are comparable to others in the subdevelopment?

MR. SHIRLEY: This lot and this lot? Yes.

MR. FIELD: Okay. (unintelligible)

MR. SHIRLEY: I mean, this is Lot 1, Lot 2 and Lot 3. Again, I'm not the landscape architect, the houses don't exist, but the purpose of this exercise is to demonstrate, I think, the density of the homes, the proximity of the homes to the tower and the reality of the remaining, the likely remaining deciduous and coniferous canopy when these homes are put in place and lawns are put in place. These homes have lawns, the Kokernaks have--what's that?

MR. LOUGHLIN: And septic systems.

MR. SHIRLEY: And septic systems, of course. So this

is, again, being influenced by those three factors, it's not trying to embellish; it's trying to be honest within the materials we have to work with.

MR. FIELD: Can I follow up with a question?

THE CHAIRMAN: Yes.

MR. FIELD: What's the height of the trees next to the Morton house?

MR. SHIRLEY: We have assumed for the deciduous canopy that this canopy is roughly 60 feet tall. And we have assumed that for a coniferous canopy 70 to 75 feet tall.

MR. FIELD: So that tower is only 50 feet higher than the other trees?

MR. SHIRLEY: This cell tower therefore would be about 64 feet taller, a little more than twice the height of the deciduous trees.

MR. FIELD: Okay.

MR. SHIRLEY: Well, one of the things that's actually hard to read, for what it's worth, is these trees being so transparent, you don't actually have a very good sense of the

image. We looked at--I mean, we scanned this, we put it under a loop, you know, under an optical loop for (unintelligible) light, to actually get vertical heights on tree trunks and the like, again, for the deciduous parts. We tried to take as much data out of the photograph as we could to influence accurately the rendering of these buildings and tower.

It also should be noted that these houses, which as Jim pointed out, Peter said to me, when placed more or less along the back, setback line, that the distance from the center line of the tower, physical center line of the tower ranges from approximately 206 feet to, on, I guess it's on Lot 2, to approximately 250 to 255 feet on Lot 1. In other words, these three houses, their back corners will be in the vicinity of 200 to 255 feet away from the center line of the tower.

We also crossed the street, again, just to capture the actual density of what this neighborhood is permitted to be around Ship Rock. There are five undeveloped sites along here, and similarly, we have placed five homes on Lots 13, 14, 15, 16, and 17, again, trying to capture the density of the neighborhood when developed as of right. And then this is the existing home

up around the corner there.

MR. FIELD: Who is the owner of those five lots?

UNIDENTIFIED: (unintelligible)

MR. FIELD: Okay. I (unintelligible)

MR. SHIRLEY: So before we go to the next slide, just to orient you, we have another computer modeling off of an aerial view. We're imagining a house on Lot 3 and we're taking an aerial view from up above and on this side Lot 3 looking back toward the cell tower, what would that visual relationship look like? And we can maybe go to the next slide.

So here is an imagined house on Lot 3, again, the scale commensurate with the homes in Ship Rock, landscape around, a drive accessing it. There is the Morton house and here is the proposed cell tower. The deciduous canopy that is mentioned in the second slide surrounds it, the tower being 124 feet, the estimated deciduous canopy being at 50 feet, and the coniferous canopy over here being at 75 feet.

Hopefully, you know, these images begin to demonstrate that the tower has more than twice the estimated canopy that's all

around it. It dwarfs the canopies, again, being roughly 60 to 65 feet higher than the estimated deciduous canopy that surrounds it. And in my opinion, you know, as an architect if I were being influenced by this tower on the site, it would have a lot of influence on how to place this house, where I place this house and how to orient it because it's a significant, in my opinion, visual affront to a home of this caliber and this location.

The next two slides, before we go to them, are also going to look now in a little more scaled detail imagining a house on Lot 3 and looking at its sectional relationship, section-elevational relationship to the tower. And we're going to look at what I'm going to call view cones. If you imagine living in this house, what would your view of this tower be? Imagine, I mean, playing in this front yard or driving up this driveway, what would your view of this tower be? So let's go to the next slide.

Now, this is a drawing prepared completely to scale. This is a, again, a house that we can envision going on this property. Walking you from left to right, this is a cleared area for a yard; this is, you know, perhaps a landscaped area of

obviously smaller trees, ornamental trees and the like. For scale, here is a person, there's another person, there's another person, because this house sometimes looks in this drawing as though it's drawn to be a dollhouse, and it's not. By that person, you can tell this is a tall house. In fact, this is a house that already exists on Ship Rock Road to scale.

The deciduous canopy shown here of an average of roughly 50 feet. The coniferous tree here is shown. And the cell tower drawn at 124 feet with its fence complex and supporting buildings, all for the drawings prepared by GridCom in your submission.

Now, these two dotted lines here represent someone in the second floor of their home standing and looking out their back window and trying to understand what view of this tower that they may have. And taking a conservative approach, a view cone that basically is cutting through just the top of the canopy, of the deciduous canopy, leaves this view of the tower in, for all intents and purposes, a clear view of this homeowner's second floor. Certainly, in the wintertime, over half of the year, through the fall, winter, early spring, this view of seeing more

than 30 feet of this tower will be always present when living in this house. This house is--this is actually the stonewall that is the property line and this is the allowable setback. So this is a house built as of right off of that property line with the tower accordingly positioned.

And we'll go to the next slide. And this is the same drawing except now we've put a person playing in the front yard. And there again, don't worry about this line cutting through the house because in fact it's only for a diagonal view around the house, but because this is a section elevation, it, the line cuts through the house. The house does not impact the view from the yard or the driveway approach. So now your view, as you can see, is even more significant. This is perhaps a 50- or 60-foot yard; it's not an extensive yard. And now they have, for more than half of the year, a clear and unobstructed view of this tower of roughly its top 40 feet or about a third of its total height. And this is, again, looking at a relatively unobstructed view with just the very tops of the suggested canopy. Views through a year in the wintertime are certainly going to be possible as demonstrated by that aerial view in the first shot,

second shot, where you could see the ground through the entire canopy with these.

So that basically concludes my presentation for the computer renderings, computer drawings. If there are more questions on those, I'll take them; or if not, I can go into a brief explanation of this physical model.

Okay. Physical model--

MS. LERMER: Now, is this to scale?

MR. SHIRLEY: Yes. This is built to one-eighth inch equals one foot scale. This complex, this is of the cell tower, the support building and the fence all built off of the GridCom drawings that were submitted to us. So this is a 124-foot tower. These buildings are built to the scale drawn on the drawings, as is the fence enclosure. These two small trees here that look smaller are actually built at 60 feet to represent what the canopy is. This is the representation of the deciduous canopy. These little evergreens are, there are some plantings suggested in the plan of, I forget what they are, something like eight to ten feet. I've put them on there so you can understand the real or not so real effect in terms of the screening of this tower

from the abutting properties. So, again, use these as scale for the canopy that surrounds this. This is the Morton house there. And then I'm going to walk around to reach the other houses.

So what we have here, again, are just a couple of quick models, suggested models of, again, a house that could go on Lot 3 that would be the appropriate scale for this neighborhood, and a house on Lot 2. And as a quick reminder, if you can see it--I know it's a little hard because it's flat and just (unintelligible)--but this heavy red line is basically the, kind of the building envelope line that is permitted as of right. So that's rear setback, side setback, and wetlands setback of 100 feet. Now, this house does have a wing coming off of it that clearly puts that off it, but as you can see, this house, you know, there's some sort of linear bar arrangement, it won't--someone, I believe, asked this of Jim, can a house fit. Clearly, a house of a reasonably substantial scale can fit in this envelope; but also, I think clearly, it's positioned tight to this property line. You know, it has to have--you can imagine this garage wing rotating 90 degrees, so it's coming out here, here's that house, here's that sectional elevation view where

you were looking, you know, from the second floor, what's your vantage point up there; a driveway coming up to the house, perhaps a front yard, those views up.

Similarly, looking at Lot 2, again, just a representation of a house of the appropriate scale for the neighborhood, Lot 2 not having wetlands pressure but its siting as suggested by the perc test and septic system and then the topography of the site, you know, somewhere getting placed in this zone. Here's the house as finally developed in 1987. As of right it could be put, you know, roughly there. Either way, close approximation distance to the cell-tower complex.

And I'll just take this around and bring you up to Lot 1, as well, if you can imagine this. Again, everything here is built to scale. Eight-tenths inch to a foot, standard architectural scale used commonly.

MR. FIELD: Frank, as you go along here, I represent Dr. and Mrs. Donsker, but could you maybe move one of those deciduous trees over to nearer one of the homes to sort of--

MR. SHIRLEY: Sure.

MR. FIELD: --just to get a perspective on that?

MR. SHIRLEY: Sure. Well, since I'm up here now on Lot 1, just sliding the house down just to understand it, once again, this property has pressures for the wetlands setback, which is shown heavily in red, this line and this line being allowable setbacks, rear and side. So here's a house that's fitting within that envelope. And if we want to imagine a couple of tree canopies here, there are a couple of canopies to that house, to give you some sense; and, you know, looking at the views through them. That's--you know, the purpose of this model is to once again explain the scale. And as an architect, when I was putting these pieces together, I think the scale is very hard to comprehend just what 124 feet means, you know, because there is woodlands throughout here, we have an impressively high canopy by their slender nature. And it may, I think, suggest casually that it will provide all the screening one would ever need for an object like this, which would be undesirable in anyone's backyard. But the reality is this is of a scale unlike anything in the neighborhood, unlike the trees or the buildings; and this, I think, reflects the dramatic difference between them. You put a tree there--I don't have people to put there, but that would help, too.

And that's my presentation. I'll field any questions; or in the interest of time, because I went over my 20-minute promise, I could leave it to the next person.

MS. PECKHAM: Actually, I have a question for Mr. Kokernak. How old is this subdivision?

MR. KOKERNAK: 1986.

MS. PECKHAM: And how long have you had all those lots?

MR. KOKERNAK: 1992.

MS. PECKHAM: Ninety-two.

MR. KOKERNAK: There was a second bankruptcy that happened in the development.

MS. PECKHAM: Okay. So the developer went bankrupt and you bought some lots, is that what it was?

MR. KOKERNAK: Yes.

MS. PECKHAM: And are any of the lots presently on the market?

MR. KOKERNAK: No. There are some other lots on the

other side that I bought at the same time and we sold them.
Houses were put up, too.

MS. PECKHAM: Okay.

MR. KOKERNAK: One lot the Boieses bought for extra protection. The second one was sold and now has a building on it.

MS. PECKHAM: Okay. I'm just trying to get a feel for it.

THE CHAIRMAN: Okay. I think that pretty well does it for testimony tonight. So--yes.

MR. HILLIARD: Before we forget, Jim or Peter, how are we going to memorialize Mr. Verra's and Mr. Shirley's presentations for the record? Well, just think about that before next time, because we saw a lot of slides and stuff, and I don't think we have any permanent exhibits.

MR. KOKERNAK: I think Jim Verra's slides are all in the record. There was actually a packet of 11 x 17 drawings.

MR. HILLIARD: Okay. They're in the record already?
Okay.

MR. KOKERNAK: And then also--

(Several voices at once)

MR. HILLIARD: P-13.

MR. KOKERNAK: And then, also, I think all the photographs in the second photo pictorial that we presented, there were computer models and the like and all that that Frank gave, other than those two view-cone pictures. So that's the only thing that we're missing.

THE CHAIRMAN: Okay.

MR. LOUGHLIN: And this.

MR. KOKERNAK: And then a picture of this.

MR. BASSETT: And I was--my responsibility when you came to that, and I forgot to do that.

MR. KOKERNAK: And what we thought Frank would do is right after the set-up here, he would photograph it.

UNIDENTIFIED: (unintelligible)

MR. HILLIARD: But the pictures with the simulated houses and the tower are in this record somewhere?

MR. BASSETT: P-13.

MR. HILLIARD: They're in P-13. Okay. Thank you.

MR. SHIRLEY: And the view cones, whether we can generate exhibits--

(Several voice at once)

MR. HILLIARD: Okay. Thank you. Mr. chairman, go ahead.

THE CHAIRMAN: Okay. So we have an idea of what we're heading for at the next meeting, we have one more gentleman for 15 and 20 minutes. Attorney Field, you wanted, what, 20 to 30 minutes, I think?

MR. FIELD: After seeing this for the first time, I think it may not take me that long.

THE CHAIRMAN: Okay. So give or take a half-hour combined. Anybody else from this group, or dare I say it? Are we approaching daylight here?

MR. KOKERNAK: I have a brief submission.

THE CHAIRMAN: I'm sorry. Yes, you did. And how long would you like, Mr. Kokernak?

MR. KOKERNAK: About a half-hour.

THE CHAIRMAN: Half-hour. Okay. So an hour.

He's wondering whether I'm actually going to make him answer the question. What do you think, counsel?

MR. SPRINGER: I would think we could finish next meeting if we can go to 10 and if they stick to an hour. But I don't know, I've got--

THE CHAIRMAN: Okay. Fair enough. A four-hour meeting might wrap it, you think?

MR. SPRINGER: I would like to try to do that.

THE CHAIRMAN: Okay. Well, let's get that scheduled and on the books, then.

MR. SPRINGER: Well, what date are we looking at? I'm sorry.

THE CHAIRMAN: I do not know. Our next regular meeting is two weeks from today, 25. So what have we been doing? Two weeks--yeah.

MR. LOUGHLIN: You've got Chapel--

THE CHAIRMAN: Yeah, we've got Chapel on the 25th. What is the second Tuesday in November?

MR. HILLIARD: November 8th. And I'm out of state then.

THE CHAIRMAN: You are.

I'm unavailable the 1st and the 15th, so that's going to be tough on Tuesdays that month.

(Discussion about availability)

THE CHAIRMAN: Everybody like the 8th with Russ reviewing the transcript, or do you want to try to do it on a day when Russ is here?

MS. PECKHAM: What is (unintelligible)

THE CHAIRMAN: Russ can't be here on the 8th. Well, in terms of Tuesdays for the month, I mean, the fourth is our regular meeting, anyway. I can't do first and third. And Russ is gone on the 8th, which is the second.

MR. LOUGHLIN: When did you say your regular meeting was?

MR. TURCHAN: The fourth--

MS. LERMER: The fourth Tuesday is Thanksgiving week.

MS. PECKHAM: It's Thursday, not Tuesday.

MS. LERMER: Yeah, but that same week as--

MS. PECKHAM: Oh, okay.

THE CHAIRMAN: Want to do it the 8th? Russ, are you absolutely comfortable with--

MR. HILLIARD: Oh, yes.

THE CHAIRMAN: Okay. Can we get him a video copy to review? Whose videographer is it?

MR. LOUGHLIN: Mr. Kokernak (unintelligible)

THE CHAIRMAN: Mr. Kokernak, our counsel will not be able to be here on the 8th, would you help him make arrangements to get the video?

MR. KOKERNAK: Absolutely. Yes.

THE CHAIRMAN: Okay.

I think we'll probably stick with the 8th, then, 6:00 p.m.

MS. LERMER: I thought somebody was meeting here on that Tuesday.

MR. MABEY: I think it was--was Tuesdays the problem or was it Wednesdays that was the problem?

THE CHAIRMAN: Wednesdays is the problem.

(Several voices at once)

MR. HILLIARD: Well, why don't I check, and we'll notify everybody?

THE CHAIRMAN: Okay.

MR. FIELD: Mr. chairman, will this exhibit be up at the next meeting, or is this the one and only time we're going to see this?

THE CHAIRMAN: I don't know. You'd have to ask Mr. Shirley.

MR. FIELD: Because I'm just thinking of the Mary Herbert room--

THE CHAIRMAN: Oh, I'm with you, yeah. Well, I mean, it's already been--it's been part of a public meeting. You know, unless I hear some, you know, some cantankerous wailing here from, you know, either side, I don't see why we need to have it again.

MR. FIELD: Well, the only reason I ask--and perhaps we can, if the record is still going, part of the Donskers' argument and part of my questioning of Mr. Gardner was the extent to which in assessing value he had theorized or--

THE CHAIRMAN: Mr. Gardner is--

MR. SPRINGER: Our appraiser.

THE CHAIRMAN: Okay.

MR. FIELD: Whether he had sort of taken this type of information into consideration on an adequate enough basis. So it would be helpful to have it, but if we all have to remember it, then, I guess we'll do it.

THE CHAIRMAN: Mr. Gardner?

MR. SPRINGER: He may have already left. He's been here all night; he may have already left.

THE CHAIRMAN: Was he here? Did he see this while--

MR. SPRINGER: Well, yeah, absolutely. He's been here all night.

MS. PECKHAM: I don't know why we can't bring it out again.

MR. KOKERNAK: It's available. It's readily available.

THE CHAIRMAN: Right. And that's not my issue. You know, but I'm just wondering, I mean, if the location is being determined, about whether this thing can be laid out or not.

MS. PECKHAM: What's wrong with here again?

THE CHAIRMAN: Well, I don't know.

MR. HILLIARD: Here or upstairs.

MS. PECKHAM: We can come back here.

THE CHAIRMAN: All right. Well, let's just do it here. Let's make it simple.

MR. SPRINGER: So we're back in the school library--

THE CHAIRMAN: Yeah. And then we know it fits, right?

THE CHAIRMAN: That's it. Thank you, folks.

(End recording)

I, Judith A. Park, court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

November 3, 2005

Judith A. Park