

Minutes of the **Regular Meeting** of the Planning Board of the Village/Town of Mount Kisco held on **Tuesday, November 24, 2020** at 7:15 pm via Zoom Teleconference

Members Present: Doug Hertz, Chairman
John Bainlardi, Acting Chair
Ralph Vigliotti
Michael Bonforte
William Polese
Crystal Pickard
John Hochstein

Staff Present: Jan K. Johannessen, Village Planner
Peter J. Miley, Building Inspector
Anthony Oliveri, Village Engineer
Whitney Singleton, Village Attorney

Chairman Hertz stated alright, welcome everyone. This is the Mount Kisco Planning Board for Tuesday, November 24th, 2020. We've just concluded our work session and this begins our regular Planning Board meeting. Before we go to the first item on the agenda, we just have a bit of housekeeping. We have the Planning Board scheduled for 2021, which members have received. It follows the form that we've been using which is one meeting, two meetings a month, one meeting in each of July and August. And again one meeting in December. Other than that two meetings a month as per usual. All the same format, submission deadlines, et cetera, et cetera remained same as per current plan. If no one has any objection, I'd like someone to make a motion or if no one has any questions rather, motion that **we adopt the Planning Board calendar for 2021 as proposed. I will make that motion**, would someone second that?

Mr. Polese stated I will second that.

Chairman Hertz stated thank you. Michelle?

UPON ROLL CALL VOTE:

Chairman Hertz	-	aye
Mr. Polese	-	aye
Mr. Vigliotti	-	aye
Mr. Bonforte	-	aye
Ms. Pickard	-	aye
Mr. Hochstein	-	aye
Vice Chair Bainlardi	-	aye

The motion carried by a vote of 7 to 0.

**A. NY Luxury Motors of Mount Kisco, Inc. (Jaguar Land Rover Dealership) – 299 Kisco Avenue
PB2017-0350 SBL 69.49-2-1
Site Plan, Wetland Permit**

Mr. David Steinmetz and Mr. Matt Acocella of Zarin & Steinmetz; Mr. Paul Sysak of JMC; Mr. Sarah Butler of Stuart Romm Architects were present.

Chairman Hertz stated alright, the first item in the agenda is a formal application New York Luxury Motors of Mount Kisco, 299 Kisco Avenue. We have a draft resolution before us. Let me see if I can reopen that and I've been having computer problems, so I apologize if I have some issues this evening, oh, great. Let's

see if I can get this to work, see if any of my notes were restored. Okay. So, before we dig into the application, Jan, would you just get us up-to-date on where we are here?

Jan Johannessen stated sure it's, the Board has closed the public hearing. And at the last meeting authorized staff to prepare a resolution for a negative declaration of significance site plan and a wetland permit. The applicant had made a couple substantial submissions, staff comments have been addressed. I think the one open item we talked about at the last meeting was they're going to provide some examples of the resin sidewalk. But other than that, there was, I think staff and Board comments were addressed. So, we prepared a resolution for your consideration.

Chairman Hertz stated okay and that resolution has been shared with the applicant?

Jan Johannessen stated it has.

Chairman Hertz stated and I know we spoke in the work session about a single item that they had a concern about which was – and what was that condition number?

Jan Johannessen stated it was condition number 32 removing the word no change in tenancy.

Chairman Hertz stated okay, so the discussion there is change of used randomizing space expansion or intensification come back to the Planning Board. But it changed in tenancy, in other words, move from one automotive used to another, functionally identical would not cause an action to come back before the Board which is totally reasonable. So, we're okay with that. I want to just walk the Board members and the public through the resolution. And bear in mind this is both a negative declaration significance, site plan approval and a wetlands permit, so, this resolution includes all three. So, the first few pages recite the whereas' which just go through the various details about the site and what we've looked at. And the degree to which things have been discussed and reviewed. There are conditions starting on the bottom page four. We have conditions to be satisfied prior which are largely boilerplate. And then we get to the other conditions section which is generally specific to the applicant's specific projects. And I would like to just bring everyone's attention to starting at item 22. There shall be no service of vehicles on the subject property based on discussions here, service vehicles will be done elsewhere. Item 23, all proposed light fixtures shall be dimmable and illuminance levels shall be reduced by 30% after business hours. I want a clarification on that, are we expecting that that is interior and exterior or exterior only? What was the intent of that, Jan?

Jan Johannessen stated I think the intent was exterior only.

Chairman Hertz stated let's, because there are other sections that talk about interior lighting, specifically number 27. So, those...

Jan Johannessen stated like televisions and signs, illuminated signs and things of that nature?

Chairman Hertz stated yeah, so let's leave 23 – let's take 23 and make that exterior, just add the word exterior.

Jan Johannessen stated fine by me.

Chairman Hertz stated in number 24, there's just a typo, take the P off of lights. Item 26, no interior televisions or illuminated signs shall be left on during non-business hours which will be visible from the public street. And tied in, that's item 26 and item 27, all interior lighting on the subject property shall be

turned off during non-operating hours with the exception of security lighting as deemed appropriate by the Building Inspector. Now, this site is nowhere near as sensitive as the Curtis site was. But if you and there are probably only one or two people on the Board who remember the Curtis approval. But we were incredibly careful because of the sensitivity of the property to – sorry, it wasn't the Curtis. It was the BMW approval, to make sure that the positioning of lights and such would not create undue illumination that would be visible because this is a street level and does not have that. I think these are reasonable requests. But I would just open it up to Board Members to see if they wanted to modify the language of that at all. Or if they thought that was inclusive enough to do what we're trying to get at.

Mr. Bonforte stated I'll say something. In the past, I've noticed the dealership meaning the applicant would leave two or three cars, the LED lighting on. And again I could be wrong about this, but I'd like them to – I don't want to see them lose that sort of marketing angle given number 26 and number 27 in the approval because maybe it's a regular practice, maybe it's not regular. But, am I – is my recollection correct from speaking...

Jan Johannessen stated know, I see with the Tesla, Tesla keeps their lights on in that display window.

Mr. Bonforte stated yeah and just to qualify, I think they were just like the front LED driving lights. They're very non-obtrusive in my own opinion. But they are on and I don't want to see that become an issue if they want to continue that business practice. So, just throwing that out there as something I'm in favor of actually and maybe it should be amended to include that. But, then again not to include 20 cars but I remember seeing two or three cars having that on in the...

Chairman Hertz stated within the showroom, within the showroom?

Mr. Bonforte stated inside in the showroom, yes.

Chairman Hertz stated what is the, I mean I'm not in particular favor of having, you know, that stuff lit at night, to me it can be distracting. You're driving along and all of a sudden there's a, you know, it's dark and there's a car light in a place you're not expecting, I find that to be almost dangerous because it is relatively close to the street. But it's, you'd have to analyze them individually. What's the applicants, or is the applicant comfortable with the language it's written?

Mr. Steinmetz stated good evening Mr. Chairman and members of the Board. David Steinmetz from the law firm, Zarin & Steinmetz representing New York Luxury Motors. We talked about these conditions and I genuinely appreciate Mr. Bonforte's comment there because I would hope, Mr. Chairman, the Board would stay away from straying into regulating internal business operations versus genuine sight issues. And there's a fine line, we clearly need to have some degree of lighting inside these showrooms at night for security purpose and I think your resolution takes that into account. There may be other incidental lights that are left on inside, not unlike other businesses in Mount Kisco. And I'm so appreciative of the fact that you share that you had some specific reason with regard to BMW that triggered this. When we read the resolution, we figured there was some other application that probably triggered you to do this in the past. And we don't feel like our site is positioned in a way we're going to cause distraction. So, well I – overall, we really don't have an objection to the language. I would suggest that you kind of defer to Peter and leave this as an enforcement issue. If the Village thought that there was a public health, safety, and general welfare issue, I don't care whether it's in your resolution or not, Peter's going to step up and enforce. So, if Peter thinks we're doing something distracting inside a high-end place of business, let him call us. If not, I would hope you wouldn't try to regulate it with language in your resolution. I don't think you regulate the lights on inside your fast-food restaurants and they leave them on and we can see the – we can see the signs

and the things inside. I question with all due respect, it feels like you're regulating internal business operation and not zoning and land use.

Jan Johannessen stated Doug, can I just step in? This is a standard condition. And every one of the Planning Board's resolutions regardless of the use,

Mr. Steinmetz stated it doesn't make it right, Jan.

Jan Johannessen stated you said that it was – you felt like it was directed this – to this particular application and it's not.

Mr. Steinmetz stated I don't think I said that. I didn't mean to say that. I absolutely didn't, I don't think I said that. I...

Jan Johannessen stated that we don't – we don't apply to other uses in Mount Kisco which is not true.

Mr. Steinmetz stated well that, whether you do or not, whether it's in the resolution or not, I'm not sure that you go around and make everybody turn off all their lights and turn off their...

Chairman Hertz stated that is absolutely the case. We do not have the big illumination police circulating at night. David, I hear you, I think these are reasonable. they allow you to provide for, you know, safety and security and all those other things. We're just asking that the lights be functionally turned off when you leave at night, which is [inaudible] practicing.

Mr. Steinmetz stated I don't want to debate it, I don't want to cause an issue. I agree with Michael's comment earlier that there are some lighting inside a showroom that might actually make some sense about, you know, the LED lights in a nice car. I don't think that's obtrusive but, Mr. Chairman, let's go past this.

Chairman Hertz stated sure, are you okay with the language and the resolution?

Mr. Steinmetz stated we are okay with the language and the resolution.

Chairman Hertz stated thank you. Okay, let's just jump down to items 29 and 30. Item 29 really has to do with just with 41 Kensico. As everyone remembers, we looked at this application for most of its application life as two sites that would be used jointly, that's no longer the case. So, we're just going to memorialize that in the conditions for number 29. And then number 30, there should be no loading or unloading of vehicles or trucks on the subject property or within any Village right of way. That will be strictly enforced. We've had disasters throughout the Village. With this not being, you know, business is violating this and to this day, that's still an issue, so...

Mr. Steinmetz stated fully understood. We've already told Bedford, when we met with the Bedford Planning Board. Our deliveries will take place on Norm Avenue, not on Kisco Avenue.

Chairman Hertz stated great. So, the last item which you may have heard during a work session. When we were discussing this at an earlier meeting, we had discussed the direction of cars coming to and from the site, you know, for cars being dropped off and then heading out for service and then being returned to the site for customer pickup. Board members, we started the conversation during a work session but we thought it was best held during the public part of the meeting so that the applicant could weigh in as well. So, the thought was could we properly request based on the business plan and in logic that the business take cars, head north of Saw Mill at least to deliver them to Norm Avenue. And that you're, it's probable that

you're use of the internal Village roadway or the Saw Mill is going to be something that you will make a business decision on and a traffic decision on, on your way back.

Mr. Steinmetz stated agreed and we agree with that. I think we told, we offered that in our first discussion about this. If you're looking for a commitment that will go northbound and the Saw Mill to get the cars up to Bedford, there's no objection. We appreciate the latitude for a service valet to make the decision about whether they want to take the local 117 south route or go north and come back on the Saw Mill. So we would appreciate the latitude on the return trip and we're prepared to commit on the northbound exiting trip.

Chairman Hertz stated so, let me just throw and open to Board members for their comment and thoughts. Anyone who wants to opine?

Mr. Vigliotti stated Doug, I'm fine with that, just as long as we memorialize it and get it into the resolution.

Chairman Hertz stated thank you. Anyone else?

Mr. Vigliotti stated as one member.

Chairman Hertz stated all right. Hearing no other Board members, Jan, I would ask that we add a condition in the resolution just referencing the northbound taking cars from the site going northbound onto Saw Mill to deliver them to the service area. So, we're going to specify one direction only.

Jan Johannessen stated got it.

Chairman Hertz stated and then they have to come in reverse back down Saw Mill. Okay, that takes us to the end of the resolution. Were there any other questions or thoughts or comments by members of Board? Applicants?

Mr. Steinmetz stated thank you for having a resolution ready for this evening, we appreciate it.

Chairman Hertz stated you're very welcome. Alright, if there's nothing else, would someone make a motion to approve this resolution?

Mr. Bonforte stated I'll make motion chairman, to adopt the New York Luxury Motors of Mount Kisco, Jaguar Land Rover Dealership, 299 Kisco Avenue, site plan approval, wetland permit and the negative declaration of significance 69.49-2-1, CAL number 2017-0350, this day November 24, 2020.

Chairman Hertz stated thank you and as verbally amended as per discussion. Do we have a second on that motion?

Mr. Hochstein stated second.

Chairman Hertz stated thank you. Any questions? Alright, Michelle would you poll the Board?

UPON ROLL CALL VOTE:

Mr. Bonforte	-	aye
Mr. Hochstein	-	aye
Mr. Vigliotti	-	aye

Ms. Pickard	-	aye
Mr. Polese	-	aye
Vice Chair Bainlardi	-	aye
Chairman Hertz	-	aye

The motion carried by a vote of 7 to 0.

Chairman Hertz stated good luck and we look forward to seeing a beautiful new building. Thank you very much.

Mr. Steinmetz stated thanks for your time and your attention on this matter. Everybody a happy and safe Thanksgiving.

Chairman Hertz stated okay, the next item or the next items on the agenda are public hearings. So, before we start the public hearings, there are, I am going to be chairing The Park which is public hearing the item B. And then Mr. Bonforte will be chairing, Item C is no longer on the agenda, it's been adjourned. And Item D, Mr. Bonforte will be chairing. I think we both would like to make joint comments and we may have slightly different versions of this that we're going to ask the public to limit their comment time in five minutes. If you've been heard before, we're going to ask you to limit of your time to three minutes, if this is a second crack at the wheel here. And then if you have longer comments, which you're certainly welcome to have, please put them in writing and make them available to the Board. So, we would ask that people, to the best of, some of our meetings have been going extremely late and we welcome everyone's input but what's important is that we get new perspectives. So, if you simply echo someone else's perspective, if you can, you're welcome to say that but you don't have to restate the case again. So, I would ask that we all try to be respectful of each other's time. That being said, the first item on this public hearing is a continued public hearing for The Park which is ShopRite expansion, 333 North Bedford Road. They're on before us for site plan special use permit, change of use, subdivision and steep slopes. This is continued public hearings, so there will be, as in all the public hearings that we've had, you can make your voice heard either through Facebook, I believe you can use the chat function of this Zoom call. And there's a calling number which I don't have. Peter, can you mention the caller number.

Mr. Miley stated yes, the number is 914-420-0383.

**B. The Park (ShopRite Expansion) – 333 North Bedford Road
PB2018-0365, SBL 69.50-2-1
Site Plan, Special Use Permit, Change of Use, Subdivision, Steep Slopes
Continued Public Hearing**

Mr. Stephen Spina of JMC; Mr. Neil Alexander of Cuddy & Feder and Mr. Jim Diamond of Diamond Properties were present.

Chairman Hertz stated and as always you can also come to Village Hall. There's a microphone live there and you could be heard live at Village Hall as well. So, and that information stands for all public hearings at this point. Okay, The Park, we have a lot of information that's been provided to us. We have a revised project narrative from our consultants, we have a steep slopes narrative, we have a page on the freestanding entrance sign as well as a whole bunch of site plan drawings that were separated out. So, there'd be a little bit easier to digest. Jan, would you just take us through procedurally where we are and what's left on the table?

Jan Johannessen stated sure. You're in the midst of a public hearing, SEQRA's been closed, you issued a neg. dec. September, I'm sorry, on May 12th, 2020. Currently before you for site plan, special use permit, change of use permit, steep slopes application both 333 as well as 309 and 383 North Bedford Road. The big item that's been kind of the focus of the Board's attention of late that's been 383 North Bedford Road and the easement area and parking within the easement. And recently the applicant had modified the application to eliminate the proposed subdivision and handle access via easements. I think I can only speak for my office that the majority, if not all of the comments on 333 have been resolved, you know, with a couple little detailed comments, we do have some comments on 383 and 309. And I don't think they'll really be able to be resolved until we understand what is or is not allowed to be done within the easement area but that's where you are. Open public hearing and kind of finishing up the review of various applications.

Chairman Hertz stated alright and then just to clarify, the applicant will, is going to be before the Zoning Board of Appeals in December?

Jan Johannessen stated yes, they've made application to the Zoning Board. If you recall, we had a joint meeting with the Zoning Board. And with SEQRA being complete the Zoning Boards' able to make their decisions. There's a variety of other outside agency approvals from, you know, from the ARB to Town of Bedford Planning, [inaudible] control commission DOT, DEP, et cetera.

Chairman Hertz stated okay and the Board that we had heard least from was Town of Bedford Planning Board. I know that the applicant has been somewhat frustrated in getting feedback there. We'll let them speak on that in a moment. Anthony, from your perspective, other than any issues relating to parking on 383 and how that's working, has, are you comfortable that the bulk of your comments have been addressed appropriately?

Anthony Oliveri stated yeah, I would say the bulk has been addressed. There are a few things still hanging out there. The final SWPPP which they've got to coordinate with the DEP as well. And there were some details lacking, I noted that in my memo. And there were a few comments there on the 383 parking easement whatever road or we're going to call it. So, we'll wait to see how that gets handled actually.

Chairman Hertz stated okay and then anything else by staff? Pete, is there anything?

Mr. Miley stated well we mentioned the variances, the requests for variances have gone down. Myself, Whitney, Neil and Stephen Spina met, I don't know if it was this week or last week, I can't recall, every day is running together.

Whitney Singleton stated last week

Mr. Miley stated yeah, last week. And we went over a number of variances and because of now there's no longer a subdivision, it has resulted in reduction. And they're going to be before the [Zoning] Board December 15th, I think the last piece of the puzzle we all talked about was the area where the parking is going to be placed whether that easement permits or not that may change one of the variances with regards of parking, it may not, we don't know yet.

Chairman Hertz stated so, I just like to note for the record that Jim Diamond and I seem to be on the opposite side of the bridge today. But it's remarkable that we're both in the exact same spot. All right, I'll open this up to the applicant. So, Neil, I'm not sure are you're going to be or Steve, who's going to be speaking for you guys right now?

Mr. Alexander stated I think we'll let Steven start. Thank you, I appreciate that.

Mr. Spina stated hi, good evening everyone. Steve Spina from JMC. Thanks again for having us. I guess, last month when we were here, you know, we were hoping to go to the Zoning Board in Bedford as well and be back to you guys with those boards behind us. That wasn't the case. You know, my notes from the last meeting were, you know, basically if that were to happen, the public hearing could be closed and you guys could direct Jan to start drafting the resolution of approval. So, I guess, you know, that would probably be our goal of the next meeting now it seems. Currently, what we're looking at is, we've been told by Bedford Planning Department that we'll be on their December 8th Bedford Planning Board. And then we have, I believe it's the December 15th, Mount Kisco Zoning Board. And then we would look to get back before your Board after those two boards. So, I think that's kind of our new schedule, you know, since the last time we spoke and, you know, the submission we made was, you know, discussed during the last meeting what we would do. We kind of had to pull it together quickly and, you know, modify the site plans to change the lot lines back to what they currently are and....

Chairman Hertz stated has everyone lost Steve?

Mr. Miley stated yes.

Chairman Hertz stated Mr. Spina, you seem to have some technical issues. You've dropped out of the call. Are you frozen in the call?

Mr. Alexander stated I can jump in if – while he's – Chairman, while he's doing that. So, essentially, as Building Inspector Miley pointed out to have a run-through of the variances and through Whitney's idea of road number three becoming an easement and that sliver on 383 in the north, I guess, east corner of the property, of the Philar property also being part – remaining with the Philar property. So, it's doing things by easement and then into subdivision we were able to significantly reduce the number of variances. A few more waivers, I think, we're going to wind up asking for with the Planning Board. Hey Stephen, I'm jumping in, you can feel free to jump in over me and take back. But basically, we were able to reduce those numbers significantly. And we owe another turn of the cross easements to Whitney which you'll probably get tomorrow but I think they're very, very close. And so, I guess we are at some point this evening just trying to understand and we're very heartened to hear what Jan and Anthony said as far as, you know, most of the comments have been addressed. I think to the extent that there's any open aspects about the easements being used instead of a subdivision, we probably should get a little bit into the weeds at some point this evening so we know as the applicant what our task is, especially if it involves any drafting that you all want to see before you. Or perhaps, it's the kind of thing that could be a condition of approval to the satisfaction of the Town/Village Attorney kind of a thing as supposed to taking up time, with the Board given your agenda items on it and the technical nature of it. I think that what we were trying to hope for is to perhaps be moving towards looking at a draft resolution of approval at the next meeting and working on language on conditions with the understanding that there are some really high technical aspects. Nothing [inaudible] changes the nature of the application or any [inaudible] we would have to take care of. Stephen, did I cover most of what you got or did you freeze again? You might have frozen again.

Mr. Bonforte stated yeah, Neil froze. It's your turn Steve. Oh, he's back.

Mr. Alexander stated is it better if I – yes, I think it's my video that's causing to slowdown. So – and Steve's back. So, I'm going to let Steve handle that. But basically, Chairman, I think between us tag teaming you got the gist of where we wanted to. We know this has been a complicated application. We just kind of feel that drafting a resolution of approval with conditions is really the way to us to figure out what check items are really left, if any, and what can really be handled through conditions as opposed to

needing to be addressed prior to the granting of an approval because I think the stuff that's left is kind of hyper-technical.

Chairman Hertz stated yeah, Neil and I don't want to get into the weeds on easements and all that tonight. I'm going to leave that to Whitney who's best suited for it. But our only concern as we started to chat about during the work session is, you know, are we properly at a point, you know, if there's something here that's going to possibly change the site plan, and we may be moving parking, we may be doing some other things, you know, is it appropriate to close the public hearing? Look, we'd like to be done with you guys and as much as we love it, we'd love to be able to close this and move on and get to a resolution. But I think this is a real issue that needs to get a little bit better understood. So, Whitney, do you want to take a minute and just jump in here as to what you're still waiting for and what your concerns are?

Whitney Singleton stated sure, we did have a meeting last Friday. We did go through and minimize a number of variances and it was a productive meeting. One of the things that was left off as far as resolution was the extent to which road number three can be utilized for the purposes of both ingress and egress and just parking. Those issues, the issue of doing this through an easement was something that the applicant has chosen to pursue on our recommendation, which I think it was a good idea. And I think that it leaves a lot of issues in place that don't need to come, you know, that don't need to create new issues. I have reviewed the easement agreements that they've given me to date. But the easement agreement that was given to me with regard to 383, still envisions and contemplates a re-subdivision going on. So, they are going to get me new easements so that I can review those. I'm less concerned about 309 even though that's the central entrance to the property in light of the fact that Mr. Diamond owns both the benefiting and the burdening properties. I'm not too worried about it. The issue that I still need is, I still need to see a title report and I still need to – we need to come to a conclusion as to the permissibility of putting required off-street parking on the street and that's essentially what's going on. When you do a subdivision, you have to have frontage on a public right of way or a private right away. Either way, that's capable of being built and designed to Village standards. The two parcels in the back or the former two parcels in the back, 383 and the area behind Sleepy's [and John's Best Pizza, they had their sole frontage via this road number three. And that road – so I have to be very mindful over them. Your Board has to be very mindful of what we allow to go on road number three as far as being compliant with the law. My understanding is that, I mean, one of two things can happen. This was either a subdivision which showed road number three is being their frontage for purposes of access or alternatively, there was some sort of by meets and bounds description, some division of the property in such a fashion that there's an easement by necessity or by implication by taking one property away from another property and then leaving it with no access. The courts will come to the conclusion that you intended to provide access and you didn't intend to land lock a piece of land. And they will impose that fiction as a reality for purposes of access. So, I just need to make sure that whatever we do with regard to 383 and to a lesser extent, the area behind Sleepy's and Westchester Burger, we just need to make sure that we don't compromise anyone else's legal rights. To further compound that a little bit or to clarify or compound depending on how you view it, the Diamonds and the Martabanoes have entered into an agreement which I'll share with the Board, if you're interested. And it essentially – it basically gives the grantee, that would be 383, the property in the back. It gives them the right to load and unload and park, temporarily parked vehicles in this right of way. It also says that no vehicle shall be stored on roads number two or three. And it also says that there will be the only parking that's allowed on road number two or three is that what's shown associated with their site plans of record and as Jan pointed out, that area currently has shown as a fire lane. So, I'm a little concerned as to how this agreement further impacts any rights of the property owner in the back and...

Mr. Alexander stated but Whitney, can you just go to the top of that agreement because it's really important?

Whitney Singleton stated right.

Mr. Alexander stated because this was in settlement of the litigation surrounding road number one. And I apologize for interrupting and we can take this offline, agreed. But it was in the settlement of that. So, one of the things you do need to look at is the context is who are the parties. So, 269, 271 were parties to that as was tangentially 283. But the other two properties you're talking about were not parties to that.

Whitney Singleton stated I understand that. But their deeds show that they have a right of 50 feet width of access across this piece.

Mr. Alexander stated right. But the way you interpret road three, you now need to apply remember also applying to road one, and if you remember correctly, the Planning Board gave site plan approval to road number one, which is between 269 and 271 to have angled parking on both sides of our 50 feet right away. So, I just think it's – and I don't want to get into back and forth right now and I apologize for pushing in and I appreciate your latitude in letting me. But it's important to remember that ultimately the indenture and this amendment to this indenture, 1953 indenture and this indenture, they correlate. So, what happens at road one has to happen at road three. And so there has to be some level of uniformity in the way they're interpreted because all the rights are derived from and the settlement is intended to apply to similarly. And I know the Chairman said he didn't want to get in the weeds but I just wanted to push in because it's not as dour as one could interpret it, is what I'm sort of getting at.

Chairman Hertz stated and I'm not assuming that any of this is fatal. We're just acknowledging that that more work needs to be done.

Mr. Alexander stated yes but I think it's also important, to the other aspect that's really important here to – is really important because there's Court of Appeals cases that go all the way up in this particularly involving the Shoangons. That the proper remedy for somebody who feels that their real estate rights may be infringed upon, is an Article 15 Litigation. Just like, by the way we didn't come to you to try and challenge an Article 78 on 269 and 271 Site Plan Approvals. We filed our litigation through an Article 15 to quiet title on the issues of the easement relative to road one. The proper remedy is from the courts. There's an Article 15 to quiet title in which case a court would be able to provide a remedy as Whitney alluded to, which is either prescriptive easement or an easement by necessity as opposed to, it's totally inappropriate to involve – to address that issue by filing either an Article 78 or declaratory judgment relative to a Planning Board's approval. And as other people know, this happened over in Pound Ridge since you have cell towers later on your agenda, tonight I'll reference it out. In Pound Ridge there was a cell tower and somebody litigated the Article 78 approval, Article 78 and an approval for that cell tower and they brought up title issues and the court said, no, no, no. Planning Board acts within [distorted] four corners of the zoning code for the community and whether there's a real estate issue, is appropriately handled by the courts through title questions. And so, we're more than willing to turn over the documents. We're more than willing to continue the dialogue with Whitney but ultimately, proving the positive is impossible, right as to whether someone may feel....

Chairman Hertz stated I'm sorry, I'm just going to...

Mr. Alexander stated you can cut me off, it's fine.

Whitney Singleton stated the point I'm trying to make Chairman, maybe I can try to wrap it up a little bit and make it a little tighter. There are still issues and I understand what Neil is saying, that it's not the Planning Board's job to be the title company, the attorney and it's not the title company's attorney to interpret zoning. I get that. Not a problem. But I also don't want to put your Board in a position, granting

rights which would be in contravention of other previously granted rights associated with this property. And the requirement to provide off street parking is just that you're required to provide it off street. If this is in fact a street as it's referred to in this document then I don't want to be put in a position where you're discharging parking in the wrong location. Our code clearly allows for properties to discharge parking on an adjoining parcel. It doesn't say that on an adjoining right of way or street though.

Chairman Hertz stated right.

Whitney Singleton and I just need some resolution as to that, to make sure that I'm not putting your Board in an awkward situation. That does not necessarily, that's not inconsistent what Neil's saying about land use versus title issues.

Chairman Hertz stated okay, so just – one, can you stop sharing for a moment?

Whitney Singleton stated oh, sorry, sorry.

Chairman Hertz stated thank you. Okay, here was a discussion in the work session that won't exactly moot some of this but there was a discussion upon, about whether we should be looking at parking in that area in the first place. So, can we bring up that – the plan for the area that's under discussion? Steve, maybe I'll give that to you. And can we allow Mr. Spina to have screen sharing rights? All right. Thank you.

Mr. Spina stated can you guys hear me or see this?

Chairman Hertz stated we do. We do. We can see that now. So, one of the discussions really is, you know – so, let's talk about that, you know, the parking on that street, you know, along the edge. And, you know, what its function is and where it's serving et cetera, et cetera. Is all that parking designed to serve the front retail building?

Mr. Spina stated yes.

Chairman Hertz stated and how many we're looking at?

Mr. Spina stated that's necessary for the –

Chairman Hertz stated so we're looking 15 spots on the side, 13 regular, and 2 handicapped in the front. So, total of 30 spots, and we came upon that....

Jan Johannessen stated purely based on zoning, I think it's just about what the zoning code requires, maybe off by a couple spaces, maybe the code requires 28 or so but....

Mr. Miley stated it requires 30. It's predicated on the square footage, 1/200.

Mr. Spina stated right, have the parking plan. I think it was C-004. I think that had that breakdown with the tables. I can bring that up.

Chairman Hertz stated so, I mean one of the....

Mr. Spina stated I think it was four.

Chairman Hertz stated I mean I – I'm never going to say, you know, let's not have parking. What, do we need 30 parking spots there?

Mr. Spina stated like Peter said, I think – so required was 28 if you round up and we just proposed 30.

Chairman Hertz stated all right. And I – I mean you don't know who that tenant is going to be and what type of retail obviously. So, there's no, you know, you can't sort of make an informed decision here and I suppose you want flexibility. So, removing 15 spots would be too many. That would leave you with another variance, I would imagine.

Mr. Spina stated yes.

Chairman Hertz stated as well as some challenges. Do you want to just talk about that as an option for a moment?

Mr. Alexander stated can I jump in first? Can I jump in for a second? And I may be off the mark, you know, lawyer playing planner here a little bit. But, the parking, we have a drive aisle that's – I mean it's – if you dropped this design down in the middle of a shopping center, it would be fully compliant with what you're doing, like what we're proposing and under code. And the other aspect that I think is important is, remember we're taking, we have two signalized intersections right now, are on off-phase five phase intersections and you're aligning them. Traffic's going to flow much, much more efficiently down 117. It's a right, you know, the way the turning is working, the number of spaces, I just – I'm confused operationally and maybe this is lawyer just going in the wrong direction which I'm more than willing to take the re-correct here.

Jan Johannessen stated can I just – can I jump in? Because it's not at all to do with traffic. The concern is that you have 15 parking spaces abutting a property line and just feet away from an adjacent building. There's little to no room for landscaping in between the parking and the building. And in order to construct this you're building an 80 something foot retaining wall with the safety fence on top.

Mr. Alexander stated but Jan, the berm that's – the property owner built their property inconsistent with the property line, you know, forget what we're doing on our side. Look at their side. They don't have an appropriate setback for the C-L zone on their building. And then you're saying now we're too close to their building it's because they put their building on our property lot.

Jan Johannessen stated you're proposing something. You're proposing a new parking lot.

Mr. Alexander stated well, there's nothing left for them to propose because in the 1960s or wherever they built that building, they built that on the property line.

Jan Johannessen stated you jumped in and played planner so I'm just asking you not to make it about traffic because it has nothing to do with traffic.

Mr. Alexander stated no, I understand. What I'm sort of saying is this, some of this stuff are not necessarily things that we're exacerbating. I'm not exacerbating the fact that that building is on the property line.

Jan Johannessen stated no but you're making something non-compliant by installing [inaudible] to the property line.

Mr. Alexander stated well actually if you...

Jan Johannessen stated I mean if anything bugs me, it's this parking in the easement that just – and it's required by code but it actually, is it, what you're not seeing is the grading and the, Steve, did you have a 10% grade coming in off the – off the road there? I don't even know if that complies with the code.

Mr. Diamond stated I also...

Jan Johannessen stated what's driving the size of the building, you know, the – your parking is based on the size....

Mr. Spina stated can you hear me? I'm trying to open the grading plan now.

Mr. Alexander stated the building is smaller than what's – the proposed new building is smaller than the existing building.

Jan Johannessen stated I'm asking just, what's driving the size of the building? Is it – do you have a tenant for it? Do we know what's going in there?

Mr. Diamond stated can you guys, can I speak?

Mr. Alexander stated we don't have a tenant, go ahead Jim or whoever is...

Mr. Diamond stated oh, sorry. I wasn't sure if you guys could hear me. What's driving the size of the building is that's the minimum size that were required to deliver. Right now, there's a 7200 square foot building there or 7400, something like that. We're shrinking the size of the building from what currently exists. We have an obligation with the property owner to deliver a building of that size. Obviously, you know, this is not – I mean I think the way we're proposing to develop this is consistent with other properties and the tightness of other properties on North Bedford Road. It's not a perfect situation but it's really the only solution we have. We're obviously encroaching into what currently is a parking lot for this property and using it for the new entryway for 333. The only place we can put the parking is on easement number three. And I think it's important to recognize that all of easement number three, I mean maybe not 100% of the width but pretty close, maybe 90% of the width or something, is currently paved and is being used as a parking lot and the driveway and....

Jan Johannessen stated it's the parking expansion what shaded there is what's being [inaudible] green space which is proposed to be parking.

Mr. Diamond stated okay..

Mr. Bainlardi stated one thing we could do is, this is probably a perfect opportunity of land bank spaces.

Jan Johannessen stated yup, are you required to deliver a certain number of parking spaces, Jim, or just the size of the building?

Mr. Diamond stated were required to deliver a number of parking spaces that's compliant with code because the property owner wants to ensure that they have a building that is code compliant for the future. So, we could cut out a couple of spaces but there's no way to make it work on just the 383 lot.

Jan Johannessen stated land banking would be zone and compliant. Is that an option?

Mr. Diamond stated I mean, it maybe. I'm not sure. But, again I mean I think if we're cutting off a few spaces, it might work but we can't eliminate 15 spaces. I don't think the building works with just 13 parking spaces.

Mr. Bainlardi stated we could land bank the ones that are closest so it's one section of the building as an example. Maybe, you may get us to a place that's, you know, a reasonable compromise but when I think from a functionality standpoint, maybe you have a 25-foot-wide drive aisle. I think that passes muster for, you know, any shopping center or retail drive aisle probably way passes muster from a fire safety standpoint. I'll differ to Peter on that. It doesn't look like – I guess that wall was pretty much right on the line but – so, you know, probably the only knock on this is if there was the ability to create some buffer in there, even if it was just a couple of feet but....

Jan Johannessen stated Steve, can you go over the grading and the entry drive? Steve Spina is still on the call?

Mr. Bainlardi stated yes..

Mr. Spina stated Sorry, if you were speaking to me, I didn't hear anything for the last minute. I don't know why. I've tried to sign on and sign off but I just don't have a good internet connection all of a sudden.

Mr. Bainlardi stated try removing the devil's jersey from your wall that might work.

Mr. Spina stated it's frozen again.

Mr. Polese stated cut off your video.

Mr. Alexander stated cut your video Steve, and then you can....

Whitney Singleton stated he won't be able to share a screen though, will he?

Mr. Alexander stated no, those drawings aren't in the packet, are they? Stephen, can you address the grading. I think is where we are and hopefully you won't lose your audio if you share your screen.

Anthony Oliveri stated I don't know if he's hearing. From what I recalled, it is like 10% coming off the road and then in transition for about a 5% grade across the drive aisle.

Jan Johannessen stated Anthony was there any [inaudible] a lesser percentage platform apron, like when you're coming off....

Anthony Oliveri stated it kind of – we have a driveway requirement on slopes for driveways and there's some requirements in the beginning slope and a transition slope. So, I mean is this a driveway or this is a road, you know, so were there. I asked for a profile in my last set comments. So, I have somebody to look at. But I'm not seeing how taking the parking away is going to affect that.

Chairman Hertz stated sorry. I've got the wrong diagram up.

Anthony Oliveri I think that's, you know, the grading is more of a function that's tying into what's there.

Jan Johannessen stated but it's a proposed driveway, right? Does it have to meet those standards?

Anthony Oliveri stated yes.

Jan Johannessen stated but we don't know if it complies.

Anthony Oliveri stated we don't know right now. We just have a, you know, couple of slopes indicated on the plan. So I've asked for a profile, we could look at that.

Mr. Miley stated but we don't even know if they're permitted to park in that area yet?

Anthony Oliveri stated so, all of this is moot if the parking goes away.

Mr. Miley stated why are we discussing parking and variances if we don't even know if they're legally, have the ability to place cars there yet?

Chairman Hertz stated so, all right. So, here's the grading plan....

Mr. Alexander stated I'm confused by that last comment because there are no definitions for driveway and so forth in the streets and sidewalks code. And since we don't have a subject division, there's no subdivision – there, the subdivision regulations aren't applicable and they actually don't have definitions of this either. I'm a little confused.

Whitney Singleton stated Neil, there are definitions as to the minimum drive aisle width for parking areas.

Anthony Oliveri stated well there's criteria on the slopes of driveways.

Whitney Singleton stated yeah and that too.

Mr. Miley stated and there's State Code, there's State code criteria if it's a fire lane, there's a lot of....

Mr. Alexander stated yes, okay, but this isn't a road. That's what I keep getting at.

Whitney Singleton stated it doesn't matter. There's still criteria....

Anthony Oliveri stated driveway, driveway. There's this....

Mr. Alexander stated driveway, okay, thank you.

Anthony Oliveri stated no, and there's – there are criteria on the slopes for driveways. So, is it a driveway? Is it a road? Is it a right of way? Is it frontage for the – you know, we don't know any of this right now.

Mr. Alexander stated well, it's, I mean look, road number 3 has been a finger forever and to the extent – and, you know, regardless of whether through, the rear where the auto repair shop is, that rear property has an express right for pursuant to either a filed map or an easement or doesn't, there's no court that isn't going to grant that if it's necessary. But it's going to grant the ingress and egress. That's what it's going to grant and that's all it's entitled to. And if you look at – I mean, this goes to the title reports that we have to share with Whitney and all that but, I'm not really understanding the issue here. I'm getting confused. It was called – 1953, they were referred to as roads 1, 2 and 3. It was contemplated probably back then at some point, they would be dedicated to the – offered for dedication and accepted by the Village but that's never occurred. Their private pieces of property....

Anthony Oliveri stated I guess – but I guess the point is if it was contemplated to be the frontage and be a road then maybe you can have the parking on the road.

Mr. Alexander stated but there's nothing [inaudible] go ahead...

Chairman Hertz stated guys, I just want to cut this off. We're not going to get to an answer on this tonight, okay?

Mr. Alexander stated no, I'm just trying to frame it, Chairman. Because I'm truly confused at this point and that's what I'm trying – that's where I'm stuck.

Whitney Singleton stated Neil, can I – let me try to frame it a little bit. First of all if these were part of a subdivision, by State law the Village would still have the ability to accept the dedication of that, unless there is a note on a filed map that precludes the dedication of that parcel, the Village would always have the legal statutory right to accept dedication of that road and you wouldn't be able to count it for anything. And I'm not saying that the Village wants to do that nor am I saying that there was....

Mr. Alexander stated I was about to say the other side of that is one of the source and finding that offer of session and it's ever, you know, it's never...

Whitney Singleton stated it's implied in the filed subdivision.

Chairman Hertz stated hey, I'm going to just cut this off, okay? I don't want to do this tonight, all right? There, you guys, Whitney and Neil, you have to get together and we've got, you know, got to work out what's going on. In the meantime, the question, the sailing question in my mind is, assuming – so we're going to have one or two outcomes. So, one will be able to move forward with the site plan, with the entire site plan as designed with parking here or we're not. If we are not, the question becomes, is this a significant enough issue and whatever that we design is required there, that would cause us to continue the public hearing because that's where I'm trying to get to. Is, can we close this public hearing? Do we have enough information? And what information is going to change that will be significant? So, I am going to – what I would like to do is get this all resolved and get you guys to the end but this is the last piece of the puzzle, all right? We believe this is function last large piece of the puzzle that's undecided. So, Jan?

Mr. Spina stated guys, I'm back now. Sorry.

Chairman Hertz stated welcome Steve, you missed all the fun. Trust me, you don't even want to be part of this.

Mr. Spina stated it's been the worst.

Chairman Hertz stated Jan, I'm reluctant to close the public hearing in the case that there will be some significant changes and then we won't have a method for hearing input. But I'm not convinced that input from the public on this type of change is particularly relevant. Can you give me feedback on that?

Jan Johannessen stated my only comment on the hearing is that if it's closed that it starts to time clock on a resolution.

Chairman Hertz stated understood.

Jan Johannessen stated I mean, the hearing been open, I don't think we've received much public comments in months so I don't know that we're going to start to receive that, so I'm not...

Chairman Hertz stated I mean we did have public comment and it was very valid and had to do, you know, largely with, you know, the alignment of the two entrances and traffic which are the, you know, the important issues that I think we've done, you know, great work or not we, we haven't done anything. We just listen. But, like you guys have done great work to get resolved. So, I want to get this to the end but I don't see a clear path without this information. I'm reluctant to close the public hearing until I get a clear answer as to what's going to happen with that property and it's a legal question that no one here but Whitney and Neil and, you know, other people who dug into this or qualified to even discuss, let alone do anything else about. So....

Jan Johannessen stated Doug, can I ask just one question in case the legalese worked themselves out. If it's determined acceptable from a legal standpoint to park in that area, is the Board comfortable with the layout as currently proposed with the parking and the configuration?

Whitney Singleton stated that's the question.

Jan Johannessen stated because once, you know, we're going to figure out this one way or the other but we still need to talk about what's being proposed.

Mr. Bainlardi stated I'll make a comment as it relates to whether or not we believe we have enough input from the public at this point. So, there's been no comment from the public on this issue one way or the other. And we're currently showing the entire length of the north side of the property park. It's not going to get worse. It may get – it may become less impactful if parking spaces are to be removed. It's unlikely that the fixed positions of the entrances and exits on and off site are going to change, right? And they would – and if they were, the DOT would have to weigh in on that anyway. But, so – and if they were, I can't see them changing substantially. So, in my view, I don't see a downside to closing the public hearing and this gets worked out the way it gets worked out but that's my view.

Chairman Hertz stated would anyone else like to comment on that?

Mr. Bainlardi stated and one other thing, I do think that it is relevant and ultimately for Whitney and Neil to work through is, is this a road or is this a driveway? Because they think the legal implications are different. How you technically have to improve a roadway versus a driveway or have two different standards.

Whitney Singleton stated but John, the one thing I want to go back to reiterate those is, I believe that that's an important and maybe dispositive issue. But, even if they can park legally in that area, I think what Jan's raising is, are you comfortable allowing them to excavate and pave all the way up to the property line?

Mr. Bainlardi stated well, I mean we do see a lot of stuff along this stretch that's right up to the property line including buildings. I guess the bigger question is, I think we've already answered this and then the affirmative is, you know, did this site get made better, what is there more green space along the 117 corridor. And I think we determines in both this entrance and at the southern entrance that it's an improvement. On both sides of the roadway, they're coming into the center, you've got a lot more green space than you had before and it's along the frontage, you know, of the properties. So, I guess if I have to weigh, you know, providing adequate parking for 5500 square feet first, you know, verse eliminating parking where I would come out on that is what I offered before. You know, if we want to land bank and parking spaces which would be zoning compliant, that's a way to gets some more green on the site without giving up the ability to the park if it turns out you needed. You know, we probably going to need 30

parking spaces for 5800 square foot retail space, probably not. But if they're land banked then you could always use them if there is a problem later.

Chairman Hertz stated well, but it sounds like the, you know, the applicant has a requirement to – in on reasonable business case to have the, you know, the zoning compliant number of spaces. So, we are really only looking at, you know, can it be saved too. You know, could we green up this area here and have a little bit more green in front. Because I don't think you're going to save it by doing anything back here that is not going to have any effect.

Mr. Bainlardi stated I think the first two spaces closest to Main Street would – to make an extension of that island as you come in and not have, you know, not having people back in and out right if those first two parking spaces would be the logical place to start.

Mr. Vigliotti stated yeah, I agree.

Chairman Hertz stated I think that's a good compromise. I would tend to agree with you on almost – on most of what you said. You know, this is not ideal but what we gain in, you know, in the forest is worth losing a couple of trees, you know, if you'll allow me the poor metaphor. And I think this area, you know, having the ability, everyone can see the screen share. Is that correct?

Mr. Spina stated yes.

Chairman Hertz stated okay, alright, the ability – I mean if this is the car stop right here and this is where cars were going to pull up, we can't green – you know, you can't do too much at this spot because it's going to, you know, be a sight line issue. You know, you'll put – the cars will pull up to the extent but they're not going to pull back. So having this additional area to do a little bit of planting and get a little height in there, you know, for a long as we could do it, I think has some – has some advantage to be able to keep, you know, this frontage a little bit greener than it would be. So, assuming that we're going to be, you know, that after all legal issues are resolved, parking can be accommodated there. Does anyone else have any comments about how you would want parking accommodated there or are there any other changes that we want to consider at this point? Or forever hold your, if you will.

Mr. Bonforte stated nothing, Chair.

Chairman Hertz stated okay, I mean I think we've – so, Jim and Stephen and Neil, would you be amenable to taking those front two spaces and land banking those?

Mr. Diamond stated yes, yeah, I mean I think we showed we had two extras, so I think that's fine.

Chairman Hertz stated yeah, you know...

Mr. Bainlardi stated they don't even have to be a land bank. They're not even zoning required, they can just be eliminated. I don't have an objection either way.

Chairman Hertz stated okay, so now how do we resolve – how do we move forward? So before we go any further, let me just ask, is – has there been any comments from the public? Is there anyone from the public who wants to speak? Pete, can you...

Mr. Miley stated there's nobody here. I'll have Michelle check Facebook.

The Secretary stated there are no raised hands in the Zoom.

Mr. Miley stated no raised hands. Nobody's called in or texted the Village phone either. So I think you're good to go.

The Secretary stated and there are no comments.

Chairman Hertz stated alright. I am going to – what are we going to do here? Whitney, how long do you think it's going take to resolve the legal issues here?

Whitney Singleton stated I do not think that they're significant. I just need to see how the lots were created and see whether or not this constitutes a road – street.

Chairman Hertz stated what's the Steve, Neil, Jim, what's the backup position? If it is determined that you can't park there, what is your backup position or do you have one at this point?

Mr. Diamond stated I think the answer is there's no backup position and you guys would just have to choose to not approve the proposal here. Because there's really – I mean it's – you can see we've got the only way ShopRite works, I mean I think the Board feels this way is that we align the intersection. And the only way to align the intersection is to go through that parcel. And we're shrinking that parts – we're shrinking the building there to make it work better, cutting off a couple thousand square feet. So, it's really the only way for the project to work. And, look, if it does not work and the Board wants to reject it, then so be it. But, that's – we have, there's no other secret.

Mr. Alexander stated and Chairman, just on a more upbeat note. I'm feeling pretty confident that because if we had found that offer of dedication when we were litigating Road 1, I think it would have been a just positive piece of information that we would have – that would have allowed us to have one that litigation, we didn't prevail in on road number one. So, I am feeling pretty confident that we're going to – because literally position we're in right now is the opposite of the position we tried to take and lost previously. So, you know, I am feeling pretty confident based upon Judge Lefkowitz's decision and otherwise that the position we're taking here is pretty solid and when we get the information to Whitney which we haven't gotten to him in fairness to him.

Chairman Hertz stated okay.

Mr. Alexander stated so, on a more upbeat note, I think we're going to be able to provide the documentation that establishes what we've been saying earlier this evening. Which means we won't have to talk about the other side of the ledger so to speak

Chairman Hertz stated alright, what I am going to do – so I would like to do a couple of things here. I do not want to close the public hearing because it starts a time clock. And I do not want to force at time clock that we can't... Jan, can you – what's the time clock from when we close?

Jan Johannessen stated Whitney could correct me, it's somewhere around 60 to 62 days.

Whitney Singleton stated yeah, 62 days.

Chairman Hertz stated so, given that this is the holidays and all the fun stuff, if there is a significant issue that comes up, I think it's going just, higher hands and I would rather not do that. So, but functionally there is no reason why we can't assuming that the information is correct at the next meeting, we can just open and close the public hearing and be done with it. I am going to direct Jan, to begin the drafting of a resolution under the assumption that parking will be able to happen there. So Jan, focus on everything else but this section that should, hopefully at least make it a little bit easier but it's going to push, you know, in approval until January. And I just do not see a way around that. Unless someone has, you know, can suggest a miracle of time that I don't know.

Whitney Singleton stated I wanted to ask Steve a question. Steve, can you hear me?

Mr. Spina stated yes.

Whitney Singleton stated this impervious coverage for road number three, you're calculating that as development coverage for which parcel?

Mr. Spina stated 333 right now.

Whitney Singleton stated okay, so, right now you basically has it – you have it as a 100% development coverage being described to 333?

Mr. Spina stated that's correct.

Whitney Singleton stated so, any – if there were any reduction, it would reduce any variance for 333, correct?

Mr. Spina stated correct, I think – well, the variance we need I believe for 333 was the coverage in the ML zone.

Whitney Singleton stated right, but it's still part of your overall development coverage regardless of what the – regardless of what the, you still have to count all the impervious surface to your overall development coverage even if it's in two zoning districts. You are right, that is the CL District, so but I want to make sure it's not effecting anything to do with 383?

Mr. Spina stated no, no, I believe we are under the 70% allowable for 333, you know, in its totality, you know, all the zones and both Towns.

Whitney Singleton stated okay.

Mr. Spina stated and the variance was just because of the zoning district, the ML district we were over. So that wouldn't affect it. But I think either way we're fine.

Chairman Hertz stated okay, so, unless someone else has a more brilliant idea, I think what we are going to do is adjourn this public hearing until the next regularly scheduled board meeting which Michelle is, what date?

Mr. Miley stated it's December 8th, Doug.

Chairman Hertz stated thank you, there is not a second meeting in December unfortunately, but you'll be going to Zoning Board, all the various other boards and then we should be able to, assuming everything is as you believe it is, you know, should be able to dispose of this in January. So, giving you guys a present in the New Year, alright. So, with that **I'd like to make a motion that we adjourn this public hearing to the next regular scheduled meeting on December 8th**. Do I have a second for that motion?

Mr. Vigliotti stated I'll second that.

Chairman Hertz stated all in favor, raise your hands? I see everyone's raised their hands, where we're unanimous. Okay, so, Neil and Whitney, you guys have homework. Anthony, Jan, Peter, just, you know, circle the wagons and then Steve, please just make sure that the list of items is checked off. I'm sure there's still some small items that need to be gone through. So, let's see if we can reduce those to an absolute minimum. And we'll see you guys in – after the holiday. So, I thank you, I am sorry we couldn't have gotten a better resolution tonight but we'll get it as soon as we can. So, everyone thank you and stay safe.

Mr. Alexander stated thank you. And Happy Thanksgiving everybody.

Mr. Spina stated Happy Thanksgiving.

Chairman Hertz stated you too, alright, good night now. With that, the next items and the last items on the agenda are items which I am recused on and Vice Chair Bainlardi is recused on. So, we will bid you goodnight. And I am turning this over to acting chair, Mr. Bonforte.

Mr. Bainlardi stated goodnight everyone, Happy Thanksgiving.

Mr. Vigliotti stated goodnight. Happy thanksgiving.

**C. Homeland Towers – Mount Kisco Wireless Telecommunications Facility – 180 South
Bedford Road
PB2020-299, SBL 80.44-1-1
Site Plan and Special Use Permit**

Mr. Robert Gaudio of Snyder & Snyder was present.

Mr. Bonforte stated thank you Chairman. Thank you Vice-Chairman. Okay. Last item on the agenda tonight is Homeland Towers. Got quite a number of items on the agenda. We have some specialist with us again, of course. And I'm happy to report that the balloon test took place finally this past Saturday. The leaves were off the trees, if not majority, almost all. So, it was a clear sunny day. I'll let our specialists from HDR talk a bit more about that, that's Michael Musso. We received a number of photos, emails with photos and other documentation from residents today and yesterday maybe, they have been entered. I'll just mentioned, just so the folks know that we received it but we haven't yet digested it. Again, the residents from the public. Mr. Skolnick from Bedford's, I believe CAC Conservation Action Committee, I believe that's the – you see, where he's – where he's writing from. Anita Stockbridge, Nancy El Bouhali, a resident, Rex Pietrobono, another resident nearby. And our own John Rhodes in Mount Kisco, CAC or conservation commission group that we have. So, thank you for those photos. We're able to open the one person, I think it was Marianne. I didn't mention Marianne Tarnok. We were able to open your file Marianne and see the pictures. So, I'm going to read off my notes so I don't miss anything. We do – I'm going to make the motion but not yet, to open the public hearing. I respect the applicant's wishes to get

going and get that feedback to the applicant which is important. So again, we've got the photos and we've got the submission, some lengthy submissions. And in that same regard, as Chairman Hertz said earlier in the meeting, if you're going to speak publicly either by Facebook or via a telephone or in person at the Town Hall, you could use any one of those methods. We're going to ask you to limit it to just a few minutes, to maybe five minutes at the most. Especially if you've already spoken and if you've already submitted something in writing, we have received them. We are reading these submissions and finding them very interesting. So, thank you but, please, in the interest of time and as Chairman Hertz said, we need new perspectives or new insights. So, going over old territory is fine, if you just bullet point it real quick. And I won't have to interrupt anybody and ask them to stop speaking, okay? So, I would like to start going – I'll just mention the rest of the agenda for this application. I am going to ask HDR, our specialist, Michael Musso to talk. He was with – he was out there during the balloon test Saturday. Simon Kates is with us from BFJ Planning and his involvement to-date. And of course the applicant, I want – several to 10 days ago, Homeland presented us with about 130 pages. Really appreciate the responses that Mr. Gaudioso and his team provided to Peter Miley's memo of October 6th. That was the first memo from Mr. Miley, our Building Inspector. Michael Musso's first memo September 18th or I should say substantive e-mail of September 18th. And of course Anthony Oliveri, our Engineer also had comments and maybe a memo at the, apologies, but I know there was responses in –you know, to you on specific items. So I'm going to ask the specialists and our staff to speak to the application and then, I'm going to ask the applicant to cover some of the, you know, items or not some but whatever they see – they deemed to be useful for tonight and at this stage which we're at. And also Mr. Burns, Robert Burns, for the applicant, thank you. There was a very detailed memo and I see you are on tonight which I don't think we met you before Mr. Burns if we, have apologies, on the steep slopes and erosion control and other aspects of the civil aspects of the project. So, thanks for those - that email, should say memo. There was one other item that we brought up in the pre-work session which was alternative sites. One being a hospital, northern Westchester in town which is nearby. I think it's within a half mile or even less. And then there is also two commercial buildings, both four stories that are, I'm not sure how to term this but, they're not being overlooked. So, as alternative sites. And there is a lot of factors involved, you know, the co – what are we calling Verizon?

Mr. Gaudioso stated co-applicant, they are all co-applicant, correct.

Mr. Bonforte stated is the word co-locator? I – just slipped my mind.

Mr. Gaudioso stated well, in this case they're a co-applicant.

Mr. Bonforte stated okay, thank you. Yeah and so that came up briefly in the pre-meeting. So, what I'd like to do is turn it over to Michael Musso. If you're ready, Mike from HDR and the balloon test that took place this past Saturday, please?

Mr. Musso stated yeah, I can share Acting Chair Bonforte, members of the Planning Board and members of the public. Thanks for having me here tonight. Mike Musso from HDR, working on behalf of Village to Mount Kisco. So, couple things to recap on the application in general. Acting chair, you mentioned a memo from HDR, September 18th, completeness memo. We did receive written responses, the aforementioned 100 plus page PDF that's under review. That looked at a lot of things. Not the visuals which we'll talk about in a second but, the need, justification, coverage capacity. It provided some information on alternate sites that we're still looking at. And some of the site plan type of issues as well, which Mr. Oliveri will certainly be looking at. It also, their response of November 4th, also provided a detailed response to Peter Miley's memo with regards to setbacks, variances and the code. The Code compliance that governments wireless telecommunication facilities here. So, what's been done recently following the applicant's submittal on November 4th. We did have calls with the applicant in scoping the

balloon test. There was a scope submitted as part of that November 4th deliverable. HDR had looked at that. We look back at our discussions with this Board, even going all the way back to the site visit in September. We did agree to what they proposed for more view shed maps, pre-balloon, desktop work that the applicant's visual consultant worked on. And as you know you had to postpone the balloon test a number of days based on daily checks of wind, forecasting and weather. And I think the good news for everybody, the applicant, the public, the Board is on Saturday, the 21st, it was really a great day to fly a balloon. The winds were very low, it was clear and importantly it was conducted during off leaf season, which would produce the worst case views of the balloon. There were two balloons that were one of 5 feet diameter that extended up to about 145 feet which is the proposed top of the monopole including stealth tree branches. The stealth tree design is something that was provided as an option by the applicant. And then there was a second balloon 15 feet lower. So, the height analysis on new tower applications of course is critical. And that's something that we need to look at both in terms of visual, but also in terms of coverage and operations. So that's sort of a tandem analysis that height analysis. HDR was onsite during the balloon test, myself and a colleague did several drive through of the radial area. Saratoga Associates, the applicant consultant for visual, of course led the balloon test and they're digesting a lot of information now. There was 30 something points of interest that they documented. Places like the Marsh Sanctuary, places like residential areas, the site but also further afield. They provided view shed maps to this point half mile and a mile out, HDR actually added a few other viewpoints that we felt necessary, that went even further than that, looking at historic or significant properties for instance. So, the balloon test went off well and we'll be expecting a visual resource analysis report, you know, at some point probably in the pursuant weeks that would be submitted. And that would include the methods that were involved photos of the balloon and then a subset of photo stimulations, where modelling will be used to show what a tower would look like from different perspectives. The applicant also coordinated, they did receive comments up until, I think the 12th from Mr. Pietrobono. The applicant also coordinated to get some shots from that property, some photos from that property. There is also comments, I know that came in from some members of the public. I had received them. The applicant received them including the Marsh Sanctuary. So, I thank everybody for their interest in that. It just makes for a better process all together. I think that was about it. As far as an update for tonight, I do want to confirm, I think a couple things on alternates. So, any applicants, early November filing, there was information that was provided on the hospital roof. We're looking at that in terms of how it would match up, what kind of service it would provide in the desired or targeted service area, essentially the 172 corridor. So, that's something that's important. There'll be more to come from HDR on Verizon's needs. Verizon as co-applicant, one of the FCC license carrier that services our area. Homeland, also the co-applicant, it's important to note, is an infrastructure company. They build towers. They build infrastructure so that licensed providers such as Verizon can co-locate on them and take space. So, Mr. Acting Chair, you're used to the words co-applicant and co-locator, are both sort of relevant here but maybe for slightly different reasons. I think that's the update I wanted to provide for tonight. And I think the bottom line is that there's some significant visual assessment work to come. I also wanted to point out if anyone, you know, looked at the scope of work that was provided for this visual part of that, early November submittal by Saratoga, at the time there was a desire and a request to float a second balloon on the subject property further south, higher elevation that was not achieved. There was no permission from the property owner to do that. However, there were view shed maps, desktop modeling that were done for both the subject location where the balloon was flown and also for that alternate location. So that's I think all I have as an update and I'll be here to address any questions or notes that the applicant puts forth tonight. Thank you.

Mr. Bonforte stated thanks Mike Musso. That one item you mentioned, the second balloon floating or the proposed, we did receive a document from the applicant. It says, you know, it says lease agreement with Skull Island Partners, anyway it reiterates the position in a one-page memo. Mr. Gaudio, is it was just one page. It wasn't the agreement. Correct? It was just a memo...?

Mr. Gaudioso stated we submitted the, what's known as the Memorandum of Agreement which is the document that's typically recorded because it doesn't have the financial terms do have an agreement. But it demonstrated also the representation of where our agreement permits us to go. We also submitted at Mr. Wimmer that confirmed that Skull Island Partners had denied the request to float the second balloon. And in fact, I believe is part of the record, Skull Island Partners had unbeknownst to us, confirming the fact that we only have permission to place the facility in the location where we're proposing to place it.

Whitney Singleton stated but we had requested copies of all leases that you have with the property owner previously. Are you not submitting those?

Mr. Gaudioso stated correct, we've submitted what we believe demonstrates that we have....

Whitney Singleton stated so you're choosing not to – so is this the only lease that you've ever had with – regarding the property?

Mr. Gaudioso stated so this is the lease that we have. This is the location where the property owner will allow us to go. I think I've reiterated that at last meetings and quite frankly, I will not say anything more. So, I would ask that you please refrain from cross examining me.

Whitney Singleton stated Rob, is this the only lease that you've had on the property?

Mr. Gaudioso stated we've made the issue very clear. Whether there have been other leases previously or not is irrelevant. We have a lease on the property. We have a lease for this location on the property and I'm representing as I have represented in the past, we only have permission, pursuant to that lease that's in place for the location on the property where we're proposing place the facility.

Mr. Bonforte stated okay, that's acceptable. Thanks.

Whitney Singleton stated not from my perspective.

Mr. Bonforte stated and duly noted, Whitney, thank you. Apologies to Simon Kates of BFJ Planning. Simon, I didn't mention you earlier but I did want to ask you also to provide an update to the board, the public, the applicant, et cetera. If you could go ahead, please?

Simon Kates stated thank you Acting Chair and thank you to the Planning Board. Happy to be back at least virtually in the Village Mount Kisco. I'm Simon Kates from BFJ Planning. The update that I have is that we've been in contact with Homeland Towers, the applicant on the cell tower as well as SCS Sarles. As the board knows, there are two applications on this site, Homeland Towers which is the subject of the public hearing tonight as well as the solar farm which is not on the agenda tonight. But, what the Board has asked us to do from the standpoint of SEQRA from environmental review is to look at these two applications and their environmental impacts together. And so, that's how we're treating the applications from a SEQRA standpoint. And we've been in contact with both applicants in order to set up a discussion about the issues that we think requires some coordination in order to conduct that SEQRA analysis. Both applicants have expressed a willingness to do that. We're going to try to get a call scheduled in the next couple of weeks. The issues that we've raised to the applicants at least preliminary that we think need to be coordinated, number one, the site plan drawings themselves. We want to make sure that they're showing the same situations, stormwater has been discussed. Both applicants have submitted stormwater protection plans. But, along with Anthony, we want to make sure that they are coordinated, that they're showing the same conditions. The access road of course is going to be a common road. So, we think it's important to make sure that the site plans are showing the same conditions and the same design for the access road. There

may be some questions about security and maintenance plans. I'm not sure how critical that one is but it's something that we've wanted to at least raise and make sure that if there are issues, that those are addressed. The concerns that the Fire Department has raised, we think will be similar, if not identical between the two projects, so those we think can be addressed in a common way. And the final one is construction staging. We know these applicants are both moving in somewhat parallel tracks, so we want to initiate a discussion about how they are going to be coordinated when, if and when they proceed to that stage of construction. So, as I said, both applicants have expressed a willingness to have that conversation and we'll have a further update after we have that call.

Mr. Bonforte stated wonderful, Simon, thank you. Okay, well, I'd like to ask the applicant to review, you know what they submitted to us however they see fit. Again, it was a good amount of paper and it did address a number of the questions, Mr. Miley, Mr. Musso and so forth, put forth, Anthony Oliveri, et cetera. If you're ready Mr. Gaudio, you're usually the lead person. Please go ahead.

Mr. Gaudio stated so what I'd like to do Mr. Chairman, because it is the public hearing, I'd like to briefly run through the documentation we've submitted.

Mr. Bonforte stated excuse me. Whitney, on the point of being a public hearing, do I need to make a motion and do I need – well, if I'd like to make it now?

Whitney Singleton stated yeah, you can open the public hearing and offer people an opportunity to participate. I think that – and then, or at least allow Mr. Gaudio to introduce his submission.

Mr. Bonforte stated great, thank you Whitney. **So, I'd like to make the motion to open the public hearing on the Homeland Towers application tonight, November 24th.** Again, folks, if you haven't submitted, you'll have an opportunity, you'll have another opportunity to speak. We're not going to close it immediately. There's a number of pieces of information we need to have and then the analysis needs to take place by the specialist that you've met tonight. So, who as you could see are already involved in the analysis of the initial data and so forth. The balloon test results, we're waiting for the photo simulations, et cetera. So, do I have a second on my motion for a public hearing?

Mr. Polese stated I'll second that motion to open up to public hearing.

Male Speaker: Thank you Mr. Polese. Michelle, will you call the Board, if that's necessary?

UPON ROLL CALL VOTE:

Mr. Bonforte	-	aye
Mr. Polese	-	aye
Mr. Vigliotti	-	aye
Ms. Pickard	-	aye
Mr. Hochstein	-	aye

The motion carried by a vote of 5 to 0.

Mr. Bonforte stated okay, so, I'd like to go back to Mr. Gaudio and his team who are here tonight and then after that we'll open up to the public. Thank you.

Mr. Miley stated and Chair, can I just interrupt for one second?

Mr. Bonforte stated sure.

Mr. Miley stated I apologize to Mr. Gaudio. I just want to give the opportunity – public the opportunity to have some time and give them an opportunity the several ways to contact the Village or make comment so if you'd just bear with me for a second. We have a Village phone that you can call in. Their number is 914-420-0383. If you are on our Zoom meeting, you could raise your hand and we'll let you in, when it's your turn to speak, you can make comment on Facebook Live. We'll read those comments into record. And last but not least, if you want to come to Village Hall, we are still here, we're open, the door's open. You could have an opportunity to speak live. And those are the four methods, Acting Chairman that people can make comment and speak publicly with regard to this application.

Mr. Bonforte stated thank you, Peter Miley.

Mr. Gaudio stated thank you Mr. Chairman. So, I'd like to do a few things this evening. I'd like to first just run through some of the materials we've submitted throughout the process. The Board is familiar with some of them because it is a public hearing, I'd like to just reiterate some of the prior documents as well as some of the newer documents that we submitted. I'd like to, after that have Mr. Burns, who you acknowledge before from APT Engineering, walk through the site plan briefly, just to orient everyone and then have Mr. Allen from Saratoga Associates who conducted the balloon test, prepared the prior view shed maps and site lines and we'll be preparing the visual resource evaluation including the visual renderings just to give an overview of some of the documentation that he's collected. Before I get started, in addition to Mr. Allen and Mr. Burns, we also have Mr. Vicente, who is the president of Homeland Towers and Mr. Klaus Wimmer, who is the manager on this particular project also from Homeland Towers with us this evening. So back in August, we did submit the special use permit, site plan application and steep slopes permit application. We've submitted all the forms, all of the checklists, the deed for the property. We submitted an FCC compliance report and as you may know the issue of radiofrequency exposure is federally preempted we do demonstrate that the facility will be compliant with the federal regulations. We submitted a worst-case scenario report of the facility and the facility would be 45 times below the applicable federal standards. Viacom engineering demonstrating the need for the facility. Your code does not have specific requirements as to the type of information to be submitted but we did submit industry standard propagation maps and a full report detailing the need for the facility and how we proposed facility would remedy that significant gap in coverage. Mr. Wimmer submitted an alternative site analysis as required by your code. He looked at all of existing towers in the area, there are four. He demonstrated that Verizon Wireless, the co-applicant is already located on three of those towers and the fourth tower is the Guard Hill tower and documented that the owner of that property was unwilling to allow Verizon to co-locate there. Mr. Wimmer actually looked at 14 alternative locations as part of that report including some of the properties that were discussed earlier, the four-story buildings and the property owners were not interested in allowing facilities at those properties. We submitted the full environmental assessment form with the visual EAF addendum. We submitted the initial visual assessment which include the computer generated view shed maps and Mr. Allen will talk about the accuracy of those maps as demonstrated by the balloon test in a little bit as well as sight lines demonstrating lack of visibility particularly from areas and residences in the chase. And we also submitted that time in August, the same plan with a survey. Then based on the conversations with the Board and Mr. Musso, back on September 29th, we submitted another report from Saratoga Associates and included sign and sealing of Mr. Allen who is a landscape architect, included some additional proposed viewpoints and detailed the methodology for the balloon test that was ultimately conducted. Our latest submission includes a full memorandum in support of this application as well as the application which we filed simultaneously on November 4th, which is the application to the Zoning Board and that application is for interpretation of the Building Inspector's determination that we need various variances. The basis for our appeal of that is the strict reading of the code as well as prior precedent within the Village. And in the alternative, in the event the Zoning Board denies our appeal, we

did request the necessary height variance and also the necessary setback variance. And while those issues are not within this Board's jurisdiction, I did want to talk about them a little bit. The height variance may or may not be required. The code says that if the planning board allows the height based on need, the height is 80 feet or the height that's proven. And in our reports, we did demonstrate the necessary height for Verizon Wireless to provide its coverage. In the event this board does not make that determination, then the height limit would be 80 feet and we're seeking in the alternative the height variance from the Zoning Board. The setback variance is required because the setback from residences unless otherwise preempted by the federal government, we believe that it is preempted because the setback is based on radiofrequency exposure. But in any event we do, in the alternative ask for the setback variance which is 500 feet for residences and then 100 additional feet to every 10 feet that the facility is over the underlying height requirement. We're not sure the basis of how that setback is based under the code but nevertheless it does trigger a 1600-foot setback. We believe that setback would be impossible to meet any place in the Village and therefore that setback requirement would be a prohibition on the federal law and we're asking for the setback variance as set forth in our memorandum in support of the applications. We submitted a concurrence in the New York State Historic Preservation Office that concluded that there are no historic properties in the area of potential effects. We submitted a determination from the FAA confirming that the facility would not be a hazard to air navigation and in fact, the facility would not need to be lit or marked in accordance with FAA requirements. So, to reiterate the facility, the tower will not have FAA lighting on it at night so it will not be visible at night and the FAA did make that determination. We submitted a supplemental radiofrequency justification report, again from Vcomm. Vcomm is the engineering experts retained by the applicants to prepare the documentation and in this case they responded to Mr. Musso. They provided actual dropped call data showing that Verizon surrounding sites are currently and have been since approximately 2018, exhausted by way of capacity, meaning that they're unable to support the capacity as well as being unable to provide the coverage within the Village. They also looked again at the minimum height requirement and provided additional documentation and propagation maps to demonstrate the minimum height for the facility. And they also looked at additional alternative sites including the hospital as well over 100 feet, so the hospital, in its location because of the topography, even at 100 feet is unable to cover the areas that have the significant gap in coverage. So therefore, even the properties that were mentioned before, the four-story buildings, they're much lower than that. Both the hospital and those buildings, the property owners have never agreed to allow facilities at those properties. The hospital in particular goes back decades not allowing wireless carriers there but in any event, both of those locations or all three of those locations would not provide the necessary service. We also looked at a location mentioned in the Building Inspector's memo known as Darlington Castle, again, that was found to not be able to solve the coverage gap by Verizon Wireless. We submitted another memo from Klaus Wimmer confirming the alternatives that he did look at, all of the existing structures, the locations of high elevation and found again no feasible alternative locations that were available for the location of the Verizon facility. We submitted a letter from Homeland Towers committing to allowing future co-location on the tower so that there would not be a proliferation of additional towers as you may recall, the tower and the base of the facility and the utilities were designed to be able to support co-location. Homeland Towers need to make space available at the facility for the Village's municipal emergency service entities and we've documented that as well. As we discussed before, Homeland Towers did submit the memorandum of lease which demonstrates the lease, demonstrated the lease exhibits, the location where we're permitted by the landowner and the only place we're permitted by the land owners....

Whitney Singleton stated Rob, Rob, could you indicate to me where on the memorandum of lease, it indicates where you can go?

Mr. Gaudioso stated so, in the documentation from Mr. Klaus Wimmer, he represented that the memorandum of lease...

Whitney Singleton stated no, no. I want to see it in the memorandum of lease, is it in the memorandum of lease?

Mr. Gaudioso stated no, it's in the representation by Mr. Wimmer, based on the lease exhibits that were submitted with that document.

Whitney Singleton stated the lease, memorandum of lease specifically says that you're entitled to the property and any where on the property.

Mr. Gaudioso stated no, that's not correct, so...

Whitney Singleton stated I can read it for you, I can share the screen with you.

Mr. Gaudioso stated Whitney, I'll do this. I'll say this, one last time...

Whitney Singleton stated no, no, no. Rob, this is important.

Mr. Gaudioso stated I will say this one last time, we have one location where we're permitted on the property...

Whitney Singleton stated Rob, I don't care how many last times you say it I'm going to continue to ask you for a copy of any and all leases. And if you don't like that, that's just too bad, alright, you have a lease which you have submitted to us, a memorandum of lease which says you can go anywhere on the property, anywhere in schedule A, schedule A is twenty-five acres and it entitles you according to what you provided us, to go anywhere on the property. If there is some clarification of that that can be made by any leases that you may have entered into, we'd be happy for you to provide those with any applicable redacting of financial terms.

Mr. Gaudioso stated so, to move on Mr. Chairman...

Whitney Singleton stated you're not going to address my comment?

Mr. Gaudioso stated Whitney, I've addressed it probably five or six times already, the Chairman earlier said that that my response was acceptable...

Whitney Singleton stated yeah, that's unfortunate.

Mr. Gaudioso stated I am not responding to it again.

Mr. Bonforte stated well it's still an open night.

Mr. Gaudioso stated it's not because we've represented clearly and unequivocally and as an officer of the court and Mr. Wimmer, as a representative of Homeland Towers, there is only spot pursuant to our agreement with Skull Island Partners where we're permitted to put the facility and that's....

Whitney Singleton stated but you won't show it to us.

Mr. Gaudioso stated and that is in the location that we are proposed to put it, and in addition to that, the owner of the property, the other party to the contract has confirmed that the only place where we're permitted to place the facility is in the place where we're proposing to put it, there is no conspiracy here.

There is no – there is nothing that we're hiding other than the fact that we have a contract, it is a proprietary contract, we have fully represented that this is the only location we're permitted to place the facility.

Whitney Singleton stated yet you provided us a document that says you can go anywhere on the property.

Mr. Gaudioso stated the document is based on the leased exhibits which we also provided to you with Mr. Klaus Wimmer's statement, that was provided by that.

Whitney Singleton stated they were not, they were generated after the fact.

Mr. Bonforte stated and my intent was not, my intent is not to excuse the item or to cross it off the list, it was just to make it duly noted that we don't have the information that we believe we should have and I stand behind my legal counsel in that manner.

Mr. Gaudioso stated look, if the Board could explain to us where in the code the lease is required to be submitted then we would certainly take that under advisement. The fact of the matter is the code does not require that we submit the lease, the case law on this issue is clear, we've made a very clear representation, the landlord has made a representation. There's only one place we can place the facility, period.

Whitney Singleton stated so you're telling us...

Mr. Vigliotti stated Mr. Gaudioso, can I ask you a question, please? If this applicant, and this is a hypothetical. If the application did not move forward for a variety of reasons down the road, would Skull Island at that point, provide the opportunity for Verizon and Homeland to find a secondary location?

Mr. Gaudioso stated I certainly....

Mr. Vigliotti stated hypothetical.

Mr. Gaudioso stated I certainly couldn't answer that hypothetical.

Mr. Vigliotti stated I know but that could very well happen.

Mr. Gaudioso stated look, a lot of things could happen.

Mr. Vigliotti stated I understand that.

Mr. Gaudioso stated but the reality is that the Board is confined by the facts before. And the facts are that we have one legal permitted location on the property where we're proposing to place the facility and that's it. So, if I may continue....

Whitney Singleton stated which is inconsistent with the documentation that you provided to us. The documents of reference....

Mr. Bonforte stated thank you.

Mr. Gaudioso stated that might be your perspective but we can tell you that and the landowner...

Whitney Singleton stated Rob, it's not my perspective, Rob. This is your language, it says, pursuant to the lease, the lease shall have the exclusive right to use the property or any portion thereof for use as

telecommunications facilities and it is appropriate for the Village to seek out alternative locations that are less impactful. But what you're saying is we want you to look over here, don't look at the man behind the curtain.

Mr. Gaudioso stated no, that's not what we're saying.

Whitney Singleton stated that's exactly what you're saying.

Mr. Gaudioso stated no, I'll respectfully disagree, Whitney.

Whitney Singleton stated okay.

Mr. Gaudioso stated so, what we've said, very clearly, is that we have one spot that the landowner has allowed us to place the facility. We have a contract to place the facility in that one spot. That is the location that's shown on our site plan. The landowner has confirmed that with his own letter unbeknownst to us but he submitted it to the record. We're glad he did and we have confirmed that and I'm confirming it as an officer of the court. If you'd like to swear in Mr. Vicente, we can swear him in right now as the president of Homeland Towers. Mr. Chairman, would you like to do that? Would you like to swear in Mr. Vicente and he can make that representation, would that be helpful?

Mr. Vigliotti stated no.

Whitney Singleton stated maybe it's something more appropriate for the Zoning Board of Appeals because there's penalties of perjury.

Mr. Gaudioso stated okay, look, it is what it is. We're not – you know, we're not threatened by your threat about penalties of perjury.

Whitney Singleton stated I'm not threatening anybody, Rob.

Mr. Gaudioso stated we have made it abundantly clear. If you don't like what the fact is, I'm sorry but that is the fact. And there's nothing more I can add to that.

Whitney Singleton stated it's enormously confusing when you get two applications on one property, and the property owners telling you that the cell tower is going to go here and then he says it's going to go here in two different locations.

Mr. Gaudioso stated no.

Whitney Singleton stated that your lease that you provided us says you can go anywhere you want.

Mr. Gaudioso stated no, we can't go anywhere we want.

Mr. Vigliotti stated Mr. Chair...

Mr. Gaudioso stated and I think I think you would appreciate the fact that no landowner would allow a lease to go anywhere on the property they wanted in their sole discretion. I think that's abundantly clear and a matter of common sense. I think you're also abundantly aware of the fact that there's an application by the solar farm. I assume you vetted out that they have authority to place the facility where they're

proposing the place it. And I would assume that you're asking them the same questions. I'm assuming that they...

Whitney Singleton stated they provided their lease.

Mr. Gaudioso stated if I may complete my sentence, I'm sure that you've looked at their leases and you understand and they have the rights to that location is our understanding and we do not. And there is nothing more I can add to that.

Whitney Singleton stated you can provide the lease.

Mr. Vigliotti stated as one Planning Board member, I would have to standby our Attorney and his advice to us as a Planning Board until it is proven otherwise. I think what, we, I owe that to our Village Attorney who has been hired to represent us. What he has just brought to the surface is very interesting to me, it's not anything that was made up. So I just as one member of the Board, I'd like to stand behind our Village Attorney and his understanding of what he is reading from the original documentation.

Mr. Gaudioso stated and again, we have also put in documentation that represents we have only one location on the property and it's the location where we're proposing. Now if the Board chooses not to process this application because of that request or decides this application based on that speculation, then that's the Board's prerogative. But we do understand that that there is Town and Village law that applies here. There is case law that applies here regarding the fact that we don't have to provide the lease and the fact that ultimately there is federal law that affects this application. And again, we have represented and if you'd like to swear in Mr. Vicente for another representation, that we have only one location where we can place the facility and it's in the location where we're proposing to place it. Other than that, I have nothing more to add on that.

Mr. Bonforte stated alright, thank you, we're just going over the same territory but thank you. But again, I don't want to excuse anything. This is why I brought it up, we were hoping to get the information voluntarily but we'll have to – I should say, regroup and come back to you again on the same issue, okay? So let's move on, okay? Mr. Gaudioso, go ahead.

Mr. Gaudioso stated the next thing we submitted was a letter from Mr. Burns from APT dated November 3rd that addressed issues of fire. Mr. Burns went into great detail about the fact that fire of these types of facilities is extremely rare. The reason is it does happen because of welding, we have no expectation of welding on this facility. If we ever did need to weld, we would follow the proper OSHA requirements and fire department requirements and therefore there's no affect from the potential of fire. He also submitted a documentation regarding fall zone. Again, we've submitted documentation showing how the tower would be constructed with the fall zone, in the rare event of a fall from the tower, it would remain within the property. We submitted from Mr. Burns and also from Tectonic Engineering, there were some comments about falling ice. There was a report that was previously submitted from 2013 from a physicist. We submitted a report and some information from Mr. Burns explaining that the physicist had his numbers incorrect, he's not a professional engineer. This was from an unrelated case that actually went to litigation where the court upheld Homeland Towers tower in that case, there is no adverse effect from ice and we've demonstrated that, as well as from falling debris. Mr. Burns also detailed the plan changes many of which were requested by your consultants and he'll go through some of those items in a little bit. We submitted the letter that was previously mentioned from APT engineering, again, dated November 2nd detail in compliance with the requirements of Section 110-33-1 regarding the steep slope permit, and that was in great detail. We submitted another letter from APT Engineering dated October 29th. This is regarding noise. I know there was some comments regarding noise. The facility will be completely within

compliance of the Village noise code. Again, another letter from APT reiterating the fall zone and the structural classifications that was dated September 16th. And in addition to the revised zoning drawings that Mr. Burns will go through in a moment, we submitted another letter from Saratoga Associates detailing the scope of work and the methodology for the balloon test that I believe, Mr. Musso we had discussed with him and he had accepted as the methodology for the balloon test that we just performed. So with that, I'd like to invite Mr. Burns to have his screen shared and I think Mr. Allen will be the one sharing it. Mr. Burns will just walk the public through the, you know, the high level overview of the site plan and some of the details in case there are any misconceptions of what's being proposed. Matt, are you able – there we go.

Mr. Burns stated thanks Rob, bear with me, this is the first time I've done this sharing my screen. For the record, my name is Robert Burns, I'm a civil engineer with APT Engineering. And I'm just going to run through the plans quickly, I'm sure the Board has seen these before but the acclimate the public. The host has asked me to start my video, just minute I tried to do that.

Mr. Gaudioso stated you have it Bob, you're good.

Mr. Burns stated okay, sorry. Alright, as you know the site is location at 180 South Bedford Road which is on the south side of South Bedford Road. It's a 25 plus acre parcel that is currently vacant and I believe at one point it was a residence. The compound is located in the interior of the parcel towards the northwest corner, adjacent to the existing driveway. Vehicle access to the compound, let me see if I can find a better plan, that's good, it will be across an existing access drive, it's about 685 feet winding up to a small 12 foot wide, it's about a 100 foot long gravel driveway that will go to the compound. The compound itself is 41 feet by 62 feet, gravel surface compound surrounded by a 6 foot high chain link fence, the previous submission had the fence at 8 foot high, we've revised it to 6 feet with a 12 foot wide access gate on the southern side. The proposed compound has been sized for four carriers, Verizon being the anchor and three future carriers and an area for future municipal equipment, if they would like to install antennas on our, on the tower. Outside of the fence in the southwest corner here, is a utility area, which will include a utility backboard which will have the existing electric meters on it, a small step down transformer and a telephone cabinet. The proposed electric services will run from a pole, existing poll on the south side of South Bedford Road and will run underground, that's another change, underground to the proposed utility area at the compound. Inside the fence in the northeast corner is Verizon's equipment area, their ground equipment will include equipment cabinets and a small diesel fired generator on a 10 foot by 12 foot concrete pad. There will be a steel canopy over the top of the equipment cabinets. It's this dashed line right here, it will not be over the top of the generator but over the cabinets. In the center of the compound is 140 foot high monopine with the top of the proposed branches at 145 [feet]. Verizon's plan is to initially install 8 panel antennas, 12 remote radio heads and 3 MDBs on mounted on T-arms. The center line of those antennas will be at 137 [feet]. The tower will also be designed for three future carriers at 10 foot intervals below Verizon's installation. In addition there is seven evergreen trees is going to be planted along the existing driveway prior to the new proposed gravel drive. In addition we have been able – we are currently reviewing the Fire Department's comments for additional parking areas around the compound and we will be making some slight revisions to be able to accommodate those comments as well. And that's in a nutshell the site plans.

Mr. Gaudioso stated thank you, Bob. With that, Mr. Chairman, I'd like to have Mr. Allen run through some of the documentation he's previously submitted as well as some of the results from the balloon test again. The view shed maps and the sight lines were previously submitted and we will be submitting a full visual resource evaluation including visual rendering showing exactly what the facility would look like in the proposed location.

Mr. Bonforte stated and afterwards I'd like to pose some questions and maybe some other members of the board would like to also. Please go ahead, Mr. Allen.

Mr. Allen stated thank you, this is Matt Allen. I am with the Saratoga Associates. We are the visual analyst for this project. And I just like to point out a couple of the documents that we have already submitted to the Board and Mr. Burns is doing the screen share with my documents. So I if I could just point Mr. Burns toward the document that's titled Saratoga 1.

Mr. Burns stated all right, I'm working with that, Matt.

Mr. Bonforte stated we can see it.

Mr. Allen stated which is a letter dated September 28th to the Board, which was a very preliminary visual analysis that just looked at the capability of the site to host this tower with minimal visual impact. What we provided was a preliminary view shed analysis, identifying the geographic area that the project, at that location, at a height of 140 feet may be visible. We also provided some line of sight profiles from the Marsh sanctuary and the Chase residential neighborhood just to get a sense of whether the tower would be visible from those areas and if so, how much. So, Bob, you're on the correct page there, this is just a the preliminary view shed analysis of the tower in the location that it's currently proposed, the blue areas are the areas where visibility is predicted based on view shed analysis, and you can see there's visibility with Leonard Park within the Mount Kisco office park just to east of Leonard Park and a little bit of visibility in the open fields in the Rochambeau Preserve on the up on the side of Guard Hill. Elsewhere there's just small snips of visibility, so those are the areas that we were looking to confirm the accuracy of the, with the balloon test, we were looking to confirm the accuracy of the view shed analysis. And Bob, if you could just skip down a few pages to the line of sight profiles, there you go. We did some line of sight profiles, as I mentioned from the Marsh Sanctuary and the Chase just looking at areas where one might expect to have visibility and then looking back across the topography to see whether such visibility would actually existing and what we found is because the topography and vegetation on the existing hillside even including possible clearing from the proposed solar project on that property, we found no visibility from the Marsh Sanctuary or the study areas, the test areas within the Chase residential neighborhood.. So, from there we moved on to the balloon test and Bob if you can switch to the drawing called Saratoga 2...

Mr. Bonforte stated Matt, one second, just to catch up, I want to make a note on that, what page is that in your submission, which I have in front of me. The page in where you just made the statement there's no, you didn't have a visual from...

Mr. Allen stated this is from the letter to the Board dated September 28th and in the appendix in the back it's Page 7, 7 and 8 of the PDF file, the line of sight profiles.

Mr. Bonforte stated thank you, good.

Mr. Allen stated okay, and Bob now has the November 3rd letter, this was the methodology that we drafted on how we plan to conduct the balloon visibility test, this was done in conjunction with HDR. HDR had suggested a methodology that we followed and this letter was approved in advance of the balloon test by HDR. And as you know the balloon test was originally scheduled to occur in November 14th but we had a full week of individual days where the wind was in excess of our minimum, uh our maximum threshold during the window of the balloon test, so we had successive postponements until we found a successful weather day, later Saturday, November 21st. The methodology, we floated one 5 foot diameter red balloon to the top elevation of the proposed tower including the branching of the monopine and that was 145 feet above what will be finished grade. The existing grade at the location is approximated 5 ½ feet lower than

what it will be when the site is graded. So, we raised the balloon 5 ½ feet to account for that grade change, so the balloon was actually floated at 150 feet 6 inches above existing grade and again that represented the top of branching of the proposed monopine which would be 145 feet above the finish grade of that site. At the request of HDR, we also floated a 4 foot diameter balloon that was affixed 15 feet below the elevation of larger balloon that is at the proposed tower elevation. As Mr. Musso mentioned, the weather was near perfect on Saturday very low wind which is actually quite rare during the balloon test and the balloon flew almost vertical for the entire duration the balloon was raised shortly before 8 am, and taken down a little bit after 12 noon. We were able to launch the balloon at the exact center point of the tower, we were successful in getting the balloon up through the trees, so the position of the balloon was true both horizontally and vertically to the upper most elevation of the proposed tower. In conjunction with HDR and the Village Planning Board, we presented 36 recommended photo locations that we would visit during the balloon test, we visited all of them, as well any others where we found visibility of the balloon that may or may not have been expected, so we did not limit ourselves to those 36 locations but we did visit each and every one of those locations. There was a heavy focus on locations within the Marsh Sanctuary and Chase neighborhood but we also looked at Leonard Park, Route 172, Sarles Road and other areas where visibility may be expected in this area and we documented all those locations photographically, we took GPS way points at each photo location, so, we know exactly where the photo was taken. Photos were taken with a 50 mm lens which is considered a normal lens in photographic terms, meaning it's neither telephoto nor wide angles, so it does not have any type of distortion to it, it's as close to the perspective as can be achieved with photograph equipment to what the human eye would see. And the visual assessment report that I'll be producing will describe why we used that lens as well as how to view the photo simulations to best represent what one might experience if they were visualizing the tower in the field after it were constructed. And I think that is it for the methodology, Bob, if you can move on to the photographs which is the document title Saratoga 3. And I have not processed all of the photographs on Saturday but I did provide for this meeting just a sample of the key locations that the Board and the public might be interested in at this time. All of the locations that were recommended and approved by the Board prior to the balloon test will be provided in the visual assessment, so if you don't see locations here that you believe were recommended for photography, they will be provided later, they were photographed. The first few photographs in this series and this is a document that the Board has not yet seen and as I mentioned, it will be provided as part of the ultimate visual assessment report. The first series of photographs are from the main portion of the Marsh Sanctuary, the photograph VP Number 1 that you're looking at is from field parking area, the main parking area at this southern portion of the Marsh Sanctuary and for this location the balloon was not spotted and that was predicted by the view shed analysis. So what we found throughout the day is the view shed mapping that we prepared in advance of the study was highly accurate, we did not find significant balloon visibility any place that was no predicted by the view shed analysis and where the view shed analysis predicted visibility, we did find visibility. So, we walked throughout the Marsh Sanctuary, VP number 2, at the bottom of that page is a view from the purple trip, now looking down over the pond, and from this location, the balloon still was remaining below trees on that ridgeline in the distance this particular location was taken as high on the hill as one can get on that trail before the trail enters the woods. So there is no location with a view down this meadow that is at a high elevation than this photograph was taken. And moving on to the next page, we walked the trail all the way up to the water tower and VP 3 is taken from the highest elevation along the purple trail and as you can see that's well into the woods, so it's very difficult to get a view out of woods even with the leaves off the trees but from this location, we were not able to spot the balloon above the ridgeline. And then VP 4 is walking back down the hill through a different meadow and again, we were not able to spot the balloon from this location and again, this location was from the highest point on the hill in that meadow, any further back and we would have been standing in the woods. And moving on to the north side of the Marsh Sanctuary, VP 5 is taken from Route 172, standing [inaudible] Brookside parking area for the Marsh Sanctuary and this location we're about 200 feet away and the balloon was visible through the trees and obviously the balloon test was conducted during leaf off season, so during leaf on season, so about 6 months of the years, I would expect

that there would be little to no visibility through the trees in this area, so the tower would likely be nearly fully screened from this location. And again we were asked to take a picture from the Amphitheater in the Marsh Preserve, so this is that picture and we're about 350 feet away from the tower location here and again it's through vegetation, so during the summertime when the Amphitheater would most likely be used, there would be substantially less visibility than is indicated by this particular photograph. And I'll go a little quicker now because we found a number of locations where there was visibility, what we would call seasonal visibility, through the trees and also many areas where there was no visibility. So, VP 7 is from the intersection of 172 and Sarles Street, approximately 540 feet away and we found the balloon visible through the trees. Moving up Sarles Street, VP 8, once you enter Sarles Street and head south, there's topography and dense vegetation that blocks views, so we actually found no views on Sarles Street beyond the immediate intersection with Route 172. I also went up to the Rochambeau Farm because the view shed analysis indicated that there would be visibility and what I found was that that portion of the view shed identified a false positive, meaning that the assumptions that were made about the height of screening vegetation tended to be very conservative, trees in that area blocking the line of sight to that tower or the balloon, tended to be taller than we anticipated. So when we went out and actually looked for the balloon, we could not see it above the trees from that location. And again going back to Route 172 and moving from the Town of Bedford toward Mount Kisco, Route VP 11 is Route 72 at West Patent Road where one might assume that you could come around the bend and have the visibility of the balloon. We did find the balloon, it was off to the left of the access to the road and again false behind dense deciduous vegetation, but would have very slight season of visibility from this location. And continuing to move down 172, the Marsh Sanctuary caretaker's cottage, again the balloon was visible through trees. And continuing to move down 172 at McLain Street, looking to the east similar situation, the balloon did not rise above the tree line but was visible through the trees. Same condition from the Mount Kisco Corporate Center, and then finally when you get down 172 at Wallace Drive, the entrance to Leonard Park, that's where the balloons appeared above the tree line, that was one of the rare locations where that circumstance occurred. And moving a little bit further down 172, just surrounding the bend closer to the center of Mount Kisco, the balloons became screened by existing vegetation and buildings. So it was relatively short stretch of 172 where the balloon was visible above the tree line. A greater degree of visibility was found within Leonard Park, all the way down on the driveway and Leonard Park, the balloon was screened by vegetation on the opposite sides of the ball field. But as you move further to the east in the park, the balloons did appear above the trees and from this one location above the distant hillside horizon. And the last photograph we took in Leonard Park was from the pond near the teahouse, and in this location the balloons were visible right at the tree line just above the horizon. And we went in and took a number of photographs within the Chase neighborhood and we found no visibility at all from any place in the Chase neighborhood and we were guided to a certain degree by some of the areas within the view shed map that indicated possible visibility. So, we went to those locations as well as other high points within the Chase where one might expect to find visibility. And on all these photographs we did not spot the balloon above the trees. And although this is private property, it is the closest residence to the proposed action and this is Mr. Pietrobono's property. We did meet with the property owner and walked the property with him and identified locations where the balloon might be visible or was visible and took locations wherever the property owner asked us to and I've included two of those photographs here. The first photograph is from sitting area on the property and we found a gap in the trees where the balloons were clearly visible and in this location, we're about 320 feet from the tower site. And then on the next page, this was a location on an outdoor deck and the balloons were visible through the trees at a distance of about 490 feet. So, that is the result of the balloon test. As I mentioned, we do have quite a few more photographs the vast majority of them show no visibility, they were a little bit further afield but there were locations that were asked for us to be visited by the Board. The most exposed locations that we found are included in the package that I just presented. We did not find any location where there was more exposed visibility than I've just shown you. And I'd like to just quickly go back. Bob, if you could go back to Saratoga 2, which is the November 3rd letter. And just quickly show you what was guiding our travels during the balloon test. Yes, page sticks of 13, Bob, if you could, one more. This is

the, yes, back to the previous one, Bob, if you could. This is the 1 mile view shed map that includes the screening value of existing vegetation and existing structures. So, you can see the blue areas are the areas that we had predicted visibility would occur, so we visited, spent a good deal of time in those areas confirming visibility. Of note, the area up north of Guard Hill Park, the Rochambeau farm, is a wide open pasture area of corrals and as I showed you the photograph, we did visit that area and I was unable to spot the balloon, so that's an area of false positive...

Mr. Bonforte stated Matt, just put your cursor on those, what you're just talking about, yes.

Mr. Allen stated false positives often happen with view shed analysis because we try to be overly conservative and predicting of visibility and then we confirm the view shed by going out in the field during the balloon test So this is a one mile view shed. Bob, if you could go down two pages, go back one page, just answer the question what is that massive blue map. HDR asked us to provide to the Board what we call a bare earth view shed and this identifies the areas that if there were no trees and no buildings in the area, you would expect there to be a line of sight to the top of the tower, so that's not a map that I typically show to the public because it requires a visual analyst to understand what you're looking at, the land cover view shed is much more disclosive for the purposes of reality and I do want to point out that the bare earth view shed is often confused with a leaf off condition, visibility and quite obviously the density of vegetation in this area, even during leaf off season, provides a very substantial buffer, so as evidence by the balloon test, simply being within the bare earth area, doesn't guarantee a view of the balloon and all likely a view will not occur. So the bare earth is just a process step in getting the land cover view shed which is the next page, if you could Bob. And this one I just zoomed in, it's the same view shed as I showed you with the 1 mile land cover view shed, we just zoom into the half mile area where we would expect most of the visual impact to occur. And you can see smaller areas of blue, particularly in the area of the school along West Patent Road, no, I'm sorry Bob, that's a little further northeast right above the word Bedford, a little more there you go. In that area there's a little clip of blue just along West Patent Road adjacent to the school, I did visit that and I did not spot the balloon. I drove around that area and I did manage to find a gap where the balloon would be seen well below the tree line it was visible through the trees, a very minor view in that area that we were report in the visual assessment study.

Mr. Gaudioso stated Matt, can you also just explain in the visual assessment study that you'll do visual renderings and the proposed monopine of the facility as a monopine and why that was chosen in this location?

Mr. Allen stated yes, the visual assessment report will include photographic simulations. We'll take the photographs that we took during the balloon tests and for those viewpoints where we found visibility. We will simulate what the tower would look like within the frame of that photograph. And in this, for this project what's known as a stealth monopine type structure was selected. It's not appropriate for use everywhere, you know, simply because a faux tree that is about 145 feet tall often stands out and is more noticeable or creates a greater visual impact than a standard galvanized pole. However in this location, because there the tower does not rise significantly above the horizon from any locations and is in fact visible through trees or against a background of woodland landscape, this is an ideal location to use that stealth technology. A stealth tree is not intended to unnecessarily to look like a pine tree but is intended to minimize the contrast of the structure with the surrounding landscape, so it better blends in color and texture with the landscape that it's viewed against. And it's very effective when it's used in the right locations to minimize the visual impact. So it's an ideal solution in this location as compared to a standard galvanize monopole. And the last thing I want to show, there were some talk about looking at a second alternative location on this site. And as was mentioned, the property owner did not give us permission to fly a second balloon at that location but we did do the desktop analysis of the view shed analysis from that

location. And in the November 3rd letter that you can compare the two, and I'll just quickly go to, Bob, it's page, it's the very last page.

Mr. Bonforte stated exhibit B.

Mr. Allen stated so, this is the view shed, a land cover view shed of the tower if it were located at the top of the hill, which was the location recommended by the Village for comparative purposes. And the difference between the two view sheds is there substantially more visibility but there was no visibility of the tower in the first location from the north, or the south side of the Marsh Sanctuary or the Chase residential neighborhood. If the tower were located at the top of the hill in the alternative location, there would be substantial visibility from the Marsh Sanctuary and the Chase residential neighborhood as well always increased visibility through other portions of Mount Kisco including Leonard Park and some of the corporate areas on the east side of town.

Whitney Singleton stated Mr. Allen, can I just ask a question?

Mr. Allen stated yes, please.

Whitney Singleton stated if you were to put it at that location, it appears as though that's on a flat area up there. You would not need the very steep slope permit that you're seeking now, you're currently proposing to disturb 2000 square feet of very, very steep slope which is prohibited under our code.

Mr. Gaudioso stated yeah, Matt is not the civil engineer. I think Matt's plate was just front a...

Whitney Singleton stated Mr. Burns can address it, he addressed it in his memo but all he says is that you comply. He doesn't detail that there are 55% of the site is not a very steep slope.

Mr. Gaudioso stated I know, Mr. Singleton, so to the extent you want to testify and the Board allows you to, that's fine. The purpose of Mr. Allen's testimony here is with respect to the visual analysis and the view shed map that was submitted. He's not the expert on steep slope impacts.

Whitney Singleton stated but simply saying in your submission that the grading plan included the site plan meets the standards of the Village code. The standards of the Village code are that you are not to build on very steep slopes unless it is absolutely unavoidable, and you have 55% of the site that is not very steep slopes.

Mr. Gaudioso stated and I'll reiterate. It's not unavoidable because we only have one location on the property landowner rural house

Whitney Singleton stated so, if this was a lake, if this was Byron Lake and that you only had a lease for the center of Byron Lake it would it be okay to put a cell tower in the middle of Byram Lake?

Mr. Gaudioso stated so generally, I've never seen a lease within Byram Lake or any other lake for that matter, so I can't really speculate on that...

Whitney Singleton stated in any body of water.

Mr. Gaudioso stated I've never seen a lease for a cell tower in a body of water. I don't know if it would technically be possible, we'd have to look at it on a case by case basis. But to the best of my knowledge, this property does not have a lake on it.

Whitney Singleton stated the mere fact that your lease relegates you to a 4,000 square foot envelope, does not mean that Village has to accept that as being acceptable.

Mr. Gaudioso stated look, the Village had many opportunities to allow the facility on many other parcels owned by the Village and the Village chose not to allow those parcels. So, to say that it's the applicant's fault that this is the location that's permitted by the property owner, I think is a false statement.

Whitney Singleton stated if we're going to talk about opportunities with the Village, didn't you indicate to me that you had a lease ready for signature for the hospital?

Mr. Gaudioso stated no, I did not represent that to you.

Whitney Singleton stated you didn't have a lease sitting before them for signature?

Mr. Gaudioso stated no, I said...

Whitney Singleton stated that you've been negotiating with them for years.

Mr. Gaudioso stated I said to you that carriers have been negotiating with the hospital for years and have been unable to ever get a lease signed. That was our discussion.

Whitney Singleton stated but wouldn't that suggest that that's an acceptable location?

Mr. Gaudioso stated I didn't say that it was an acceptable location and I didn't say that that was within the last year or two since the other facilities around the Village have been construction over the past, literally decades. The hospital has never permitted a carrier on the hospital for at least two decades that I'm aware of.

Whitney Singleton stated okay.

Mr. Gaudioso stated in that time, many other facilities have been placed within and around the Village, including the facility, if I may finish.

Mr. Vicente stated Mr. Singleton may I speak?

Whitney Singleton stated I don't know who's speaking.

Mr. Vincente stated this is Mr. Vicente.

Whitney Singleton stated go ahead.

Mr. Vicente stated Mr. Singleton, you mentioned your concern about steep slopes, as Mr. Gaudioso has mentioned several times, it's not available to us. Secondly, we were able to provide this view shed analysis for comparison purposes. The view shed analysis clearly and our expert clearly is telling to that it's much more visible at that location, yet you're bringing up steep slopes, what are you getting at?

Whitney Singleton stated steep slopes are one of the impacts that Village is concerned about...

Mr. Vicente stated and we're addressing that in our response to Mr. Miley's memo and we filed an application with the Zoning Board. Are you saying that it is more important to you and our, excuse me, let me speak...

Whitney Singleton stated whoa, whoa, Mr. Vicente [inaudible].

Mr. Vicente stated and our engineer has said we can comply with the code. Is this a red herring? We are showing you want the visibility comparison would be like and you're ignoring it completely and getting off track on something that we're more than prepared to answer through the process. I think this is unproductive.

Whitney Singleton stated well, you know, Mr. Gaudioso has gone on for close to an hour talking. I don't see why the Village asking questions during a public hearing it would be in any way inappropriate.

Mr. Vicente stated I think there's a difference between asking questions and providing testimony.

Mr. Gaudioso stated yeah, we're having our engineers and landscape architect provide expert testimony as part of our application.

Whitney Singleton stated but they're not, they're not answering...

Mr. Gaudioso stated they are. They are. So, to the extent you wish to testify the record will reflect your testimony to the extent it's relevant. And the fact is that we've documented all of this and its part of the record and the Board will say...

Whitney Singleton stated to simply say that there are no other viable alternatives, does not make that to be a fact.

Mr. Gaudioso stated okay, that's good.

Whitney Singleton stated have you get more locations on the...

Mr. Gaudioso stated yes, we have and the landowner has told us he will not let us locate the facility on any other portion on the property and we've also investigated as Mr. Allen was trying to demonstrate, we investigated it even without permission, to show that visibility particularly from the area to the Chase would be significantly greater.

Whitney Singleton stated and all I was pointing out...

Mr. Allen stated and to that note, you also have an expert that is going to review a lot of data that we've submitted regarding alternatives, regarding the need for the facility. So, I think we should let Mr. Musso do his job as well.

Whitney Singleton stated Mr. Musso, will do his job and I'm sure he'll do it fine. If you're going to talk about other locations and how they're more visible, I'm simply pointing out that at those other locations your code compliant with our steep slopes regulation, at your current location you are not.

Mr. Gaudioso stated okay, but we don't have access to those locations, I just want to make that clear.

Whitney Singleton stated that's kind of your thing...

Mr. Gaudioso stated just like we don't have access to Leonard Park because the property owner at Leonard Park wouldn't allow us to locate there, it's the same thing.

Mr. Musso stated Mr. Chairman, if I may?

Mr. Bonforte stated go right, ahead, Mr. Musso.

Mr. Musso stated yeah, so a couple of comments on what's been shown right here. Mr. Allen talked about false positives and that's the importance of doing a balloon test. The maps you're looking at now we're done before the balloon was floated obviously, we always do like to look at bare earth as if there's nothing besides the ground surface and it's good first step to allow planning out locations based solely on topography. So, if you went north on this map to the top of it right where it says half mile, you're just going to be blocked by topography. So, what's been provided now I think is helpful, but I want to mention also about false negatives. So, I know a few things were submitted to the Planning Board by some residents along Sarles Street and you could see where Sarles Street is, it's at the bend almost at the center of this exhibit running from 172 South. So, there are points obviously which weren't visited and there are points where you could theoretically see that balloon and we'll be able to see the tower. I just bring this up because I think it's important for the Planning Board to look at those that record, it's important for me as your consultant also to look at that. Again, these are worst case situations or scenarios where the balloon test was conducted, which is important. Mr. Allen's point that the bare earth does not indicate on leaf or off leaf, that's absolutely correct, even in off leaf Mount Kisco and Bedford I think they're kind of blessed with the amount of trees in the area, not every municipality I work in has that situation. So I think the balloon test was conducted at the right time of year, there's still a lot to look at and what I just want to bring up here on these maps were the dark blue indicates this visibility, that has to be ground truthed in the final visual resource analysis report. I also want to bring up that the photo simulations will be provided for stealth tree monopole and I have to say that HDR does not normally endorse that because we've all seen horrible examples of the stealth tree and some places it may make sense. I also want them to give you an option and sims for a conventional monopole for comparison, I'd like to work with the applicant in deciding the number of simulations, stealth tree, conventional, I want you to look at any many options as possible, in other works. And it may or may not be appropriate but you can at least get a feel for the different options that are out there and then there's also options so for the stealth tree, options for the option, if you will. Things like taper of branching, color or branching, density of branching and even texturing of the pole structure itself. These are things that are out there that I'll include in our tech memo that comes together under the visual assessment section. I also want to note that we would like them to look at the alternate height scenario and one thing that was very interesting to me was that that second balloon that flown 15 feet below, there were certainly points where I could see the higher balloon but not the lower balloon. And this is that tandem analysis that I spoke about earlier is looking at the alternate height coverage maps, what it gets you and what it doesn't get you, still being considerate for Verizon and possible co-locators in the future. So there's really a lot to look at here and I just want to maybe set the stage for the necessary photo simulations that are being developed, with your permission, I'd like to work with the applicant in deciding stealth tree and conventional, the number of alternatives and the alternate height analysis also. I want to make sure that you have a nice record to look at and of course this will be for the photos that are most visible. It's not going to be from every location where the balloons were visible, maybe through a tree stand but certainly from the closest residential property from 172, Leonard Park and some other areas afield. I would expect a, you know, anywhere from 6 to 9 viewpoints that could be turned into photo simulations. So, with your permission I like to work with the applicant's visual consultant to scope that out for the visual resource analysis report that will eventually be submitted to you.

Mr. Bonforte stated I think that's a valid set of points and if the applicant agrees, I'm certainly all for it.

Mr. Gaudio stated we have no objection to, you know, working with Mr. Musso to hear his suggestions and, you know, providing our report as best we can based on that.

Mr. Bonforte stated and I just had one quick follow up with Matt, your specialist. Matt, on that last graphic that you were showing bare earth with the, you know, what you call the desktop version, using the alternate site, right? The site that's flatter doesn't involve steep slopes as Mr. Singleton said. What was the height of the tower obviously, it's not as high. Correct?

Mr. Allen stated the parameters I was given was to use the same size tower, but I defer to somebody else to address your question on that regard.

Mr. Bonforte stated so before we do that I guess, just from my perspective that doesn't quite make sense because it's further up the hill on the property and therefore it wouldn't need to be as tall. But, Mike Musso, can you comment?

Mr. Musso yeah, it's maybe a little bit counterintuitive but when you consider the coverage objectives and now greater distance, greater height and more trees that shadow signal down to the ground surface, 140 feet is probably appropriate. When we put our October 22nd memo that Saratoga responded to for the balloon test scope, we asked about the second location, you know, we talked about that way back at the site visit in September or October rather. And it's maybe a little counterintuitive but you have to remember that the signal works not 100% but in large part of line of sight. And we asked them when you put this scope together for us, the one you received dated November 3rd that was followed last Saturday, we asked them to provide a height and we said, talked to Verizon talked to the RF people, what height would you need? And they came back with 140 feet, which frankly is not surprising at all to me. So, right, so that's a qualitative answer maybe to answer your question, you know, you go up on the hill that's a big differential 40, 50 feet, maybe more, but that doesn't mean you could go from 140 to a 90 foot tower. It all depends on the topography, the layout and the tree line to a large degree.

Mr. Bonforte stated and Matt's graphics and Exhibit B do say 140 feet, but I just had to ask the question. So, yes, thank you.

Mr. Vigliotti stated I have a question for Mike Musso or Mr. Allen. You know, as we look across the view scape even from the pond and in front of the teahouse, you see the balloons above the tree line. How are we taking into account the 33 trees that will be removed, including a non [inaudible] that helped to screen not the balloons, but the pole, the monopole, the stealth mono pole that's going to go up through the property? That pole is going to be unsightly and when the 33 trees are down, we're going to get a different view then we would get during the balloon test. I did ask the question on the site what was the diameter at the base of the monopole and I couldn't get a clear answer. So I just want, of course, my concern is the view scape from Leonard Park and the other different locations, but the number of trees that are coming down the balloon test obviously wasn't done with 33 trees down. And we weren't able to see the monopole weave up through that open landscape. From Route 172, that's going to be quite a visual to see because that would be the closest area. So, Mike, if you could share how that will show in the final analysis?

Mr. Musso stated I think if, I know the applicant rep have the latest drawing set handy. And maybe, Mr. Burns, you could show the image of the compound area with the proposed tree removal. And I think with that being said that the important thing to compare, Mr. Vigliotti, is the survey map that shows the density of trees that exists now and then there's a zoom in of those trees that would be taken down as part of the homeland proposal.

Mr. Vigliotti stated so we'll see in the final, the views of the cell tower from those different locations through the trees.

Mr. Musso yeah and Mr. Allen that's something that you could account for or at least...

Mr. Allen stated yes, that's a very good question. And then just very quickly the way I would address that is I don't just built a 3D model of the tower. I built a 3D model of the entire project including the existing trees that will remain and the trees that are proposed to be removed. So when I look at the 3D model from the perspective of the photography that we're simulating, the change in the tree line will be visible within the 3D model and I will make sure that that is included in the photographic simulation.

Mr. Vigliotti stated okay, that's great, I just have one more question. Mr. Gaudioso, you had mentioned that New York State Historical Society or thereof, indicated that there were no historical sites within the area proposed for the cell tower. I just want to for the record, to let you know that there are several areas, one is the St. Mark's/St. George's Cemetery that dates back to 1761 which is on a National historic Register, it faces Leonard Park and there may be some views depending on where you are in that one acre cemetery of that balloons. There is also, outside the hospital, at 172, a monument where Rochambeau met George Washington in 1776 and 1781, so I want to as some point that may become part of the historical registered site. Currently, just to put it on the record, the Mount Kisco Historical Society has been for the last three years proposing to the State to recognize a historic cultural landscape area that would include the two areas I just mentioned, including Leonard Park and along Route 117 into what we refer to as the early settlement trail. So, I just want to place that on the record that there are several historical sites and locations within the one mile radius of the cell tower.

Mr. Gaudioso stated just to clarify, the New York State Historic Preservation office.

Mr. Vigliotti stated yes.

Mr. Gaudioso stated which is the official agency, I'm sure Mr. Kates, look at this is part of the EAF. It's the official agency that makes determinations under SEQRA and also under the Historic Preservation Act, the Federal Act as well. And they have certain criteria based on distance and the type of resource that it is and based on all that criteria, the State's preservation office, which is the Official State Agency has with making that determination, made the determination there would be no effect because of the fact of the distances and the types of impacts that were proposed.

Mr. Vigliotti stated if you would just show the Historical Society has that on record, just part of our files, if I could get copy of that, I am the current President of the Mount Kisco Historical Society, so I would like to be able to have that on record, in case anyone is asking.

Mr. Gaudioso stated sure, the November 4th submission. We did submit that.

Mr. Vigliotti stated okay, great, alright, thank you.

Mr. Musso stated yeah and HDR in the scope, we had identified, those were some of the additional viewpoints, and some of those who are outside the one mile radius. So, we have photos from there. The two sites or two of the sites at least that you mentioned, we did not noted, we didn't note any balloon visibility. We also went up on the Saw Mill River Parkway.

Mr. Vigliotti stated oh, okay.

Mr. Musso stated maybe that's not historic but we thought it was important to get a look if there's any registration status with the Saw Mill. There's a lot of old byways obviously in Westchester.

Mr. Vigliotti stated sure.

Mr. Musso stated but your points are important especially in light of the SEQRA Process. When the Board is evaluating visuals, one of the key things is to look at [inaudible] or another types of resources.

Mr. Vigliotti stated okay.

Mr. Musso stated that really has to be buttoned up for this.

Mr. Vigliotti stated okay, thank you, Mike.

Mr. Bonforte stated Matt, were you essentially done. Correct?

Mr. Allen stated I'm sorry, can you repeat the question.

Mr. Bonforte stated Matt, you essentially finished your presentation, correct?

Mr. Allen stated yes, yes.

Mr. Bonforte stated and I wanted to jump back when Mr. Vigliotti asked Mr. Burns about the, you know, the site itself for the pad, for the concrete pad, et cetera for the tower. I wanted, I still had an open question on when you presented earlier and you had a screenshot of, you know, a top down view. You mentioned there would be access for the fire department but I don't think you really elaborated or could you elaborate now, how that's going to take place?

Mr. Allen stated yeah, so I got the fire department come in sort of late in the game. So, I'm in the process of looking at that now. We will provide the parking that they're seeking, it's not shown on this particular site plan but on our subsequent submission we will show the parking that he's asking for.

Mr. Bonforte stated I think it was parking and sort of access way.

Mr. Allen stated parking and access, yes sir, that's correct.

Mr. Bonforte stated the turning radius maybe...

Mr. Allen stated yes, sir. That's correct.

Mr. Bonforte stated alright, thanks.

Mr. Allen stated you're welcome.

Mr. Bonforte stated anybody else on the Board, please step forward. Ask questions of any of the specialists on applicant side. Anybody? Because it's getting late and I'd like to get to the public who are waiting. There's at least a couple I see here, they're waiting. So if, one second here, hold on. She's getting a message for Mr. Miley. Yeah, understood, so again I'd like to ask Mr. Miley to conduct the residents who would like to speak and please, you know, announce yourself who you are. And again, we received your detailed documentation and photographs just today, you know, as a result of that beautiful day this past

Saturday. Now we're going to be going through those along with the applicant submission. So please go ahead, Peter.

Mr. Miley stated Acting Chair, I believe you need to open the public hearing first.

Whitney Singleton stated they did.

Mr. Miley stated did they?

Mr. Bonforte stated yeah, it was a little while. So you can go ahead Peter.

Mr. Miley stated I apologize. I didn't hear it. Alright, just to remind the public, we have phone number here you can dial. It is 914-420-0383. We're also monitoring Facebook live and we have no comments currently. However, we have several people that are waiting in the waiting room. So, I'm going to ask Michelle, allow one person at a time to enter. And who do we have as a first person?

The Secretary stated Marianne Tarnok.

Mr. Miley stated so Marianne Tarnok will be let in from the waiting room. Okay, Marianne, you're at live.

Ms. Tarnok stated good evening. Good evening, I'm Marianne Tarnok, a 23 year resident of Mount Kisco Chase and a 33 year resident of Mount Kisco. I am speaking tonight in regard to the two applications before the Planning Board for the installation of both the solar facility and a cell tower on the property at 180 South Bedford Road. I would like to clarify some points, reiterate some points and bring to your attention some conflicting and disturbing issues regarding the applications to develop this property. I have limited my comments to about five minutes. There has been some confusion throughout these discussions about if, when, and how the residents who occlude in about the change in their zoning to this property from a Conservation District to one that would allow Tier 3 solar panel installations. To clarify, while we were aware that the Town was working on establishing a solar law back in 2018, we were not aware nor was it adequately publicized that a rezoning of this property was being considered for that it had been approved by the Town Board in November of 2018. It wasn't until July of this year, when we were notified about the public hearing on the solar application that we were clued in to what had transpired almost one and a half years ago. I've heard some comments that from those supporting the solar project that it was going along smoothly until the cell tower was added. That is not true, it was going along smoothly because most residents knew nothing about it. A 10 point petition in opposition to these applications, was written in September of this year and in a few short days was supported by 124 signatures. Most who signed were shocked to hear that these projects were being considered. I believe you all were given copies of the petition back in mid-September. I'm requesting that you read it again along with the comments made by many of those who signed. There have been many concerns about the involvement of the Chairman and the Vice Chairman of the Planning Board since both have or had a connection to either the property or would profit from the project if is approved. Both have since stepped but we question their involvement up to this point and how it might have influenced the zoning change and what influence their involvement might have had on those who will be involved in the decision making. Most on the communication given to the Planning Board from the public has been against the installation of a solar farm and/or a cell tower, not because it would be in our backyards but because it is the wrong thing to do. To change a heavily wooded Conservation District in our beautiful town, located next to a wildlife sanctuary and also next to many residential homes, into what would essentially become a commercial industrial zone. The original application for the solar farm drew environmental data from a 16 year old study, the elimination of 600 to 700 trees is a very real concern, as it would affect the wildlife, plant life, the environment, storm runoff, noise levels, et cetera. A thorough current and comprehensive study is needed in this case because again, it

is basically a heavily wooded undisturbed nature center. I strongly urge the Board to issue a positive declaration on this application. We've all seen the impact of the recent clearing of the Bedford property for the Chabad just up the street from 180 South Bedford. Is this what we want for our town? There is also concern regarding the current owner of the property, who resides in Florida. His LLC is leasing out portions of the property for his own personal gain with apparently little or no regard to the impact on the Town, The Marsh Sanctuary, the homeowners who lived contiguous to the property and other Mount Kisco and Bedford residence. It is eye opening to know that of the 11 available property owners who Verizon contacted, about installing a cell tower, the only one who agreed to lease their property to them were someone who doesn't physically reside here. I've also seen conflicting information regarding the actual acreage of the 180 South Bedford site. A minimum of 25 acres is needed to install a Tier 3 solar facility. On the deed of sale, dated June 13, 2013 and filed with the Westchester County Clerk from Realis Development LLC, which was signed by John Bainlardi to Skull Island Partners, the local acreage indicated is 23.523 acres. In a document submitted by Cuddy & Feder to the Planning Board, for the October 24th meeting of this year, it was stated that the survey prepared for David Selden, the owner of the property, dated December 6th of 2001 but last revised on October 21, 13, which was four months after the property sale, the land area stated at 25.001 acres. So you can see why I'm confused. What does our properties Town and tax records indicate? By the way, an acre has 43,560 square feet, 25 acres equals 1,089,000 square feet, 0.001 acre is 44 square feet or even less if the 0.001 was rounded up. Another real concern is what's next after a solar farm and a cell tower? Who else would the owner list the remaining space to for the profit of the LLC? Have there been any conversations with the owner as to his plans for the future of the property? Don't you think he should make those plans known before the Board? How do we know this solar farm applicant won't try to increase the number of panels once the initial installation has been approved? How do we know that...?

Mr. Bonforte stated Marianne, Ms. Tarnok, just at the interest of time.

Ms. Tarnok stated yes?

Mr. Bonforte stated you're a bit over five minutes but please proceed.

Ms. Tarnok stated am I really?

Mr. Bonforte stated please proceed. Really. Just follow me. This is about the cell tower applications. So, please contain your comments to the cell tower, please. Thank you.

Ms. Tarnok stated okay, I apologize.

Mr. Bonforte stated no problem.

Ms. Tarnok stated how do we know if that Verizon won't try to recruit more carriers which would add height to the cell tower and increase Verizon's and the owner's profits? What's going to change a few years down the road when the wireless technology changes from 4G to 5G? In conclusion, since mid-July, a number of us in the community have voiced our thoughts and concerns in regard to these applications. With very few exceptions, all opposed the idea of either application getting approval. It is unfortunate that we're at this place in time and then has gotten this far, let's not allow it to go any further. The balloon test conducted this past Saturday has only strengthened our resolve to continue to oppose his applications. Thank you for your consideration.

Whitney Singleton stated Ms. Tarnok?

Ms. Tarnok stated yes?

Whitney Singleton stated if I can just address one thing that you raised just to, there's a lot there and there's a lot to consider. But I just wanted to clarify with regard to the acreage of the site that issue has been resolved. The reason that the acreage, if you look at the deed that you're referring to, it comes up as 23 point something acres because the Chase's attorney put it in a plotter the means and bounce description in a plotter and you put it in incorrectly. They left the 100 feet off of one of the courses and therefore you came up with an incorrect acreage. The exact acreage of the property is 25.002 acres, and that has been confirmed.

Ms. Tarnok stated I'm just bring it to your attention.

Whitney Singleton stated I'm bringing it to your attention that your submissions on behalf of your development are incorrect.

Mr. Bonforte stated thank you, Whitney. Thank you, Ms. Tarnok.

Doug Hertz stated Mr. Acting Chair, I will restate my technical request not to accept evidence on a case that is not having a public hearing tonight.

Mr. Bonforte stated understood. And I will...

Doug Hertz stated and I do not. There is no representation here. None of the information is being heard by people who can respond. So you're taking an information that is influencing this Board when the public hearing has been adjourned to another month. This compromises one of your applicants. Thank you.

Mr. Bonforte stated Thank you too. Alright, and I'll reiterate before the next speaker or telephone call whatever we have. The same is which I said to Ms. Tarnok that this is just the Homeland Cell Tower application. Please contain your comments to that application. Thank you. Peter, go ahead.

Mr. Miley stated Acting Chair, you have John Rhodes as your next speaker.

Mr. Rhodes stated Let me begin. Here we go, thank you, Peter and thank you, you know, all the members and staff of the Planning Board. I know it's been a very long evening for you and in beyond this evening you put in a tremendous amount of work on this application and the one that is now conjoined with it in terms of the SEQRA application. And I just like to say that—

Mr. Bonforte stated and let me stop you John, right there again. We're looking at just the Homeland Towers...

Mr. Rhodes stated I understand that.

Mr. Bonforte stated even though there's some work being done like, several applications and let's...

Mr. Rhodes stated I understand that. But it's virtually impossible to talk about this application and its appropriateness especially from the point of view of the Conservation Council without referring to the considerations under SEQRA law but I will try to limit my comments to specific because there are so many just for this particular application but if I slip up for a moment but I would appreciate if I was not interrupted and probably not by you sir, because you have every right to but by the Chairman who has recused himself and spoke inappropriately during the work session and again during this meeting,

reminding everybody including all the members of the Board, that he's the Chairman and he has an involvement in this and this is really, this really has gone for way long...

Mr. Bonforte stated okay, John, thank you for that just please go through, you sent a very thorough email, I appreciate the depth of it and you've brought up some new issues and I appreciate that, so why don't you share those with the rest of us.

Mr. Rhodes stated thank you Mr. Acting Chairman. I want to say that I've been listening now for a couple of hours of what's going on here and it just strengthens my conclusion and I assume other members of the CAC that helped compose the original letter that you're talking about, that there is an absolute need for a positive declaration here. And I'll explain my reasons, I'll try to make them brief but one of the, the new ones, I kept hearing from the attorney for the applicant that this is evidence, that this is testimony and so forth and so on. None of the things that they have said or that anybody else has said is evidence or testimony because this is not a trial and that's one of the reasons that I think we really need the positive declaration because whenever Mr. Singleton was asking specific questions that was important for the understanding of the Board in terms of what's actually going on here and what has gone on here with this application. There was a lot of kind of dancing around the question, if we have a positive declaration then the Board is really entitled to basically any relevant documents and what those were would be determined by the scope. And at this point I would like to ask you formally Mr. Chairman, if there is a positive declaration, the CAC would like to be involved in the scope, in creating the scope for that environmental impact study. The, there are just so many points where we've heard different things from this application and they've been all verbal statements, they're not evidence, they're not sworn testimony. There're interpretations saying no, that's not what we meant here, that's not what we did there, we filed this application but we didn't really mean to. We didn't really, you know, I mean I'll give you one concrete example. This thing about the alternate sites, obviously we've looked, the CAC has looked at a number of these other sites and one of the ones that particularly interest to us was the 101-105 Bedford, which is a just a office park now. That has in the back of that office park at the top of the hill. We're not quite at the top of the hill, what is right now an empty parking lot that faces right down 172, and would cover that, I would guess we obviously have to have this confirmed would provide good coverage for that corridor which they say. Again now, as opposed to when they applied for the letter park land is their primary objective. So, they say oh, we've investigated this. Well, when I was out, I went out for the balloon test on Saturday and we had some very good conversations with different people, you know who were representing the applicant and if you want me to offer this a sworn affidavit, I will by the way but that's not the context right now. But the conversation got around to that office park and somebody else that I was with said why don't you look at the office park? And the representative Homeland said, we have looked at it and the question is when did you look at it? And they said well, we looked at it a while ago and the other person who is there with me said well, you know, I understand that there's been some changes in terms of the business situation there obviously due to COVID and so on. Have you been in touch with him recently? And the answer was oh, yes, I left him a phone message a few weeks ago. Now we're having so much problems, so many problems with the citing of this, the steep slopes and all the other ones that get into a second. You would think that if there was a new alternative site that where there was a business opportunity, where it would not be visible to virtually anybody other than the people in the rear office building there because there's a hill behind that to the north that has 100 foot walnut trees on it and so on, that they would pursue that by more than just leaving a message. When I hear that, and we hear that all the time you know when we're doing out investigations for the CAC, somebody says, I left them a message a few weeks ago. That to me is a check box thing saying. Okay, I check boxes so I can say that we tried to contact them. That's not a real attempt to, in my mind, to really pursue the possibility of that is an alternate site. So, there are lots of things like, this is just one example in bringing up. We truly show that we do need a positive declaration. We need the ability of the Planning Board to create a scope and to decide what information and what

documents you need in order to make a proper decision here. And I do have a question for Simon or maybe for Whitney.

Mr. Bonforte stated well I don't know if that's really allowed. Why don't you pose it and we'll see whether...

Mr. Rhodes stated okay, the question is the technical because it going to affect some of the things I'm going to say. When you have a non-segmented SEQRA review, is a positive declaration on either aspect of it or on either applicant. Does that create a positive declaration for the entire review? I think it does but I'm not sure. I mean, not the theory.

Mr. Bonforte stated Whitney

Mr. Rhodes stated is that an inappropriate question?

Mr. Bonforte stated go ahead, Whitney.

Whitney Singleton stated the Planning Board has indicated its intention to review these two applications and as a part of the same action for purposes of SEQRA. And the applicants are aware of that and the applicants have indicated a willingness to work with our Planner and with our staff towards coordinating the cumulative impacts of the two projects. So, they will be evaluated together and if that was a pos. dec, it would be a pos. dec for both of them. If it was a neg. dec, it would neg. dec for both of them.

Mr. Rhodes stated thank you. Go ahead, please.

Mr. Bonforte stated and John, just to mention about the scope and asking to work with, you know, the staff and then specialist, as a member of the community and the chairman of the CAC, you've been very involved. The email you sent was very thorough and in depth and you sent a couple of pictures. Thank you. And you'll still be able to contribute, so, I don't think there'll be a direct link that you would have to these, you know, to the staff that we're utilizing on this application. But you'll still have a way to provide input. Okay? And you think you know that's how you've been doing it and we welcome that further. You follow me?

Mr. Rhodes stated that specifically is that in going through the records, I found that in previous positive declarations when the CAC was an interested agency, they were actually involved in helping to shape the scope of the positive declaration. I think this was with the old, previous application on the Hearth on Kisco Mountain. But it's entirely up to you Mr. Chairman, however you this we can best help with this, we'll be glad to do it.

Mr. Bonforte stated you know, thanks for reminding of that, I do recall that and we'll come to that at the time, at the necessary time but thanks for your input John and we need to move forward for tonight, just for tonight.

Mr. Rhodes stated okay, so let me just go very briefly over the points that I have here. Our key point in terms of this application is that it should be, should receive a positive declaration in terms of environmental impact, I think we've had a lot of indications, not just from the point of view of actually nailing down what the independent verified and sworn facts are but also because on the face of it, there's substantial environmental impact.

Mr. Bonforte stated and John, I'm going to interrupt you, those are all items that we covered before and you actually covered before in writing, I'm looking at it in writing...

Mr. Rhodes stated I have some comments on this application that was for...

Mr. Bonforte stated I don't want to cut you off John, I don't want to be disrespectful but please go to the items that you haven't covered before or haven't been covered. I would appreciate that.

Mr. Rhodes stated okay, I'll only cover things that are either different or have a substantial update on them but as I said, the previous comment from the CAC were on the other application that we're not talking about tonight but I understand what you're saying. First of all, in terms of the balloon test, you know that showed us a lot of things in terms of one of the qualifications for a pos. dec., which is the community impact and as you can see, if you can see behind, I don't know how good the image is transmitting. This picture was one of the many pictures I took, this was taken from actually right next to the sign that marks the Marsh Sanctuary and where the driveway is right next to the caretakers cottage. And as you can see there, the balloons are quite clearly visible, I won't go through all my photos with you because obviously we're short on time but one of the others I took from Leonard Park, I could not only clearly see the balloons above the tree line, so it wasn't the matter of seasonal view from the teahouse, if I have to remind is one of the iconic and historic structures in Mount Kisco. But I could not only see the balloons in the sky, I could see them reflected in Wallace pond, so clearly have a and the structure itself would have even more of an impact on this view which is basically the signature view of Mount Kisco, it is the one that Mount Kisco is known for all around the world. One other picture I will share with you, just the switch to that, this is taken from Mr. Pietrobono's backyard closer to the property line looking up because the 50 millimeter lens would not, would not, when you look up obviously it wouldn't cover the distance from the ground. But this is basically what it looked like and what this would look like if this was, and this is just the lower of the two balloons but it would look like if this was a large cell tower. Mr. Pietrobono's family has been in this community for several generations. So is this house and, you know, this kind of impact is really just as far as I'm concerned a citizen of the town. It's really unacceptable and I think that if you look at the pictures carefully, you'll see that there is quite a bit of visibility from the important view.

Mr. Bonforte stated John, those pictures were excellent. They were very clear. We had a great day and I'm actually going to ask you to do this. Again, please plan to speak at the next public hearing because, you know, we just have to get through a number of people and there points on your memo that you could take up at the next meeting. Is that okay with you?

Mr. Rhodes what I'd like to have Mr. Chairman, is just to have one more minute just to mention those points and...

Mr. Bonforte stated I'll give you one minute John, please go ahead.

Mr. Rhodes stated okay. I think the issue of setbacks which is a new major issue was covered very well in an excellent letter from Peter Miley, so, I don't have to say anything in that. Community character, we already know the impacts there but just that in looking through the NOI and the comprehensive plan, this is really a contrary to that. The view scapes I just covered before with the photographs in terms of 172 and the trees, I think is another one because when we went to the site for the balloon test, we could see that looking straight down the hill to 172, there were clearly marked and this is another reason why we need certified documents on this, clearly marked a path for the excavation, for the cabling which would knock down a bunch of other trees and actually create a direct view from, as Ralph mentioned, from the road up to the cell tower when the trees were removed. So, that's another reason why we do need a positive dec. and also since there is no real wildlife survey that has been done yet and actually no tree survey that's been done

yet. I think we need both of those and we need those to be done afresh and not from 19 years ago and not partially done and not done with just a single line in a short environmental impact form. But we really need some hard concrete certified evidence.

Mr. Bonforte stated understood. Please, you just keep going here. Then there's maybe one more did you want to mention?

Mr. Rhodes stated one more was basically again why we need this as a positive dec. and why we need the certified information is that there are a number of other, the electrical system noise, I just talk about a generator there. It's very easy for any applicant to say there will be no effect and if the Board accepts that that's fine. But in terms of these types of things whether we're talking about electrical system noise, whether we're talking about the cell tower fires, I mean I don't see how if a 140 foot tower falls down in a forest that typically is on a very windy hill, that that fire is not going to cause extensive damage. Generator noise, these things we need concrete certifiable evidence, not just shorthand statements on an EAF. And I really urge you to move to create call for a positive declaration. Thank you very much.

Mr. Bonforte stated very clearly stated. Thank you, John for your patience with me. And again you'll have more chance to speak again. Peter Miley, please go ahead.

Mr. Miley stated okay Acting Chair, we have Ms. Anita Stockbridge is our next speaker.

Mr. Bonforte stated welcome Ms. Stockbridge.

Ms. Stockbridge stated thank you, I'm a 38 year resident of Sarles Street, you want my video, okay, I can't do that...

Mr. Bonforte stated you don't have to, if you don't want to, that's fine.

Ms. Stockbridge stated and I am also the Vice President of the Marsh Sanctuary. And I have one is sort of a lay question, when I looked at that map that has the blue areas of visual impact or possible visual impact, I noticed that Marsh Sanctuary cottage and Mr. Pietrobono's house that area surrounding the cell tower is not marked in blue as visually impactful, I'm a lay person so I'm not sure why that isn't in blue.

Mr. Bonforte stated okay, keep going, thank you.

Ms. Stockbridge stated and then I would like to request that when Mr. Musso does his simulations without the trees and including the generator and all the equipment and the trail of power down to 172 that he does a simulation from the Marsh Sanctuary cottage, so that we can get a clear picture of what this is going to be, look, without those 33 trees around it and without those pine trees that are now shielding it a little bit now and then but clearly won't be there when the tower is built. And then, we're very concerned, the cottage is very close to the, I think it's like 158 feet or something, the generator noises and the electrical noises, I would like to explore that.

Mr. Bonforte stated okay, fair enough.

Ms. Stockbridge stated and that's about, thank you and I did submit photographs this morning.

Mr. Bonforte stated we were able to, I was able to open the zip file...

Ms. Stockbridge stated okay, I did give a [inaudible] to Michelle Russo and I went to Kinko's and made 8 by 10 photographs for your files.

Mr. Bonforte stated they were very good pictures, thank you. And by the way, I'm taking notes Ms. Stockbridge and we will address those items, okay? In due course, right?

Ms. Stockbridge stated thank you.

Mr. Bonforte stated Peter?

Mr. Miley stated yes, Acting Chair, next speaker is Mr. Andrew Campanelli.

Mr. Bonforte stated he's still on mute.

Mr. Campanelli stated hello?

Mr. Bonforte stated we can hear you.

Mr. Campanelli stated I'm trying to unmute and open my video but it says the host won't let me. Okay. Here we go, great. Good evening, thank you. My name is Andrew Campanelli, I'm an attorney, I represent Rex Pietrobono. I haven't before had the pleasure appearing before this Board but I handled cell tower cases like this across the entire United States. I've done it for about 20 years and handled I don't know, about 7000 cases. I'm very impressed with this Board, I'm impressed with not only your professionalism but the fact that you're asking the right questions and particularly Mr. Singleton hold onto it, honed into a very critical issue. And so, I will be very brief as some of you may know I submitted a memorandum over the opposition. I will not discuss anything in that memo, it's in writing. I ask that you read it and consider it. However, I would like to extremely briefly address some of the factual and legal representations which were made by the applicant at this hearing tonight and their attorney. One of the major issues of Mr. Singleton honed in on was the issue of the lease and the question of whether or not the lease permits this applicant to put this proposed facility on some other location on the proposed site. That is a critical issue and here's why. In representing my client, my goal is not to persuade you that this application should be denied as it should be because it would violate your code if you were to grant it. I must make sure that you denied in a manner which does not violate the Federal Telecommunications Act of 1996, which is kind of my own turf. And there are two critical issues that this Board must address. Now, I've seen the records or the reports prepared by VCOM and it's almost laughable when they say to you that this establishes, that this applicant is established that Verizon suffers from a significant gap in personal wireless services. That's quite frankly ridiculous for two reasons. Number one, it's not up to VCOM to make a factual determination as to whether or not this applicant has met its burden of proving to you that a significant gap exists. The question of whether or not Verizon has a significant gap in service is a fact finding determination that this Board and this Board alone is required to make. And you make it based upon the evidence that's submitted before you. And no matter what else you determine, because this applicant claimed that significant gap exists, you must make that fact finding determination. Because if you deny this application for any other reason and don't make that fact finding application, Homeland Towers will file a federal lawsuit and try to challenge the decision and they'll probably win. There's a second fact finding determination that you must also make. Even if Homeland proves that Verizon have a significant gap in service, they must also prove that their proposed installation at the specific location on the specific site, specific height is the least intrusive means of remedying that gap. That again is a factual determination, it doesn't matter what the applicant or their attorney says. It's up to you, this Board to make that fact finding determination and the reason it's critical is if you find that the applicant has proven both of those things then you must grant the application under the Telecommunications Act of 1996. However, under Federal Law and specifically the

holdings of United States Court of Appeals for the Second Circuit, this Board and this Board alone gets to decide what evidence you consider and of greater import, what weight you give to each piece of evidence submitted before you. So by example, if evidence is submitted before you in the form of a lease which shows this applicant has the opportunity to place this tower in a less intrusive location on the same large site and the only evidence to the contrary is a statement from their attorney which is not even testimony, then you can find that the written lease that you have in your possession is of greater [inaudible] value and thus this applicant has failed to established that their proposed installation is the least intrusive means and you're well within your power of denying this application. So it is critical to me that you make the proper fact finding determinations but I'm very comfortable that you have, very comfortable, very confident counsel in the way of Mr. Singleton. I would offer one case citation, I ask the Board's attorney to review, if he hasn't already, it's the Case of Sprint versus Willoth, the citation is 176 F3rd 630, it's a decision from the United States Court of Appeals from the second circuit from 1999 and look up any cases that cite it, it's going to give you guidance as the face finding powers of this Board. And it is critical that you exercise them, if you wish to exercise your power to regulate the placement of this facility, if you think the applicant can be granted, you have the power to do that. But if you find, as I think appropriately, that the application should be denied, you must render fact finding determinations based upon which you make that decision, under the Federal Telecommunications Act of 1996, any denial you might grant must be based upon substantial evidence in the record. And if you read Willoth, it will give you pretty good guidance. And so with that I thank you. I will also tell you that the VCOM submissions are quite frankly completely lacking in probative value, I am surprised quite frankly that this applicant has provided with you with no probative data whatsoever. I heard Mr. Gaudio mention drop call records, I haven't seen but I'm going to look for them, what I do not see is a drop call, excuse me, is a drive test, or drive test date. And the reason that critical is by VCOM's own report, they indicate that it's, that they have to take into account eh terrain and that the terrain and the characteristics of the terrain in the location they are talking about as far as coverage is problematic because of trees and foliage blocking the signal. Well the funny thing is across the entire United States, what applicants do when they have this type of terrain is conduct a drive test because if you conduct a drive test, then and only then, will you place a Planning Board in a position to determine if the proposed application makes sense because a drive test will show if there is a gap, the location of the gap and the boundaries of the gap and then and only then will they place you in a position to ascertain if this is a good location for the proposed facility. I know you've been here a long time tonight. It's already almost 11 o'clock. I'm going to end it there. And I thank you for the opportunity to speak. Thank you.

Mr. Bonforte stated before you go, Mr. Campanella, just going back to your third point, I wanted you to repeat, I just, I missed it taking notes, I think I missed it. But you started saying that the Planning Board can actually determine the weight of the components of the various issues aat hand in regards to whether it be the gap or, you know, some of the other items. But what was the second aspect of that third point, right? Just can you go over that real quick for me, please?

Mr. Campanella stated okay, under Federal law, the Board gets to decide what evidence to consider with certain limitations. There are some Federal cases and Mr. Gaudio would be very quick to point them out, that say if your code doesn't allow you to require this evidence, you can't require it. However, you are allowed to require whatever evidence you need to enable you to make your fact finding determinations. So for example, if you have to determine whether or not this applicant has proven that their proposed installation is the least intrusive means of remedying the gap they claim to exist, and that there's no possible less intrusive alternative locations, you can ask reasonable evidence or you can ask the applicant to produce reasonable evidence. So for example if they say, I can't put it the hospital because the hospital won't let me. Where is the evidence of that? Local boards across the entire United States will say, okay, you claim that? Did you send the letter? Did you get the letter back? Show me the letter you sent? You sent an email? What address did you send it to? You have a right to ask for probative evidence, not conclusory statements. It's not enough for an applicant or the attorney to say, oh, we can't put it there nor is it enough

to an applicant's attorney to say, yes, I know you have a lease, and the lease says in black and white in writing that we can put it anywhere in that large possibly want. But I'll need an attorney and I say, trust me, we can't put anywhere, we could only put it there. I've seen this applicant make that representation in other cases, and the tower ended up going in locations other than the location where they said it had to go. So for what it's worth, and that's a matter of public record. You could look it up in the records of Carmel. This applicant wanted to put two towers up in Carmel. He said it has to go on these two locations and at the end of the day, neither one of those towers went up in either of his location.

Mr. Bonforte stated okay.

Mr. Campanella stated as far as the way weight of the...

Mr. Gaudioso stated that is not what the record [inaudible]...

Mr. Campanella stated Mr. Gaudioso, I didn't interrupt you.

Mr. Bonforte stated thank you, Michelle. Yes, sorry, Mr. Gaudioso, and Andrew Campanella, if you just finished please, and go ahead.

Mr. Campenalla stated yes, the other thing that Federal Law makes crystal clear, you and you alone get to determine the weight to be afforded each item of the evidence. If you get conflicting engineering reports, you can choose one that you believe is more probative and carries more weight. As long as you put in your written decision, why you found it to be more compelling.

Mr. Bonforte stated okay.

Mr. Campanella stated and as long as there is a reasonable basis, if a reasonable mind based on the evidence that come to your conclusion, Federal Courts are loath to challenge that. They're – they don't want to be Zoning Boards of Appeals. So what I'm trying to convince you of is you simply need to grasp the power to make the finding determinations. Just because this applicant or one of the applicant or one of their expert says, this is the case, there's a significant gap and it has to go here. You don't accept that at face value. Each of these claims are a fact finding determination, which you and you alone are vested with the power to make.

Mr. Bonforte stated thank you for your input.

Mr. Campanella stated thank you. You're welcome, Mr. Bonforte. Thank you again.

Mr. Bonforte stated Peter, please go ahead, Peter. Anybody else?

Mr. Miley stated no, there's nobody else in the waiting room and we just look at Facebook, there's nobody there, there are no further comments.

Mr. Pietrobono stated Rex, what about Rex?

Mr. Miley stated Rex has not raise his hand, if he would like to speak, by all means will allow him in, of course.

Mr. Pietrobono stated how do I do – how do I raise my hand. The video wasn't...

Mr. Miley stated Rex, you're ready to speak now, we could let you right in?

Mr. Pietrobono stated yes, okay.

Mr. Miley stated yes, because we have nobody else, Chairman.

Mr. Pietrobono stated okay, thank you, thank you very much, everyone else. I will honestly try to be very brief and not repeat, not that I even could repeat anything that my council just said. So mine's more factual just a couple of points that came up. Mr. Allen had indicated he's going to make a 3D model with "existing trees that will remain and those removed." And so, just so you understand in the pictures I sent, you know, the only screening it all from my property as you see, is inadequate completely but there's two large pine trees that even Homeland indicated that they're vitally important to screening. And they made a representation that they would not be taking those down, however and I'm going to break taboo here and say the word solar, okay, because I do find it wholly inappropriate that the recused Chairman pops in and out and starts directing this meeting and tries to limit our right to speak...

Mr. Bonforte stated Rex, Rex, please limit your comments to, you submitted a nice memo today, please don't...

Mr. Pietrobono stated I'm not trying to make, alls I want to say is because this is going to come up again in the future because the Board already denied segmentation and yet how are you going to have a public hearing that talks about the significant impact of both of these parcels on this property when you have one applicant who keeps adjourning and one who is relying on a shot clock. You'll never coincide to let the people speak about the entirety or this project, that's what I'm trying to get at and just please consider that in the future. And somehow, you can't end, I hope you don't end one public hearing to try to continue the other one in the future when they really need to be combined.

Mr. Bonforte stated we're just working on tonight.

Mr. Pietrobono stated okay.

Mr. Bonforte stated and we did get your email from Monday, the 23rd and the pictures, several to ten pictures and we've been to the site. I'm very familiar with your site, I've been visiting three and four times. I was just that Mrs. BouHali's site myself yesterday day before. But anyway, please go on, Rex?

Mr. Pietrobono stated I will be brief again. The, again, I am grateful to the Board. You've done a fantastic job, you know, very diligent efforts, and I greatly appreciate it and I mean that. My point is perhaps Mr. Allen should also do a model without those trees there, because those trees are not going to be forever. And my point of mentioning the segmentation thing is that, within the last two weeks a member of Insite Engineering has tagged those very trees and I'm referring to amongst other trees. As possibly with – I was told possibly within the area of disturbance for the expansion of the driveway. So you could have conflicting intentions here, where Homeland is going to rely on those, and yet the other person is going to remove those. That is my point why they need amongst many reasons why they have to be considered together, and not be allowed to be in practical aspect segmented...

Mr. Bonforte stated so Rex, those two large pines you're just referring to are in the first picture. I mean it, I think that's the only one, the only picture with two large pines, right?

Mr. Pietrobono stated yeah, it's the spot in there, yes.

Mr. Bonforte stated those two were not on your property, is that correct?

Mr. Pietrobono stated that is correct. They are on the, just on the other side of the driveway...

Mr. Bonforte stated okay, thank you.

Mr. Pietrobono stated so it's hard to imagine how these two projects can be done without taking this out, if they could, it's going to take a herculean effort, I hope don't do it.

Mr. Bonforte stated okay.

Mr. Pietrobono stated I just want you to be aware that if those are removed, either by one of the applicants or one of the other hundred trees of the similar size which were knocked out by a storm, Sandy, and ever since then, the wind, now there's not buffer, they could be knocked down again. And if they aren't there, it's not just me that's going to see them, although for me it's going to be an exposé of the rib cage of this structure but it's going to be exposed to everybody else by 10 fold. So I am respectfully asking you to allow a public discourse on both applications, non-segmented, in terms of how they adversely combined impact this parcel. Thank you.

Mr. Bonforte stated thank you Mr. Pietrobono and just to let you know, we received your latest communication on Monday evening after 5 and just everyone on the Board, not everybody on the Board has had possible, has not had the chance read it and see the pictures, okay? But we will take it in as part of the public record. Thank you again.

Mr. Pietrobono stated thank you very much, I appreciate your time.

Mr. Bonforte stated and Peter, I think you said that was the only other speaker, that was the last speaker.

Mr. Miley stated that's correct, nobody else has their hand up, but like Rex, he wasn't able to get his hand up, but if there's anybody else that would like to speak, please let us know right now because we have nobody else in the waiting room or anybody else with their hand up.

Mr. Bonforte stated Facebook?

Mr. Miley stated Facebook is clean, nobody there, no comments. We have the phone, nobody has called in and I'm actually monitoring the text as well, nobody has texted that they'd like to speak. So that's everybody, Chairman.

Mr. Bonforte stated okay, thanks, I'll just mention one other person, Nancy BouHali, who lives across the street from the projects like on Sarles Street near Mr. Pietrobono. She submitted some more information, and regarding tree removal and songbirds, et cetera, residents of the area, et cetera. So we'll be looking at that more, you know, as we get to it. Does anybody on the Board have anything to say? Its 11:06, but I don't want to cut anybody off tonight. And if not, I don't think there's anything else so we could do except ask for the motion to adjourn the meeting...

Mr. Miley stated Chairman, let me interject before you close the meeting. You still need to adjourn SCS Sarles William Null. We have not, you have not made a motion to adjourn to January 12th.

Mr. Bonforte stated thanks for the procedure.

Whitney Singleton stated Chairman?

Mr. Bonforte stated yes, Whitney.

Whitney Singleton stated before you do that, it does beg the question that Rex raised and is relevant, and to be fair to Homeland. If we're going to require that there be coordination between the applicants as far as the environmental impacts under SEQRA, SCS Sarles is requesting another adjournments that will basically take us to the expiration of the shot clock for Homeland. And I don't know whether you wanted to keep entertaining these adjournments.

Mr. Bonforte stated well, I'm, I've been perplexed by them because originally it started out with that other applicant and then we went to Homeland. So maybe Mr. Gaudioso or someone on his team can fill us in.

Mr. Gaudioso stated I have no knowledge and cannot speak on what the other applicant is doing.

Whitney Singleton stated and that's fair enough, I think. Well, one of the things that you can do, if you want, is we can adjourn it. We just have to adjourn it to a date certain. So we could adjourn it to the only meeting in December. And if you decide you wanted to adjourn it again until January pursuant to the request of the applicant, you could make that decision at that point in time, or in advance of the meeting.

Mr. Bonforte stated well, they're asking if I understand you, Whitney, they're asking for the January 12th meeting, is that correct?

Whitney Singleton stated correct. What I'm saying is you don't have to make this decision tonight. If you defer them to the next meeting, you could always kick it over again another meeting into January, if that's your ultimate decision. But this might also give us an opportunity because I believe Simon has reached out to both applicants with regard to coordinating some of the environmental review. And, you know, if it's determined by your Board that adjourning to January 12th is okay, you can do that at the December 8th meeting. If you determine that you really need to have them on agenda, then you have them on the agenda. You can't adjourn it to January 12th and then change your mind.

Mr. Bonforte stated okay, understood Whitney. And I think it's inconsequential whether it's the 8th or the 12th or whatever. They can do what they want. And we just have to go on with Homeland. And they'll just have to submit what they're submitting and if all of a sudden, this other application comes to the forefront then and we're going to have to stop them at that moment in time and say, guess what we have, a practical...

Whitney Singleton stated if your Board is going to require whether it's through a pos. dec or through a neg. dec. if you're going to require a coordinated and comprehensive stormwater plan for example, you're going to require that the more as was pointed out earlier, you wanted to look at the impacts, the visibility impacts not only with the trees down from Homeland, but the trees down from the solar project. And then combined the impact both of these applicants need to be participating in that process.

Mr. Bonforte stated and that's our intent, clearly. And as a board our intent and including steep slopes et cetera. But I don't see what we can do other than ask the other applicant to proceed.

Whitney Singleton stated well, I mean, they're asking you to adjourn the public hearing to January and with all due respect to the applicant, you're not required to do that.

Mr. Vigliotti stated yeah, Mike, can I weigh in? Now, if we continue the way we're continuing which is adjourning one application and moving in the other forward, we are going back to segmentation. We got reprimanded tonight by the applicant from SCS that they were talking, well crossing over into the solar array territory. I thought this was non-segmented and we were going to be able to discuss both. I believe both applications needs to be discussed at the same night and I think we have to plan that out to make sure that that happens, otherwise we're segmenting them by when they appear on the agenda.

Mr. Bonforte stated agreed.

Mr. Kates stated can I make just a point of clarification and I think that will help with that, Ralph? The public hearings are on site plan, which is not combined, right? The SEQRA is combined. There's no public hearing on the EAF part two. If there were a pos. dec. and an EIS, there would be a public hearing that would be combined on both. So it's a little tricky where we are right. We're having these public hearings that are separate.

Mr. Vigliotti stated yeah but we keep crossing over unintentionally or with intention is that crossover and how do you prevent that? How do you monitor that? It's very awkward. We've never had this before, so this is all new territory.

Mr. Bonforte stated so Whitney, what's our risk if we tell Homeland that, you know, there's a risk that the shot clock is going to expire as a result of our intent to analyze the environmental and practically in a practical manner together. How do – what's our risk?

Whitney Singleton stated well, our risk is the more we adjourn things, the more we delay things. That's what our risk is. I mean, I think it's important that you continue to show as you've shown in the past that you're going duly entertain the application of both applicants. And the application for Homeland came a long much later but you have opened the public hearing tonight, you have done site visits, you've done balloon tests and you're pursuing going through the application. I don't know the last time we heard SCS' application and it's been, sometimes it's nice not to have these things on the agenda, it's just, you know, kicking the work to a later date but by the same token, I don't know how we're going to evaluate, jointly evaluate the impacts associated with these sites if there's not going to be coordination on that topic.

Mr. Bonforte stated and thank you for that.

Whitney Singleton stated and by adjourning and I'm not suggesting that the combination of reasonable request from applicants or from their counsel not be grated, it's common practice, particularly if somebody has, particularly if somebody has some conflicts. But if we were to adjourn this to December and then we had the opportunity to confer with Mike, to confer with Simon, to confer with you as the Acting Chairman, to confer with SCS' attorney, find out whether or not it's feasible to have them on for the 8th of December and if there's not and there's a reasonable basis to kick it to January, we'll kick it to January. Right now, we're litigation on this property and the judge has granted them an adjournment to January 13th over our objection. There's, you know, adjournments are sometimes appropriate, sometimes they're not. I just want to make sure that you're processing this application with due diligence, that's all.

Mr. Bonforte stated thank you Whitney, I think that's very important, we appreciate this. **I'd like to, I can make the motion, correct, the SCS Sarles Street to December 8th in order to coordinate the environmental review as practically and as efficiently as possible.** Do I have a second on the December 8th?

Mr. Vigliotti stated I will second that.

Mr. Bonforte stated thank you, Ralph. And Whitney, I'll follow up on the second element there, in terms of...

Whitney Singleton stated whoa, whoa, you had a motion and a second.

Mr. Vigliotti stated yes.

Mr. Bonforte stated Mr. Vigliotti seconded, can we poll the Board, Michelle, please?

UPON ROLL CALL VOTE:

Acting Chair Bonforte	-	aye
Mr. Vigliotti	-	aye
Mr. Hochstein	-	aye
Ms. Pickard	-	aye
Mr. Polese	-	aye

The motion carried by a vote of 5 to 0.

Mr. Bonforte stated okay...

Whitney Singleton stated and what I can do is this. Through this communication, we can determine whether or not it's feasible and reasonable to adjourn again. And you could make that determination at your next meeting.

Mr. Bonforte stated okay, thank you, Whitney.

Whitney Singleton stated and then you still have the issue of it continuing the public hearing for tonight for Homeland.

Mr. Bonforte stated well, I make the motion to continue the Homeland application, sorry, Public hearing for the Homeland application, do I have a second?

Mr. Polese stated I'll second that.

Whitney Singleton stated yeah, to December 8th?

Mr. Bonforte stated Mr. Gaudioso is that okay with you? December 8th?

Mr. Gaudioso stated look, we, the quicker the better, we believe this application you know has to continue to move along, I just ask that we set the time certain, as well as the date certain, that way the public has notice.

Mr. Bonforte stated December 8th, it is. Michelle, again I need you to poll the Board please.

UPON ROLL CALL VOTE:

Acting Chair Bonforte	-	aye
Mr. Polese	-	aye

Mr. Vigliotti	-	aye
Mr. Hochstein	-	aye
Ms. Pickard	-	aye

The motion carried by a vote of 5 to 0.

Mr. Gaudioso stated and is that 7 o'clock again or is that 7:30?

Mr. Bonforte stated we have to look at the agenda...

Whitney Singleton stated that would be 7 o'clock, I'm sorry 7:30 is when the meeting starts.

Mr. Bonforte stated normally, normally we're 7:30, we only thought tonight would be a much more extended meeting. I would say 7:30 unless you hear otherwise.

Mr. Vigliotti stated well the reason why tonight isn't extended beyond midnight is because SCS adjourned. Otherwise we'd still be in the midst.

Mr. Bonforte stated well but Ralph, I would still limit the public speaking to a few minutes at a time, as best as possible.

Mr. Vigliotti stated that's fine, just we know it's going to be a long night.

Mr. Bonforte stated it doesn't serve anybody if we're tired. Alright, let's...

Mr. Gaudioso stated thank you very much.

Mr. Bonforte stated let's make the motion, thank you Robert. **Let's make the motion to say goodnight or adjourn the meeting.**

Mr. Vigliotti stated so moved.

The motion carried by a vote of 5 to 0.

The meeting adjourned at 11:18 pm.