THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, December 14th, 2016.* The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present — Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

* * *

ADOPTION OF MEETING MINUTES FOR NOV. 16, 2016

Mr. David Douglas stated first item on the agenda is the adoption of the minutes, which we just got the other day so people need more time or are we ready to adopt them?

So moved, seconded

Mr. John Mattis stated actually those are the October ones. We're only approving October this month.

Mr. Ken Hoch stated that's a mistake. That should be November.

Mr. David Douglas stated I think it's the November minutes but it says October on them. That's one correction.

Mr. John Mattis asked did we do October?

Mr. Ken Hoch responded yes.

Mr. David Douglas stated we did October.

Ms. Adrian Hunte stated I think we did.

Mr. John Mattis stated because I know we missed a month.

With all in favor saying "aye."

Mr. David Douglas stated the minutes are approved with the change to indicate that they're from November.

* * *

ADOPTION OF ZONING BOARD 2017 MEETING SCHEDULE

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting schedule that was distributed will be the official meeting schedule.

* * *

ADJOURNED PUBLIC HEARING TO JAN. 2017:

A. **CASE NO. 2016-25 Adam Anfiteatro** for an Interpretation that no Variance is required to rebuild an existing garage in the front yard, with a 64 square foot increase in the size of the garage, in the front yard, with a 10 foot setback from the front property line, on property located at **12 Hollis Lane, Croton-on-Hudson, NY.**

Mr. David Douglas stated we received a notice from the applicant that he is going to withdraw that so we might as well note that now. The case #2016-25 for Adam Anfiteatro regarding property at 12 Hollis Lane has been withdrawn.

* * *

ADJOURNED PUBLIC HEARINGS:

A. **CASE NO. 2016-10 New York SMSA Limited Partnership /d/b/a Verizon Wireless** for a Special Permit to install a wireless telecommunication facility on property located at **1065 Quaker Bridge Rd. East, Croton-on-Hudson, NY.**

Mr. David Douglas stated before you begin, let me just remind everybody who comes up, please

speak into the microphone and I'll remind all the board members also. Please speak into the microphone. Thanks.

Mr. Michael Sheridan stated good evening Chairman, members of the board. My name is Michael Sheridan, attorney from Snyder & Snyder LLP, the attorneys for New York SMSA Limited Partnership /d/b/a Verizon Wireless. As the Chairman indicated, Verizon Wireless is seeking a Special Permit application to install a public utility personal wireless services facility at 1065 Quaker Bridge Road East. If the board would please be reminded, we submitted response documents in opposition papers that we received in connection with this application at last month's meeting. Earlier this week at the work session, there were additional opposition papers that were received. We are reviewing those. They seem somewhat similar to the initial opposition papers with some minor changes. Please also note that in connection with a fire inspection memo, we've been trying to meet with the Fire Inspector to discern specifics about the memo. We were advised by the Technical Department here to submit a letter so that they can review our response to that memo prior to scheduling that meeting. We submitted such letter earlier today and copies were passed out to you. Specifically that, in accordance with use group U. Towers are an exception to the recommendations that the Building Inspector made to this board, sorry the Fire Inspector made to this board. It's also my understanding that at tonight's meeting an RF report will be submitted by the Franco's or their consultant. I would request that if the board does in fact decide to close the public hearing at this time just with the understanding that we request time to review and respond to any documents that are submitted this evening.

Mr. David Douglas stated let me ask Mr. Klarl a question. If we do close the public hearing are we permitted to accept additional documents?

Mr. John Klarl responded if you close the public hearing, there would be a written comment period.

Mr. David Douglas stated it's ten days.

Mr. John Klarl stated we can allow a ten-day written period, yes.

Mr. David Douglas stated you would have ten days. If we end up closing the public hearing today, then you'd have ten days to submit anything else that you may wish to submit.

Inaudible.

Mr. David Douglas stated ma'am, we have to go one at a time.

Mr. Michael Sheridan stated I don't know if the board has any questions or any comments or if you'd like to open the public hearing.

Mr. David Douglas stated one question had to do with whether Verizon would agree to a further extension of the period…

Mr. Michael Sheridan asked until the February meeting?

Mr. David Douglas responded until the February – because until as of now, as I understand, Verizon has agreed to extend to January and we were not, whether we close the public hearing today or not, we're not going to have a decision in January.

Mr. Michael Sheridan asked what is the date of the February meeting?

Mr. Ken Hoch responded February 15th.

Mr. Michael Sheridan stated yes, I agree to extend that to February 15th.

Mr. Wai Man Chin stated thank you.

Mr. David Douglas asked anybody have any questions for Mr. Sheridan? Anybody else wish to be heard?

Mr. Andrew Campanelli stated I represent Mr. and Mrs. Franco. My name is Andrew Campanelli, Campanelli & Associates PC, 1757 Merrick Avenue, Suite 204, Merrick, NY. Good evening Mr. Chairman, members of the board. I am aware of the fact that, as a result of my previous submission before the board, that the applicant has submitted something regarding a drive test that was apparently conducted. I wanted to point out to the board that, for reasons which I can't fathom, despite the fact that they've conducted a drive test they have failed to produce to this board the results of the drive test. The whole purpose of a drive test was to enlighten this board as to the actual signal strength that exists in the area within which they claim to possess a significant gap in personal wireless services coverage. I had mentioned to the board that one of the most accurate ways to assess whether or not such a gap exists because at this point, still, I respectfully submit to the board they have not shown that such a gap exists, is to conduct a drive test. Typically, when they conduct a drive test, what that means is they physically drive through the area and they have a cell phone with a recording device and they record the actual signal strengths and usually there's several hundred thousand records. It will show you – it will take a sample every few millisecond and then what they typically do is they give you the results, they show you the strengths. They didn't do that here. Instead, they again engaged in computer modeling. I'm aware they submitted the map to the board which purports to show, and I'll read from their own document. The map described as figure A in their submission dated November 15th of 2016 says: "Figure A shows a level of existing coverage in the Cortlandt area which is based on the minimum required signal strength for reliable in-building, depicted as green and in-vehicle, depicted as blue, service which is in this area are 85 db and 95 db respectively. The white areas represent unreliable areas of service areas." They cannot produce for this board the actual in-building strength coverage because they didn't test the in-building strength coverage. The only time they talk about in-building coverage is when they produce what's called a bait-and-switch. What a company will do, and I don't know if they did it here, but they will take actual signal strength and then apply variables and what that means

is: they take an arbitrary factor and they multiply the actual signal strength numbers to calculate what the signal would be inside a building taking into account, allegedly, the reduction in signal strength that would occur when the signal pass through the materials of which a building is constructed. What you do not have before you are the actual numbers for the records from the drive test. They have still not shown you that they suffer form a significant gap in wireless services which, once again, which would be completely inconsistent with Verizon's public map which they said has nothing to do with this, which I don't understand how they claim that to be the case. Either there's a significant gap or there isn't. I don't know how Verizon Corporate Headquarters can, to this day, claim there is absolutely no significant gap in coverage when this applicant says there is. In addition to that, I understand that they're still claiming that the tower height they're seeking is a 140 foot tower. It's my understanding that the balloon test was conducted presuming there's a 140 foot tower to be built. Aside from the fact that that balloon test is ineffective because they did it at a time when everything's covered with leaves and it's not going to give you an accurate assessment of what it's going to look like, I respectfully submit to the board that this is not necessarily a 140 foot tower. If you look at what they say from their own RF engineering report, a 140 foot tower will not be sufficient height to satisfy the alleged need they claim to exist. Now, whether this board is aware of it or not, under the Tax Relief and Job Creation Act of 2012, if this board were to approve a 140 foot tower, once it's built, this applicant can increase the height of that tower to 165 feet…

Mr. David Douglas stated excuse me sir. We had covered this at a number of the previous meetings. I believe the applicant has agreed not to increase the height of the tower.

Mr. Andrew Campanelli stated that was the second part of the issue. You see, unfortunately, this board is acting in a regulatory capacity and agreements of that type are specifically not enforceable and the principle case is the Sprint case. I apologize, I will forward the citation for it but on Long Island, Sprint rented space to put a cell tower on top of a school and the attorney for the school district was wise enough to impose a radiation limit and they said: okay, we'll lease a new space for a cell tower but in the lease it says you can't have the tower exceed radiation levels of this. And Sprint said: "fine." Six months after the lease was entered and the tower was built, Sprint came back and said we're increasing the radiation levels. The school district said: "you can't, we have a lease." And they said: "no." Only the FCC can set limits on the radiation levels which a cell tower can emit and they sued the school district in federal court. In that case, the federal court in the second circuit said: because and only because the school district was acting in a proprietary capacity, meaning not a regulatory capacity, they were acting like any other landlord and they can enforce that covenant. However, if a government body is acting in a regulatory capacity, covenance such as that cannot be enforced.

Mr. David Douglas asked are there any cases regarding the height issue?

Mr. Andrew Campanelli responded the leading decisions are from the FCC and the FCC has interpreted that section of the…

Mr. David Douglas stated if I understood what you're saying, that case involved radiation levels

which is something the FCC regulates.

Mr. Andrew Campanelli responded correct.

Mr. David Douglas stated I'm just wondering if there are any cases involving the height issue.

Mr. Andrew Campanelli responded yes, well it's not a case, it's the FCC ruling. The FCC has ruled that they have jurisdiction over interpreting the Tax Relief and Job Creation Act of 2012 and under their interpretation this applicant would be able to increase the height of this tower from 140 to 165 and you would be completely without power to stop them.

Mr. David Douglas asked even if they've entered into agreement not to do so?

Mr. Andrew Campanelli responded that agreement is not enforceable because only the FCC can determine or interpret if that application is reasonably necessary, meaning; they can say they need that additional height if it's reasonably necessary to accommodate additional carriers or to accommodate additional equipment and the only body that has jurisdiction to interpret whether or not that is necessary within FCC's guidelines is the FCC. They can agree here all they want but nothing's to stop them six months from now from going to build it and you'd have to try to sue them to try to stop them and you would lose.

Ms. Adrian Hunte asked should we get a ruling from the FCC?

Mr. Andrew Campanelli responded the FCC refuses to give advisory ruling. So if you ask the FCC they will not answer you.

Ms. Adrian Hunte asked and you're saying that this is a ruling as opposed to a regulation?

Mr. Andrew Campanelli responded that's correct. The FCC's rulings have the effect of regulation. They're actually numbered, like a ruling of the FCC 099 of 1999.

Ms. Adrian Hunte asked and what statutory basis is there for the ruling?

Mr. Andrew Campanelli responded it's under the federal rules. It's the power vested…

Ms. Adrian Hunte stated there has to be a statutory provision that allows for the regulation and slash then a ruling.

Mr. Andrew Campanelli stated the way the federal system works is as follows: the shot clock, I heard you talk about an extension of time. The Telecommunications Act of 1996 does not set a shot clock. What the Telecommunications Act said with regard to time is that when an applicant for a wireless facility submits an application to a local Zoning Board they are legally required to make a decision within a reasonable time. That's all it said. So, how did we get 150 day shot clock? The FCC created a regulation, it interpreted that provision and the FCC said our ruling is:

if it's a new facility, I say, you have to make a decision within 150 days. If it's a co-location: 90 days. That decision has the force of law and the same goes for their interpretation for the Tax Relief and Job Creation Act of 2012. There's no grey area here. If the FCC issues a ruling, it has the force of law.

Mr. David Douglas stated but they haven't issued a ruling regarding the height requirement.

Mr. Andrew Campanelli stated they have. They've issued an interpretation of that section of the code.

Mr. David Douglas stated no, but they haven't issued a ruling regarding whether an applicant can enter into voluntary agreement, have they?

Mr. Andrew Campanelli responded what they've done is they have established that they have the authority to interpret that section, meaning; the only one who can interpret whether or not that additional area is necessary is them.

Mr. David Douglas stated maybe I'm missing something. I'm not going to pretend I'm a regulatory expert but that's different than whether – that's a different issue it seems to me than if a private party can enter into agreement to voluntarily restrict themselves of something as opposed to a government agency opposing a restriction. Here we've got a private applicant entering into agreement: I will not do 'x'. I would think, and again I may be wrong, but I would think that that would be as enforceable as any other private party's agreements so long as it's not against public policy.

Mr. Andrew Campanelli stated one would think that would be logical however, the way the Second Circuit has ruled is, that works fine if you're acting in a proprietary capacity. If you were a landlord and you were leasing space on town property that would be enforceable but here, you don't own this property. You're sole function is in a regulatory capacity.

Mr. David Douglas stated no, I'm not talking about this board, I'm talking about the private applicant: Verizon.

Mr. Andrew Campanelli stated yes, but this board would have no power to enforce that restriction is what I'm saying. It would be void because you would be resurping the power of the…

Mr. David Douglas stated that's two different things, that I do know. It's not necessarily void.

Mr. Andrew Campanelli stated okay, I go back to the Sprint case. Clear case; we have a lease. In the lease it says: you will not allow the tower to emit radiation levels which exceed this…

Mr. James Seirmarco stated that's different. That's radiation levels.

Mr. David Douglas stated that's why I was asking about the height. I understand what your point is. I'm not sure I agree with it or necessarily don't agree with it but I understand your point but there's no cases about the height. You've got a radiation case and you're saying that's analogous and the same principle applies with the FCC's regulatory authority. I understand the principle.

Mr. Andrew Campanelli stated if you read the FCC's decision, the FCC and the FCC alone has the jurisdiction and power to ascertain if a proposed extension is consistent with the provision of the Tax Relief and Job Creation Act. In other words…

Mr. David Douglas stated I understand. Why don't you go on to your next point?

Mr. John Mattis asked can I comment on that? Did you say that the reason they could extend it higher is if they could not co-locate, they couldn't fit it and then they could move up? They can't just arbitrarily say they want to make it higher.

Mr. Andrew Campanelli responded yes they can.

Mr. John Mattis stated I don't think that's what you said because it is designed to co-locate the number that the Town Code requires of co-locations all of them below what Verizon will be putting up. There's no reason for them to go higher.

Mr. Andrew Campanelli stated the provision of the Tax Relief and Job Creation Act of 2012 specifically says, at any time, they can increase the power output, they can increase the size of the structure and the size of the antennas so long as – at any time they want, no conditions so long as they…

Mr. John Mattis stated wait, wait, you stated a condition that they could only do it if they couldn't co-locate below if they had to go up to co-locate.

Mr. Andrew Campanelli stated you're mixing two different things. First, I'm just going to talk about the Act. The Act says: once a tower is built, the owner of the tower can increase the size of the tower, can increase the power output, can increase the size of the antennas so long as those modifications don't substantially increase the overall size of the facility. Now, taking that language, there's no conditions. They can do that at any time. That Act does not define what substantially increased the overall size of the facility means. The FCC took it upon itself to render a decision, its interpretation, and again it says: we're the only ones who can interpret this. They say: okay, well we think at a minimum, at a minimum, they should be able to increase by 10% without asking anybody anything. They can increase more than 10% if they decide to add another antenna and to make that antenna function properly they need sufficient spacing between the new antenna and the existing antennas. Typically, based upon their ruling, you've got 20 feet no problems whatsoever but typically on 150 foot tower you can go up 50 feet. On a 140 foot tower, you can go up 25 feet.

Mr. John Mattis stated but our code says they must co-locate lower and there is sufficient room in between.

Mr. Andrew Campanelli stated they don't have to co-locate to increase the size. They don't have to co-locate.

Mr. John Mattis asked then why did you bring up the co-location? I thought you were throwing me off by doing that.

Mr. Andrew Campanelli responded I apologize. They don't need any excuse whatsoever. They can arbitrarily decide they want to increase power and they want to make it taller to accommodate another antenna of their own. The question is; how far can they go without getting your approval? Based upon the rulings of the FCC, the FCC says basically for a 140 foot tower, they can go up 25 feet. That's what they say, without your approval and you can't stop them. That's what it means.

Mr. John Mattis stated I think I'll stand by the letter that they sent and let our Town fight it out in court if they have to because it's not going to happen.

Mr. Andrew Campanelli stated if we haven't already, I'll send the FCC decision and it pretty much speaks for itself. Just take a look at it.

Mr. James Seirmarco stated I'd just like to back up when you discussed before the map of coverage. If there comes a time when common sense triumphs over – when you have 25, or 30 or 40 people riding by this certain area and nobody gets a signal, I don't care what computer, I don't care what model; if you don't have a signal, you don't have a signal. In this particular case, all of us have ridden in this area and there's no signal on anybody's phone, different kinds of phones and because there's a piece of paper that shows that there is a signal, I don't believe it. I personally take a ride down the road and there's no signal, there's no signal. If you have 20 or so other people have no signal, then there's no signal. Even if you have a piece of paper that says you have a signal or the computer says you should have a signal. I don't believe it. I just don't believe it. That's me.

Mr. Andrew Campanelli stated I agree with you. I also agree in common sense; logic.

Mr. James Seirmarco stated right.

Mr. Andrew Campanelli stated and doing these all over the country, I've seen every case in there you can think of. The issue here, however, is the burden is on the applicant to show there's a significant gap in service. If there's one block where you can't get signal…

Mr. James Seirmarco stated common sense tells me that no company, I don't care if it's Sprint, or Verizon, or whatever would ask to put up a tower that's going to make money if they don't need it.

Mr. Andrew Campanelli stated oh, that's a loaded question. There are many reasons these towers go up. The number one of course is money because it looks good every time they have a commercial there's one of those little red dots there. But, in reality, these days, the truth is, the vast majority of towers they're seeking to build are for A) future capacity and B) co-location because they make money by leasing space to their competitors.

Mr. James Seirmarco stated and then I go back to what this applicant has proposed. They're going to co-locate. There's going to be a number of things on the antenna and they're going to be at the top.

Mr. Andrew Campanelli stated well let me ask you this: suppose for argument's sake, this tower is going to cost them four hundred and fifty thousand dollars to build. What if instead they can satisfy this gap by spending ten thousand dollars…

Mr. David Douglas stated that's a business decision. That's not for us to get into.

Mr. Andrew Campanelli stated actually it's not and that's bringing me into my second point.

Mr. David Douglas stated no, actually it is. I don't think that we should be getting involved into the business motivation…

Mr. John Mattis stated economics is not involved in our decision. We don't know what the economics are.

Mr. Andrew Campanelli stated I'm not talking about economics. I'm talking about the fact that there's an alternate location…

Mr. David Douglas asked what is the alternative location?

Mr. Andrew Campanelli responded the Con Ed tower which is thirteen hundred feet away.

Mr. James Seirmarco stated we've answered that question when you weren't here.

Mr. stated what was it?

Mr. James Seirmarco stated Con Edison is not allowing anything to be co-located on their towers anymore.

Ms. stated that's not true, sir, that's not true.

Mr. David Douglas stated one person at a time. We've talked about this at numerous meetings. You're saying that potentially another location could be the Con Ed tower, understood, that's your position. I understand. Go into the next thing because we've covered this. We covered it.

Mr. Andrew Campanelli stated my client has retained the services and our RF engineer shall discuss that. I'll let that go.

Mr. David Douglas asked is somebody submitting an RF report tonight?

Mr. Andrew Campanelli responded yes.

Mr. David Douglas stated okay, great. I'm not trying to cut you off, I just don't want to rehash – you weren't at all the meetings. I don't want to rehash things we've done at previous meetings.

Mr. Andrew Campanelli stated I understand. The applicant has consented to the application deadline to be extended to February and you were talking about extending, I guess keep the record open for ten days. I would ask that you keep it open for twenty days because I understand that…

Mr. David Douglas stated my understanding from Mr. Klarl, his advice is, if we were to close the public hearing tonight, which we may or may not do but if we close the public hearing that under the rules there's a ten-day comment period.

Mr. John Klarl stated typically, we do ten days but at times we do fifteen and twenty days.

Mr. David Douglas stated I would prefer to keep it at ten days because this has been going for months and months and we need time to consider what's been submitted.

Mr. Andrew Campanelli stated of course, my only request is that the record be kept open for twenty days simply because I know of the document regarding the fire issue was submitted earlier today by the applicant. I haven't seen it. I don't know how long it's going to take me to get it.

Mr. James Seirmarco stated I have a copy of it right here.

Mr. David Douglas stated there's a copy here. It's a page and seven lines.

Mr. Andrew Campanelli stated if I can get a copy tonight that would be great.

Mr. James Seirmarco stated here you go.

Mr. Andrew Campanelli asked may I approach?

Mr. James Seirmarco responded sure.

Mr. David Douglas stated and ten days will get it done before the Holidays. I assume you'd prefer that, having a deadline of January 2nd.

Mr. Andrew Campanelli stated I tend to like to get it done right rather than quickly.

Mr. David Douglas stated okay, so if we do ten days, if we do a ten-day period you'd beat the Holiday.

Mr. Andrew Campanelli stated thank you very much gentlemen.

Mr. David Douglas asked anybody else want to be heard?

Ms. Jamie Black stated good evening everyone. My name is Jamie Black. I reside at 35 Quaker Bridge Road in the Town of Ossining. From a personal perspective, this isn't going to affect me at all. I'm here speaking about community because when we say the pledge of Allegiance we're speaking and committing to liberty and justice for all. So, when you look at a situation such as the establishment of a cell tower, the question becomes: who's going to be impacted by it and what's that impact going to be? I went to the Danish Home. I've only seen the signs. I've never been on the property. I took my old 4S cell phone. I had cell phone coverage all the way to the property. I was talking into the property. I had 4G coverage by AT&T. There was no gap from my phone. The Danish Home is a bucolic property. It's why they selected that site. They enjoy the experience of being in a bucolic location because they're in a bucolic neighborhood. They purchased the property back in '54 for a hundred and eighty thousand dollars. They generate up to five hundred and sixteen thousand dollars a year with their property and they've got themselves registered as a 501©3. What that means in terms of tax revenue, you don't bring in any tax revenue.

Mr. John Mattis stated excuse me, this is all irrelevant.

Ms. Jamie Black stated it's not irrelevant from the perspective of looking at what your responsibility as a Planning Board and your neighbors. When you look at ten of the neighbors…

Mr. John Mattis stated first of all we're the Zoning Board and secondly, we do not look at the economics of the applicant or the owner of the property. That has no relevance for our decision.

Ms. Jamie Black stated so when you looking at zoning, when you look at zoning then the question becomes what then does the rest of the neighborhood have the opportunity to become? If you let this be a precedent, then what does everybody else have an opportunity to do?

Mr. John Mattis stated nothing to do with the economics you're telling us.

Ms. Jamie Black stated then let's say it has to do with zoning. They have twenty acres so if they have a cell tower at the beginning of their property then what parameters then are established for the balance of the property? It's a residential neighborhood. It's zoned residential and that's apparent and when you look at the property values surrounding it, it's because they are zoned residential. They're not zoned commercial.

Mr. David Douglas stated the Town has a hierarchy in terms of where cell towers are to be located. You're correct, residential neighborhoods are lower down on that hierarchy but they're not prohibited in residential neighborhoods if the other requirements of the laws are met. That's why they can apply for it and we have to decide whether or not to grant it. They're not prohibited in residential neighborhoods.

Ms. Jamie Black stated the attorney who just spoke prior to me, he brought up something that I've heard time and time again when communities are faced with a cell phone company who wants to establish a tower in their neighborhood and that is the rules have been written in such a strange way that they win when they win and then they win when they lose. They do not, not lose, because they've created the rules and the regulations to allow them to have almost unlimited flexibility in a residential neighborhood.

Mr. David Douglas stated in so far as the federal government has established rules, we've discussed this at other meetings and I don't know whether you were present or not but our hands are tied to a large degree, by the federal government. There are only certain factors we can look at and we will look at just those factors. Yes, our hands are somewhat tied. We can't look at things like health and various other things.

Ms. Jamie Black stated and that's a tragedy of role. The tragedy is that we get up at these meetings…

Mr. David Douglas stated we are a local Zoning Board. The federal government made certain rules and we talked about this at other meetings. Again, I'm just trying to be efficient. I don't want to go over things we talked about before at other meetings.

Ms. Jamie Black stated then I would suggest that we don't say liberty and justice for all because if the federal government is attaching parameters and basically locking your hands in terms of what you can do to support quality of community then it's not liberty and justice for all.

Mr. David Douglas stated look, our hands are not totally tied. We can make decisions based on certain factors and those are the factors that we're going to look at and the law is the law and we follow the law.

Mr. Raymond Reber stated last century, the federal government had to make a decision when electricity became something that they felt the nation wanted and had to have and they set regulations to create standards across the country for delivering electric power. We all have our poles with the wires and all our neighborhoods; residential, commercial, it's part of our existence. What the federal government has done now is made basically the same decision when it comes to cell towers. They say having cell towers is a fundamental utility that we will put throughout the country and so therefore they've set these guidelines that tie our hands because they're saying they don't want a patchwork system, they want this to be a national network that can go out there and that's why our hands are tied. They're saying cell towers, having cell phone

service is a fundamental need of the citizens of this country.

Ms. Jamie Black stated I had cell phone service there so my fundamental need was met.

Mr. Wai Man Chin asked Mrs. Black, can I ask you something? You have service because you have AT&T. There happens to be a cell tower strictly AT&T just right north of the dam. That's why you're getting full power.

Ms. Jamie Black asked so why don't they piggyback on AT&T's tower?

Mr. Wai Man Chin responded it won't work over there for some reason. I wish they would piggyback because then I would have cell phone on my Verizon over there but they don't.

Mr. David Douglas stated we've got to consider that factor of whether they can achieve what they're seeking to achieve by co-locating on a cell tower that's over on 129. That's one thing we're going to decide. If we come to a conclusion that could serve that purpose then we will reject the cell tower. Mr. Chin and I have been pushing very hard. We would love it that they could co-locate on 129 because we both live there. It would improve our cell service.

Ms. Jamie Black stated I will keep my fingers crossed. The other thing too just to say is that I remember when we had this whole conversation about the pipeline coming across from Haverstraw…

Mr. David Douglas stated not in front of us. It had nothing to do with the Zoning Board.

Ms. Jamie Black stated what I'm basically saying is this, is that I know that everybody was looking for Con Ed to kind of step in and help out as far as supporting a safe corridor for that so you know I guess the question becomes: what is it going to take for Con Ed, who we all pay, to step up and let them on their tower?

Mr. David Douglas stated you'd have to speak to Con Ed about that. We're just the local Zoning Board. We're not Con Edison.

Ms. Jamie Black stated well best of luck.

Mr. David Douglas stated thank you. Anybody else?

Cal Franco stated my name is Cal Franco, I live at 1059 Quaker Bridge Road East, Croton-on-Hudson. I'm here tonight to ask you carefully to consider the effects. A cell phone tower in a residential area is a fire risk. I learned in school that communities make rules to keep people safe. I hope that you will consider me in my backyard playing when you make your decision. At the very least, you need to follow instructions for the town's Fire Inspector. Many people have given you information about following the laws and what the problems would be with building a 140 foot tower in the woods. I don't want to look at a cell phone tower every day.

Most of the leaves, the trees in my backyard have no leaves. Why wouldn't you do a test for a cell tower when the leaves are off the trees? We learned in school that there are multiple solutions to a problem for a community. We need to choose the one that people agree with. In school, if I didn't behave or didn't give the true answer I would get in trouble. Facts matter to my teacher. We need our Town's [inaudible] to work for the residents of the Town not for big companies like Verizon, especially when they have other places to put their antennas. I love my house. I love my neighborhood. Please consider following the Town of Cortlandt Zoning laws.

Mr. David Douglas stated you did a very good job. Thank you.

Ms. Cindy Secunda stated tough act to follow. Cindy Secunda, 62 Teatown Road, Croton. Just I don't know if this would be a trump thing. Show of hands for people who do get service reception up around there? He just said facts matter. There are scientific methods that show the design by people that show whether there's cell reception in the area. The fact that you drove and didn't get cell reception, I don't know what to tell you but we get cell reception up there. There was a time…

Mr. James Seirmarco stated it wasn't just me.

Ms. Cindy Secunda stated there was a time when there was no cell reception up there, then the Village put the tower on top of the municipal building and there's the one that's over by 129 somewhere. We do get cell reception. I don't know anybody who still complains about not getting cell reception and I live on Teatown Road which is right in that neighborhood, right in what used to be dead neighborhood. People don't complain about that anymore. I don't know what the problem is. Maybe it's your phones. I can't help you but there are scientific ways that you can factually show whether or not this tower is needed not "we drove by and we didn't get reception." We drove by, we live there, and we did get reception. Let's see if we can maybe "facts matter" as he said.

Mr. David Douglas stated let me just point out to some people who may not be aware of this. Verizon has submitted data about the cell service. You can believe it or not believe it. We will analyze it but they have submitted data. It's a matter of public record.

Mr. Bill Sherrer stated excuse me, I have a little cold. I'm Bill Sherrer, I live at 2126 Quaker Ridge. I just have a few questions. About two months ago I wrote Mr. Klarl's or his partner a letter pointing out the provision in the code which permitted the board to hire an expert at the applicant's cost to get an expert who wasn't a partisan. I haven't heard whether or not the board has rejected that opportunity.

Mr. David Douglas stated I think the board has decided we don't need to have that additional…

Mr. Bill Sherrer stated I wanted that to be a part of the record.

Mr. David Douglas stated it is a part of the record.

Mr. Bill Sherrer stated I think that's an arbitrary and capricious decision.

Mr. David Douglas stated I know that's a good legal term and then if necessary you'll pursue your rights that you have under the law.

Mr. Bill Sherrer stated question number two: you've said that Con Ed will not permit the use of its property and its towers. What is the basis for that conclusion?

Mr. David Douglas responded that's our understanding. If you have other information you can submit it as part of the record.

Mr. Bill Sherrer stated if it's your understanding based upon a representation made by Verizon…

Mr. David Douglas stated no it's not – actually I can only speak for myself. It's not my understanding based on a representation from Verizon. That's been my understanding for a number of years. I don't recall when I first heard that. If you've got other information you can submit it.

Mr. Bill Sherrer stated has anybody contacted Con Ed on behalf of the board to find out.

Mr. David Douglas responded no we have not contacted Con Ed but of course the public and any applicant has the right to contact Con Ed if they wish.

Mr. Bill Sherrer stated third question. When the Verizon people came around on that balloon test day one of the engineers told me the reason why they were locating this tower at the Danish Home was because the signal could not get over the ridge and the ridge I believe they're referring to is the ridge that is – you can see from 129. I just heard and I didn't know who the provider was, that AT&T has a tower which apparently gets over the ridge.

Mr. David Douglas stated the AT&T tower is located on Route 129 and that again is an important issue that we're looking into.

Mr. Bill Sherrer stated and I think you should take into account the fact that when you're driving up and down to hear whether your cell phone works that there are 'for sale' signs on commercial property up and down 129. I would be willing to wager that if Verizon approached one of those owners, either the one with the office building that's vacant or the one where the Northeast Utilities is deploying trucks, they would be thrilled…

Mr. David Douglas stated but that's right next to where the cell tower is. The cell tower on 129 is right there next to…

Mr. Wai Man Chin stated there's only so many commercial spots on 129.

Mr. David Douglas stated it's about two parcels down from where you're talking about.

Mr. Bill Sherrer stated there are hundred acres at least that are on the market on 129…

Mr. Wai Man Chin stated the AT&T cell tower is right next to it.

Mr. Bill Sherrer stated fine, but if you're going to be considering appropriate locations…

Mr. Wai Man Chin stated we've asked that already.

Mr. Bill Sherrer asked you've asked that?

Mr. Wai Man Chin responded we've asked that already. If you were at any of these other meetings, you would have heard that.

Mr. Bill Sherrer stated I've been at the other meetings. What have you asked?

Mr. Wai Man Chin responded we've asked Verizon. They're saying that the best place right now is up where it's being proposed.

Mr. Bill Sherrer stated and therefore, with all due respect, you have accepted what they're telling you a partisan party…

Mr. David Douglas stated no let me finish. First of all, we haven't accepted anything. We've gotten the information that has been made part of the record. We have listened to all of the speakers. We have all the data that's been provided to us and any data that's opposed to it, the letters that were written. We take this all into consideration and as to 129, there's a preference under the Town Code for co-location. If they can co-locate and achieve what they're seeking to do on 129 then you will all be happy and we will all be happy. That's a main factor when we make our decision.

Mr. Bill Sherrer stated there's also a reference in the code to locate separate towers on 129. If you're accepting the representations that they've made, with all due respect, let me finish. If you're accepting the representations that they've made that there are no other alternatives available to them, then I think that you're doing a disservice to the community because you can't accept what they say…

Mr. David Douglas stated if you have facts that prove what they are saying to be untrue, please submit it within the ten-day period.

Mr. Bill Sherrer asked when is that ten-day period starting?

Mr. David Douglas responded well, if we close the public hearing tonight, it's ten days from today, if we close the public hearing.

Ms. Adrian Hunte stated I would appreciate it if you do not characterize what we've done as pre-judging and that's what you're implying.

Mr. Bill Sherrer stated I know you're sensitive to that but…

Ms. Adrian Hunte stated no don't tell me about being sensitive sir, don't imply that we've pre-judged this case because we have not.

Mr. Bill Sherrer stated then if I might be so bold to say, people sitting in the audience have gotten the impression of that. There's been an aggressive tone taken by some members of this board which…

Mr. David Douglas stated I will assure you on behalf of all seven of us, we never pre-judge any cases. We keep an open mind. Sometimes we challenge what people say. We try to listen to what everybody says. We're trying to do the best we can for the community. We're trying to follow the laws that we're bound by and we're trying to be fair. We've all been doing this a long time and that's what we're trying to do. At the end of the day, people sometimes get what they want, they don't get what they want, they're happy, they're not so happy but it's not because we're pre-judging anything. We're trying to do what we're required to do. Let me finish. We're trying to do what's required under the law. We have listened to a lot of testimony, a lot of commentary. We have a huge pile of information from people and we're taking all under consideration and we will reach a decision considering that and what the law requires.

Mr. Bill Sherrer stated and my point is frankly, although my wife will disagree, I'm indifferent as long as you make a decision based upon all of the information and rejecting the opportunity to get somebody who's actually an expert in this area and depending upon the personal judgments by riding up and down…

Mr. David Douglas stated that is not the only information that we've got. We've got pounds of paper here with information. Okay?

Mr. Bill Sherrer stated I think you should reconsider whether you should…

Mr. David Douglas stated I understand you've made that request.

Mr. Bill Sherrer asked why was it in there? It was in there because the people who past that…

Mr. David Douglas stated right, and the board has made a decision, rightly or wrongly, you may think we're mistaken, we've made a decision that in this circumstance it's not necessary. It's not because we pre-judged anything. It's not because we're unfair. We've made a decision. You may think we made a wrong decision. That's your right. You have the right to criticize us. That's okay. Anybody else?

Mr. Frank Franco stated Chairman Douglas, members of the board I am Frank Franco, 1059 Quaker Bridge Road. Over the months of adjournments from Verizon, there's been numerous discussion about the Teatown Reservation and what this means to the people. Many residents have expressed their thoughts and I just want to go over the – we live in the Teatown Reservation and the term 'Reservation' by definition is "attractive public land set apart for a special purpose and more specifically Teatown says their mission is to inspire our community to a lifelong environmental stewardship." As residences community we take this lifelong stewardship seriously. Teatown, which is bordered by roads, rivers and reservoirs defines a habitat for animals, trees, and also defines a community within those same borders. It values keeping this habitat pure. This isn't just about my home, or the nearby residents. This is about the character of our neighborhood. During the work session, we submitted the opposition memorandum and I feel that that memorandum addressed pretty much every Verizon point that was listed. I didn't appreciate the quick and somewhat strong response I got from some members of the board on opinions without even really reviewing the whole document in its entirety. I tried to summarize certain points and some comments were made on those points almost to the point that the comments were made like the fire code was ridiculous. As my son mentioned, I really do hope you guys consider all the facts which you guys have mentioned you will. This honorable board not only represents the singular entity of Verizon but also represents all the members of this community…

Mr. David Douglas stated we don't represent Verizon. Verizon has made an application. I just want to make sure that everybody here understands; we don't represent an applicant. They have come to us seeking a permit and we're hearing their application. We don't represent them.

Mr. Frank Franco stated well you're making a decision…

Mr. David Douglas stated we're making a decision because they have applied for something. We're completely neutral.

Mr. Frank Franco stated my parting comment is the Town of Cortlandt Master Plan set forth the document on how to develop a residential community and on page 46 of the Master Plan it says that "we should preserve large lot residential uses within the R80 zone." As you guys have probably aware, this area in Teatown is pretty much entirely R80 zoning. Please leave Teatown as it is for the community to enjoy. Also, as promised, if I could approach and distribute the RF report that basically states and my RF engineer unfortunately didn't have unlimited time so he focused on the Con Ed tower and potentially co-locating on that tower. We have called Con Ed and they said there was no issue co-locating on that tower. They said Verizon should reach out to them and they'll work something out. Sprint is already on a tower across Quaker Bridge Road up the hill the other direction. We picked out a location very close to the proposed site and my RF engineer did an analysis which basically, I'm going to hand it out to you guys, but it basically concluded that the service at that Con Ed tower would pretty much be equivalent to putting it at the Danish Home. I would like to submit, and I hear there's a—if you do close it there's a ten-day window, I would like to submit and get my RF engineer some time to do some analysis on those co-location towers like 129, the municipal building, Ellington and present what that looks

like but for the moment…

Mr. David Douglas stated let me just note something to make clear about the municipal building. I don't believe that we have the right, as a municipality, to basically say to an applicant: don't go into our community, go to another jurisdiction. I don't think that we can consider the municipal building. We can't say: we don't want a cell tower here. We want to put the cell tower in Croton. Croton's a Village in the Town of Cortlandt but it's got its own Village controls over things. I don't think that we have the right to do that.

Mr. Frank Franco stated well Verizon could do that though.

Mr. David Douglas stated Verizon can do that but I don't believe that we have the right to say – when we're doing the analysis of other locations, I don't believe and please somebody correct me if I'm wrong, but I don't believe that we have the right to say: we're going to reject a cell tower in Cortlandt because we want you to do it in the next community.

Mr. Frank Franco stated it's not like we're proposing that they create a new tower or – we talked to the Town of Croton about this and they already have antennas up and they're welcome to do more. We're not saying like: we don't want it in our Village or our area and put it over there.

Mr. David Douglas stated I'm just saying from the point-of-view – from the perspective of us as a board for the Town, I don't believe that it is appropriate for us to say -- to reject an application and as a rationale say: a better spot would be in the next community. I think for reasons it should be clear that wouldn't be a good system if every community say: not here, put it next door.

Mr. Frank Franco stated like I said, I don't know if I quite follow the reasoning on that. If there was no towers there, co-location there at all we were saying: why don't you just put it there and it's a totally new venture. In speaking with them, it sounds like they have infrastructures there to impose an antenna. I hear what you're saying, Chairman. Finally, there were comments made at the working session that they, and numerous in the audience, that we couldn't make calls coming from the bridge up to the Danish Home and there were comments made that in the log that we didn't see them there. Just to make it more clear, I highlighted all the ones that were on Quaker Bridge Road specifically and also the ones that are tributaries because, as I mentioned at the working session, there's some roads coming off Quaker Bridge Road going down. My wife has, as some other people have commented in the audience, where they don't have issues. My wife has an I-Phone 6. It seems to work fine. She's talked to me continuously down the road, over the bridge and it's not dropped a call.

Mrs. Heidi Franco stated I like to talk.

Mr. Frank Franco stated as other people have commented, it doesn't sound – even, I hear you guys, you can't seem to hold a call but if we could hold a call I would argue that, as Mr. Campanelli commented, it doesn't look like there's a significant gap because my phone shouldn't work either. Anyway, can I approach and give you these documents? Thank you.

Mr. Jim Levis stated I'm Jim Levis, I live on 35 Quaker Bridge Road. I would also like to be on record as strongly suggesting, recommending that for such a controversial issue that there be, contrary to Mr. Klarl's position of passing on it, that there be an independent review of the data, of the gaps. I have a different cell phone than the ones I've heard tonight. I have a 5S. I think the point is: every time there's a new cell phone carrier it's another form of competition. There's always going to be a push-pull and a tug-of-war as to who gets what piece of the pie. What you're doing is you're really basically facilitating more of a slicing up of the land grab for customer accounts at the expense of community quality. Suppose there were three more cell phone companies and those cell phone companies said: "well, I can't go under the AT&T tower. I can't go under the Verizon tower. I can't go on the Comcast tower"…whatever. So, your argument, if that's what's being presented here, is that well find some other place in Ossining or somewhere else and the point is: maybe it's time to push back and say: this is about community and our responsibility is to our community, not necessarily to other businesses which may or may not produce jobs in our community and present a quality of life in our community. This country is entering another phase of business over community and it's scary. It's really scary and so I look to you as stewards of the public trust in this Town to do the following: to put to rest the question of the information, number one. I think right now if there's an independent study, somebody who, maybe, the countering counsel says – just like they do in arbitration, pick somebody you both trust and let him look at the data and separately I would still ask you that even if the data says: oh yes, over that rocky hill there, there's no cell reception and that means nine people aren't getting service or nine people three towns over aren't getting service because they're customers of Verizon rather than of AT&T. At one of the most recent hearings I was not very articulate and I apologize Vice Chairman, when I was trying to make my argument to you about quality of community, but when I had a building in a commercial location every single one of the players; I had five different cell phone companies with their towers mounted on the top of my building, they all had to find a solution and they ended up on the top of my building somewhere else, not in neighborhoods. We need to push back on these carriers and say: we're here to protect the public trust, the public, the community and that doesn't mean that every time there's a new cell phone company that comes along that says: hey, I've got some customers that can't get service. That's only going to set the precedent that we're going to allow other companies to say: I can't get service. You gave it to them, why can't I have a spot over on your street. Thank you.

Ms. Karen Wells stated good evening. Karen Wells; 28 Applebee Farm Road. First, I'd like to talk about the New York City Watershed. Verizon accurately…

Mr. David Douglas stated Ms. Wells, I think that you discussed the New York City Watershed at one of the prior hearings.

Ms. Karen Wells responded yes I did and I'm responding to…

Mr. David Douglas stated I'm trying to – we've got a lot of other cases on after this, including another large one and I'm trying to be fair to everybody. You talked about the New York City

Watershed at length at a prior meeting. If you're going to repeat what you did before, I'd ask that you please not. If you have other points, feel free to make them but please don't rehash what you've discussed the last time. Is that okay?

Ms. Karen Wells stated absolutely understandable. My comments are in response to Verizon's response to my earlier comments. Verizon misunderstood my comments about the New York City Watershed. I am not saying that this particular location is in the New York City Watershed. What I was saying is that it still has an impact and a potential impact on the New York City Watershed. The first impact is visual. Even during the first balloon test when the leaves were on the tree, the balloon was clearly visible from the Croton Dam which is in that watershed. The second point is, even though they are not located in the watershed there is no magic wall to prevent a fire from spreading from their location into the watershed. The other point, and actually was very helpful they raised the issue that they're not in that watershed because we have not considered the impact of the watershed, in particular the basin they are in. I believe this is something the committee should look into. My understanding, the basin that they're in drains into the Croton River and again there, should there be a fire there, that would have a significant impact not only on water flowing in the Croton River but the recreational activities that occur in that river which brings me to my next point which is the Fire Plan. I had stopped by several times at the Code Enforcement office to ask for the Fire Plan and just recently had an opportunity to go through it. It is clear that in the Fire Plan, they have recognized the unique situation of this neighborhood namely: we are one of the few neighborhoods that has residential development and does not have fire hydrants. We have limited capacity to fight fires in our community. I do not think it is irresponsible for the Fire Commission to say that, yes, not all cell towers are required to do these things but in this particular situation, these are our recommendations and the recommendations are actually quite rational and along those lines what I'd like to see when Verizon has that meeting, I would like to have that as a public meeting if possible. We of course will approach the Fire Advisory Board to ask for that meeting to be public. The other point I would like to make is now that the leaves have come off the trees, and we're talking potentially about going into a February meeting, there is no reason not to have a second balloon test. A second balloon test will help the community, including the members of this board to better understand the impact, the visual impact and I think this is particularly important since Verizon responded in their documents that there would be no visual impact. There is another issue I've been trying to get some information on I have not been able to, which is the tree removal required for the building of this facility. If that information is available, I can stop by and speak with Ken and other people in the department to hopefully get that but I have not seen any information on that topic and I think that's particularly relevant especially for those of us who went to the balloon test and some towering pines were clearly some of those things hiding the balloon test at that point from that particular position. The pines did not protect the visual impact from other positions such as the Croton Dam. The final comments I have are, one: I am one of those people who have Verizon cell phone. I live in the neighborhood. I take calls from that road all the time. Then finally, I understand your comment and I appreciate it that it is not one community's place to suggest that another community take on the burden of infrastructure. Having said that, and from a former foil request, having learned that Verizon did reach out to Croton and the Croton officials instructed us that the Town would need to reach out

to them. I don't think there's anything preventing a friendly conversation to determine if Croton would welcome such an application. Thank you.

Mr. David Douglas stated let me just note something that you pointed out because this was something that I was very concerned about as well, that's the view from the dam because obviously one of our treasures of our community is the Croton Dam. Just so it's on the record for whoever is here or is watching in the various forms because this is broadcasted, based on the balloon test it appears that the cell tower would not be visible from most of the dam view shed except on the Croton side as you get over near the spillway for about – I don't know if it's 2 inches from there, going 200 feet, 300 feet. It most definitely is visible from that point. You will see it in the distance but where it's located, it's basically in the same area as the Con Ed tower already exists. So, you'd be looking out – if you're standing at the spillway and you're looking out, you'd be seeing the Con Ed towers and then an additional pole that would be added to that. I just wanted that to be on the record.

Mr. Hugh VanHingle stated hi my name is Hugh VanHingle and I live in the same street as Karen as well.

Mr. David Douglas asked what's your address?

Mr. Hugh VanHingle responded 31 Applebee Farm Road. I know you have a tough job and I get all that but to me there's a lot of things that just haven't been known as fact yet. You've not done a report from what I've heard tonight and I've heard from the past but yet you have all the different groups that have skin in the game so why don't you do your own report that you can be sure is right.

Mr. David Douglas stated that's not our role. That's not our role as a Zoning Board.

Mr. Hugh VanHingle asked your role is not to know that the facts are right?

Mr. David Douglas responded no, the basic fundamental role in the most simplistic form is an applicant comes and applies for something and they put in certain evidence and people can oppose to it or supporting it can put in their evidence and then we weigh the facts and make a decision under the guidelines that the…

Mr. Hugh VanHingle asked then why would you have the choice to bring in another…

Mr. David Douglas responded the Town apparently has a provision that allows us to hire another – we've made a decision…

Mr. Hugh VanHingle stated so in the case where there are many conflicting viewpoints…

Mr. David Douglas stated we have made a decision, again as I said to the other gentleman, right or wrong we've made a decision that we don't feel that that's necessary in this case.

Mr. Hugh VanHingle stated though you say that, you have…

Mr. David Douglas stated I'm not going to argue with you about it. That's the decision that we made, okay?

Mr. Hugh VanHingle stated it doesn't make any sense.

Mr. David Douglas stated you can criticize it, that's fine.

Mr. Hugh VanHingle stated next, you were just saying that on the Con Ed on the top of the dam that you do not see – that it was said, because I guess none of you went, that it was said that you didn't see the balloon from the whole top of the dam.

Mr. David Douglas stated no, I didn't say that.

Mr. Wai Man Chin asked were you there?

Mr. Hugh VanHingle responded yes, I was there. Of course I was there.

Mr. David Douglas stated a number of us were there. What I've said is that for the majority of going across the dam, I walked across the entire dam, and for the majority of the dam you can't see it. As you get, and I said I gave an estimate of about 200 feet before the spillway as you're walking from the Teatown side to the Croton side, probably about 200 feet or so as you're approaching the spillway you begin to see it because you can start seeing it coming across the ridge and from there over to the where the spillway is and the end yes, you can see it.

Mr. Hugh VanHingle stated you can see it on the other side as well because that's where I saw it.

Mr. David Douglas stated I don't think you can see it from the Teatown side.

Mr. Hugh VanHingle stated point two, if it was to be raised another 25 feet, it would be clearly seen.

Mr. David Douglas stated you can see it a mile away from the spillway yes.

Mr. Hugh VanHingle stated so that's my one point. The next point is, you're told and you don't know where the source is, is that Con Edison won't allow firms to hang on their tower. That is blatantly wrong. There is Sprint right on the same stretch. It's a fact.

Mr. David Douglas stated my understanding is that in the past Con Ed allowed there to be cell towers put onto their property…

Mr. Hugh VanHingle stated you said for years…

Mr. David Douglas stated I am not going to argue with you. If you have facts otherwise and Verizon wants to consider putting it in that location, they can do that. An applicant has a right to come before us saying this is the location that we want to do it and then we have to evaluate the factors.

Mr. Hugh VanHingle stated but don't you have a role to say that there are other spots and you have not explored them…

Mr. David Douglas stated no, we do not have a right to say to a company: we don't like where you've proposed and the deal you've made with this landlord, this property owner but you should go to other property owners and say you must – we're going to turn down where you've chosen and you must go to other possible, potential…

Mr. Hugh VanHingle asked what kind of decision are you making then?

Mr. David Douglas stated we have to make the decision – one of the key decisions has to do with co-location. As to, is there another location that can serve the interests better than or as well as what they've proposed.

Mr. Hugh VanHingle stated as Sprint is co-location on Con Edison, then that applies.

Mr. David Douglas stated that has to be analyzed.

Mr. Hugh VanHingle stated and you said it can't be done.

Mr. Wai Man Chin stated that's what they said.

Mr. David Douglas stated I didn't say it can't be done.

Mr. Hugh VanHingle stated Mr. Mattis said no.

Mr. David Douglas stated I don't want to debate. I don't want to argue with you. You can make your points. Go ahead.

Mr. Hugh VanHingle stated what my point is, is perhaps you should know of what is true and not true and base that decision on that not: well I heard…

Mr. David Douglas stated sir, we are doing our best. We have had months of information. We have had months of hearings. We have had evidence and whatever evidence is put in front of us is what we will consider.

Mr. Hugh VanHingle stated it's mind numbing to think why you, yourselves would not have gotten that report.

Mr. David Douglas stated okay, that's fine, that's your opinion, that's fine.

Mr. Hugh VanHingle stated and the co-location on 129 behind the gas station I believe it is.

Mr. David Douglas stated yes.

Mr. Hugh VanHingle responded did you do report there? Did they do a report there?

Mr. David Douglas responded I don't know if you've looked at what's in the record, but there is a comparison between on what's 129…

Mr. Hugh VanHingle asked on who's statistics?

Mr. David Douglas responded sir, again…

Mr. Hugh VanHingle stated please answer the question.

Mr. David Douglas stated first of all I'm trying to be very polite but I am not getting cross-examined here, okay? That is not my role.

Mr. Hugh VanHingle stated just answer the question. Who's statistics?

Mr. David Douglas stated are you going to let me answer your question?

Mr. Hugh VanHingle resident yes, sure.

Mr. David Douglas stated the way the system works is that evidence is submitted. The applicant submitted that information. Anybody in the community, anybody else that wants to submit, challenge what they say and say: that's not right, has the opportunity to do so. And to some extent they have done so.

Mr. Hugh VanHingle stated but the town gave you a tool in just this type of case, why don't you use it?

Mr. David Douglas responded we have decided that we don't need that additional evidence.

Mr. Hugh VanHingle asked why?

Mr. David Douglas responded because we think we have enough evidence already.

Mr. Hugh VanHingle asked based on who's data?

Mr. David Douglas responded sir, you do not have to agree with us.

Mr. Hugh VanHingle stated I know I don't have to.

Mr. David Douglas stated but I do not want to waste this board's time going around in circles. You were saying: I'm right, I'm right, I'm right, you're wrong.

Mr. Hugh VanHingle stated I'm saying that you're wasting our time because you don't have pure data.

Mr. David Douglas stated that's fine, that's your opinion. Can you go onto your next point?

Mr. Hugh VanHingle stated I don't think it's just mine. Is it anybody else's?

Mr. David Douglas stated that's fine. Okay, you got a rousing response, now you can go into the next point, that's great.

Mr. Hugh VanHingle stated I don't care about the response it's just fact.

Mr. David Douglas stated okay, do you have another point? We have a room full of people. We have another half of the applicants that their important to them too.

Mr. Hugh VanHingle stated no I don't.

Mr. David Douglas stated okay, thank you. Anybody else?

Mr. Tom Secunda stated hi, Tom Secunda, 62 Teatown Road. I promise to be quick. The only thing that we've asked for, I'm actually here on another matter but sitting back here I wanted to comment. What we've asked for in the past is just some kind of study when the leaves are off the trees because I agree with you. I walked the dam as well but I bet you would have a very different experience of seeing that tower when the leaves are off the deciduous trees. The last time I was here and asked you said that Verizon was going to give us a simulated report. They did, but unfortunately they did that when the leaves were still here. To the extent that visual impairment is a condition that the Town could refuse the Verizon proposal, we don't really have the facts on the visual impairment, that's all.

Mr. David Douglas stated I'll give you my personal opinion about the visual test is that, yes, in an ideal world it would be better to see it without the trees but based on – let me speak for myself, based on the information that we've got here, I think I can visualize what it would be more visible with less leaves on the trees. I don't think, personally, that it's necessary because the visual impact of the tower is a factor but it's not a deciding factor, it's not an exclusive factor. The fact that one can see a cell tower doesn't give us grounds for – we cannot reject a cell tower because it can be seen. Every cell tower can be seen from somewhere.

Mr. Tom Secunda stated by its very nature.

Mr. David Douglas stated so that's my personal opinion. I think I can visualize it. Maybe I'm wrong but I think I can.

Mr. Tom Secunda stated again, I don't want to play prosecuting attorney here. I happen to disagree. I think that with the tree leaves down you'll see a dramatic change in the visibility, especially on the Quaker Bridge Road and Quaker Ridge Road where the tower is most prominent. Again, with the leaves covering the tower, it was not particularly prominent. I agree with your assessment. I just feel that with the leaves down you would get a very, very different type of thing and we'd love to be able to see that and again, if it was the decision of the board that after seeing that the visual impairment did not meet whatever goals that it has to meet to make this an objectionable plan, that would be fine. I'm just afraid that we don't have all the evidence that we might want. Thank you.

Ms. Arcadia Kocybala stated good evening, I'm Arcadia Kocybala. I live at 2122 Quaker Ridge Road. The proposed cell tower is approximately across the street from me and along the lines of the previous individuals in the neighborhood I would like to request that the board in fact arrange to have another balloon test done. I think we also need to take into account that this commercial facility, the compound is five and a half thousand square feet which will require the removal of trees around that monopole. To this day, we've been meeting since June on this matter and it never ceases to amaze me that Verizon has not once presented a plan indicating the location of the monopole, of their equipment, what the fencing would look like so we have no plan, we have no rendering and everything is left up to the imagination of the neighborhood as to what this is going to look like. I would again ask that we have that balloon test and thank you.

Mr. David Douglas asked anybody else?

Ms. Heidi Franco stated hi there, Heidi Franco at 1059 Quaker Bridge Road. I'm not going to take up a lot of time. Thank you to the board for listening for all of this. I personally had contact with Con Ed, Chairman Douglas and Con Ed in fact has two departments with which they co-locate antenna on. There are towers on 129. There are towers on Ellington. The Town Code calls for co-location first, followed by least impact second then the building of a new tower third. Facts matter here. You've been given really great facts. We submitted the report with regard to that Con Ed tower that is sixteen hundred feet away and there is no difference in the RF engineer profile from using that Con Ed tower to building a new tower. Secondly, we will use our own money, and once again commission an RF engineering report for Ellington and 129. It should have been on the Town to do this, in my opinion. I'm a taxpayer. This would be a great use of our taxpayer dollars. Thank you very much for listening. Facts matter. Please consider them.

Mr. David Douglas stated thank you. Anybody else? Sir, did you want to respond?

Mr. Michael Sheridan stated I can just respond quickly to a couple of items. One of them is the Con Ed issue. Please note that Verizon, again, submitted RF compliance, an RF affidavit at the beginning of this which was looked on rather dimly by the people opposing this which

unfortunately was done with using a [inaudible] computer program which is something that is used industry-wide. Due to that, Verizon went out, hired a third party, RF consultant to provide a report, which they did. In that report, on page 7, they went through numerous sites that were brought up by Mr. Franco and his opposition and indicated why those sites would not work. The Con Ed tower was one of those sites, went through how much less coverage would be provided by co-locating on that Con Ed tower. I just want to make sure this board understands that, at this point, Verizon has provided information that the Con Ed tower would not work because of its location and its height and it would not provide the proper coverage. I'm interested to see this RF report that was just submitted. We'll certainly take a look at that and review it in connection with the report that Verizon previously provided. At this point I'd like to say that this board needs to be looking at the Special Permit requirements in the code as respectfully submitted that Verizon has complied with those Special Permit requirements and that the Special Permit should be granted. Verizon has provided numerous things above and beyond the initial application which it was believed that, again in our opinion, that Verizon complied with those Special Permit requirements. We went out. We got another RF report. A drive test was done. We provided a letter that this board requested in connection with the TRA. We've done what this board has asked. We respectfully request that they look at the Special Permit requirements which is what you should be looking at to see if Verizon's complied with those and then make a decision accordingly. Thank you.

Mr. Frank Franco stated this is Frank Franco again, 1059 Quaker Bridge Road. I just want to make one last comment regarding Mr. Sheridan's comment on the Con Ed tower and that is simply that in their document, true they state that the Con Ed tower is not sufficient. There's no charts or data. They draw a couple of facts around. They claim facts about the potential coverage. In their report, they don't even state what tower they really even referencing. They just say that it's not going to work. I think you'll find that the RF report that I submitted has significantly more data connected to the Con Ed coverage and submit that that is equivalent to the Danish Home coverage. Thank you.

Ms. Jamie Black stated I just have a question. If the Danish Home…

Mr. David Douglas stated could you say who you are again?

Ms. Jamie Black responded Jamie Black

Mr. David Douglas stated and your address.

Ms. Jamie Black stated 35 Quaker Bridge Road. If the Danish Home rescinds permission to Verizon to establish a cell tower on their property, does this all go away?

Mr. David Douglas responded yes, nobody can force – if they decide to enter into a contract…

Ms. Jamie Black stated from a community perspective then isn't it kind of beholden on all of us who are their neighbors to really put some effort into requesting that they change their position

on allowing Verizon to basically take up sort of residence on their beautiful bucolic, almost one hundred year old farm? It seems to me, as a neighborhood, we really need to rally to have the Danish Home change their position as well, because without an unbiased expert working on behalf of community, I think it's going to be a pretty tough battle to try to succeed in not having that tower established.

Mr. David Douglas asked can I make a request? That's something that really doesn't concern this board so can you do that not at this forum? Okay? Thank you. Anybody else want to be heard?

Mr. Wai Man Chin stated I think I have enough information. I'm going to make a motion on case 2016-10 New York SMSA Limited Partnership /d/b/a Verizon Wireless to close the public hearing and reserve decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated with a ten-day comment period. The motion passes. The public hearing is closed as we discussed before if anybody wants to submit any additional materials, you've got ten days from today to do so and then we'll issue a decision at, most likely February because realistically I don't think we'll be able to do it in January. Thank you very much.

B. **CASE NO. 2016-24 Hudson Ridge Wellness Center, Inc. and Hudson Education and Wellness Center** for an Area Variance for the requirement that a hospital in a residential district must have frontage on State Road on property located at **2016 Quaker Ridge Road.**

Mr. David Douglas stated before we begin I just want to explain something that we discussed with the attorneys at the work session on Monday. It seemed to the board that there was an important preliminary issue that we wanted addressed before certain of the other issues were addressed and that's the somewhat technical, legal issue of whether this situation presents an Area Variance or more properly a Use Variance. What we discussed at the work session is trying to limit today's hearing to just the discussion as to that issue because the resolution of that issue will shape what steps get taken next under the law and under the factual issues. What I'd request – and I know the attorneys have agreed to limit their comments to that but if anybody else speaks tonight, I would request, if at all possible, to limit your remarks for this month to that issue of Area Variance versus Use Variance if anybody else wants to speak about that and then in subsequent hearings we could deal with other issues.

Ms. asked [inaudible]

Mr. David Douglas stated I think the lawyers are going to. You're going to hear from Mr. Davis and I'm sure you're going to hear from Mr. Steinmetz.

Mr. asked are you closing today?

Mr. David Douglas stated we are not closing. There's not a chance in the universe that it's getting closed today.

Mr. Bob Davis stated good evening. I'm Bob Davis for the applicant. Given the hour, I try to impose on the younger Mr. Franco to take this over for me but he wanted a very large retainer. First, just by point of procedure Mr. Chairman, I forgot to ask this actually at the work session. There had been a separate application of some neighbors to which we had objected and just for the record, can we know what happened to that?

Mr. David Douglas stated Mr. Klarl do you want to explain…

Mr. John Klarl stated I believe Mr. Hoch…

Mr. Ken Hoch stated we did receive an application from Mr. Steinmetz and after consulting with Town legal staff it was determined that this would not be a separate application. This would be part of the Hudson Wellness application since it addresses the Use versus Area question.

Mr. Bob Davis stated yes, we had objected to it in my November 10th letter on the basis of the board's jurisdiction. I just wanted to make sure that that was no longer outstanding before I commence.

Mr. John Klarl stated Ken, it's not on for a future agenda.

Mr. Ken Hoch stated no, it's not on a future agenda. It hasn't been accepted as a separate application.

Mr. Bob Davis stated thank you. So, I will, as the Chairman requested, I'll confine my remarks today to what really is purely a legal issue. I know the other attorneys will speak. I'm not sure if there's any other attorneys in the audience but it is really a legal issue tonight.

Mr. David Douglas stated I guess the attorneys in this room should apologize to everybody else for the dry and boring discussion of…

Mr. Bob Davis stated I'm going to try to make it as exciting as I possibly can. It is difficult. This is the topic of whether this is an Area Variance or a Use Variance and it's our position that there's no legitimate question at all that this variance from the State Road frontage requirement for hospital's Special Permit is an Area Variance and not a Use Variance. We covered this issue at length in our memorandum of law at points five and six. We also covered it in my letter of November 11th. We've augmented the memorandum and we do respectfully refer the board to those documents and submissions for a full discussion. First, as we explained in our submissions, this Use Variance argument raised by our opponents has recently been rejected by both the New Castle Zoning Board and that was in the Sunshine Children's Home case which

involved some of the same opponents and which involved a very similar road frontage variance and also by the Bedford Zoning Board in a case my firm had handled. Moreover, the board, as well as the opponent's counsel had previously treated such a road Variance as an Area Variance in the Town of Cortlandt. I'm sure this board remembers that in 2010 after lengthy proceedings you issued an Area Variance to the Yeshiva on Furnace Woods Road from a very similar provision of the Town Zoning Code which is section 307-50 b(8) which provides with respect to Special Permits for colleges, universities and seminaries "access to the premises shall be via State or County Highways only." Zarin & Steinmetz, the law firm that represents the opponents on our application represented the Yeshiva on that application. I think they have three attorneys here tonight which is why I called upon Mr. Franco. All of the current board members, I believe, were on the board then. A copy of the board's decision in that matter is exhibit 3 to our memorandum of law and a copy of the board's July 18, 2007 minutes in that matter, at which the Yeshiva attorney presented their request for an Area Variance is exhibit 4 to our memorandum of law. As you know, we submitted the memorandum separately. It's also appendix E to the Expanded Environmental Assessment report. There are two issues regarding the relevance and presidential value of the Yeshiva case to this case. First it bears on what type of variance this is that we see and secondly, we submit that it strongly supports the granting of that variance, but tonight I'll only focus on the first issue: what type of variance this is. The Yeshiva case fully supports the fact that we seek an Area Variance from the State Road frontage requirement not a Use Variance as claimed by the opponents. Tellingly, in their letter of November 7th, making their Use Variance claim, counsel didn't even mention the Yeshiva case, their own case, even though we had addressed it at length in our memorandum of law in support of our Area Variance issue. Then, they claim rather incredibly to me in their November 9th letter related to the Area Variance criteria that the Yeshiva case couldn't serve as any precedent at all with respect to the granting of our variance because "the ZBA did not state whether it was granting the Yeshiva a Use or Area Variance." Quite frankly, in my opinion, that's a rather preposterous claim and just a little bit disingenuous. This board well knows has stated in the July 2007 minutes we've given you that the Yeshiva attorney stated expressly that it was an Area Variance they were seeking and they expressly took the board through the statutory balancing test for Area Variances and all of the other statutory criteria for Area Variances. There really can be no question that in the Yeshiva case what the board granted was what they were requested to grant which was only an Area Variance. There was no mention of Use Variance in that case either by the Yeshiva's attorneys or the board as best I could tell. There was no proof of Use Variance criteria offered, only Area Variance criteria was expressly offered. I do note in that regard that the minutes reflect that the Yeshiva attorney lumped together a request for a front yard setback variance in the very same discussion as the Area standards for the road frontage variance. I also note ironically that they argued that the variance should not be denied on the basis of community opposition which was substantial in that case. Now, counsel for our opponents turn around basically a hundred and eighty degrees and they claim that completely contrary to their statement, in the Yeshiva case, our client requires a Use Variance from the State Road frontage requirement. In my view, there's no plausible explanation for their totally contradictory argument in this case. The law hasn't changed since 2010. The nature of the variance hasn't changed. The only distinction that I can see is that in that case they represented the applicant and in this case they represent the party opposing the variance. I think the distinction on what side

they happen to be representing in the given case doesn't change the unambiguous law applicable to this case. This is an Area Variance. By the way, the Yeshiva Variance likewise was not a dimensional variance per se which is an argument they make. As they would put it, also a locational variance which they now claim makes our variance a Use Variance. In doing that, they're not only contradictory but they consistently ignore the dual statutory definition that Area Variances cover not only dimensional requirements but physical requirements as well. First of all, based on the Yeshiva case alone, I would say this is clearly an Area Variance. Next, we need only look to the statutory definitions in the state Town Law of Use Variance and Area Variance. Those are in Town Law section 2671 subsections A and B states as follows: "Use Variance shall mean the authorization by the Zoning Board of Appeals of the use of land for a purpose which is otherwise not allowed or prohibited by applicable zoning regulations. Area Variance shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner not allowed by the dimensional or physical requirements of the Zoning Ordinance." So, accordingly the relevant inquiry is whether the hospital is a prohibited purpose in the zoning district or whether the state road frontage requirement is a dimensional or physical requirement. As the hospital is permitted in the residential district, and indeed I think in every district, and as frontage is a physical requirement, the clear answer is that the frontage requirement is subject to Area Variance analysis. Again, the project opponents conveniently focus only on the word 'dimensional' in the statute while they avoid the word 'physical' in the same statute. Based on the statute and the voluminous case law, the recognized zoning treaties in New York State by Dean Salkin states that frontage Variances are indeed Area Variances. In the 1998 decision in the Sunrise Plaza case which we cited, which was rendered by the Second Department which governs our jurisdiction, the court pointed out that by definition a Variance from a Special Permit requirement is always an Area Variance because the Special Permit otherwise allows the property owner to use his property for the particular purpose. In fact, in Town Law section 274b(3) which was an amendment to the State Town Law in 1992, entitled "approval of Special Permits" on its face provides that consistent with the reasoning in the Sunrise Plaza case any variance from a Special Permit requirement is necessarily an Area Variance and that is expressly so despite any law to the contrary. That statute states as follows: "application for Area Variances: notwithstanding any provision of law to the contrary where a proposed Special Use Permit contains one or more features which do not comply with zoning regulations, application may be made to the Zoning Board of Appeals for an Area Variance." Tellingly that section's not entitled Application for a Use Variance, it's entitled "Application for an Area Variance" and it speaks to any requirement of the Special Permit. Finally, as if that statute and that language were not clear enough, the Court of Appeals decision in 2004 in the Seminal Zoning Case of Matter of Real Holding Corps versus Lehigh. The highest court in our state removed any possible doubt on this issue. That case arose from the Town of Wappingers and the court affirmed the Second Department as well as the Supreme Court Westchester County down in White Plains in holding that a Variance may be issued from any Special Permit requirement and that such a Variance is an Area Variance. Our opponents have also conspicuously avoided discussion of the Real Holding case probably because in that case the Court of Appeals held that relief from another locational type Special Permit requirement for gas stations which mandated separations, certain separations from residential districts and from other stations was an Area Variance. Like in our case, Real Holding itself considered a situation where the requirement was

not dimensional per se with respect to the lot itself but was a physical requirement which is also subject to Area Variance analysis. The Court of Appeals, again the highest court, laid that issue even more firmly to rest in the case we cited from 2014; the Collin Realty versus Town of North Hempstead case. In that case the Court of Appeals finally clarified the parking Variance which is also more of a locational variance with respect to where off-street parking is, not a dimensional variance. The court declared that that's an Area Variance also in all cases regardless of whether the parking requirement is based on use or square footage. More importantly held that the Area Variance rules always apply so long as the underlying use is permitted in the zoning district. In Cortlandt, a hospital or nursing home is a specially permitted use in every single residential zoning district subject to all Special Permit requirements which include the state road frontage requirements. There's no basis, really, to differentiate the state road frontage requirement from all of the other many requirements set forth for a hospital specialty permit in section 307-59b. If the Town Board wanted to create a zoning district where the properties in it were only those located on state roads and wanted to limit hospitals or nursing homes to that type of district, it could have done so but it didn't. As if all of these authorities in all of the cases that we've cited in our memorandum of law were not sufficient enough, I would direct your attention to an off use section 280a of the State Town Law which governs building permits and that provides that building permits for any use can only be issued if the building is located on certain enumerated roads which expressly include state roads but also expressly provides that if the building is not going to be located on one of those roads, including the state road, then the owner may apply to the Zoning Board of Appeals for an Area Variance. We cited a 2008 East Fishkill case in which the town's own attorneys Wood & Klarl prevailed in upholding a one hundred percent Area Variance from section 280a that was issued by the Zoning Board and Mr. Klarl himself argued that successfully before the Second Department and he won a reversal in that case of the Lower Court. The opponent's counsel basically ignores all of the law that as set forth by the Court of Appeals and by the statutes. In their November 7th letter, they offered just one very misleading case citation in support of their spurious Use Variance argument. That was a case involving a party who sought a Use Variance for a nursing home road frontage requirement but importantly, not only was the question of what kind of variance was required in that case even considered or discussed addressed at all in that decision. Importantly, moreover, that case in 1995 preceded the Court of Appeals 2004 decision in the Real Holding case. Before Real Holding was issued, there was some confusion among the courts and some courts held, as in the Elwood case, that a variance of any Special Permit requirement. It wasn't based on road frontage, any Special Permit requirement whether road frontage or otherwise required a Use Variance. Real Holding put those cases to rest and they are no longer good law and that includes the Elwood case which is why it's never been cited at all ever again by any other court for the proposition its offered by the opponents. In sum, we respectfully submit that this issue is not really susceptible to reasonable argument under the law. Pursuant to what we think is overwhelming legal authority, our application is for an Area Variance. To hold otherwise this board would effectively be purporting to make new law and I would think that the board would rather stick to following the very strong current law that this is an Area Variance in which case its decision would be correct and even more likely to be upheld by the courts. So I thank you for your attention to that exciting material.

Mr. David Douglas asked let me ask one question: if I understood you correctly, you're saying that an Area Variance can encompass either locational elements or dimensional elements – physical elements?

Mr. Bob Davis responded physical or dimensional, yes.

Mr. David Douglas asked I understand I think what dimensional means but what does physical mean in that statute?

Mr. Bob Davis responded I think physical is, for example, physical is what was considered by the – it's apart from the use itself. The underlying use, the underlying purpose as a statute says; a hospital is permitted in the zone but there's a physical locational requirement that requires that in order to be permitted just like many other requirements it has to be on a state road and that's analogous to the same type of requirement that was in the Real Holding case which was not a dimensional requirement either but had to do with how far the station was located from other uses whether a residential use or a station. The same thing with off-street parking requirements, that's a physical requirement, it's not a dimensional requirement. As our opponents have described, it's a locational requirement which is another form of saying that it's a physical requirement.

Mr. David Douglas stated okay. Thank you.

Mr. David Steinmetz stated good evening Mr. Chairman, members of the board; David Steinmetz from the law firm of Zarin & Steinmetz. I am here this evening representing Tom and Cindy Secunda, Karen Wells, Lois and Charlie Goldsmith, Jill and Joel Greenstein and numerous others who are members of a group of concerned citizens regarding this project who are filling this room this evening: the concerned citizens for responsible Hudson Institute Site Development. With me this evening my partner Brad Schwartz who has appeared in connection with this matter previously as well as our associate Zack Mintz, Nat Parish our engineer and Planning Consultant and expert could not be here this evening, largely because it was going to be focusing on legal issues and we didn't think it was necessary to have him here. In summary folks, I'm here this evening in opposition to Hudson Wellness's application and I am here with our team and with our clients to explain to you why this is indeed a Use Variance application and not an Area Variance application and why we felt it was so important to make sure you focused on that, that we filed a separate submission and we're delighted that it has been merged into this matter so that you can confront it. In fact, I genuinely appreciate the fact, in light of that, that you have dedicated tonight to this really important legal issue. I first appeared in the Town of Cortlandt in 1989. I've practiced here regularly for twenty seven years and I have never taken on or handled a matter in opposition to a Land Use application. Our firm has handled dozens of subdivisions here in the Town, three shopping centers, the hospital, a private school, a junkyard, a recycling facility, the ice skating rink that never happened, an indoor sports facility, a health club, medical office and I'm sure there are others that I literally couldn't think of but the point is I have stood in front of this board, in front of the Town Board, in front of the Planning Board on private Land Use matters too many nights. Each time the first question is always the same: does

this use belong here? Is this use allowed here? That's a critical Land Use Zoning and Planning question that we wrestle with. Simply put, every zoning analysis begins with a locational question because that's how the application proceeds from there. You need to know where it can go. Our position, quite simply and quite succinctly is, this use, does not belong located in the Teatown section of the Town of Cortlandt on this road in this zone and it cannot be located on this particular property because it doesn't meet the Town's requirements. This specialty hospital is not permitted in this part of the Town because it is not located, it does not front on, it does not front on a State Highway. Now, for this applicant who has submitted quite extensive submissions and numerous upon numerous foils to this Town, as I understand from the Town Attorney's office, for this applicant and their team to demean and insult my clients, its neighbors, just because they disagree with their position is absurd. My clients have been called, often hysterical, severely lacking in credibility…

Mr. David Douglas stated Mr. Steinmetz, let's stick to the legal issue, okay?

Mr. David Steinmetz stated spurious, patently without merit and obstruction…

Mr. David Douglas stated Mr. Steinmetz, let's stick to the legal issue.

Mr. David Steinmetz stated Mr. Chairman and members of the board, my clients are here tonight because they live in the Town, they care about their property, they care about the process and they deserve to be heard like any neighbor in any application.

Mr. David Douglas stated Mr. Steinmetz, I mean, you're ignoring me. Can you just focus on the legal…

Mr. David Steinmetz responded absolutely. So, let's discuss the law Mr. Chairman and members of the board: 307-59 sets forth the criteria for hospital. It identifies five specific dimensional requirements in b(1) through (5). It tells us a hospital has to be on a lot containing 10 acres. It's got to have a 100 feet of frontage. It's got to have 20% building coverage. It can have no more than 20% building coverage. It can be no taller than 75 feet in height and there are series of articulated side, front yard and rear yard setbacks. Each of these are measurements. Each of these are dimensional. Next, in 307-59 it identifies building separations and buffers but separately in 307-59 b(9) in 2004, the Town of Cortlandt expressly added the following statement: "only to be permitted on a lot in residential zones which front on a state road." That provision was added by the Town Board and it's the issue, it's really the phrase that we're here debating. It's our position that that created a locational limitation, not a dimensional limitation. The dimensional limitations are very clearly articulated in your code: 10 acres, 100 feet of frontage, coverage, height. This is something different. Now, we all know that the Town has a rather elaborate zoning map with a series of zoning districts – what I've displayed before you is the Town of Cortlandt Zoning Map and I apologize that it's a little crooked but my easel is doing the best that it can. Identified on here are numerous zoning districts and I don't have to read them all. You're familiar with them. You have a series of residential districts. You have a series of commercial districts: the HC (Highway Commercial) and the HC9A, the Industrial

Manufacturing districts. Each of these districts in different colors on your zoning map tells us land use practitioners locationally where a use can go. The Town, under concepts of Euclidean Zoning that began literally over a century identifies where it in its legislative discretion believe certain things should go. Now, Mr. Parish also helped us a little bit and took the map and then just simply broke it down…

Mr. David Douglas stated Mr. Steinmetz, take the microphone with you because we get criticized for things not being…

Mr. David Steinmetz stated he broke the map down and identified state highways. We asked him to do this because if in fact it's "only to be permitted on a lot in a residential zone which fronts on a state road" it's important to understand where are the state roads in the Town and you're familiar with them, and then to begin looking at the breakdown of the zoning districts that front on a state road. That's the locational requirement that somebody needs to do were they to come to the Town and say: I want to do a specialty hospital in a residential zone. Now the Town law, and Mr. Davis identified it, Mr. Chairman you asked a question that I don't think was correctly answered. Town Law 267-1b defines Area Variance as those addressing dimensional or physical requirements. Go take a look at the transcript of the way Mr. Davis answered that, I think he talked in a circle that brought him back to locational but I actually think there's a very big difference from locational. Dimensional are Area Variances regarding front, side and rear measurements, height measurements, separation between building measurements. Physical criteria are things like: FAR, building coverage, development coverage, cubic area. They're physical requirements that may not be measured based upon lot lines or the height of the structure but they're all things that we have routinely handled as Area Variances and I don't quarrel in any way that those dimensional and physical requirements are all subject to Area Variances but locational requirements are no different than the locational requirement of a zoning map. Where do I put this use? It tells me at the beginning of my zoning analysis. Locational requirements are not different from a residential zone, a commercial zone, an industrial zone, HC9A. In fact, I actually think the same sentence could have read: "only to be permitted in the HC9A or in the MOD zone." If it did, we'd all go home. We'd know this would be a much easier exercise. If it said "only to be located in the HC9A or in the MOD zone, it would be clear but the analysis and the locational issue are the same. Whether the Town Board told you and the Building Inspector and the Planning Board that hospitals have to be located in HC9A or MOD or whether the Town Board told you that hospitals "only to be permitted on a lot in a residential zone which fronts on a state road" it's the same locational mandate from the Town Board. Instead, the Town Board, in its legislative capacity made that determination, and folks, from our position this is not rocket science and I totally disagree with Mr. Davis's analysis. The Town Board told us exactly where this use needs to be just like the comprehensive plan tells us this use if it belongs anywhere, probably belongs in the new MOD zone just like the New York Presbyterian Hospital. Now, the Real Holdings case: we haven't ignored the law. We've written to you about the law and there are some real gross macro-distortions and wide-sweeping statements that have been made by the other side which really are unfortunate. The Real Holdings case, which we don't ignore, Real Holdings case was a gasoline station separation case. It was purely dimensional. It was a measurement. It was how far one gasoline station had

to be from another gasoline station. It's dimensional. It's mathematical. It's a measurement. It's not a locational starting point case making way too much of the Real Holding's case. It's not an important case in the law of Area Variances, it's the Court of Appeals. It doesn't speak to this issue. It never spoke to this issue. A lot has been made of the Bedford ZBA and the New Castle ZBA. Now, it would be real easy for me to say you're the Cortlandt ZBA, you're not bound by the Bedford ZBA, you're not bound by the New Castle ZBA so who cares. No, I care. Very important, very interesting, they're not dispositive and interestingly enough they're tremendously distinguishable and in terms of candor it hasn't been indicated. The Bedford case was about a pre-existing use that evolved over time. The Use vs. Area issue was never confronted, it's never reported out. There was some litigation that ensued from that matter which was settled by stipulation. New Castle certainly had similarities. That's the Sunshine Home matter. It definitely had similarities to this case but also, it involved a pre-existing use on that property and most importantly Use vs. Area Variance was hotly contested in that matter. It's currently being litigated and I find it extremely important that Cortlandt's Special Land Use and Zoning Counsel, Cortlandt's Special Land Use and Zoning Counsel is arguing in that case that fronts on is a locational requirement that requires a Use Variance. So to bring to your attention anything about the New Castle matter and not tell you that your Land Use experts are arguing down the block in New Castle that it's a Use Variance. I think you need to know that. Not to mock us on the Elwood case, to me is silly. Elwood is the only decision that we've been able to find and I'm pretty sure based upon reading your special counsel's submissions in New Castle that they've been able to find that actually talks about the fronts on requirement and somebody in a Special Permit application seeking a variance. Elwood, in that decision, for whatever reason that we can debate, because it's not abundantly clear, the Zoning Board of Appeals in that case granted a Use Variance and the Second Department decision reported out a Use Variance from a fronts on requirement regarding a Special Permit for a nursing home. It's about as close to this situation as we can get and I'll be candid with you, there isn't a tremendous body of law on this very issue. It's a very unique issue but it means it's an issue that's entirely within this board's discretion and to point to Professor Salkin. Professor Salkin's frontage requirement comments, much like Mr. Davis's case. Bob cited us fifty cases on frontage requirements. I don't disagree. Frontage requirements just like this one here where there's a frontage requirement for a 100 feet, that's a dimensional frontage requirement. Salkin knows it, I know it and this board has granted those types of Variances. It's an Area Variance but fronts on locationally is a different standard and a different articulation. He pointed you in his verbal comments now to Sunrise Plaza. I'm a little surprised and again if you go back to the transcript it was stretched beyond the words of the court's decision. Here it says: "that provision does not mention Use Variances," and by the way, I'm reading from that decision. I'm not characterizing. This is the Second Department 1998. "That provision does not mention Use Variances, a Special Use Permit generally will not be accompanied by an application for a Use Variance. As by definition the use is authorized" but not when the Special Permit has an articulation that the Town Board adopted that tells us what and where that use can be located, where that use can be located. We also submitted to you in writing, we think that Collin decision about parking, that case isn't about where the parking is located. That case wrestled with the issue that many of us Land Use practitioners have dealt with for many years. Do we treat the quantitative parking variance as an Area Variance like we just did together for Acadia with regard to the Cortlandt Crossing matter, like we did across the street

for the small shopping center in front of the Cortlandt Town Center? I've processed those parking Variances before this board. This board got it right. This board treated them as Area Variances. Other boards in the state were trying to treat them as Use Variance and that was incorrectly – that was determined to be an incorrect approach but boy let's talk about the Yeshiva. Man, I did something wrong. I represented the Yeshiva and I'm here tonight representing probably a hundred people who think this is a Use Variance so I must be talking out of both sides of my mouth. I've done something wrong. Mr. Chairman I know you don't want me to editorialize but I don't like…

Mr. David Douglas stated don't worry, at least speaking for myself, the fact that a law firm represents one client in one case and takes a slightly different position for another client in another case does not matter at all to me. I understand how you make your living. That's fine.

Mr. David Steinmetz stated I don't have to read the next line in my notes right here.

Mr. David Douglas stated I do the same thing.

Mr. David Steinmetz stated folks, the characterization that Mr. Davis presented to you is unfortunately severely distorted and, yes, my firm did represent the Yeshiva and no we did not apply for a Use Variance but Mr. Davis claims I'm arguing inconsistent legal theories which the Chair at least says I can but I'll tell you, I'm not arguing inconsistent legal theories. They are two completely different matters and I couldn't wait to get here tonight to bring us all back. That case suggests, or at least the characterization of that case suggests a fundamental misunderstanding of what my firm, your board and Mr. Klarl did six and a half years ago. First, when I went back and I started to re-read the board's decision from six and a half years ago, it's kind of strange that literally every single one of you is still on the board tonight as you were six and a half years ago. I took a collection outside. We're getting you all Netflix because you folks need a life or something. I mean, are you – it's one thing for me and Schwartz to be Land Use junkies but for you guys. Let's examine the Yeshiva matter and let's give Mr. Davis the plausible explanation he was searching for because the explanation is the key to the whole thing. I had forgotten about that requirement and that Yeshiva matter until I read his submissions and it brought me back to being here six and a half years ago as was my partner Dan Richmond. The Yeshiva: we processed this folks. I've got your decision in front of me. This is March 17th, 2010. You really do need a life if you're even here on March 17th. I mean that's – the use was in existence since 1985. We were processing this application in 2010. The use had been in existence since 1985. It was a place of worship and instruction and it was a permitted use. In fact, paragraph number one in your decision announces that the place of worship and religious instruction with housing for students, place of worship and religious instruction is a permitted use under the Town Zoning Ordinance. First thing that's different. The operation was "lawful and permitted and it was acknowledged by Town Planner John Felt" you told us that in paragraph number three but this is where Hudson Wellness and Mr. Davis missed it. They missed ZORP. Remember ZORP? When I mentioned to my associate Zack Mintz: Zack, the Yeshiva case is going to turn on ZORP, he looked at me kind of like you guys are looking at me like you must be crazy. What are you talking about? ZORP was the name of the Town's Zoning

amendments that were adopted for those historians here in the Town, in 1994. In 1994, section 307-50 was inserted regarding seminaries, universities and colleges and you heard Mr. Davis talk about seminary, universities and colleges. I came before this Town representing a client that really had both categories. They had been a religious instruction school since 1985. They have a shull or a place of worship located on the property so they're a permitted use and we never deviated from that and some of you may remember, Richmond and I standing in front of you and saying we're a permitted use. In fact, we told your Town attorneys we were a permitted use, but the Town attorneys said to us: you've got a sign in front of this place on Furnace Woods Road and it says "Seminary" and some of the Yeshiva boys are actually twenty two to twenty four years of age so it looks and it feels, to us, it looks like a college, it looks like a university. You've got the word "seminary" and in 1994 David, the Town adopted this new ZORP law and it changed the game for the Yeshiva. The ZORP law said: "hey, you now have to be on a state highway," well you know what? I didn't want to come here six and a half years ago. My client was there. It's still there. I knew it was going to be there. Religious Land Use protected that use, New York State Law protected that use but your Town attorneys with who, let's go back six and a half, seven years ago, my clients and I were doing everything we could to cooperate openly, thoroughly and properly with the Town of Cortlandt. The Town of Cortlandt said: David, you and Richmond and the Yeshiva have to come in and process a Special Use Permit which we did and we got and you and Richmond have to come in with the Yeshiva and you have to apply for variances from the state highway that you're already on and you've been on. It's now 2010 so we had been there for twenty five years and there was a setback issue regarding the Rabbi's house. We did what the Town asked us to do. We processed it – if you look at the top of your decision, you guys actually called it an Interpretation. There's no question we stood in front of this board, we were an existing use. You know what? We were a pre-existing use. It's starting to sound familiar. We were a pre-existing use just like Bedford was a pre-existing use. We were a pre-existing use just like New Castle was a pre-existing use. The Yeshiva is no different from those matters, one could argue legally, and therefore maybe Mr. Klarl and your board had a rational basis for treating that as an Area Variance. You know what? That use was going nowhere and that particular use is dramatically different from the reason this room tonight is dealing with an entirely new use. It's a vacant piece of property. There's no specialty hospital on that property. There's nothing of that nature so I believe, unlike Mr. Davis, as I started my comments we've got to treat this matter like I treat every single Land Use matter. You go to the beginning and you figure out: where's the use belong? What does the law tell us? We begin the analysis from there. And you know what? Had I gotten the phone call instead of Mr. Davis and had these – whoever these people actually are, who want to operate this, had they called my office, we would have said to them: guys, you're going to have a real problem because you have a locational hurdle you're not going to be able to get over. I submit, I suspect, if I remember their papers they bought this property several years ago. I don't know if you remember Zack what year they bought the property.

[Inaudible]

Mr. David Steinmetz stated it took a couple of years after they bought the property to supplicate before a government so I have to assume maybe the same people didn't make the analysis but I

must tell you before 1994 the Special Permit requirement – oh, in fact, I don't have to tell you. I'm actually going to read your own words because I was surprised to see a quote authored, I'm sure, by Mr. Klarl, your Resolution states the following on page three: "therefore, before 1994 the Special Permit requirement let alone the two above-described variances" fronts on Rabbi's house setback "were not" in your original "were not part of the Town Zoning Ordinance and not" underscored in your original "required." We didn't ask for an Area Variance or a Use Variance. We claimed we were there. My clients claimed and they were going to continue operating the Yeshiva and like New Castle and like Bedford the ZBA allowed the pre-existing use to continue. I think you have a very simple threshold issue before you and you can tell, completely disagree with all of the wonderful smoke and mirrors that have been presented to you; two and a half pages of cases on frontage requirements which have absolutely, unequivocally nothing to do with this. Remember what I said to you in my written submission: when somebody hits you with two and a half pages, single-spaced of cases and tells you that the law is right on, black-and-white, clear as day, that's the first time you know something seems a little odd. When the applicant comes here on one of the most controversial matters in the Town of Cortlandt for the last year and a half – and I feel bad for Bob. He's got to sit there all by himself all night long. We don't know who is client is, where his client is. You guys know what happened at that work session.

Mr. David Douglas stated David, please, stick to the Use Variance issue.

Mr. David Steinmetz stated Mr. Chairman, the Use Variance issue is clear as day. The Town Board adopted a locational requirement. Your Building Department didn't waltz out and send them to the Planning Board and tell them to go process a Special Permit and a Site Plan because they know darn well there's a locational issue here. Your Zoning Map tells me very vividly in wonderful color, where these different uses in the Town belong. I was reminded by my colleagues that you have one last thing in your Zoning Ordinance which is, again odd but helpful for those of us who read your Zoning Ordinance carefully, you have a table of uses different from your table of bulk requirements. Make sure you're with me on that. Bulk requirements are those tables that we look at as lawyers and as planners and as Zoning Board members, it tells us distances, height, and setbacks and FAR and all that stuff. You have a different table of uses. In that table of uses, which again is my starting point as a zoning law here, that table of uses has a footnote in it. There aren't always tables of uses like that and I can tell you there aren't always footnotes like that and that footnote cross-references us right back to the same locational requirement. That locational requirement is dispositive. Something mattered to the Town Board or the Town of Cortlandt when it wrote "only to be permitted on a lot in residential zones which front on a state road." In closing, I'm absolutely convinced we can defeat the Area Variance. We know the five factor test. We'll meet each one of those factors. We'll identify all of the issues. I'm absolutely convinced if we go through the SEQRA process, whoever the lead agency is, that it'll expose all of the issues that need to be inquired but we filed our application and joined in Mr. Davis's application because there's a fundamental dispositive issue that eliminates and gets rid of this matter. This matter should not be processed before the Town of Cortlandt. If and when Hudson Wellness wants to operate a specialty hospital they're welcome to do so under your code if they front on a state highway. Until they do so, they need a Use Variance. Thank you.

Mr. David Douglas asked Mr. Steinmetz, I have one question for you: I think that Mr. Davis said and maybe I misheard him, he'll tell me if I misheard him that Special Permits are always Area Variances. Mr. Davis, am I saying your position correctly?

Mr. Bob Davis stated inaudible.

Mr. David Douglas stated we'll get back to you in one second. I think that Mr. Davis said Special Permits are always Area Variances. I trust that you disagree. Can you tell me why?

Mr. David Steinmetz responded we disagree with that. We identified that in our written submission Mr. Chairman. We do not believe Real Holdings stands for that and in fact, in the one case that Mr. Davis was specifically talking about this evening, even this case which predates Real Holdings, I'm very well aware it predates Real Holdings. We don't believe Real Holdings ever eliminated the issue that in certain situations, and this is truly a unique one, that that type of locational requirement – it's not bulk, it's not dimensional, it's not physical. It is purely a use classification embodied in a Special Permit and I absolutely believe this board has a right to treat it as a Use Variance.

Mr. David Douglas stated okay.

Mr. Bob Davis stated I didn't regard frankly quoting from the state statute as smoking mirrors but I'm kind of choking on the smoke right at the moment. Just for clarity, I think Dave was kind enough to say they joined us in our application. I think their separate application was basically removed for lack of jurisdiction because it was improper under the law. Really, it boils down to just a couple of things. There was a lot of tap dancing there: the difference between locational and physical escapes me. The difference between the Real Holding case that talks about where a gas station has to be located vis-à-vis residential districts, vis-à-vis other gas stations totally analogous locational requirement. Off-street parking spaces, the number required is not a dimensional requirement, it's a physical requirement as the Court of Appeals has held and the statute just as Real Holding clarified because people were still confused with it. The statute that I read to you 274b(3), again says: "notwithstanding any provision of law to the contrary" and that includes any notes that the Town Zoning Ordinance or anything else and I'll speak to that in a second "where a proposed Special Use Permit contains one or more features which do not comply with the zoning regulations" which this one does, the state road frontage requirement. "Application may be made to the Zoning Board of Appeals for an Area Variance," end of story. There's not one single case that supports what Dave said. The Elwood case did not address the issue. The Elwood case arose out of a situation where the prior use had a Use Variance dating back to 1983. It basically expired and a new owner took over and he applied to reinstate the Use variance. There was no discussion at that time as to whether a Use Variance application was required or an Area Variance application was required. In that case, the application in that case then went before the Zoning Board of Appeals and the Zoning Board of Appeals decision itself preceded the quote that I just read you from 274b(3) of the Town Law because that was not enacted until sometime in 1992 after the Zoning Board decision in that case

and admittedly, as Dave said, it was well before the Real Holding case. The section 280a of the Town Law, again, relates to a locational requirement if you will. A building has to be located on a road on a filed map or an existing state, county or town highway and if you're not located on one of those highways including the state highway, you may apply for an Area Variance. I see very little difference. We have Real Holding. We have the statute itself that says if you deviate from any of the regulations you're entitled to an Area Variance no matter what the law says and the fact that the Town Board put a note, and there are numerous notes to that table, so many so in note "a" that they have their own section of the Zoning Ordinance. Please read 307-14 by the way that says that that table is a table of permitted uses and please take a look at the line item for hospitals and nursing homes which says it's a Special Permit Use and, I believe, in every district of the Town certainly every zoning district, but even if that were not the case, even if we were to take the concept that just because something is a note on the schedule of uses and that turns something into a Use Variance then we could look at a lot of other Zoning Ordinances. New Castle and Bedford among them which follow a typical way of doing things where when they list a Special Permit use in the use table they cross-reference you over to the specific section of the code similar to what Cortlandt has that gives the specific Special Permit uses – the specific Special Permit requirements for that use. The mere fact that there's a note there that refers you someplace else, that note is exactly the same as the Special Permit requirement in the list of Special Permit requirements. It doesn't change it into a use criteria that requires a Use Variance. I heard Dave try to do a little tap dance and try to differentiate some of the Special Permit requirements, dimensional rather than physical. All of the ones he mentioned were dimensional requirements that related to things on the lot itself not locational requirements. But the thing with the gas stations, the thing with parking perfectly analogous 280a of the Town Law. Why would you treat this differently than the state statute that requires buildings to be on a state road or some other type of road and if they're not on it you get an Area Variance. What makes this any different? So, basically, I think we heard a lot but the basic law comes down to what the statute provides, what the overwhelming case authority provides. And by the way, if there is some ambiguity, as Dave may have alluded to, in the law that ambiguity as you know is supposed to be resolved in favor of the property owner. Interestingly, I agree that attorneys – and I wasn't casting dispersions on the fact that attorneys can represent different clients in different ways. I've been known almost to do that myself but the issue was taking a different position and the fact, an inconsistent position, and the fact is that whether the Yeshiva was a pre-existing use, whether there was a pre-existing use in New Castle, whether there was one in Bedford. In all of those cases, changes were being made to the use. The pre-existing use issue is a total Red Herring. They were still law-required to apply for a variance because they were making changes in the pre-existing use that were being made after the statute was changed to require road frontage and so they were required to apply for a variance. The variance they were required to apply for was an Area Variance and the reference to the Town Special Zoning counsel is exactly in the purview of what Mr. Steinmetz was saying, that's because he represents the people opposing the variance in that case. I've read that case and I'm well familiar with the Yeshiva case. I read every set of minutes in that. I know about ZORP. I know about all of that stuff but it's a Red Herring. They applied for an Area Variance. Thank you.

Mr. David Steinmetz stated it's great that he knows about ZORP and he read everything but he

certainly didn't want to bring that to your attention. And he's overstating Real Holdings. I got to just hit that for a moment. Because Mr. Davis made a big deal about this word "physical" versus "dimensional" we actually went and pulled the legislative bill jacket on the 1992 amendments to the New York State Town Law and I went searching for something that would help us better understand the word "physical" because he was making such a big deal about it, maybe some of the senators and the assemblymen did. We find absolutely nothing in which any kind of significant discussion was had about the word "physical" but we do find in 1992 in the bill jacket "finally the bill provides that in the event local site plan or special use permit requirements present dimensional difficulties to a particular applicant, an Area Variance may be applied for to the Zoning Board of Appeals." Seems pretty clear. The legislature thought they knew what they were doing. It was 1992. They were announcing; you have dimensional requirement issues and a Special Permit context, Zoning Boards can grant Area Variances. Over the next ten, twelve years, Zoning Boards didn't get it. Not everybody read the bill of jacket. Not everybody understood the law and the Real Holdings case that he's making such a big deal about, quote from the case: "The ZBA concluded it was powerless to grant an Area Variance from Special Use Permit requirements absent express granted authority from the Town Board." So, even though the state legislature thought they made it clear that you can grant Area Variances there were still Zoning Boards that were not granting Area Variances and telling applicants like Mr. Lehigh in the Real Holdings matter that they couldn't get them. What the Court of Appeals tried to do was clarify the law that certain requirements like the dimensional requirement that issue in Real Holdings, Real Holdings is about a thousand foot boundary between gasoline stations which I've already told you, it's a dimensional variation. It's not locational. What Mr. Davis doesn't want to admit to you, but I will, is that this is truly a unique legal issue and there isn't a wealth of case law out there which is why he's stretching every one of these Area Variance cases as far as he can. You have every right to make a determination that this is locational. The fact that the statute says that if you deviate from the standards – I want to rephrase that: the statute doesn't – the fact of the matter is, the Real Holdings decision doesn't do anything tremendous to help us in this particular situation. I believe this board must do what you and your counsel, I'm sure will guide you, to look at the words of your very statute and, again, just to kind of end with the Yeshiva I'm deeply troubled that someone would argue in that situation which is grossly distinguishable, or tremendously distinguishable on the facts that it somehow dictates the result in this case. I'm pretty confident that your counsel will be able to explain to you if you don't remember why you ruled the way you did that it is a very different situation. And you know what? If somebody had made me focus on: hey David, should this be a Use Variance or an Area Variance back then? We would have had a very different discussion because I would have said to you at that time: my use exists. I'm not coming in with dollars and cents proof and so one question that I want to answer and I think it was one of the residents asked this at the very beginning because I don't think we've made it, despite the fact that Mr. Davis and I have spoken at length, we haven't made this point clear. Why are making such a big deal about this? Why are these lawyers arguing to the Zoning Board Area Variance, Use Variance? They're Variances, what's the big deal? The big deal, as this board knows, and I want the record to be abundantly clear, the legal standard in New York is such that Mr. Davis knows that he and his client cannot satisfy the Use Variance standard because they would have to demonstrate, number one: by dollars and cents proof that they cannot earn a reasonable return on

their investment if they use the property in accordance with existing zoning. If you have, what is it Bob, 10, 12 acres in Teatown? You can earn a return on that investment. Lastly, the fourth factor of the Use Variance test, unlike the Area Variance test, is if there's self-created hardship. It is a dispositive factor against the award of the variance. If you go back to what I said to you forty minutes ago; when these folks bought this property they knew or should have known what the requirements of law were. They bought it. They created their own hardship. That's, folks, why they're fighting tooth-and-nail against the Use Variance because the Use Variance will stop this and put this where it should be located: on a state highway.

Mr. Michael Shannon stated hi, I'm Michael Shannon 2022 Quaker Ridge Road, the adjoining property. I am a lawyer. I'll be very brief. First, I appreciate that you are considering this threshold jurisdictional matter. We need your guidance going forward and I ask you to make a determination on this issue promptly so we know what to address when we keep showing up. I think listening to the argument that sometimes the most basic rules of statutory construction come into play, many cases are being cited by each side and I don't know how many of them you've read but every case is every lawyer argue is a little bit different here and there. I think this though can be decided on a much more basic proposition. I don't practice in this area and I was very grateful to find the tables that counsel referred to but before the tables were the definitions and in the definitions is the phrase: "words not defined in either place shall have the meanings given in the most recent edition of Webster's unabridged dictionary." When we talk about 'use', when you look at 'use' in the cases and throughout these hearings and every piece of paper filed, we're talking about purpose. I want to operate a hospital. When we talk about 'area' we are talking about something that is measureable. That is the basic element in the statute here and I think that has to guide you. from day one, their problem was not the area problem, it was not whether their driveway was a 100 feet or 90 feet or 40 feet, it was the use and they have tried to dress it up and add a lot of cases, to use his expression, create a lot of smoke and mirrors for you but all you have to do is use your common sense and Webster's. The purpose talks about the use and something that is measureable is 'area' and I think you should grant the interpretation being asked for by the opposition. Thank you.

Mr. Bob Davis stated I'll just be very brief. I think the statute 274b(3) and 280a, the words speak for themselves. The Real Holding case which is regarding as a seminal case in zoning law speaks for itself. I would just harking you back to the Collin Realty case where if the statute's not enough, if 280a is not enough, if 274b(3) is not enough, Collin Realty says: if the underlying use is permitted in the zoning district then the variance you're looking for is an Area Variance. Hospitals are permitted in the residential zoning district. The state road frontage requirement is a physical requirement, it's not a dimensional requirement, it's a physical requirement. We can try to disguise it by calling it a locational requirement but you can't do that and then claim that the Real Holding case dealt with a dimensional requirement. That had nothing to do with the dimensions of the lot itself. It had to do with the location of the lot vis-à-vis other stations, vis-à-vis the residential zoning districts just like this has to do with the location of a hospital on a state road. Thank you.

Mr. David Steinmetz stated one very quick thing and I'm sorry I just can't let that go. Collin, I

didn't want to do this. I thought I kind of hit it quickly but – you can't argue the Collin decision as a broad sweeping doctrine. Justice Reed writing for the court in 2014, the court starts off and says "this appeal calls upon us to revisit our decisions" and it cites a couple of other cases which dealt with variances from the off-street parking requirements of zoning Ordinances. This case is about off-street parking requirements. This is not a broad-sweeping doctrine about use vs. area variances let alone in a special permit context. It's a great case. It was a very helpful case for those of us land use practitioners who struggle with boards, unlike Cortlandt, that didn't know how to treat off-street parking variances. This is not some wonderful earth-shattering doctrine.

Mr. David Douglas asked anybody else? Do you want to talk about area vs. use variances? If that's what it's about then that's fine. If it's about something else maybe you should be at a different meeting. Hold on one second. This young man here wanted to speak but I don't know if…You want to speak? Go ahead. You've got to tell us who you are first.

Evan Hunt stated hello my name is Evan Hunt and I live on 39 Quaker Hill Drive. If this business gets approved, one of the issues would be the roads. Quaker Ridge Road is a small, curvy road and it has hard driving conditions, especially in the winter when there's snow and ice. It is not a state road. If they may need to travel with supplies for their business and that they may need trucks and if they need trucks that could cause traffic accidents because trucks may not have as good as handling skills and could maybe crash and that could be a very dangerous thing for the person driving but also the person in the truck who is driving. They could be seriously injured. Another thing is the wild life. There is a lot of wild life in Cortlandt and if there's a lot of traffic and loud noise, the wild life could be driven out to other areas. Basically, that is why they should not get a variance. Thank you. It's been an honor talking to you and Happy Holidays.

Mr. David Douglas stated thank you. It's been an honor listening to you.

Mr. Pesavento stated I live at 1038 Quaker Bridge Road. I think we're missing the whole concept here. Everybody's worried about the variance and this and that. I think the most important thing here is the building itself. It cannot be used for anything. Let me tell you some of the things that it needs. It doesn't have any water…

Mr. David Douglas asked can I make a request? We really wanted to focus tonight just on this specific legal issue of the use versus the Area Variance. Would it be possible for you to save comments about the building for a subsequent meeting?

Mr. Pesavento stated no, I ain't got time. This is the second time. I waited hours here.

Mr. David Douglas stated right, but what I'm saying is to this month we really wanted to focus on just this narrow issue. There are going to be other hearings on this matter.

Mr. Pesavento stated well let me give you the hearing about the building. It will only take a few minutes. This building here is not usable for anything. We're wasting our time negotiating land

use, Town roads, state roads and all that. Can you use the building? I don't think so. You have no water, none. This is a blue construction. You know what a blue construction is in these old buildings? It's two walls, stone and wood in between is air. That fire hits in there, it's gone. You aren't going to save that building – if you have water. The other thing about that building, because it's going to be important to make a decision, there's no sprinklers, there's no water. The people have no way out. In California they had 36 people die in the building. This is a similar thing. You have a stairway, only one way in and one way out. That thing is going to get on fire, we're going to lose a lot of people.

Mr. Raymond Reber stated excuse me sir, but aside from the fact that that wasn't the topic for tonight, those kind of issues normally, on our parameters to determine how a Zoning Board decides a variance. Those are Code Enforcement issues. Those are Engineering Department issues, Building Permit issues. They may be all valid and maybe reasons why even if we said fine you can have a hospital there, they can't meet the building requirements and therefore they don't operate a hospital. Those are very valid issues but they're not issues that a Zoning Board takes into consideration. They may be Health Department issues, Engineering Department, but not us.

Mr. Pesavento asked you people don't want to know about it?

Mr. Raymond Reber responded the point is that it doesn't affect…

Mr. Pesavento stated it has everything to do with it. There's people's lives at stake and you don't want to hear about it.

Mr. Raymond Reber stated we have a Court of Appeals that addresses zoning issues not…

Mr. Pesavento stated yes but if you pass this thing here now, now we have more trouble to defeat it later…

Mr. Raymond Reber stated no, no, no, after we get done with it, it goes to the Planning Board. The Planning Board gets involved in a lot of those issues but even they will not dictate in terms of Building Codes and whether it has sprinklers and what have you. Those are issues that Code Enforcement has to address and impose upon the applicant to make sure that they meet all those requirements before they get a permit to operate.

Mr. Pesavento stated yes, because I heard mention things about roads too. You don't want to talk about the building, can I talk about the road?

Mr. David Douglas responded sir, listen, I'm going to have to ask you to hold off on your comments for tonight, okay?

Mr. Pesavento stated thank you.

Mr. David Douglas stated thank you.

Ms. Karen Wells stated Karen Wells 28 Applebee Farm Road. I'm going to be very brief and am going to talk about use versus variance. First, we had some additional speakers but we are going to hold off, write some letters. I wanted to address this because we're asked this quite often. What use would be acceptable to the community? This is zoned residential. A residential use is what would be acceptable. Thank you very much. Happy Holidays!

Mr. David Douglas asked anybody else?

Mr. James Seirmarco stated at this time if there is no further comments I'd like to make a motion to adjourn case #2016-24 Hudson Ridge Wellness Center.

Seconded.

Mr. David Steinmetz stated so we know Mr. Chairman, members of the board, I think both the applicant and certainly our team want to know whether you want us to come back presenting…

Mr. David Douglas stated we'll let you know. That's a fair question. I make a request there are several other applicants that want to be heard tonight so if people are leaving, I'd ask that you hold your conversation until you get outside because these people have been waiting for hours and I want to give them a chance.

Mr. James Seirmarco stated thank you everybody for coming.

With all in favor saying "aye."

Mr. David Douglas stated it's adjourned until January.

Mr. Wai Man Chin stated the Wellness Center is adjourned until January.

C. **CASE NO. 2016-26** **Robert Vaughn** for an Area Variance for the front yard setback to replace an existing deck on property located at **31 William Puckey Dr., Cortlandt Manor, NY.**

Mr. David Douglas stated we've gotten a notice from the applicant that he's withdrawn that application. Case 2016-26 is withdrawn.

D. **CASE NO. 2016-28** **Seventh Day Adventist Church** for a Use Variance to allow a parking lot on property located at **0 Crompond Rd., Cortlandt Manor, NY.**

Mr. David Douglas stated that has been withdrawn as well.

* * *

NEW PUBLIC HEARINGS:

A. **CASE NO. 2016-29 Alex and Diana Daoud** for an Area Variance for the front yard setback for an addition on property located at **11 Buena Vista Ave., Cortlandt Manor, NY.**

Mr. David Douglas stated if I mispronounced your name, I apologize.

Mrs. Diana Daoud stated you did perfectly. Good evening. How are you? We are here to request a variance for the front yard usage. Right now what we're trying to do with our home is make some modifications, adding square footage to an area where we have currently a secondary entrance and an additional location where our master bedroom is to, in essence, make it larger. Just a little bit of information on the building. It's a one-story framed house. We have a main entrance and a secondary entrance with an arbor. The secondary entrance is basically the one that we use the most. What we are trying to do is consolidate the use and the flow and the way that we use the, what you call the public areas of our house. In order to do so, we would like to infill where the arbor is and that would also allow us to make some interior adjustments to the house. We have several steps within the house. There's two breezeways. In essence, those three rooms are in different elevations. There's like a six-inch drop in the back and then about a three to four inch drop right by the secondary door. If we do the infill we'd be able to bring all that to the one elevation while at the same time making it easier or better for us to use the main entrance. Then the addition to the master bedroom is the second – the variance is the front yard as it stands from the main road and that is a pre-existing condition to where the existing main entrance is. It's already in non-compliance. That's the way that we bought our home so the modifications are a slight change to the non-compliance condition.

Mr. David Douglas stated Mr. Mattis this is your case.

Mr. John Mattis stated that's my case. Generally, we try to reduce non-compliance. We don't allow it to give you more non-compliance. I know everybody likes to improve their house and do what they want but they do that subject to zoning constraints. There are different factors that we look at. One, is it substantial? You're going from a required 50 foot front yard variance, you're already at 27 feet and you want to go to, I'm going to round it off, 22 feet, it's just slightly less. It's a 56% variance. That's very, very substantial.

Mrs. Diana Daoud stated I think that has a lot to do with the fact that our lot is not…

Mr. John Mattis stated we can't change the lot. The lot is the lot and also it's already way in front of the others in the neighborhood. Will it make a change to the neighborhood? You're

already out closer to the road and you're going to be even more closer to the road and it is very substantial. People can't always do what they want. It's a shame. I know what you'd like to do will make it look much nicer but that isn't what we're here for. We're here to grant reasonable variances and you already have a 23 foot variance which is forty something percent and you want to go up to 56%. I don't know, except in an area where there aren't any other houses around and it doesn't impact anybody that we'd ever give a variance, not in a neighborhood like this, we don't give a variance that large.

Mrs. Diana Daoud stated I don't know if you've been to our neighborhood but there's some other homes around there. Again, this has to do with the way that the lots are in our area. There's only probably two homes right now that meet this 50 foot setback…

Mr. John Mattis stated directly to the right and the left you're considerably in front of them. If you can show it, it's very visible. The one on the left, as we look at it on top of yours there is substantially further back and the other one is also further back.

Mrs. Diana Daoud stated he has an acre lot. So he has enough room for him to…

Mr. John Mattis stated but you're stuck with the lot. You purchased the property. The zoning is the zoning and if we granted everybody stuff that they wanted we wouldn't need a Zoning Board. We'd just say go ahead and do it. We try to conform to the code and not give variance after variance after variance. If we can, we're supposed to grant a minimum variance and are there alternatives? There's probably alternatives to how you can build without coming out further. I don't know if you've explored those.

Mr. Raymond Reber stated the key is always the front yards and how they're arranged in a neighborhood and the side yards in terms of proximity to your neighbor's house. I have no problem with your new living room because that's simply filling out to line up with the rest of your house. That's fine with me. The new covered front porch, that's not even a living space. It's more of an esthetic structure that you're going to put on the front and I agree with Mr. Mattis that I can't see, considering how close your house already is, to grant a variance for a porch. I mean, you have an entrance there, that's fine. You're going to have a landing like you would at any entrance but the idea there's going to be an actual covered structure coming out toward the front, I have a problem with it.

Mrs. Diana Daoud asked so the objection that you're making is to the covered porch?

Mr. Raymond Reber responded yes, not the new living room, just the covered porch. To me, a landing like you would have at a normal entrance, we grant those. We understand you've got to have some steps up and a landing to open the door, that's fine, but to have a structure there I don't think, this close to the street, to me it's inappropriate.

Ms. Adrian Hunte stated I think this board is usually required to try to give the minimal variance if we give one at all and in this case the porch aspect would increase it beyond what the minimal

would be to achieve the purpose of having some variance to allow for the bedroom and the office.

Mr. Wai Man Chin stated what it was, was back in 1991 whoever was the owner then was given quite a big variance and we try to minimize anything more than that now because like Mr. Reber said with the living room and everything I don't mind that either. The covered front porch is -- you bring everything further out again more, you know what I mean?

Mrs. Diana Daoud asked would a less substantial porch be acceptable, something that doesn't expand as wide, maybe something right over the door?

Mr. David Douglas responded no, it's not the width that's the problem.

Mrs. Diana Daoud stated it's the…

Mr. John Mattis stated the frontage.

Mr. Wai Man Chin stated this is something you might want to talk with your architect or something like that but you know, like Mr. Reber said, with the living room area and this and that and I don't have a problem with that also.

Mr. David Douglas stated what might make sense is for us to hold this open for next month. We'll adjourn it to next month and you could talk further with Mr. Hoch about steps you could take to minimize the variance and maybe eliminate the porch but keep the proposal regarding some of the other aspects, if that's acceptable to you.

Mrs. Diana Daoud responded yes, that's fine. I guess we just have to talk to our architect…

Mr. David Douglas stated you should talk with your architect…

Mrs. Diana Daoud stated what he suggests would be a…

Mr. Wai Man Chin stated and also talk with Mr. Hoch.

Mr. David Douglas stated you should talk to Mr. Hoch about the procedural things and some ideas and then also speak with your architect.

Mrs. Diana Daoud stated okay, great.

Mr. David Douglas asked when would we need revised plans by when?

Mr. Ken Hoch responded to get on the January agenda I would probably need them within two weeks.

Mr. John Mattis stated well you're not going to do the construction until the spring anyway so even if it's February – if you can't come back until February just ask for an adjournment in January and you don't even have to come in.

Mr. David Douglas stated we'll put you on for January but if it turns out – especially if we're talking about two weeks and it's the Holidays so you may not be able to get your architect to do whatever he needs to do now. If that's the case we'll just push it back again…

Mr. Wai Man Chin stated and just talk with Mr. Hoch and say January is a little bit too fast…

Mrs. Diana Daoud continued can we adjourn it to February?

Mr. Wai Man Chin stated adjourn it to February, right, exactly.

Mr. John Mattis asked would you like it adjourned to February?

Mr. David Douglas stated we can do it to February now, it's up to you.

Mr. Raymond Reber stated that would give you more time.

Mr. John Mattis stated yes, then you won't feel pressured to try to...

Mrs. Diana Daoud stated I want you guys to settle these two cases before I come back.

Mr. David Douglas stated I've got bad news for you. They're not…

Mr. John Mattis asked would anyone of you in the audience like to speak to this case? I move that we adjourn case #2016-29 to the February meeting.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated that way it gives you time to talk with Mr. Hoch also. Happy Holidays!

B. **CASE NO. 2016-30** **Maria Angelico** for Area Variances for and rear yard setbacks for an addition on property located at **2 Mountain View Rd., Cortlandt Manor, NY.**

Mr. David Douglas stated I apologize if I mispronounced your name. She, during the break, she requested that this be adjourned to January because – we're going to adjourn it to January.

Inaudible.

Mr. David Douglas asked would you prefer to talk now rather than when she's here to hear what you have to say?

Mr. Wai Man Chin stated you can speak.

Mr. David Douglas stated I feel uncomfortable with this because I told her – she had a childcare issue and I told her that she could leave and I don't think it's fair.

Mr. Wai Man Chin stated it's not fair to him being.

Mr. David Douglas stated he said he'll come back.

Inaudible

Mr. David Douglas stated we'll hear it in January.

Inaudible

Mr. David Douglas stated okay, thank you.

Mr. Wai Man Chin stated I'm going to make a motion on case 2016-30 to adjourn to the January meeting.

Seconded.

Mr. asked does she have to resend the letters?

Mr. David Douglas responded no.

Mr. Wai Man Chin stated no, no, it'll be for the January meeting.

Mr. asked what day is the January meeting?

Mr. Wai Man Chin responded that is January 18th now.

Mr. John Mattis stated no, she requested February, no, no, you're on case 30, 29 was February. January 18th.

Mr. David Douglas stated January 18th.

Mr. asked hoping I'll forget about it.

Mr. David Douglas stated no, she's not hoping you'll forget about it.

Ms. Adrian Hunte stated thank you. Good night.

With all in favor saying "aye."

Mr. David Douglas stated it's adjourned.

C. **CASE NO. 2016-31 Anthony and Terez Mekuto** for an Area Variance for an accessory structure, a wooden shed, in the front yard on property located at **37 Baker St., Cortlandt Manor, NY.**

Mr. David Douglas stated and I apologize to you. You've been sitting patiently for three hours and ten minutes.

Mr. John Mattis stated yours will not take an hour.

Mr. Anthony Mekuto stated I would have either been here or at a C.A.L.L. baseball meeting so this is okay for me. Good evening.

Mr. David Douglas asked why don't you tell us what you want.

Mr. Anthony Mekuto stated Anthony Mekuto 37 Baker Street. My family and I are asking this board if we can have a variance for a small shed that we have on our property. It's an 8' x 10' shed. We have what's considered a flag-shaped property and the location of our house is in the far left corner of that property. The majority of our property is considered our front yard. We have a very long driveway and I basically just have the shed for my snowplow that I use to plow our very long driveway. Before I put the shed in I consulted with the Building Department to make sure that it was small enough where I didn't need a Building Permit per se but I didn't account for the building area perimeter of the area the building area so before I put it in the location I did, I did consult with a lot of my neighbors and no one objected and kind of where it is it's in a similar area of my neighbor's shed so it's like – we have all our sheds kind of like together. It's a family of sheds but…

Mr. Wai Man Chin stated it's an Area Variance, not a Use Variance.

Mr. John Mattis stated it's kind of ironic that you five contiguous neighbors and your front shed would be in any one of their back yards.

Mr. Anthony Mekuto stated right, yes.

Mr. Raymond Reber stated this is my case and the applicant I think has described the situation quite well. As he say, he has a flag lot. For those who aren't sure it means basically he's got a narrow strip that runs between two lots and his lot is in back of another lot so it looks like a flag when you look at the map. The position that he's placing the shed, as my colleague has

indicated, if it was a normal lot, it's in the back corner lot. It's next door to the sheds of his neighbors that are in their back corner of their lot. In that sense, it makes sense. It's a very logical position. His house is way to the back of the lot so theoretically his whole yard is a front yard. If he's going to put it anyplace we have to give a variance. To me, this is a reasonable location. It's 140 feet off the road. It's certainly not going to disturb anybody or bother anybody. It'll blend right in with the neighboring sheds. I think it's a fine location. I think the applicant has a right to have a storage shed as all of the neighbors do so I see no problem with the application.

Ms. Adrian Hunte stated I don't see any undesirable change in the neighborhood or that there will be an adverse affect or impact on the physical or environmental conditions. It is somewhat not visible except that it is in line with the other properties and their sheds so I don't see a problem with this.

Mr. James Seirmarco stated I agree.

Mr. John Mattis stated I agree.

Mr. Wai Man Chin stated no problem.

Mr. David Douglas asked does someone want to make a motion?

Mr. Raymond Reber asked does anyone in the audience want to speak? No, there's no one else to speak, I make a motion on case #2016-31 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. Anthony Mekuto stated thank you very much…

Mr. David Douglas stated wait, it's not – it's a two-step process.

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on case #2016-31 application by Anthony and Terez Mekuto for a variance at 37 Baker Street for a 10' x 8' pre-fab shed to be located in the front yard at a distance of 140 feet from the property line where only a 30 foot normal setback is required for structure, we grant this variance. This is a type II, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated now it's granted.

Mr. Anthony Mekuto stated thank you very much.

Mr. Wai Man Chin stated you're welcome.

Mr. David Douglas stated speak to Mr. Hoch about when he'll get you the paperwork.

Mr. Wai Man Chin stated have a nice Holiday.

Mr. John Klarl stated is that dimensional or physical?

Mr. Anthony Mekuto stated I give you guys a lot of credit. Thank you for all the service you do for our Town. Thank you.

Mr. John Mattis stated thanks.

Mr. David Douglas stated that's the first time we've been thanked in a while.

* * *

ADJOURNMENT

Mr. John Mattis stated I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

* * *

NEXT MEETING DATE:
WEDNESDAY, JAN. 18, 2017