

TOWNSHIP OF CHATHAM
ZONING BOARD OF ADJUSTMENT

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IN THE MATTER OF: :
 : TRANSCRIPT
CASE NO. BOA 15-83-3, NEW: OF
YORK SMSA, LIMITED, : PROCEEDINGS
VERIZON WIRELESS :
BLOCK: 83, LOT: 3 :
----- :

Wednesday, May 19, 2016
Municipal Building
54 Fairmount Avenue
Chatham, New Jersey 07928
Commencing at 8:05 p.m.

BOARD MEMBERS PRESENT:

TONY VIVONA, Chairman
GERGORY BORSINGER
JON WESTON
TINA ROMANO

ALSO PRESENT:

MARGARET SMITH, Secretary
ROBERT A. MICHAELS, Planner
JOHN K. RUSCHKE, P.E.

ALISON GULINO, CCR, RPR
CERTIFIED COURT REPORTER

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A P P E A R A N C E S :

STEPHEN H. SHAW, ESQ.
Counsel for the Board

FERRARO & STAMOS, LLP
22 Paris Avenue, Suite 400
Rockleigh, New Jersey 07647
BY: FRANK FERRARO, ESQ.
Counsel for the Applicant

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1 CHAIRMAN VIVONA: Next is BOA 15-83,
2 Verizon, Pine Street.

3 MR. FERRARO: Good evening, Mr.
4 Chairman, members of the Board. Frank Ferraro,
5 attorney on behalf of the applicant, Verizon
6 Wireless, on this continuation hearing from April
7 13, 2016. At the previous meeting, we concluded our
8 direct case in the matter. At that time, we ran out
9 of time that night for the public to comment so I
10 think that's where we left off.

11 CHAIRMAN VIVONA: Okay.

12 MR. FERRARO: It's my understanding
13 that the Board only has four members so we couldn't
14 take a vote if we wanted to but we do have the
15 requisite quorum to hear the comments from the
16 public tonight.

17 MR. SHAW: I'm sure the absent Board
18 members will listen to the tape so you will have a
19 full Board to make a decision.

20 MR. FERRARO: We will provide a
21 transcript for tonight's meeting if that's helpful.

22 MR. SHAW: Slightly.

23 For the members of the public, there
24 will be no vote tonight. We are just going to do
25 public comment. Whoever wants to make a public

1 comment, stand and say what you have to say. If you
2 have evidence or something you want to mark as an
3 objector exhibit, you can do so.

4 MS. MILAZZO: My name is Cynthia
5 Milazzo. I live on 26 Maple Street with my husband
6 James and two daughters who are 3 and 5 and I have
7 another baby on the way. We moved to Chatham about
8 four years ago.

9 So the tower that is in question, I
10 know a lot of people have been saying -- well, you
11 know, don't care about the cell tower part. It's
12 the facilities that people are upset about. From
13 our house which is less than 200 feet away from the
14 tower in question, you can see pretty much
15 everything that they are proposing from our house,
16 from about 50 percent of our house and from all of
17 our back yard. The new tower went up after we moved
18 in and it reaches above the tree line so the
19 addition of this cell tower extension would take up
20 more height and would be more visible. There's no
21 trees that can block that. You can see it from the
22 nursery and from every room in the house. Along
23 with that, you can see the large facility that would
24 be visible from the house and all the back yard.

25 I could say, you know, with certainty,

1 they brought a lot of experts here. We can't afford
2 to bring our own experts to refute but I can say,
3 with certainty, that tower and that facility is
4 going to decrease the value. I don't think they
5 could refute that. We moved into a residential area
6 and they are proposing a nonresidential building
7 next our house. I don't think that's acceptable.
8 They haven't proven how this will benefit the
9 neighborhood or the aesthetics or good planning,
10 which is, I think, all the things you need to prove
11 in order to get a variance.

12 I do have some pictures to show to
13 you, what it looks like from the house. When they
14 did come out and stake the house, you could see the
15 stakes from the house and they are a foot tall. You
16 can see it from the house so imagine an 8-foot
17 facility going up. It's just not what I bought my
18 house for and it's going to ruin the aesthetics of
19 the neighborhood, my views from all of my back yard.
20 There is not one single place I can go in my back
21 yard and not see that, which is unfortunate and I
22 think you need to take that into consideration.
23 There are plenty of people who walk by it every day
24 and, you know, it being a commercial site and
25 needing maintenance, there's going to be traffic

1 along with that as well.

2 So that's, basically, my case. I can
3 show you the pictures if you would like to see them.

4 MR. SHAW: It's your decision and
5 while we are at it, since you have been testifying,
6 if we could swear you in?

7 C Y N T H I A M I L A Z Z O, 26 Maple Street,
8 Chatham, New Jersey 07928, is sworn.

9 MS. MILAZZO: Here are some pictures;
10 I have some sets. I can speak to them.

11 MR. SHAW: You need to have them shown
12 to Counsel and then you need to identify what the
13 pictures are, if you took them and what they
14 describe and then you can mark them as objector's
15 exhibits and we will pass them around.

16 MS. MILAZZO: Okay. There are four
17 pictures here.

18 MR. FERRARO: I have no objection.

19 (Exhibits O-1 through O-4, photographs,
20 were marked for Identification.)

21 MR. SHAW: Describe what the pictures
22 reflect and what you would like the Board to
23 understand.

24 MS. MILAZZO: So the first, Picture A
25 is a Google satellite shot. You see my house, 26

1 Maple. It's about 200 feet from the tower and you
2 can see the way that my house is angled, it's
3 straight to the tower that we are talking about.
4 That's Picture A.

5 Picture B is a view from the baby's
6 room on the second floor and it's showing the old
7 tower there. Both are at the same height. You
8 notice that most of the trees did block the old
9 tower and the old tower that was there and then the
10 new tower went up. You can see how much higher it
11 goes and you can imagine how much more the call
12 extension would be. Also, from that view, you can
13 see where the facility would go. You can see grass
14 there and you can see the ground. You are going to
15 see an 8-foot or however big the facility is going
16 to be all around it. So that's from one of the
17 bedrooms. The other bedroom in our house, you can
18 see the same. The bathroom from our house, you see
19 the same image as well.

20 Picture C is from the kitchen window.
21 We are a center hall colonial so you will get the
22 same view. You can see the grass below the tower.
23 I circled the stakes. If you came to my house, the
24 stakes were up for a very long time and you could
25 still see it from there. You can see where the

1 facility is going to go. I would be cleaning dishes
2 and bottles and seeing that facility there. Then,
3 this is a view from our back porch, the view from
4 the kitchen. You can see, if you go anywhere in
5 that back yard, you are going to see that view as
6 well. The way our house is situated is kind of on a
7 hill, I would say. So in comparison to the other
8 homes, you get a downward look at it. There's no
9 hiding that and I did take these pictures.

10 Another comment is: I don't think you
11 will have a single Chatham resident here asking for
12 the tower. I don't think you are going to have a
13 single Chatham resident here saying that the lack of
14 cell service is depreciating the value of their
15 home. I don't think you are going to have a Chatham
16 resident saying this is a real issue, that they are
17 thinking about leaving Chatham because of the cell
18 service being inadequate. I think you will find
19 people saying the opposite. If this goes up, it's
20 going to question whether they want to stay there
21 and live there and take the hit on their house. I'm
22 not sure what you are weighing if no one is coming
23 here from the town saying they need these things.

24 So that's all I had to say.

25 CHAIRMAN VIVONA: Okay. Thank you.

1 Who else has a comment from the
2 public?

3 MR. LEE: My name is Preston Lee from
4 6 Sherwood Circle.

5 Why do we have ordinances that
6 restrict activities in residential neighborhoods if
7 somebody can come in and get a variance? What's the
8 purpose of having the ordinance?

9 MR. SHAW: If I could address that for
10 you.

11 MR. LEE: I'm not talking about people
12 doing things on their property. I'm talking about
13 an activity that's prohibited.

14 MR. SHAW: The ability of a town to
15 adopt an ordinance and to regulate zoning is based
16 upon the Municipal Land Use Law. The way the law
17 was set up was, you had to provide an ability for
18 variances to be granted for the municipal ordinance
19 to be upheld and to be valid so any zoning ordinance
20 that's adopted in order to comply with the Municipal
21 Land Use Law, which was drafted to comply with the
22 Constitution, you have to be able to allow variances
23 to be granted from zoning ordinances. It's a state
24 statutory requirement.

25 MR. LEE: Even if it's --

1 MR. SHAW: The Board has to decide
2 whether it should be granted. There's all kinds of
3 cases and things which provide the parameters for
4 the Board's decision-making but the MLUL, which
5 governs the regulation of zoning ordinances,
6 mandates there has to be a procedure for variances
7 to be granted. That's why you have a Board of
8 Adjustment.

9 MR. LEE: Well, I know why it is. I'm
10 curious; why write all the ordinances that restrict
11 things? I'm not talking about these people that
12 want to build something on their property. I can
13 understand that. If the ordinance specifically says
14 "this shouldn't be," something, they shouldn't be.

15 CHAIRMAN VIVONA: This is an
16 application, not a guarantee. This is the process
17 that everybody has to go through so they are asking
18 for a variance.

19 It does not mean they are getting one. They are
20 asking for it and this is a process that everybody
21 has to go through.

22 MR. LEE: I understand all that.

23 CHAIRMAN VIVONA: That's why it's
24 here. That's why there are amendments to the
25 Constitution.

1 You can't have a law be forever. You have to have
2 the ability to make changes throughout time. They
3 are asking for a variance and they have every right
4 to ask.

5 MR. LEE: It's not comparable to the
6 Constitution but okay.

7 (Exhibit O-5, photo board, was marked for
8 Identification.)

9 MISS HERR: So these photos are of the
10 site tower and the house. These are an objector
11 exhibit. They were taken shortly after the last
12 meeting and they were taken in spring. Most of them
13 are in the back yard, side yard, front yard. I'm
14 presenting these because the previous testimony did
15 not do due diligence to the site and the surrounding
16 area.

17 I'll also mention that there are birds
18 in some of these pictures because there are a lot of
19 birds in the area. So if there is a cell tower, it
20 will affect these birds tremendously and during the
21 summer, there are some hawks that come in, although
22 I don't have any pictures but they do come in the
23 area a lot.

24 This is not related to the birds but
25 Lafayette School does walk through Pine Street

1 during field day so if there's a cell tower, it will
2 be giant, standing out. It will be like -- people
3 will not feel as safe and they will think it was,
4 like, weird and disruptive to them when they are
5 walking to field day.

6 I also have two other pictures if I
7 could pass them around.

8 (Exhibits O-6 and O-7, photographs, were
9 marked for Identification.)

10 MR. SHAW: Can you describe for the
11 Board what they depict?

12 MISS HERR: So the pictures, it's
13 mostly of the site and our house and where the tower
14 would be if it is built, like right over here
15 (indicating).

16 This is the camera I used (indicating).

17 CHAIRMAN VIVONA: Do you want to pass
18 your picture board around?

19 MISS HERR: Okay.

20 MS. ROMANO: Were all these photos
21 taken from your property?

22 MISS HERR: Yes. And I will point out
23 that our property is one of the closest properties
24 to the site.

25 CHAIRMAN VIVONA: How long have your

1 parents owned that house?

2 MISS HERR: About a year now, not very
3 long.

4 MS. ROMANO: Do you have a pool in
5 your back yard?

6 MISS HERR: Yes.

7 MS. ROMANO: So you are the closest to
8 the site?

9 MISS HERR: Yeah.

10 CHAIRMAN VIVONA: Okay. Anything else
11 you would like to add?

12 MISS HERR: No. I think that's all.

13 CHAIRMAN VIVONA: Thank you very much.

14 MS. ROMANO: Jessica Romeo, I live on
15 49 Pine Street. I have four children. They are
16 outside every day playing. They ride their bikes up
17 and down that path. My dogs and I play on that
18 path. We walk on that path every day. The boys'
19 and girls' track team run by this building, antenna,
20 whatever. The football marching band goes up and
21 down Pine Street so this would be impacting that
22 group as well. Kids walk up and down the street to
23 get to field day. There's kids up and down the
24 street all day every day getting to and from school.
25 In the summertime, people go the pool through that

1 way. There's a lot of foot traffic of people who
2 pay taxes in this town. I have been here 14 years.
3 I never once had an issue with my Verizon service
4 working. I do not need any enhanced service. This
5 wouldn't benefit me, in my way. I think it would
6 impact my property value and quality of life. I'm
7 hopeful that this won't go through because I don't
8 know see how to benefits anybody from Chatham
9 Township.

10 CHAIRMAN VIVONA: Okay. Thank you.

11 MS. GERDINE: Heather Gerdine, 82
12 Pine.

13 I, as well, I have been in our house
14 for 16 years and the power lines, there's the
15 possible pipeline that is potentially going through
16 there and these cell towers and it's just slowly
17 decreasing my property value over and over again
18 potentially and the site where this building is
19 going to go, as Jessica said, there's so much foot
20 traffic that goes around there. That area is really
21 used by our community, our neighborhood extensively
22 and the rest of the community to get to other parts
23 of the community because, until they put that
24 sidewalk in, there was no other way to get from Pine
25 Street to Main to Colony Pool other than going out

1 onto Lafayette unless you walked through the power
2 lines and the power lines are --

3 I go out there every morning with my
4 dog. There's a bunch of us that just use it a lot
5 and I think that that building would be a huge
6 eyesore. It's not going to be beneficial for our
7 neighborhood and I just don't think it's necessary
8 and it's really decreasing our property value
9 significantly because it's also at the highest point
10 in Chatham so everybody will be able to see this
11 cell tower. It is already.

12 You can see it from everywhere because it's the
13 highest point in Chatham and it's an eyesore.

14 CHAIRMAN VIVONA: Thank you.

15 MS. McCLINTOCK: My name is Jenna
16 McClintock. I live at 36 Pine Street, about five
17 houses away from the power lines and proposed tower.
18 I have been in the township for 18 years, 11 on Lisa
19 Drive and seven on Pine Street and I have the same
20 sentiments that have been shared. I have two
21 children that are 12 and 14; they walk everywhere.
22 They are the age they can go and they are walking
23 through there to get to their friends' on Dale
24 Drive, to their friends' on the other side of Noe,
25 walking to school and to the field to play and there

1 are kids, as we have heard, walking on that street
2 and it's a parade every day after-school, especially
3 in the fall and spring. That's one of the things we
4 love about it. The high school kids are going to
5 Cougar and back and with them there and the building
6 there, workers there with an eyesore there, it's
7 going to decrease property value and quality of life
8 and there's no benefit that any of us can see to the
9 township. I don't know what would cause the
10 township to approve this variance if there doesn't
11 seem to be any proven benefit but a detraction for
12 our kids and community.

13 That's it.

14 CHAIRMAN VIVONA: Thank you.

15 MR. HERR: Robert Herr, 53 Pine
16 Street.

17 So I'll go through a few things
18 tonight. First, I want to address the Board and the
19 application by Verizon as a resident who is most
20 closely situated to the installation of the cell
21 tower and facility. The proposed location is on the
22 existing PSE&G tower, which is roughly 50 feet but
23 the proposal is for 44 feet from our property line.
24 Also, it would include the access road and the
25 building that would be closer to our property

1 because of the way it angles in.

2 At this time, I would like to bring to
3 the attention of the Board and Verizon the
4 applicant's failure to notify us via certified mail
5 as required by the Municipal Land Law of New Jersey
6 40:55D-12 of their application to install this cell
7 tower. We became the taxpaying residents of 53 Pine
8 Street on September 21, 2015. It's been over 150
9 days since the application was completed on November
10 12th. That's enough time to complete this
11 notification. Thus, I would propose to the Board
12 that we are now looking at a potentially unlawful
13 application by the State of New Jersey since they
14 failed to notify us.

15 Moving on with the need for four
16 variances, I would agree with a lot of my neighbors.
17 This is not a place that was meant to have a
18 facility like this. As I followed these proceeding
19 and Verizon's testimony, I would remind the Board
20 they are only presenting the evidence that they feel
21 supports their application and claim this site is
22 unique and must be approved. This does not make it
23 completely factual or true.

24 The following are just some issues and
25 inconsistencies with this application. For example,

1 by his own admission, Mr. Pierson, the RF engineer
2 that we heard extensive testimony from, did state
3 that the proposed site, in many ways, is too high
4 and does present some problems with line of sight.
5 If you refer to the transcript from the February
6 10th meeting, you will see his statement. He also
7 cited his analysis is based upon a propagation model
8 but not actual data from Verizon users in the area.
9 They tested their own data and models but it is
10 independently tested. We have not heard there is
11 any independent test of that data or those models to
12 verify that they are, in fact, true.

13 Moreover, Verizon does not even know
14 the number of customers it has in Chatham Township
15 or the number affected by this gap. If it did, why
16 isn't it presented, those numbers? It seems to me
17 that the Board would consider that a good statistic
18 to have. They have shared population from the 2010
19 census that would be affected by the area but not
20 actual users in Chatham Township, which is this
21 Board's purpose to consider with this application.

22 Furthermore, we have not heard from a
23 single Verizon customer stating that a significant
24 gap in their service exists. Remember that the
25 burden is on Verizon to provide a significant gap

1 that exists from the user's standpoint, not theirs.
2 Even their application omits the word "significant";
3 it only says the word "gap," which says they don't
4 deem it as important enough or relevant enough.

5 Also, Mr. Pierson's testimony states
6 that Verizon's desire is to maintain greater service
7 and provide better coverage. This is improving but
8 not providing service. Let's be clear here.
9 Verizon's service already exists as well as service
10 provided by several other carriers. Under FCC and
11 Homeland Security requirements, the area of the
12 township is covered.

13 Also, just because they have a license
14 to use the higher frequencies that they presented on
15 does not mean that Chatham Township has a
16 requirement to approve them to use them. We also
17 have no substantial evidence as to Verizon's
18 attempts or proposals to collocate on another cell
19 tower or structure already providing cell service in
20 the area. This is another reason they want to
21 approve the entire variance of Ordinance 30-99.9.
22 They want the use variance for Lines A, B, C, but
23 want us to waive Line G, the collocation
24 requirement, so they don't have to bother with
25 looking at a collocation site. What certainly is in

1 the best interest of the citizens in Chatham
2 Township, as Mr. Hyland stated, that they work a
3 little harder to find an amenable solution. There's
4 two current and one upcoming cell towers within 1900
5 feet of this site so why can't they collocate? What
6 other options to collocate are available? Why not
7 Gloria Day Lutheran Church on Shunpike or the
8 property on Cougar Field?

9 Again, I also note that this tower is
10 part of their eventual solution which includes even
11 more towers going up. At the December 10th meeting,
12 they cited unreliable service is the reason for this
13 proposal; yet, I'm a Verizon customer, have constant
14 4G connectivity and live 44 feet from the site. Mr.
15 Pierson said Verizon gets to self-define reliable
16 and unreliable service but the truth is reliable
17 service is constant and does exist. How much time
18 has Verizon technicians and engineers spent in
19 Chatham Township in the affected area? Remember,
20 this clearly constitutes a commercial want, not a
21 need for the community.

22 Verizon is looking for a competitive edge here, not
23 to provide service. Service already exists.

24 Furthermore, in regard to Mr.
25 Pierson's assessment to the possible collocation on

1 the PSE&G tower that AT&T has a license to locate
2 on, I would like to note that, based on his
3 presentation, the Pine Street location is 360 feet
4 above sea level and would have 132-foot-high
5 location for the cell tower for a total 492 feet
6 above sea level. The AT&T Shunpike location being
7 320 feet above sea level with a 132-foot tower would
8 be 452 feet above sea level so it's 40 feet lower
9 but still 92 feet above ground at the Pine Street
10 location. The statement said that the signal has
11 trouble carrying over the hill, just isn't true. A
12 virtual assessment would show that the top of the
13 AT&T tower is clearly visible from Floral and Spring
14 Street and that's a ground level, let alone 92 feet
15 above. Sorry, but the math just doesn't lie nor
16 does actual line of sight.

17 Moreover, he states that the angles at
18 132 feet would provide better penetration through
19 the trees to reach homes and the ground than it
20 would at 92 feet. Based on what? He's a radio
21 frequency engineer. He's not a botanist nor an
22 expert in the growth patterns and leaf density of
23 every genus and species of tree in Chatham Township.
24 Therefore, to make such a statement is superfluous
25 and only a guess and not based in fact, in any way.

1 With regard to the variances, with
2 over 225 feet of property available, why can't they
3 build this structure as far away from homes as
4 possible rather than close to our house as they have
5 proposed. Several statements were made by Mr.
6 Ferraro and Mr. Pierson regarding PSE&G policies for
7 towers but they didn't present any such evidence or
8 policies to back them up. Are either of them
9 employees of PSE&G or contracted to speak on their
10 behalf? Verizon has given them permission to pursue
11 this application on a PSE&G tower but it does not
12 state they can speak on their behalf; therefore, the
13 Board should ignore any statements related to PSE&G
14 policy because they are not represented nor are
15 their policies, in any way. "PSE&G says this or
16 that" does not make it an incontrovertible fact. It
17 is hearsay.

18 The assessment in the application from
19 Russell Acoustics is unbelievably nonspecific and
20 sparse. They claim it will make noise but the
21 assessor did not have all the required elements, no
22 access to a generator or backup batteries or the two
23 air-conditioning units to review an actual working
24 facility. A subsequent assessment from Match is
25 from the Verizon project manager, not a sound and

1 acoustical engineer, hardly an expert.

2 On a personal note, our oldest child,
3 who has a documented hearing disability and hearing
4 loss, will be directly affected from any noise
5 emanating from this facility. We looked for
6 residential quiet neighborhoods so excess ambient
7 noise would not affect his ability to hear when
8 outside. This will have a serious effect on his
9 quality of life.

10 Can Verizon also explain how the
11 alternative structure they proposed at the last
12 meeting would be any better? Seven units under a
13 steel canopy is supposed to be better than one unit
14 in a building? It seems, either way, it's an
15 eyesore and an intrusion into our neighborhood. I
16 would subsequently remind the Board that they
17 represent the taxpaying residents, not the selfish
18 interest of companies who want to use our township
19 as a cell phone tower safe zone. Two current towers
20 within 1900 feet or a third of a mile of this site,
21 another one approved that's even closer, how many
22 towers is our neighborhood expected to endure?
23 There is no evidence that installing a tower in a
24 residential area has ever increased the values of
25 homes or improved the quality of life in a

1 neighborhood. It's true that evidence can be found
2 that it can decrease home values from 2 to 20
3 percent. So why, after all the zoning ordinances,
4 would we want to accommodate that, A, doesn't belong
5 here, will negatively affect the neighborhood, the
6 quality of life of residents, especially a resident
7 immediately next door and is part of an ADA
8 protected class, possibly reduce the home values and
9 taxes in our community and, again, why choose a
10 commercial entity over the citizens of Chatham when
11 your role is to look out for the best interest of
12 your citizens and not a company that pays zero taxes
13 in Chatham Township?

14 Thank you for your time. I appreciate
15 your time.

16 MR. FERRARO: I have a question. Have
17 you or a member of your household been in every
18 meeting so far?

19 MR. HERR: Yes.

20 MR. FERRARO: Is it your understanding
21 that there's air-conditioning units in this
22 application?

23 MR. HERR: Yes.

24 MR. FERRARO: There are none being
25 proposed so there's no air-conditioner condensers on

1 the property, just to clarify for the record. You
2 indicated that the applicant has not testified to
3 the existence of a significant gap in coverage; is
4 that correct?

5 MR. HERR: From the users'
6 perspective, which is the requirement.

7 MR. FERRARO: Just reading from Page
8 22 of the transcript in February 1016, the question
9 posed to Mr. Pierson, "In your opinion, does the
10 first overlay of A-15 depict a significant gap in
11 Verizon's reliable coverage" and the answer was
12 "Yes." Were you here for the meeting in February?

13 MR. HERR: Yes.

14 MR. FERRARO: Are you aware that the
15 Board hired its own independent engineer to review
16 the application?

17 MR. HERR: Dr. Eisenstein.

18 MR. FERRARO: Are you aware that Dr.
19 Eisenstein's testimony on Page 62 of the transcript
20 of that same date indicates that, reading from Line
21 14, "I don't disagree with anything Mr. Pierson has
22 said. He stated the case accurately"?

23 MR. HERR: Yes. If you wouldn't mind,
24 I would like to further read from that, if I could.
25 He goes to the next page with some interesting

1 statements as well.

2 MR. FERRARO: I'm not sure if you were
3 here when the Board's acoustical engineer reviewed
4 the application; were you here for that?

5 MR. HERR: I was not here for that.

6 MR. FERRARO: Do you understand that
7 this was not only reviewed by the applicant's
8 engineer but the Board's engineer and there were no
9 issues from a noise standard perspective?

10 MR. HERR: I'll take your word for it.
11 I haven't seen the transcript from that meeting.
12 It's not available yet.

13 MR. FERRARO: It's available.

14 MS. SMITH: They are not posted online
15 yet but they are available in the office. It was
16 just approved tonight.

17 MR. FERRARO: The applicant has been
18 providing the transcripts from all the meetings.

19 MR. SHAW: The transcript would be in
20 the file if you wanted to come in and review what's
21 in the file. It's in the file.

22 MR. HERR: I'm following up. It
23 wouldn't be available until after this meeting
24 because it was just approved?

25 MR. SHAW: If you had looked in the

1 file, it's available. It was just approved as
2 minutes formally this evening but a copy of the
3 transcript was in the file available for inspection.

4 MR. HERR: Okay.

5 MR. FERRARO: That was it. Thank you.

6 For clarification, the applicant
7 provided notice to everyone on the town list at the
8 beginning.

9 MR. SHAW: If there's been a change on
10 that, the applicant is allowed to rely on whatever
11 it was from the assessor.

12 MR. FERRARO: I believe the first
13 hearing was August of last year. By statute, the
14 applicant has met the statutory burden of providing
15 notice to all property owners within 200 feet.

16 MR. HERR: I have a point of
17 clarification. The law states the failure to notify
18 does not invalidate a hearing or proceeding but it
19 does not negate their failure to comply with the
20 law.

21 MR. FERRARO: It's our position and
22 it's pretty clear that the applicant is able to rely
23 upon the certified list provided by the township.
24 There was a certified list provided to the applicant
25 at the beginning of the hearings from which we had

1 to notify the public. All those names were notified
2 by certified mail as well as newspaper. If there's
3 been changes to the ownership, it's not a statutory
4 obligation on behalf of the applicant to research
5 that and send additional notices. For the record,
6 it was indicated that they have been at every
7 meeting too as well so I don't think there's been
8 any prejudice by the fact that they purchased after
9 the first notice was sent out.

10 CHAIRMAN VIVONA: You have receipts
11 for all the...

12 MR. SHAW: They were all provided back
13 when the application was deemed complete at the
14 first hearing.

15 MR. FERRARO: My understanding is
16 that, they are not saying that a notice wasn't sent
17 to the property; they were just not the property
18 owner at the time the notice went out.

19 MS. HERR: A notice was not sent to
20 the property. It was sent to the previous owners.
21 August is when you got the list of tax. The first
22 meeting was in November so I have a record of that
23 as well so due diligence was not done again.

24 MS. MILAZZO: I received my notice
25 maybe a week or two prior to the November meeting.

1 That's the first one I came to.

2 MR. SHAW: The point is: An applicant
3 is allowed to rely on the list from the assessor for
4 the purpose of perfecting a hearing. That was done.
5 If, during the course of the process, you became
6 aware of the application and were to participate,
7 from the standpoint of a legal notice required for a
8 hearing, the statute, the Municipal Land Use Law is
9 very clear that the applicant is allowed to rely
10 upon the list provided by the township tax assessor.

11 MR. DEVLIN: Colin Devlin, I live at 1
12 Maple Circle. I live down the end of Pine Street
13 down a cul-de-sac. I wouldn't be affected directly
14 from seeing the tower.

15 I'm taken aback by the fact this
16 gentleman seems like he's devoted months and
17 probably taken this as a -- probably cut some of his
18 work out as well as time with his kids and some of
19 these other people in order to stop this from
20 happening and I understand that there are variances
21 that are allowed for a lot of different things for a
22 lot of different reasons but, again, we have Verizon
23 in our house. I never had an issue. I never heard
24 anybody speak about issues. It seems like it's more
25 about profitability and adding potential users or

1 using it as data to get more users for Verizon. It
2 doesn't seem to be anything for a Chatham
3 perspective and, in fact, as a taxpayer here, he
4 seems like he's doing all this research and all this
5 stuff on his time to try to refute something that
6 seems like -- just at the naked eye, does not seem
7 like this should go forward at all. Again, they
8 have -- you know, there's Verizon usage in this town
9 and it doesn't seem like it meets -- it's something
10 that doesn't seem like it is needed.

11 With that sidewalk that connects Noe
12 to Pine Street, it's not only affecting the
13 residents of Pine Street but the residents on the
14 other side of Noe where that sidewalk was built so
15 the kids on that side of the street, which has 100
16 to 150 households, to come across and go down a safe
17 sidewalk to come down Pine to go to Lafayette or the
18 high school and when I lived there when they were
19 redoing the towers, the electrical tower, the amount
20 of heavy machinery that was there and even when
21 those power trucks come through, I mean, these guys
22 are going 50 miles per hour. It happens all the
23 time, my kids are out there. They come barreling
24 through. They have to be somewhere else. They are
25 not cognizant of what they are driving through is a

1 residential neighborhood. They have work to do on
2 that tower or they have something to do and I'm
3 afraid walking my kids around, if they were
4 servicing this new facility, that these large trucks
5 are going to become a safety hazard for a street
6 that was meant for kids to go to school and a
7 sidewalk was set up from Noe to Pine Street in order
8 for more kids to go down that street so the town has
9 decided that that street is beneficial to be a
10 feeding street going into our kids' schools and now,
11 in order to put a tower in there and allow trucks to
12 go in there would seem like it would be
13 counterintuitive to the reason of putting that
14 sidewalk there to begin with. And I see it because
15 I sit and play with my kids in the front yard.
16 There are so many kids that walk up and down that
17 street.

18 And, again, it shouldn't be, just
19 because those power lines are there, it doesn't mean
20 that people should be able to piggyback on it. "The
21 power lines are there so we should be able to do
22 this."

23 Those power lines were put there a long time ago for
24 a direct purpose to provide for a lot of different
25 towns as well as ours. This service is an add-on

1 feature. It's not a necessity. It's just a
2 performance-enhancing service, which, again, I don't
3 know if that's even the fact or not. As somebody
4 that lives on that street and goes up and down that
5 street with my kids, I'm worried about the trucks
6 coming there and the facility in there and allowing
7 this to happen there. What gateway will open up to
8 other people piggybacking on that? People saying
9 "Verizon got the okay. I can get an okay" and
10 there's a potential of other things going in there
11 as well as trying to fight this gas pipeline that,
12 you know, I don't know where we are on that one. So
13 it seems like everyone is trying to use these
14 existing electrical PSE&G power lines to piggyback
15 their projects into there without actually ever
16 showing that it's giving us, as taxpayers and
17 homeowners, any benefits whatsoever.

18 I know that, the people up in the
19 Highlands, they had a big ruckus about the cell
20 towers on the water tower and that did not get
21 approved. I don't know, obviously, everything about
22 that but I'm wondering, in that case, if they showed
23 -- because a guy behind me at work lives there --
24 they showed it would have a negative effect on their
25 property and they ended up getting defeated. So I

1 wonder, in a lot of respects, why did that get
2 defeated so easily and why would this even be, I
3 guess, given a chance to go forward? I understand
4 you have to go through the steps of it but that was
5 just to put antenna on top of a water tower. This
6 is to put a facility and all the stuff.

7 So again, I'm not up to speed with all
8 these things but as a taxpayer and a neighbor to
9 those people, I'm pretty horrified at the work that
10 he's had to do in order to get something that, I
11 think, should have never even been thought of being
12 put there, possibly going there.

13 CHAIRMAN VIVONA: Thank you.

14 MR. SHAW: Just for the record, for
15 the folks out there, the Buxton water tank was
16 denied by the Board. The court in Morristown
17 reversed the Board's decision and granted the
18 approval. The Board has appealed that decision.
19 That appeal is pending.

20 CHAIRMAN VIVONA: Also, it wasn't just
21 the antennas. It was the enclosure as well. Every
22 cell facility has an enclosure for the facility.

23 MR. DEVLIN: I'm not versed on it.

24 MR. FERRARO: If I may, I believe, if
25 the notice in question is for 53 Pine Street, that

1 was mailed out on November 24, 2015. There was a
2 return, signed return receipt from that address
3 signed by Mr. Easton.

4 MR. HERR: I am not Mr. Easton.

5 MR. FERRARO: At the time, that's what
6 the tax record reflected. There could have been a
7 change of ownership but the tax records don't
8 instantaneously get updated.

9 MR. SHAW: That's the name on the list
10 that was provided to you?

11 MR. FERRARO: Officially, it's Mark
12 and Margaret Easton, 53 Pine Street, Block 83, Lot
13 4.01.

14 CHAIRMAN VIVONA: Okay.

15 Any other comments?

16 MS. HERR: I have taken a lot of time
17 from our family and it's consumed our lives because
18 this is what we need to do to protect our kids, our
19 neighbors and the kids that walk through.

20 So to start, I'm Mary Herr, 53 Pine
21 Street and I want to follow up from my husband where
22 it said in the transcript about Dr. Eisenstein but I
23 want to read the rest of the testimony.

24 "I don't disagree with anything Mr.
25 Pierson said. He stated the case accurately. I

1 would like to make a couple of points for the Board
2 and the public. There's a tendency to look at the
3 propagation plots the way we look at other data that
4 they represent an exact representation. That is far
5 from the truth. A wireless system is inherently
6 random. The propagation of the wireless signal can
7 go all over the place in terms of the amount of
8 power and what you get. What these plots are
9 showing is the median of the coverage so, in other
10 words, 50 percent of that time, it will be better
11 and 50 percent of the time, it will be worse. So
12 that fits a design criteria such that if the fading
13 is bad, you will still have enough network that you
14 would be able to use the network. When it's good,
15 it's just a bonus."

16 Good evening. I am Mary Herr,
17 resident of 53 Pine Street. I have my B.S. from
18 Susquehanna University, M.Ed. From Rutgers
19 University and my Ed.S. from the George Washington
20 University which qualifies me to seek knowledge.

21 My husband and I first lived in
22 Chatham in 1996. Soon after, we got married almost
23 21 years ago. We lived in the Hickory Tree
24 Apartments behind ShopRite. We loved Chatham and
25 Chatham was where we wanted to call home. As life

1 does, our journey took us to another state where we
2 were blessed to have three beautiful children. Our
3 hope was that someday we would be able to return to
4 Chatham to raise our family.

5 Four and a half years ago, that
6 opportunity came to return to Chatham, now, with our
7 three school-aged children, and I obtained a job in
8 Chatham doing what I love. We rented a house for
9 what was supposed to be one year until we found our
10 final resting home. As it is difficult to find
11 affordable housing for a family of five, that one
12 year turned into almost four years until my
13 daughter, last May, came home after walking on Pine
14 Street from Cougar Field for field day saying she
15 thinks she found the perfect house for us.

16 There was a "For Sale" sign in front
17 of 53 Pine Street. She researched the house online
18 and said it was perfect. It had a wide, flat
19 driveway that my son wanted to shoot hockey pucks,
20 it had a nice yard for our daughter to take walks
21 with the dog she hopes to have one day, and a tree
22 to climb for our other daughter with a beautiful
23 backyard. They each could have their own bedrooms,
24 none of the children would have to switch schools
25 and it was somewhat close to our price point.

1 Two weeks after we moved in, our
2 neighbor stopped in to tell us Verizon has a cell
3 tower application to build right next to our house
4 and with that, our life in our new home has been an
5 emotional struggle.

6 With the background established, at
7 this point, we politely ask the Board to deny this
8 application as Verizon did not give adequate notice
9 to the public. If you wanted to inform the Chatham
10 residents of important community happening, you
11 would place the information in the Chatham Courier.
12 Verizon published the notice of this cell tower
13 solely in The Daily Record, printed in Freehold, New
14 Jersey on 11/28/ 15, Exhibit D in the file.

15 Exhibits A14, A-15, A-18, A-19 were not in the file
16 for the public to have access to review.

17 According to the governing laws of
18 this Board indicated in A Guide for Public
19 Participation on the Zoning Boards website, The
20 Municipal Land Use Law regulates and recognizes that
21 property owners within 200 feet of a property have a
22 statutory interest in the application owing to its
23 proximity. Residents within 200 feet should be
24 given written notice of the application and hearing
25 process.

1 We have lived at 53 Pine Street for
2 eight months since September 18, 2015 and to this
3 date, we have not been officially notified in
4 writing of a cell tower being built within 44 feet
5 of our property and the compound radius will be
6 within 10 feet of our property as required by the
7 Municipal Land Use Law. The closest resident and
8 taxpayer to this proposed tower has not been
9 notified. The tax resident list was dated 8/3/15.
10 The application was completed on 11/19/ 15. Letters
11 were mailed on 11/24/15, almost two months after we
12 already paid taxes and legally resided at 53 Pine
13 Street. See Exhibit A-C, affidavit of mailing by
14 Attorney Ferraro, and Exhibit A-6 showing our
15 residence is within a 10-foot radius to the
16 compound. Due diligence was not followed on the
17 part of Verizon and the MLUL was not abided by;
18 therefore, the variances for this application should
19 be denied.

20 Why should the Board further consider
21 an application from a company that has proven it
22 cannot follow the law and is now asking us to grant
23 exceptions to four more laws for them? If Verizon
24 says they attempted to follow the law, an attempt to
25 follow the MLUL does not constitute actually

1 adhering to the law.

2 (Exhibit O-8, guide to public
3 participation, was marked for Identification.)

4 MS. HERR: You might need those to
5 refer to later.

6 If we must proceed, the facts
7 presented are relevant to obtain a full and balanced
8 understanding of the issues and the public's needs,
9 which deserve the same airing as Verizon's. To this
10 point, Verizon has presented a narrowly-defined,
11 self-serving case, carefully selecting parts of our
12 code and laws it likes, while ignoring and
13 discounting the parts it dislikes. We need to
14 address the following issues: Inconsistency with
15 the zoning plans, local zoning authority preserved
16 under Section 704, significant gap in service,
17 substantial evidence, alternative sites, aesthetics,
18 right of way, written actions, safety-related and
19 the environment.

20 Township Zoning Plans, Local Zoning
21 Authority Preserved Under Section 704, Variances:

22 Verizon is requesting a variance for
23 cell towers to be in this residential area. As
24 published in their Exhibit C, a variance is required
25 since wireless telecommunication facilities are not

1 a permitted use in the R3 zone. Pine Street, Block
2 83, Lot 3 is in the R3 zone.

3 There are reasons a cell tower
4 variance should be denied in a residential area. At
5 one end of Pine Street, there are two schools, CHS
6 and LAF, and the other end of Pine Street is Cougar
7 Field. This month, over 600 children are going to
8 walk down this street to Cougar Field for Field
9 Days. Dozens of students walk daily on this street
10 to and from sports practices at Cougar Field,
11 soccer, cross country, track, football, lacrosse,
12 etc. From 3:00 to 4:30 every weekday, the street is
13 busy with kids walking. The marching band marches
14 down and back on this street during football games.
15 Kids are walking down this street to attend LAF and
16 CHS. Again, this is a residential area. Kids use
17 this street on the weekend to play at Cougar Field
18 to avoid the busy street of Shunpike. During a
19 month, an average of 800 students, approximately 25
20 students two times a day, walk past this proposed
21 site. Pine Street is a safe residential street
22 within an R3 zone with many school-age children.

23 As you look out to the street and onto
24 the field, you frequently see people walking their
25 dogs, riding their bikes along the road and through

1 the field as a way to get "open space" without busy
2 traffic. Again, this is a residential area, an R3
3 zone.

4 Although the FCC has a gag order which
5 does not allow testimony about emissions with
6 electromagnetic waves to be a justification of
7 denial, there are other health concerns that can be
8 discussed and will be addressed later in this
9 presentation. Please also know, there is research
10 of long-term effects of school-age children and cell
11 towers, as their brains are not fully developed.
12 Please keep in mind, the four closest houses within
13 70 feet to this proposed cell tower have children in
14 preschool, elementary school and middle school. In
15 addition, there are two schools almost one-quarter
16 of a mile away. Again, we purchased our homes to
17 live in a residential area, an R3 zone, not a
18 commercial-zoned area.

19 Building a structure with a road along
20 next to where students/kids frequently walk will
21 bring in larger trucks and vehicles making it a
22 danger for pedestrians, both adults and students.
23 Increasing the traffic is not what you want, again,
24 in a residential area, an R3 zone.

25 Let's talk about the significant gap

1 in service. "Verizon must show a significant gap in
2 service. There is talk of lack of reliability with
3 drive-by data gathering; however, I have been data
4 gathering since September. Here is the actual data
5 from a Verizon customer living right next door to
6 the proposed site and, again, a Verizon customer."
7 I have never lost or dropped a call. I am able to
8 dial 911 and call my family, pull up texts and
9 emails when I am in the concrete basement corner of
10 our home. My needs are met and no significant gap
11 in service.

12 When my daughter, a Verizon customer,
13 texts and calls me to pick her up at LAF at the end
14 of Pine Street, her calls and texts are immediately
15 received and she immediately responds to my calls
16 and texts. Her needs are met and no significant gap
17 in service." When my son, a Verizon customer, calls
18 me daily from CMS as well as sends me a text, he has
19 never lost or dropped a call. His needs are met and
20 no significant gap in service.

21 When I am shopping at ShopRite or
22 picking up my kids at Esternay or Sheppard Kollack
23 Field, I have never lost or dropped a call. I am
24 able to dial 911, call my family or send a text. My
25 needs are met and no significant gap in service.

1 When my son is at confirmation classes
2 on Sunday evenings at Gloria Dei Lutheran Church on
3 Shunpike, he is able to call and text me when to
4 pick him up.

5 "All these areas are within the focal
6 point and beyond of what Verizon says there is a gap
7 in service. That is a 4-mile radius where the
8 necessity of being able to dial 911 and call my
9 family and/or text my family are met. As a Verizon
10 customer, I have always been able to receive ample
11 service in this area to send and receive calls and
12 texts and emails within this area.

13 So that is my unofficial data
14 gathering. Now, let's discuss the ambiguity of
15 Verizon's data and to validate that, Verizon did not
16 prove a significant gap in service as required by
17 the FCC. Again, please keep in mind, the FCC does
18 not require improved service. It is a significant
19 gap in service that Verizon must show and they have
20 not.

21 First, as stated in the Verizon
22 application Page 1, Section 2, "Proposed
23 Installation, VZW currently has gaps in reliable
24 coverage and areas of deficient capacity in and
25 around the Township of Chatham." By their own

1 application, Verizon is not stating they have a
2 significant gap in service. I have a handout for
3 this.

4 (Exhibit O-9, Verizon application, was
5 marked for Identification.)

6 MS. HERR: If coverage doesn't
7 guarantee service, how can service be measured? Not
8 by bars on a handset; those bars measure signal
9 strength. They are a close approximation of whether
10 your phone will work or not but they don't guarantee
11 service. Service could still be a problem. The
12 only way to determine a carrier's service is to try
13 it with one of their handsets, which I have done.
14 Characterization of "adequate service," "reliable
15 service" or "poor service" are meaningless without
16 standards for what constitutes good service and
17 there are none for the industry. There is no
18 standard definition of "unreliable service." Mr.
19 Pierson reinforces this point. Verizon, therefore,
20 can use their self-defined standard to their own
21 benefit or detriment accordingly. Our federal Third
22 District Courts have settled on a term called
23 "significant gap."

24 In 1999, the most important
25 interpretation of Section 704 of the

1 Telecommunications Acts was given by the US Second
2 Circuit Court of Appeals in Sprint Spectrum, L.P. v.
3 Willoth. Sprint Spectrum alleged that the Town of
4 Ontario violated the Telecommunication Act by
5 prohibiting or having the effect of prohibiting the
6 provision of personal wireless services. The
7 three-judge panel held that prohibition, meaning
8 denying an application for a facility that is the
9 least intrusive means for closing a significant gap.
10 This has been repeated in, at least, three other
11 federal Court of Appeals decisions.

12 While dead zones and holes are
13 commonplace, a significant gap is special. A
14 significant gap is that piece of geography where a
15 remote user is denied access to the national
16 telephone network or land-line. These gaps only
17 occur at the edge of built-out networks. Holes in
18 dead zones within build-out networks are
19 insignificant and a denial of attempts to fill
20 insignificant gaps is not a prohibition of service.

21 In Ho-Ho-Kus, the judge ruled that the
22 public interest for siting a wireless facility is
23 not compelling when the area has adequate service.
24 FCC regulations require that a licensed wireless
25 provider need only provide "sound, favorable and

1 substantially above a level of mediocre service" in
2 order to renew its license.

3 Unlike the resolution documentation
4 from Application No: BOA 15-84-3, for the AT&T
5 tower, Page 5, Bruce Eisenstein, P.E., concurred
6 that the gap in coverage was established. He did
7 not indicate that in the Verizon testimony. Dr.
8 Eisenstein's comments were clarified that Verizon
9 propagation plots are the median coverage on page 62
10 of the transcripts.

11 I refer the Board to NJ Law Journal
12 article dated May 24, 2004. AT&T Pittsburgh Ltd.,
13 Partnership v. Penn Township. The Omnipoint II
14 court reiterated the Penn Township test explaining
15 the first prong requires a gap from the user's
16 perspective, rather than a particular provider's
17 perspective. The court declared that the provider
18 must include evidence that the area the new facility
19 will serve is not already served by another
20 provider. A provider's gap in market share should,
21 therefore, not be equated with a gap in effective
22 overall coverage.

23 (Exhibit O-10, Law Journal article, was
24 marked for Identification.)

25 MS. HERR: Verizon did not provide

1 documentation of a gap from a user perspective nor
2 did they provide evidence that this gap would not be
3 closed by another provider.

4 The case New York SMSA v. Township of
5 Mendham confirms that there should only be enough
6 cell sites to adequately provide service to the area
7 in question; not enough to promote competition for
8 customers within the municipality at large. The
9 business judgment of an individual applicant that it
10 would like to expand its presence in an already
11 serviced market should not be sufficient.

12 As soon as one carrier offers a signal
13 that can remotely, with one or two bars of signal
14 strength, be used, the significant gap is closed.
15 It doesn't matter whether you have that carrier's
16 handset or not; service is available. The
17 Telecommunications Act, TCA, doesn't guarantee every
18 carrier the right to close a significant gap, just
19 the first one. T-Mobile and AT&T have already
20 filled this first gap. Currently, the Verizon
21 service at this location is at 4G LTE on a
22 consistent basis at this site. This is tested daily
23 on four devices.

24 The provider's claim that it must be
25 allowed to build any and all towers it deems

1 necessary to compete with other phone companies was
2 rejected by the Court of Appeals in Willoth at 639
3 and the Third Circuit in Penn Township. "Section
4 704 does not trump all other important
5 considerations," Penn Township.

6 The Fourth Circuit in Virginia Beach
7 held that Section 704's requirement that
8 municipalities not prohibit or have the effect of
9 prohibiting conventional cellular PCS service only
10 applies to blanket prohibitions and general bans or
11 policies, not to individual zoning decisions.

12 In Albemarle County, 211 F.3d at 87,
13 and Sprint v. Palos Verdes, "FCC regulations
14 expressly allow gaps or dead spots in cellular
15 coverage. For FCC purposes, cellular service is
16 considered to be provided in all areas, including
17 dead spots."

18 In New Cingular Wireless PCS v.
19 Fairfax County Board of Supervisors, the court said
20 that "A plaintiff's burden to prove a violation of
21 subsection (B)(i)(II) is substantial and is
22 particularly heavy when the plaintiff already
23 provides some level of wireless service to the area.
24 A plaintiff must show a legally cognizable deficit
25 in coverage amounting to an effective absence of

1 coverage."

2 Remember, there are significant gaps
3 in wireless services if a user cannot connect with
4 the national telephone network or cannot maintain a
5 connection supporting reasonably uninterrupted
6 communication. "Verizon has coverage in the area
7 and has not proved an absence in coverage". The gap
8 must not be just in the complaining provider's
9 service. It must be an area unserved by any
10 provider. The provider's showing on this issue will
11 thus have to include evidence that the area the new
12 facility will serve is not already served by another
13 provider," Penn Township, Newtown Township.

14 MR. FERRARO: Can I point something
15 out? That specific decision has been overruled.
16 That's not an accurate statement of the law. I
17 realize that she's reading from cases but that
18 aspect has been ruled on, specifically, by the FCC
19 in a declaratory ruling that you can't deny an
20 application for one carrier just because there's
21 another carrier in the area providing service. The
22 whole purpose of the Telecommunications Act of 1996
23 is to encourage and foster competition between the
24 carriers. So that's been, specifically, overruled
25 on that point.

1 MR. SHAW: There have been some other
2 comments which are not necessarily coincidental with
3 what the case law is but, please, proceed.

4 MS. HERR: I hope I'm keeping you
5 awake. I'm doing my best research.

6 MR. FERRARO: I feel, by no means,
7 that was intentional.

8 MS. HERR: Verizon has eight sites --
9 I have this exhibit; it's Exhibit A-13 -- supplying
10 cellular service to Chatham. They currently have
11 three other applications in process for Chatham:
12 One proposed this evening on Pine Street, one
13 proposed on Southern Boulevard and another one on
14 Main Street. If all are approved, that would be a
15 total of eleven towers servicing Chatham. Perhaps
16 it is the provider's defective system design that is
17 requiring them to propose so many sites, not their
18 proposed gap in service. As Mr. Pierson testified,
19 they are having difficulty with a few of their
20 towers, concurring it is their defective systems
21 that possibly have created their so-called gap.

22 With Verizon already having eight
23 towers, approving any of these towers will give them
24 an unfair advantage over the other cellular
25 companies. T-Mobile testified they have five towers

1 with the one approved recently. Thus, this
2 application should be denied based upon unfair
3 competition/business practices.

4 Since Verizon already has a presence in the Chatham
5 Township cellular market, the courts cannot deem a
6 denial by the Board would be violating the
7 prohibition of siting that solely because of the
8 presence of another carrier. In fact, with so many
9 Verizon towers in Chatham, the Board could actually
10 be violating the Telecommunications Act's
11 pro-competitive purpose.

12 Under both 253(a) and
13 332(c)(7)(B)(i)(II) of the Communications Act, "A
14 plaintiff must establish either an outright
15 prohibition or an effective prohibition on the
16 provision of telecommunications services. A
17 plaintiff's showing that a locality could
18 potentially prohibit the provision of
19 telecommunications services is insufficient." This
20 Zoning Board is doing neither for Verizon. A
21 certain level of discretion is involved in
22 evaluating any application for a zoning permit and
23 that "it is likely that a Zoning Board would
24 exercise its discretion only to balance the
25 competing goals of an ordinance, the provision of

1 wireless services and other valid public goals such
2 as safety and aesthetics."

3 According to the FCC, their
4 determination also serves the Act's goal of
5 preserving the state and local authorities' ability
6 to reasonably regulate the location of facilities in
7 a manner that operates in harmony with federal
8 policies that promote competition among wireless
9 providers. As we indicated, nothing we do here
10 interferes with these authorities' consideration of
11 and action on the issues that traditionally inform
12 local zoning regulations. Again, adding another
13 Verizon tower is not promoting competition; it is
14 monopolizing the competition.

15 We do not see how any carrier could
16 claim that Chatham Township discriminates
17 unreasonably against any provider or has tried to
18 ban the use of wireless facilities. Verizon
19 currently has more towers than T-Mobile and Sprint
20 servicing this area. These other towers have
21 parking lots, steep inclines or busy street buffers.
22 The proposed site on Pine Street, in fact, is only
23 44 feet to a residential property with no busy
24 street or parking lot to buffer, again, next to a
25 property that has not been officially notified

1 according to the Municipal Land Use Law.

2 According to the transcripts from the
3 2/10/16 hearing, on Pages 14 and 15, the goal for
4 this tower is cellular capacity at the 700
5 megahertz. The other gap that was suggested is not
6 truly an established gap. As stated in the
7 transcripts, "There are some concerns with that
8 frequency band at this point, which is partially why
9 we are here tonight, those higher frequency bands,
10 since they do not cover as far."

11 Verizon purchased this higher band and
12 as Mr. Pierson suggested, they are required to do
13 something with these bands. As he testified, they
14 have done something with those bands as they are
15 installed within the other towers. At this point,
16 these higher bands are not an FCC requirement;
17 therefore, no gap can be established and the higher
18 band discussion should be dismissed. They have the
19 license in those bands, but it is still up to the
20 Zoning Board where the cellular companies can build
21 based upon local zoning regulations, Section 332(c)
22 (7) of title "Preservation of Local Zoning
23 Authority," as it addresses the authority of a State
24 or local government to make a decision regarding the
25 placement, construction, and modification of

1 personal wireless service facilities.

2 So with that, here is the census data.

3 So let's discuss and analyze the
4 objective data that Verizon suggests as a capacity
5 issue and a gap in service. P-17, as much as I
6 respect the qualifications of Mr. Pierson, he also
7 is a paid employee of Verizon and as he stated on
8 Page 17, the exhibits were prepared by him solely.
9 There were no checks and balances for the accuracy
10 of his data. Again, the overlays, A-14 through
11 A-19, were not available to view by the public.

12 Keep in mind, the objective, as stated
13 on Page 20, "The objective of this proposed site, is
14 one-half of Shunpike, Watchung to Fairmont, as the
15 hill is difficult to get the signal over." On Page
16 21, Mr. Pierson stated there were 3,472 pops based
17 on the 2010 census. Actually, the Chatham Township
18 Census has 3,915 families in Chatham so I question
19 his data. At the following hearing, Mr. Pierson
20 adjusted the data but still did not supply
21 documentation to the census data or justified
22 documentation to his population data for us to
23 review.

24 (Exhibit O-11, population data, was marked
25 for Identification.)

1 MS. HERR: There was some discussion
2 whether the high school students were included in
3 the calculation but that was, again, not confirmed
4 by Mr. Pierson. Later on in Mr. Pierson's
5 testimony, Page 97 of the transcripts, it was
6 suggested by Mr. Michaels why it was that
7 population. It was because there were other parts
8 of the communities from neighboring towns as well.
9 Mr. Pierson's data is based on that all these
10 residents are Verizon customers which is inaccurate.

11 As you review Dr. Eisenstein's
12 comments on Page 62, these propagation plots are far
13 from the truth. The plots show the median of the
14 coverage is 50 percent above, meaning better
15 coverage, and 50 percent below. Since we are not
16 sure of the accuracy of his population, there is
17 absolutely no way to show a gap in coverage.

18 They are also projecting an increase
19 in population for Chatham Township and that we will
20 reach capacity. According to the 2015 Demographic
21 Studies prepared by Whitehall Associates available
22 on the school district's website, the population in
23 Chatham will decrease. There has been a
24 42.63-percent decrease in birth rate in the Chathams
25 over the past seven years. There will be a 5.44

1 percent decrease in school population in the next
2 five years.

3 (Exhibit O-12, demographic study, was
4 marked for Identification.)

5 CHAIRMAN VIVONA: We are going to take
6 a five-minute recess.

7 (Recess taken)

8 MR. SHAW: We are back on the record.

9 I would like to make an announcement.
10 If anyone was here for Innovative Construction &
11 Design, we are not going to get to that.

12 MS. HERR: Capacity is market-driven,
13 not legally-driven. The wireless carriers are
14 market-driven. Companies who compete are not
15 chasing radio frequency signals but rather, they
16 desperately need new subscribers to their wireless
17 services. This means, in the initial stages of
18 wireless competition, carriers will deploy cell
19 sites in an attempt to achieve coverage, not
20 capacity. There currently is coverage. What
21 Verizon is talking about is increasing capacity,
22 which is not defined legally.

23 Capacity is about being competitive
24 and wanting to be more competitive in the market.
25 The way to achieve coverage is: Get as high an

1 antenna as possible and send the signal as far as
2 possible. The strength of a signal will suggest
3 whether it can be received and responded to but
4 signal strength is not a guarantee of service.
5 Rather than an increase concern in capacity issues,
6 there will be a decrease in capacity issues
7 countering the gap and, therefore, this tower is not
8 needed. The Board should vote "no" to the
9 variances. Since capacity is not a legally-defined
10 term and market-driven, the Board should, again,
11 vote "no" because a significant gap was not
12 established from a customer perspective that would
13 not be covered by other carriers in the area. This
14 Board should vote "no."

15 On Page 43, Mr. Pierson stated there
16 is a time factor and the time factor plays into the
17 capacity. Page 44, "The white areas on this
18 frequency band are going to be unreliable for
19 suburban design." He then references the Homeland
20 Security Act as "it is important to provide seamless
21 services but an area like Chatham is a little more
22 difficult." I, along with the Federal government
23 documents, disagree with Mr. Pierson. I received a
24 letter from Congressman Rodney Frelinghuysen. As he
25 suggested, I went to the FCC website.

1 The letter is dated March 2, 2016.

2 "Dear, Ms. Herr: Thank you for
3 contacting me regarding a recent meeting in the
4 Chatham Township to discuss construction of a
5 Verizon cell tower. I appreciate having the benefit
6 of your views. I have been informed by the FCC that
7 the siting of wireless facilities is generally a
8 local matter subject to the zoning ordinance and
9 statutes. However, the FCC does have rules relating
10 to the location and construction of communication
11 towers, which can be found here at the
12 www.FCCgovernmentgeneraltower. Please know I will
13 continue to monitor this issue with your views in
14 mind and, again, thank you for contacting me."

15 (Exhibit O-13, letter dated 3/2/16, was
16 marked for Identification.)

17 MS. HERR: So I took his advice and I
18 went to the website. On the FCC website, you can
19 obtain the federal government's current 2016
20 research and reporting for anywhere in the US. So
21 we used 53 Pine Street, which is within 10 feet of
22 the compound radius, less than 44 feet from our
23 property, to see what is reported to the federal
24 government.

25 The area mentioned, actually, is in

1 the red zone, which means it has three or more fixed
2 25 MBPS/3 MBPS providers.

3 All the residents in the proposed area
4 have fixed broadband technology at 25 MBPS/3 MBPS.

5 All the residents in this area have
6 appropriate speed for broadband.

7 This area has ample fixed broadband
8 deployment with Verizon having 100 in both areas of
9 up-speed and downloading.

10 According to the federal government,
11 this area of the proposed tower is not a concern to
12 receive seamless cellular or broadband services.
13 Again, Verizon did not establish a gap in coverage;
14 therefore, the Zoning Board should vote "no" to
15 their variances.

16 (Exhibit O-14, FCC broadband deployment,
17 was marked for Identification.)

18 MS. HERR: Anything in white is an
19 area of concern; Chatham is all yellow. The only
20 area of concern that is in white is actually along
21 the Passaic River and along 24 and Loantake Way.
22 This one is the same.

23 Mr. Pierson testified, on Page 89,
24 that, in '93 in Ho-Ho-Kus, and what came out of that
25 is that, "You are not going to cover every

1 cul-de-sac. You need to be somewhat significant
2 from a federal standpoint." As pointed out by the
3 reporting documents from the federal government,
4 this site is not a significant gap. According to
5 publicly-available documents, Chatham Township is
6 fully-covered by several carriers including Verizon,
7 T-Mobile, AT&T. If there were a significant gap,
8 they would have been filled multiple times by other
9 wireless carriers.

10 According to Verizon's very public
11 marketing efforts published in print and television
12 advertisements, they have the best coverage compared
13 to the other wireless carriers; therefore, they do
14 not have a significant gap in service. On Verizon's
15 own website, "Check Your Coverage" indicates that
16 Pine Street and surrounding areas have 4G LTE, 3G,
17 Extended 3G, International 4G and International 3G.

18 (Exhibit O-15, coverage information from
19 Verizon's website, was marked for Identification.)

20 MR. FERRARO: For clarification, are
21 we providing testimony here or public comment
22 because we are getting pretty technical with some of
23 the submissions that are going in as evidence and I
24 suspect that this is not an expert in radio
25 frequency engineering. So I'm not sure if she's

1 testifying to it.

2 No offense.

3 She's not qualified to be testifying
4 to this type of technical data.

5 MR. SHAW: You are indicating that
6 these documents are being marked but you believe it
7 requires someone with an engineering expertise to be
8 able to say what these documents mean rather than a
9 layperson?

10 MR. FERRARO: Absolutely. I mean,
11 what does "MBPS" stand for? I mean, there's no
12 foundation for the evidence that's going in. It's
13 -- with all due respect, it's a net opinion.

14 MS. HERR: "Megabars per second."

15 MR. FERRARO: She doesn't have the
16 requisite background to be providing testimony
17 regarding engineering requirements for an
18 engineering system. I have no problem with her
19 making comments as long as these are -- to me, these
20 are being marked for Identification purposes but
21 can't be qualified or substantiated.

22 MS. HERR: They were public documents
23 from the FCC.

24 MR. SHAW: If there is going to be any
25 -- the documents exist but what Counsel is

1 indicating -- and they have been marked for
2 Identification but I think Counsel is indicating
3 that, absent some professional testimony to indicate
4 what that means, the Board wouldn't be able to
5 understand or weigh what that is.

6 MR. FERRARO: I would hate for the
7 Board to give weight to documents that are not being
8 properly -- the proper foundation for the opinion
9 that is being given to the Board is first
10 established.

11 MS. HERR: If you go to the FCC
12 website, there's a link. It says "Recording From
13 Providers." As a person, as a citizen, as a
14 taxpayer, I can click that link and say anything.
15 You can plug in any address and it will show how
16 much coverage. You can see, anything that is linked
17 on the left of the coverage, how is the coverage for
18 your millibars per second, what's your up-speed. It
19 says 1 percent, less than 1 percent of Morris County
20 is not receiving service. So I don't think it
21 should be an expert. Those are public documents
22 from the federal government provided to anybody that
23 clicks on the link.

24 MR. FERRARO: She's taken those
25 documents and extrapolating an opinion on whether or

1 not there's a need for that particular site.

2 MR. SHAW: I would agree with your
3 opinion as to lack of a foundation being laid for
4 any professional testimony from it.

5 The documents are the documents but
6 for the Board to be able to evaluate it, someone
7 with credentials to address it would need to provide
8 that.

9 MR. FERRARO: That's why the Board
10 hired Dr. Eisenstein, so there would be an
11 independent professional radio frequency engineering
12 review of the submission and the testimony. Like I
13 said, I have no objection to comments being made.

14 CHAIRMAN VIVONA: We are taking it as
15 comments, overkill of comments, but, you know, none
16 of this -- we can't take what your opinions are as
17 fact. We are here to listen to you but we cannot
18 take your opinion as fact. We take your opinion as
19 your opinion.

20 MS. HERR: Okay. I'm presenting
21 information. Thank you.

22 If this is inaccurate, is Verizon
23 committing fraud? So you are looking at what
24 Verizon is putting out to the public right now. If
25 this is inaccurate, is Verizon committing fraud and

1 misleading the public with its coverage?

2 MR. FERRARO: I'll object to this line
3 of comment.

4 MS. HERR: There's a fine print --

5 CHAIRMAN VIVONA: When someone
6 objects, you have to wait so we can figure it out.

7 MR. FERRARO: I object to the
8 inclination that there is some element of fraud in
9 the presentation. All the testimony has been under
10 oath and has been, from what I have seen, confirmed
11 by, not only Dr. Eisenstein, but I have not seen any
12 review letters from the Board's professionals
13 indicating that there's any inaccuracies in the
14 application. So I would like to note my objection
15 to this theory that there may be some fraud to the
16 presentation.

17 CHAIRMAN VIVONA: Duly noted.

18 MS. HERR: If this is inaccurate, is
19 Verizon committing fraud and misleading the public?
20 Yes, there is the fine print on the Verizon website
21 but, as we see it, a picture and television
22 advertisement are worth a thousand words. Again,
23 these variances should be denied based on no
24 established gap in service.

25 The reports on the FCC website

1 indicate this area is not a concern for the federal
2 government and that concurs with what Verizon is
3 putting on its website. This is not an area that
4 has a gap in service so unless someone is reporting
5 inaccurately, why would we need another cell tower
6 in our residential area? Why would we grant a
7 variance for another redundant site that is a
8 detriment to both our community and our zone plan?
9 The Telecommunication preserved the municipalities
10 to deny this variance and this Board should deny.

11 Verizon strictly wants better
12 coverage, which they have the right as a business,
13 but they have not established a need. This
14 community street is not the right location. This is
15 a want, not a need. The Board does not have an
16 obligation to grant variances based on better
17 coverage, only a significant gap in coverage.

18 Let's talk about alternative sites.
19 Verizon must prove that they have properly exhausted
20 all other options for sites. Verizon did not
21 provide a written record demonstrating that it has
22 made a full effort to evaluate all other available
23 alternatives and that the alternatives is not
24 feasible to serve its customers. "For a
25 telecommunications provider to argue that a permit

1 denial is impermissible because there are no
2 alternative sites, it must develop a record
3 demonstrating that it has made a full effort to
4 evaluate the other available alternative and that
5 the alternatives are not feasible to serve its
6 customers." Verizon has not provided a written
7 record of the full effort to evaluate other
8 available alternative sites and that the
9 alternatives are not feasible to serve its
10 customers. A provider must investigate all feasible
11 alternative sites so a similar effect would improve
12 quality of service and dropped calls. This
13 application should be denied based upon all options
14 have not been exhausted or properly considered.

15 Verizon has provided no documentary
16 evidence in its efforts to locate the tower where it
17 would affect fewer residences, only generalities
18 because they have administrative and financial
19 reasons why they feel they are less viable. The
20 Board has not seen an analysis on the tower on Maple
21 or across the street on Shunpike. The Board has
22 seen no documentation from PSE&G as to which towers
23 it has or has not permitted Verizon to explore. Mr.
24 Pierson said he believed the tower off of Shunpike
25 was in Wetlands, however, again, no documentation

1 was supported. How do we determine that the tower
2 on Pine is not located in Wetlands?

3 Mr. Pierson expressed that the
4 approved AT&T tower would not allow collocation
5 based on the number of panels. However, he provided
6 no documentation as to the number of panels.
7 According to the resolution of the AT&T
8 documentation, there is no identification of the
9 number of panels, only that AT&T will install a
10 twelve-telecommunication antenna. Please refer to
11 the AT&T resolution handout that was provided to
12 you. Therefore, this tower is a viable option.

13 Also, there is no requirement by the
14 FCC that they have to allow all the frequencies that
15 Verizon is proposing. Again, the Board is not
16 required to approve optimum service for Verizon,
17 only filling in a significant gap. The AT&T tower
18 meets the minimum allowable setback distance for a
19 cellular tower from a residential district 100 feet
20 required, 0 feet proposed. Kindly, refer to the
21 AT&T resolution handout. The Pine Street proposal
22 does not meet this requirement of Section 30-99.9.b.
23 The AT&T tower has less pedestrian pathways for our
24 residents and children.

25 Mr. Pierson also suggested that Maple

1 was not a viable tower because of the drastic
2 200-foot elevation drop; however, he did not
3 indicate that there is also an elevation incline
4 after that immediate drop.

5 Mr. Pierson also stated in his
6 testimony that he cannot project the
7 telecommunications industry past the next five
8 years. If that is the case, then all the lattice
9 structure towers are also viable options for Verizon
10 since it will be multiple years before they are
11 replaced.

12 Remember that this is a two-pronged
13 approach for Verizon. The water towers on Highland
14 have not been explored. They are on a higher
15 elevation than Pine Street and perhaps one water
16 tower could address the Fairmont Avenue/Shunpike
17 need and the other water tower could address the
18 Southern Boulevard tower, thus eliminating two
19 compounds close to school pedestrian walkways.
20 These water towers are within that one-half-a-mile
21 to mile range that Mr. Pierson suggested they needed
22 for cellular waves. Since it is up higher, it would
23 go above the clutter, he suggested, and also be
24 within close proximately of the high school. Again,
25 another location that has not been fully explored.

1 There is yet another location Verizon
2 has not explored that would benefit from a cell
3 tower and welcomes a cell tower, which we will
4 discuss this later in our public comment period.
5 Circled in red indicates all other viable
6 alternative site options that Verizon did not
7 explore or did not provide written documentation of
8 exploring.

9 (Exhibit O-16, alternative sites, was
10 marked for Identification.)

11 MS. HERR: These variances should also
12 be denied because it is not in the best interest for
13 the Chatham community and Verizon did not prove this
14 was the best site to solve their suggested gap.
15 Keep in mind, the objective of this proposed site is
16 one-half of Shunpike, Watchung to Fairmont. Again,
17 this was a two-prong approach with another proposed
18 site on Shunpike.

19 Mr. Pierson said, on Page 29 of the
20 transcripts, "We have a balancing act because it is
21 relatively high. We just have some challenges
22 trying to get down to the valley." Again, this is
23 not the optimal spot. If this current tower is too
24 high, as stated by Mr. Pierson, they should be
25 forced to share and collocate with the approved AT&T

1 tower on Shunpike that is less than 200 feet away to
2 the current site and lower on the hill.

3 The objective for this site is to
4 cover one-half of Shunpike. So wouldn't it be
5 better if it was on an approved tower that was
6 actually on Shunpike so that they would not have the
7 challenges of a site so high? On Page 34, Mr.
8 Pierson suggested that T-Mobile has a reservation on
9 that tower; however, he is contradicting himself,
10 as, on Page 40, he then states, "T-Mobile had a
11 search area on the AT&T tower. They had a
12 reservation there. That was temporarily taken away
13 and at this point, they are budgeting their money
14 somewhere else for whatever reason." According to
15 his testimony, they have not exhausted the
16 possibility of collocation of the AT&T tower on
17 Shunpike; therefore, these variances and application
18 should be denied.

19 When questioned as to why they can't
20 use any of the other PSE&G towers, they claimed
21 there are Wetlands. Why, then, does T-Mobile have
22 their application in the Borough for one of these
23 towers if none of them can be used? Again, another
24 contradiction with testimony with no documentation.

25 Another contradiction or pondering

1 question I have was, on Page 91, when it is stated
2 that "everybody picks a different pole because you
3 cannot get multiples," then how did T-Mobile get a
4 reservation on the AT&T which they no longer have?
5 Why didn't Verizon try to make a reservation and
6 collocate on that tower if they wanted this area? I
7 also question, why Verizon cannot collocate on the
8 T-Mobile tower to get a signal over the hill?
9 T-Mobile is able to do it so why can't Verizon?
10 Again, these companies are not talking about a gap
11 in service; they all want optimal data coverage.

12 There was a great discussion that the
13 new towers can't support all the panels; however, it
14 is not up to this Board to provide every commercial
15 wish to corporations. This site is not in the best
16 interest for the residents of Chatham Township.

17 As a wise principal once told me,
18 "With every problem, try to bring a solution. We
19 have a viable site that was not explored by Verizon.
20 This is a solution for this Board and we hope that
21 you and Verizon seriously explore it. This location
22 is away from residences. This site will allow the
23 Board control of the explosion of cell applications
24 in this area while benefiting taxpaying Chatham
25 residents and residents of surrounding towns that

1 need and want this tower. We don't want a cell
2 tower near our homes in residential zoned areas.
3 They do not belong here.

4 We teach our children to share. Why
5 do we not hold these cellular companies to the same
6 expectation? Maybe it won't be their optimum choice
7 but, again, that is not what this Zoning Board needs
8 to make a ruling on in this application. Verizon
9 has an AT&T and T-Mobile option. Right now, it is
10 up to them to make it work. They must be forced to
11 collocate the farthest distance from taxpaying
12 residential communities, not a 10-foot radius
13 compound from the nearest resident.

14 Again, Verizon has not proved that
15 they have exhausted all areas as well as collocation
16 options and truly, no other alternative site would
17 solve their speculated coverage problem? Verizon is
18 required to find the least intrusive location based
19 on the values of the community. Putting a
20 commercial cell tower in a residential community
21 where both township and borough children walk to and
22 from school and practices as well as a 10-foot
23 radius and less than 44 feet from a residence is not
24 the right location. You need to vote "no."

25 I would also like to note that, even

1 though someone may be considered an expert on their
2 subject matter, it does not follow that everything
3 they say is true without exception. Experts
4 themselves often disagree, and those whose paycheck
5 comes from the applicant will necessarily be
6 inclined to present only the facts that are
7 specifically requested or that bolsters their case.
8 There are numerous internal inconsistencies with the
9 Verizon testimony and application. Open debate and
10 freedom of information are one of the core
11 principles of our democracy and an open and complete
12 review of this application, transcripts and the law
13 should be researched.

14 Verizon should be denied based on
15 their history that they have not shown good faith to
16 this Chatham community and the residents close to
17 the site. Verizon did not appear at the site visit,
18 although not a requirement. I understand they were
19 not able to see the close proximity to the residents
20 or hear their concerns. Now, five and a half months
21 after the November site visit, Verizon has not been
22 back to remove the marker flags that still remain
23 scattered across the field. Is this an indication
24 of how they would care for the facility if this site
25 were approved? What if the fence gets knocked down

1 by kids or graffiti on the building, beer cans,
2 trash? How quickly will they respond and who will
3 contact them to reconstruct the area? This
4 certainly is a huge issue for this residential
5 community.

6 Wireless deployment is not PSE&G's
7 core business. PSE&G's foremost concern is
8 transmitting electricity and they will not permit
9 any construction, landscaping screen or siting that
10 hinders their primary mission. PSE&G is able to
11 have their cake and eat it too since they receive
12 extra rent once variances are granted but wash their
13 hands of the ensuing eyesore and its maintenance.
14 If there are any issues with the panels, PSE&G
15 restricts when the maintenance can be done,
16 therefore, putting our residents, again, at risk.

17 Verizon has not acted in a timely
18 manner to remove the trash and previous cell
19 equipment from the Sunset site as documented in the
20 T-Mobile hearings. Verizon has set a precedent that
21 they do not care about the image of our community,
22 only for the business and money it makes from the
23 community. Has the Board been prudent with Verizon
24 to require an escrow account or a bond to cover the
25 cost of removal should a negative financial

1 consequence result or if a carrier fails to remove
2 an unused facility or file for bankruptcy? To date,
3 several cellular providers, Pocket, Nextwave,
4 Metricom and several other providers have failed
5 because there are many competing providers and
6 technologies providing telephone service and not all
7 will survive. The question is not whether some
8 companies will fail but which ones and when. To
9 protect municipalities, bonds, security deposits,
10 sufficient funds to remove antennas and towers
11 should be held. If a company files for bankruptcy
12 and a tower, compound or facility falls into
13 disrepair or is unsafe, the municipality cannot
14 require the provider to fix it or have it removed.
15 It should not fall on the taxpayers to monitor the
16 safety and disrepair of these facilities.

17 As Mr. Pierson testified, PSE&G makes
18 it very clear they are not in the wireless service
19 so they will not care about the upkeep of these
20 compounds, only the rental income they receive from
21 Verizon. We have witnessed how rundown these
22 compounds have become from recent testimony and is
23 this deterioration what you want to be a reflection
24 of our Chatham Township community exhibited to
25 taxpaying residents, visitors and children who walk

1 or drive past our neighborhood daily? According to
2 the Chatham Township website, "About Chatham
3 Township: Chatham is a quiet, carefully-developed
4 residential community. Chatham Township is a family
5 community whose residents take pride in their green,
6 forested land at the edge of the Great Swamp."

7 (Exhibit O-17, Chatham Township website
8 article, was marked for Identification.)

9 MS. HERR: Aesthetics: The governing
10 Zoning Board has rules for a reason and, therefore,
11 this application should be denied and the Board
12 should vote "no" on the variance issues. According
13 to the Township Board of Adjustment Guide -- see
14 handout given previously -- all variance relief must
15 satisfy the negative criteria that the character of
16 the neighborhood and township zone plan and
17 ordinances will not be substantially impaired if the
18 variance relief is granted. If this variance is
19 granted, it will negatively impact our neighborhood
20 for decades.

21 Also indicated on the guide is that
22 the practice of the Board is to seek to minimize
23 variance relief wherever possible. I question
24 whether all the variances are indicated in this
25 application. According to Section 30-75.2, zoning

1 requirements, a professional and institutional side
2 yard setback is 50 feet. If a professional building
3 is 50 feet, why would this building that is 44 feet
4 from a property and a radius compound zone of 10
5 feet away from a property not need a side yard
6 variance? This is not a residential compound so a
7 15-foot side yard setback is not the correct
8 requirement.

9 MR. FERRARO: Is it necessary to mark
10 portions of the zoning ordinance?

11 MR. SHAW: I would say not. I would
12 say the zoning ordinance speaks for itself.

13 MS. HERR: Then I just want to share
14 this.

15 CHAIRMAN VIVONA: It's after 10:00.
16 How much longer do you have? After this, there's no
17 more public comments.

18 MS. HERR: I'll try to speed through
19 it then.

20 I ask the Board: Would you allow a
21 residential structure to be built less than 10 feet
22 away from another property? Then why is this
23 compound radius that is only 10 feet away allowed?
24 Why is a professional and institutional side yard
25 distance requirement to be 50 feet, yet this

1 compound is 44 feet away? Verizon should be held to
2 higher standards as they will only be monitoring
3 this property remotely. Verizon has set a precedent
4 as to not maintaining these properties. Again, this
5 is not the right location for the residents in the
6 R3 zoned area. The Board should vote "no."

7 Verizon also needs to show the
8 necessity versus visual impact/aesthetics
9 considerations. The Board has R3 regulations,
10 height regulations, on structures and fences for a
11 reason, the Board should abide by these regulations
12 and vote "no" to Verizon. The height requirement
13 allows 4 feet above the top of the tower; Verizon is
14 6.5 feet above so the applicant exceeds its maximum
15 height allowance by 2.5 feet or 62 percent. If this
16 deviation is minor, many residents would be happy to
17 know that they can adjust their home with variances
18 62 percent higher as long as the applicant feels no
19 one will notice much. In the applicant's opinion,
20 no one will notice. Of course, the applicant
21 doesn't have to look at the facility every day as
22 the residents and visitors to Chatham would. This
23 tower and structure will be seen from many
24 neighboring streets: Pine Street, Robin Hood Lane,
25 Maple Street, Sherwood Circle, Dale Drive, Floral

1 Street, Shunpike Road, Linden Lane, Woodland, etc.
2 These are homes of taxpaying Chatham residents.
3 This cell tower and structure will impede on the
4 aesthetics of this residential area.

5 Section 6409 of the federal statute
6 states changes cannot be made to a facility that are
7 substantial changes of the physical dimension of
8 either a tower or base. Section 6409 requires
9 approval of modifications which do not substantially
10 change the physical dimensions of a tower or base
11 station. Verizon's proposal does significantly
12 negatively impact. Substantiality of the change is
13 determined purely physically by the amount of the
14 change in height, width and depth or by the effects
15 of the change in visibility or impact on the
16 environment. Verizon's proposal does significantly
17 negatively impact. Does the modification have
18 material effects of other kinds such as in color,
19 lighting, reflectance, weight or wind loading? Due
20 to the increased weight, a new antenna array could
21 have increased wind loading problems.

22 The 2001 Collocation Agreement defines
23 "substantial increase" in the size of a tower at
24 Section 4, "The mounting of the proposed antenna
25 would involve excavation outside the current tower

1 site defined as the current boundaries of the leased
2 or owned property surrounding the tower and any
3 access or utility easements currently related to the
4 site." Therefore, this is a substantial increase.
5 This variance should be denied.

6 "Substantially changed" can be deemed
7 in a qualitative sense, blocking sight lines or
8 pedestrian access, even if minor, in a quantitative
9 sense. Having this cell tower viewed by eight
10 streets within the township along with significantly
11 impacting the open space of residents and pedestrian
12 access is a substantial change. Having a fence down
13 a road is a substantial change. Having my 10-year-
14 old daughter view the inside of this equipment
15 compound every day as she looks out her window for
16 the next nine years is a substantial change. Having
17 thousands of residents walk past this site each year
18 is a substantial change in the qualitative and
19 quantitative sense according to Section 6409.

20 I ask the Board, would you want a box
21 of equipment with cable wires to be your daughter's
22 view each day she looks out her bedroom window?
23 Would you want this shelter and fence less than 44
24 feet from your property? Would you want these cell
25 panels to be dangling higher than the PSE&G tower

1 less than 44 feet away from your property? There
2 are no street buffers, parking lot buffers between
3 this residence and the tower as are other towers.
4 The FCC regulations do not, on its face, give a
5 wireless provider a private right of action against
6 a local government. Just because there are PSE&G
7 towers, does not mean we should make this
8 residential area a cell tower corridor. We cannot
9 remove the PSE&G towers, nor do we have to
10 exacerbate them by allowing further development.
11 Two wrongs do not make a right.

12 Would you want your family to have the
13 fear of wondering if someone is around this shed at
14 night? If you hear a car pull up this driveway in
15 the middle of the night, would you want to
16 constantly be on alert to wonder why, knowing
17 nothing good could result from having a car being
18 parked there? Again, this is not a residence that
19 is being built next door. You are impacting the
20 quality of life of a family that did not purchase a
21 home next to a commercial property, rather that
22 purchased their home in a residential-zoned area on
23 a residential-zoned street. Having a project that
24 puts our pedestrian children, neighbors, our family
25 and taxpaying residents in harm's ways for the eight

1 months this project is proposed to take with noise,
2 construction vehicles and inconvenience for
3 something that will negatively impact our home
4 values and quality of life is justifiable for a
5 denial.

6 Aesthetics are discussed at length in
7 Helcher vs. Dearborn County and upheld as a basis
8 for denying approval of a cellular tower. The case
9 is notable for its description of the types of
10 evidence, photo simulations, produce by neighbors
11 and which formed the basis for the County's
12 decisions and the courts sustain it. The Ninth
13 Circuit initially held that, under California law,
14 aesthetics may not be considered for cell towers
15 located in public rights of way -- La Canada
16 Flintridge, supra, and related decision at 250
17 P.U.R. 4th 207 -- but in Sprint PCS Assets v. City
18 of Palos Verdes Estates, it held, to the contrary,
19 that under the California Constitution, a
20 municipality may consider aesthetics in considering
21 whether to approve cellular antennas located in the
22 public rights of way and upheld Palos Verdes' denial
23 of two antennas on that basis.

24 Pine Street is an alternate entrance
25 to the high school. Currently, it makes a favorable

1 impression on those walking, driving or cycling
2 through Rolling Hills neighborhood. Properties are
3 well- maintained and care is taken to keep houses
4 painted, lawns well-manicured and landscaping
5 healthy. This takes time, effort and financial
6 resources which residents gladly spend to maintain
7 the neighborhood as a wonderful place to live.
8 There are also no industrial type facilities. Their
9 nature is contrary to the character of this
10 residential neighborhood.

11 Verizon has shown you pictures in
12 their photo simulation report which, if you haven't
13 noticed, are all more than 250 feet away from
14 properties. I find it interesting that none of the
15 pictures were taken within the 200 feet, which is
16 the required notification zone according to
17 Municipal Land Use Law. Here are our pictures of
18 streets where this cell tower would be viewed. This
19 impact to this neighborhood is substantial and,
20 therefore, the Board should vote "no."

21 (Exhibit O-18, photographs, was marked for
22 Identification.)

23 MR. SHAW: Were they all taken at the
24 same time?

25 MS. HERR: Yes.

1 MR. SHAW: What's the date they were
2 taken?

3 MS. HERR: November 2015.

4 Safety is a concern with this type of
5 facility. Placing a wireless facility easily
6 visible from the air on top and beside an electric
7 tower adjacent to a high-pressure gas pipeline in
8 the middle of a residential neighborhood offers a
9 target to those who would harm our community.
10 Distance from residential property lines for such a
11 facility affords some protection to our citizens.
12 One of the reasons given for PSE&G's aggressive
13 pruning was to eliminate hiding places for those who
14 would do us harm. Is constructing a ground compound
15 not giving those same people a place to hide? In
16 this young neighborhood, children enjoy the free
17 time spent in their yards and woods. Will Verizon
18 be putting money in escrow to pay for extra police
19 patrols to check on whether anyone is hiding behind
20 these compounds a stone's throw from our children?
21 These safety hazards, these towers and compounds, as
22 to the neighborhood, have not been addressed. Right
23 now, if someone is walking through the power lines,
24 residents or law enforcement can clearly see them
25 and react accordingly. With Verizon's proposed

1 compounds, this will not be the case; in fact, you
2 are inviting complication and putting the community
3 at risk.

4 Other safety risks include antennae
5 collapse. Failure to meet setback fall zone
6 requirements that a tower should be, at least, as
7 far from other property lines as its height, allowed
8 as a basis for zoning denial in Albemarle County.

9 Falling ice from tower: Pedestrians
10 walk by this tower daily and regularly in all
11 seasons to get exercise. Falling ice from the cell
12 tower is a concern. This tower is 44 feet from our
13 residence and ice falling on property from the
14 winter winds is a justified safety concern for our
15 family. Falling ice from towers is a concern as
16 stated in Des Moines -- 465 F.3d at 823 -- ban in
17 Section 704 on local regulation based on
18 environmental effects, only applies to radio
19 frequency emissions, such that District of
20 Columbia's concerns about falling ice and resulting
21 safety risk was outside the ban. American Towers v.
22 Williams.

23 Some cellular services cause
24 interference with hearing aids and some studies show
25 interference with pacemakers. Neither of these

1 safety concerns have been addressed by Verizon. The
2 committee report accompanying Section 704 expressly
3 states that safety may be considered as a means to
4 deny.

5 On October 4, 2007, the FCC, in
6 continuing response to Hurricane Katrina, adopted an
7 order requiring backup power, batteries or
8 generators, at most cell tower locations nationwide.
9 On December 2008, the order was rejected because the
10 FCC failed to get public comment before adopting the
11 order and didn't show that the information required
12 from wireless companies would actually be useful.
13 Municipalities may still see activity to use
14 generators and battery backup systems at cell tower
15 sites on private and public property, including
16 those in the rights of way. Backup power systems
17 typically involve gas-, diesel- or propane-powered
18 generators with accompanying fuel tanks or batteries
19 with lots of sulfuric acid. Cell companies may
20 still seek lease amendments to allow them to install
21 backup power systems. Cell companies may claim that
22 lease provisions effectively preventing backup power
23 systems violate Section 253 of the Federal
24 Communications Act. Municipalities can have
25 legitimate concerns if they have good reason for not

1 wanting such systems installed on particular
2 properties, yet the lease does not clearly preclude
3 them. As Mr. Shaw said in the transcripts, once a
4 tower is approved, it is very difficult to regulate
5 what additional equipment will be placed in the
6 compounds.

7 The Great Swamp is less than one mile
8 from the proposed cell tower. This is federally
9 protected land. There is great concern of the
10 impact of migratory birds and cell towers. The
11 Federal Preserved Guideline to preserve our natural
12 habitats and protect our birds should be followed.
13 Lia McLaughlin, the deputy refuge manager of the
14 Great Swamp National Wildlife Refuge, supplied us
15 with the 2013 US Fish and Wildlife Service
16 Guidelines for Communication Tower Design. This is
17 her handout and these are the guidelines that are
18 supposed to be followed.

19 (Exhibit O-19, 2013 US Fish and Wildlife
20 Service Guidelines for Communication Tower Design,
21 was marked for Identification.)

22 MS. HERR: Since we are within a mile
23 of federal preserved Wetlands and a wildlife habitat
24 at Southern Boulevard School, I ask, has Verizon
25 provided the topography of the surrounding habitats

1 regarding hills, mountain, mountain passes, ridge
2 lines, rivers, lakes and other Wetlands and other
3 habitats used by raptors, birds of conservation
4 concern and state and federally listed species and
5 other birds of concern? Have they identified any
6 active or inactive raptor nests?

7 A note: The USFWS personnel should be
8 notified of the final location and specification of
9 the proposed tower and which measures recommended in
10 these guidelines were implemented. If any of these
11 recommended measures cannot be implemented, an
12 explanation why they were not feasible needs to be
13 given to the USFWS. Again, it is cited that towers
14 should not be near Wetlands. Many environmental
15 laws require studies or analysis of any Federal
16 action potentially affecting the environment or
17 prohibit actions affecting certain categories of
18 items such as endangered species, bald eagles and
19 migratory birds.

20 There has been a striking lack of
21 compliance by cellular companies with these
22 environmental laws. Is Verizon in compliance with
23 all the environmental laws? Has Verizon prepared an
24 environmental impact statement for federal actions
25 potentially affecting the environment which is

1 required by the National Environmental Policy Act of
2 1969 since we are within one mile of a federally
3 protected land?

4 The FCC's Wireless Facilities Siting
5 Issues web page provides some links and information
6 on NEPA compliance such as: Endangered Species Act,
7 Migratory Bird Treaty Act, Bald Eagle Protection
8 Act, and Golden Eagle Protection Act. Towers or
9 other structures that may affect birds, their
10 flyways and the like, there are well-documented
11 instances of major bird kills from encounters with
12 towers at night and in unusual weather conditions.
13 Such a kill could have a major impact on an
14 endangered or similar specie. Many federal
15 programs, including major grants to municipalities,
16 require review under the Endangered Species Act. In
17 implementing NEPA in the 1970's, the FCC expressly
18 recognized the potential environmental impact of
19 towers on bird kills, visual/scenic landscape
20 blight, construction-related concerns.

21 In the spring of 2001, the Friends of
22 the Earth and Forest Conservation Council filed
23 petitions at the FCC in many pending cell tower
24 cases to require the FCC to prepare an environmental
25 impact statement and comply with NEPA and other

1 environment laws. Municipalities can and should
2 require a cellular provider, especially one
3 proposing a tower for a sensitive area, to
4 demonstrate compliance with the preceding laws or
5 seek court redress for noncompliance.

6 Southern Boulevard School has a
7 wildlife habitat within closer distance to the
8 proposed site and there is Wetlands speculated on
9 the other side of Shunpike; therefore, this area is
10 sandwiched between two Wetlands so I ask the Board
11 to have Verizon contact the Army Corp of Engineer
12 and the DEP to determine if this area is also a
13 Wetland under Section 404.

14 I also refer to the article written on
15 December 21, 2005 from the Newjerseyhills.com
16 entitled "Lowly Turtle Puts Big Crimp in Park
17 Plans." In a long-awaited decision released Monday,
18 December 12th, the Department of Environmental
19 Protection classified a portion of the site as
20 exceptional Wetlands for their habitat value. The
21 biologist said he believes the preservation of areas
22 like Woodland Park is important because they serve
23 as travelways for wildlife between larger Wetlands
24 resources, such as the Passaic River floodplain and
25 the Great Swamp National Wildlife Refuge. Rothauser

1 said "The future of the state's wildlife habitat
2 hinges on such connecting points, greenways as well
3 as flyways." Since this is a fly zone between two
4 Wetlands and with the concerns the USFWS sets forth
5 for migratory birds, there is an environmental
6 impact when you have multiple cell towers. Verizon
7 must collocate in order to preserve our migratory
8 birds and protect these fly zones; therefore, this
9 Board should vote "no" to this application. This is
10 the article that I referenced.

11 (Exhibit O-20, USWWS article, was marked
12 for Identification.)

13 MS. HERR: Impact of commercial
14 operation on residential neighborhoods: Maintaining
15 the residential character of a neighborhood is an
16 appropriate consideration and municipalities may
17 deny zoning approval based on the impact of a
18 commercial operation on a residential neighborhood,
19 Kay vs. City of Rancho Palos Verdes.

20 Inconsistency with zoning plans: Our
21 hope is that the Zoning Plan of Chatham Township is
22 not to have commercial operations in residential
23 neighborhoods, nor is it to create a cell tower
24 corridor through Rolling Hills. Denial was upheld
25 where the proposed tower was inconsistent with the

1 county's comprehensive plan or zoning ordinance, New
2 Cingular Wireless PCS vs. Fairfax County Board of
3 Supervisors.

4 The Board should take the suggested
5 FCC guideline, Section 253, for policy of prudent
6 avoidance maximizing the distance from homes,
7 schools as well as follow their own zoning guidance
8 for height requirements for tower, fences, along
9 with no cell towers in an R3 zone. There are 2
10 schools at one end of the street, a school sports
11 field at the other end of the street and houses less
12 than 44 feet from the proposed structure, 10 feet in
13 radius from the compound as indicated by A-6.

14 Kids, especially adolescents, are
15 curious and sometimes this curiosity leads to
16 questionable decisions. Having a road leading to an
17 unsupervised structure in the middle of a field that
18 dozens of students pass daily to and from practices
19 and school can lead to curiosity to explore during
20 the week and on weekends, during the day and perhaps
21 during the evenings. Again, students are curious
22 and this curiosity can lead to questionable
23 decision-making and actions.

24 Recently, a case came before this
25 Board with request for a walking path connecting

1 Linden Lane and homes on Pine Street and then
2 exiting out to Pine Street. One of the issues that
3 was raised was the potential drinking of students as
4 it is a heavily traveled street with adolescents.
5 The Board voted "no" to this pathway. The Board
6 should also vote "no" to this application as
7 according to prudent avoidance, this is a heavily-
8 traveled street by teenagers and a road leading up
9 to an unsupervised structure is not in the best
10 interest of our community. If the proposal is to
11 put security cameras that would infringe on our
12 privacy acts.

13 This current application proposes the
14 most intrusive attempt yet to disregard Chatham
15 Township's laws protecting residential property. It
16 strikes at the character of our township. As
17 indicated on the township website, "Chatham Township
18 is a quiet, carefully-developed residential
19 community in north-central New Jersey.

20 William M. Cox's book on NJ Zoning and
21 Land Use Administration, (2005), notes that "Because
22 there is a strong legislative policy favoring land
23 use planning by ordinance rather than by variance,
24 the grant of a use variance will always be the
25 exception rather than the rule. Greater deference

1 is ordinarily given by courts to the denial of a
2 variance rather than to a grant." After
3 considerable criticism of the judicial tendency in
4 the 1990s to expand the concept of inherently
5 beneficial to such commercial uses as
6 telecommunications towers, the Supreme Court
7 responded by making clear that communications towers
8 are not to be considered inherently beneficial. The
9 site suitability is to be viewed, not only from the
10 applicant's perspective but from the municipal
11 perspective as well.

12 Real estate: Courts have ruled that
13 some sites are impossible to screen or buffer and
14 that, in some cases, testimony of the applicant's
15 real estate expert that there would be no decrease
16 in property values as a result of the tower lacked
17 credibility. That was the case at the last hearing.
18 One member asked: What is the implication from a
19 real estate perspective from these towers? The
20 testimony was not from a hired appraiser so,
21 therefore, it should not be valid. Verizon has not
22 hired an appraiser to comment on the obvious decline
23 in residential property values when adding an
24 industrial-looking compound right next to someone's
25 yard, again, less than 44 feet away. The town of

1 Ho-Ho-Kus relied on the testimony of a tax assessor
2 who found that properties around the installation
3 they denied would lose approximately \$660,000 in
4 value. Their Board also considered testimony of the
5 company's real estate appraisers but rejected it
6 because their studies were in communities that were
7 substantially different from Ho-Ho-Kus.

8 Has our Board heard Verizon bring
9 testimony addressing this key issue, the loss in
10 property value? Would the Board members like
11 someone to grant exceptions to the law we live by
12 that takes \$50,000 to \$75,000 in equity out of their
13 investments? That is what a grant of this variance
14 does to residential properties in view of the
15 proposed facility.

16 The following data is only looking at
17 the 15 properties within 200 feet as listed in
18 Exhibit A. This data is obtained through the County
19 of Morris, New Jersey Tax Board:

20 "The Total land value of all 15
21 properties is \$8,258,700.00. This assessment is
22 based on fair market value as determined by Chatham
23 Township appraisals. This assessment of property
24 already includes the negative effect of the power
25 lines. The total taxes paid from these 15

1 properties to Chatham Township is \$245,045.75.

2 MR. FERRARO: I'm going to object to
3 this comment. She's testifying as to impacts on
4 real estate but she's not a licensed real estate
5 appraiser. We are making an assumption.

6 MR. SHAW: She cannot make any
7 professional opinion as to what real estate value is
8 because she's not an expert in the area.

9 MR. FERRARO: I guess, I'm asking,
10 this exercise, we are going to go through what she
11 believes what the impact would be?

12 MS. HERR: I guess I can restate that.
13 I'll just share, of the 15 residents, this is the
14 value that we pay in taxes and the taxes paid by
15 these 15 people and it shows how much PSE&G pays on
16 taxes so, basically, it's documented that we pay
17 \$245,045.75 in taxes; PSE&G pays \$1,608.34 to taxes.
18 So if people propose and appeal their taxes, there
19 would be a tax loss for this community.

20 Is that okay?

21 CHAIRMAN VIVONA: It's your opinion
22 there would be a tax loss, not a fact.

23 MR. SHAW: What is that document?

24 MS. HERR: This is when you go on the
25 court's record. This is the properties that were

1 sent to, the 15 properties.

2 MR. SHAW: That is a sheet that was
3 taken from the county website on property values
4 which is available?

5 MS. HERR: Yes. You can access it
6 through the tax record of Morris County.

7 (Exhibit O-21, tax information from the
8 Morris County website, was marked for
9 Identification.)

10 MS. HERR: Since there are numerous
11 cell tower applications, I tried to attend as many
12 of these public hearings to gain more knowledge of
13 an unfamiliar industry. Through these meetings, I
14 developed a greater respect for each Board member
15 and appreciate all the time, knowledge and
16 thoughtfulness towards following the rules and
17 hearing the voices of the taxpaying residents of
18 Chatham.

19 After attending the Zoning Board
20 meeting on March 9, 2016, I left in tears and had
21 yet another sleepless night because of Verizon's
22 application. I told my husband what I had heard and
23 then waited for the transcripts to be posted to
24 verify that I was accurate in what was said. Out of
25 respect for the Board members, I will not read their

1 names.

2 Page 49 of the transcript reads:

3 "Well, no. Let's pursue that for a
4 second. Your tower, the proposed tower, is near
5 Colony Pool. There is an opportunity to collocate
6 three poles near the road closer to Shunpike.

7 "That's Pine Street?

8 "Pine Street, yeah. I believe there's
9 a large area that's declared as Wetlands that we
10 weren't allowed to pick up these towers.

11 "Well, no. Someone else is picking
12 one on those towers so I don't know why you couldn't
13 pick it if they could. So I guess the question is
14 -- well, if someone else, do you know where they are
15 going on that specific tower? Are they going on the
16 top or the middle?

17 "They are going on the top.

18 "They are going on the top and you
19 guys can build a pole extender to go above them.

20 "No. They go where they are. They
21 would stay in the middle and the other guys are
22 proposed to go on the top.

23 "No. I mean these guys can go above
24 them. The other people are supposed to be on the
25 top.

1 "I'm sorry. Then you could be, yes,
2 exactly. But regardless, I believe what you are
3 talking about is the tower off of Shunpike and it's
4 really not too far off. It's somewhere --

5 "Nope, not that one. There's one on
6 Pine Street.

7 "Pine Street?

8 "Which is right there, right there,
9 and now go towards your tower off of Pine Street
10 probably halfway up about there.

11 "Yes.

12 "So no honesty, in all honesty, that
13 could be a potential candidate in future rings to
14 jump on that one but not for now."

15 So after hearing that dialogue at the
16 meeting and then rereading it as part of the public
17 record in the transcripts, please validate to me and
18 all the other residents of this street, neighborhood
19 and taxpaying residents of Chatham that there was
20 not and is not a predetermined decision on this Pine
21 Street site before we heard the remaining Verizon
22 witnesses and hearing the voices of the public. How
23 can we regain trust that this process is unbiased
24 based upon hearing that testimony from the Board? I
25 do not mean to be disrespectful, in any way. Just

1 because there is already a PSE&G tower, a negative,
2 does not mean that we can just put another negative
3 there. The public cares, we care, the neighborhood
4 cares. This is a residential zone, R3. Show us
5 that this Board cares and it does not have any
6 pre-unbiased opinions. Vote "no" to Verizon's
7 application and variances. This Board voted "no" to
8 a cell tower application in another Chatham Township
9 residential neighborhood. The Board should vote
10 "no" for our neighborhood as well. It is
11 inconsistent with zoning plans, current township
12 ordinances and local zoning authority preserved
13 under Section 704.

14 According to Chatham Township's Codes,
15 these are our laws and they are written for a
16 reason:

17 "Cellular towers may be permitted upon
18 authorization of the approving authority in
19 accordance with the following standards and site
20 plan reviews."

21 "No tower shall be located closer than
22 100 feet from any residential district, no closer
23 than 80 feet from any other district and shall
24 comply with all other setback requirements of the
25 zone in which the tower is located." Verizon wants

1 to put this tower smack dab in the middle of an R3
2 zone.

3 "Transmissions from such towers shall
4 not cause interference with any electronic reception
5 or transmission from neighboring properties." Where
6 have the tests been done on hearing aids and
7 pacemakers?

8 "No cellular tower shall be permitted
9 unless the applicant can establish the
10 unavailability of collocation for transmission and
11 reception of radio waves on an existing cellular
12 tower." Our own engineer said they can do this. It
13 is just not ideal for them. Verizon still would be
14 able to provide a substantial amount of service if
15 it collocated.

16 "Appropriate screening and buffering
17 shall be required as part of site plan approval so
18 as to reduce the visual impact of the tower and
19 auxiliary structure." What Verizon proposes is the
20 extreme polar opposite, building a road, fencing
21 with no buffering screening, makes this more of a
22 spectacle in this walking residential neighborhood.

23 The bottom line is: Verizon's
24 proposal deviates substantially from the conditions
25 for use within the residential zone in Chatham

1 Township. If all variances are granted, the code is
2 not serving its intended purpose to reasonably
3 regulate wireless facilities in the township and to
4 protect the township from the visual or other
5 adverse impacts of these facilities.

6 We do not feel Verizon has satisfied
7 the criteria necessary for the Board to grant the
8 variances requested and respectfully ask the Board
9 to deny the applicant's request in the interest of
10 Chatham Township and its citizens. The decision the
11 Board makes tonight will drastically affect our
12 township for decades to come. Again, a thoughtful
13 review of all the FCC laws, case laws, transcripts
14 and evidence needs to be reviewed.

15 The Board should not feel they have no
16 control over the placement of these cell towers and
17 are fearful to deny. Just because a cellular
18 company has been approved by the FCC and they say
19 you have to let them build the tower right here is
20 simply not true. Under the Commerce Clause of the
21 Constitution, the federalism protection of the 10th
22 Amendment, all powers not given Congress are
23 reserved to the states and people. Recent US
24 Supreme Court cases have interpreted the 10th
25 Amendment and the Commerce Clause in favor of

1 states, municipalities and our dual system of
2 governance so as to strike down federal statutes
3 which improperly intrude on states and local rights
4 and authority, Gregory vs. Ashcroft, New York vs.
5 United States, Printz vs. US.

6 The federal government may not compel
7 the states to enact or administer a federal
8 regulatory program due to the blurring of lines of
9 the political accountability that result in the
10 federalism context and the proper spheres of local
11 and Federal authority. The courts resist attempts
12 by the Federal government to usurp the general
13 police powers traditionally reserved to the states
14 and recognize zoning as a matter of particularly
15 local concern into which the Federal government is
16 generally restricted from intruding.

17 The FCC 09-99 states, the Statutes
18 Section 33(c)(7) of the Act is entitled
19 "Preservation of Local Zoning Authority" and it
20 addresses "the authority of a state or local
21 government over decision regarding the placement,
22 construction and modification of personal wireless
23 service facilities." Further in the document, Page
24 9, "Our actions herein will not preempt state or
25 local governments from reviewing applications for

1 personal wireless service facilities placement,
2 construction or modifications. State and local
3 governments will continue to decide the outcome of
4 personal wireless service facility siting
5 applications pursuant to the authority Congress
6 reserved to them in Section 332 (c) (7) (A). Under
7 Section 332 (c) (7) (B) (iii), they may deny such
8 applications if the denial is supported by
9 substantial evidence contained in a written record."

10 The Fourth Circuit's principal concern
11 was that giving each carrier an individualized right
12 under Section 332 (c) (7) (B) (i) (II) to contest an
13 adverse zoning decision as an unlawful prohibition
14 of its service would effectively nullify local
15 authority by mandating approval of all or nearly all
16 applications. Our interpretation of the statute
17 does not mandate such approval and, therefore, does
18 not strip state and local authorities of the Section
19 332 (c) (7) zoning rights. Rather, we construe the
20 statute on the basis of the presence of another
21 carrier in the jurisdiction. State and local
22 authority to base zoning regulation on other grounds
23 is left intact by this ruling. This Board is not
24 banning other cellular companies nor is it
25 eliminating Verizon's presence in the Chatham

1 cellular market. This Board should deny this
2 variance on the facts.

3 Congress reserved to state and local
4 governments to ensure that personal wireless service
5 facility siting occurs in a manner consistent with
6 each community's values. Is a commercial compound
7 in the middle of a residential neighborhood, which
8 puts children in harm's way and decreases the
9 property value of the taxpaying residents of Chatham
10 Township, consistent with the community's values?
11 We hope the Board does not believe this to be true.

12 In accordance with federal precedent
13 concerning judicial review of state agency decisions
14 and Section 704, zoning matters, is whether
15 substantial evidence in the written record supports
16 the authority's determination. AT&T Wireless PCS,
17 Inc. vs. Winston-Salem Zoning Board of Adjustment,
18 the court cannot review such a decision de novo and
19 is not free to substitute its judgment for the
20 municipal authority's judgment -- Omnipoint
21 Communications vs. Easttown Township, 248 F.3d 101,
22 106, 3d Cir. 2001, Easttown Township -- rather, a
23 court must uphold the municipal authority's decision
24 if there is substantial evidence to support it in
25 the record as a whole, even if the court would have

1 made a different decision.

2 The standard US Supreme Court
3 definition of "substantial evidence" applies "less
4 than a preponderance of the evidence but more than a
5 mere scintilla." "Substantial evidence" also means
6 "such relevant evidence as a reasonable mind might
7 accept as adequate to support such a conclusion."
8 Virginia Beach, Universal Camera vs. NLRB, 340 US
9 474, 488. This case is notable because it held that
10 substantial evidence under Section 704 should be
11 interpreted as what would be considered important by
12 a reasonable legislative body, not as to what would
13 be important to a bureaucrat. The US Constitution,
14 Article IV, Section 4, guarantee of republican form
15 of government, a court, constitutionally, cannot
16 impose what is essentially an administrative
17 standard of review on a state's legislative
18 decisions. Accordingly, the Fourth Circuit held
19 that it is proper and expected that the views of
20 constituents should be considered by municipalities
21 as particularly compelling forms of evidence in
22 zoning and other legislative matters. Constituents'
23 views, if widely shared, will often trump those of
24 bureaucrats or experts in the minds of reasonable
25 legislators, Virginia Beach, 155 F. 3d at 430. I

1 hope I have given you both substantial evidence,
2 relative evidence and a constituent's compelling
3 form of evidence to deny Verizon's application.

4 Finally, our son was diagnosed with
5 asymmetric sensorineural hearing loss, partial
6 hearing loss in his right ear, when he was 4 years
7 old. He is eligible for a hearing aid and will need
8 one at some point. He constantly struggles with
9 external noise. That is one reason we chose to
10 purchase our home after waiting almost four years on
11 a quiet street in a residential area. Any noise
12 that this structure gives off will not allow him to
13 hear when he is playing outside in our own backyard.
14 The noise will dramatically affect our family's
15 quality of life. According to the letter addressed
16 to the Board from Russell Acoustics dated January
17 11, 2016, it was noted that there certainly will be
18 noise produced from this building but the company
19 cannot assess what impact that will have on
20 neighboring properties. It is further noted in the
21 letter from Russell Acoustics that Verizon is aware
22 that sound is an issue. The letter also indicates
23 that the 7-foot-high wooden fence is not a sound
24 barrier and the installation of sound absorption
25 barrier panels are not barriers to sound

1 transmissions. Absorption is the prevention of
2 reflection, not the restriction of sound
3 transmission through the material. On March 31,
4 2006, Dewberry submitted a letter to Russell
5 Acoustics showing an outdoor canopy with a steel
6 canopy. They said no detectable noise will result
7 from the operation of the equipment at the nearest
8 right of way line of 44 feet away.

9 I would like to point out that
10 Dewberry is not an acoustic engineer. They are the
11 site engineer hired by Verizon and will
12 significantly benefit financially from this project.
13 The engineer presented that no detectable noise
14 would be present but also said they did not report
15 what decibel level would be present and had no
16 baseline standard to document it.

17 You already have the Dewberry report.

18 CHAIRMAN VIVONA: Yes and they have to
19 comply with state regulations.

20 MS. HERR: As Mr. Shaw stated, it is
21 difficult to regulate after a cell tower is approved
22 what equipment can be added later. Verizon can say
23 they have new quieter equipment but there is no
24 guarantee that will remain the same equipment over
25 the next decade. Again, Verizon did not demonstrate

1 good faith to our community. Why should I believe
2 this for-profit company will act in good faith for
3 the ADA rules and the hearing impact of our son?
4 This compound radius is less than 10 feet from our
5 property as indicated on Exhibit A-6.

6 The evidence presented this evening
7 against this cell tower application is focused on
8 four areas: Needs, wants, sharing and rules.

9 Needs: Verizon did not establish
10 their needs. Verizon did not establish a
11 significant gap in existing service as defined other
12 than from their own perspective, which can be filled
13 by other carriers. This board should vote "no" to
14 this application and variances.

15 The reports on the FCC website and
16 Verizon's own publications indicates this area is
17 not a concern for the federal government and, in
18 fact, Chatham has seamless cellular broadband
19 coverage. This Board should vote "no" to this
20 application and variances.

21 Verizon did not document and fully
22 exhaust all other site options and actually
23 indicated that this location is too high and they
24 have to be careful not to angle the panels to miss
25 the valley.

1 This Board should vote "no" to this application and
2 variances.

3 To restate, a plaintiff's burden is
4 heavy when the plaintiff already provides some level
5 of wireless service to the area. A plaintiff must
6 show a legally cognizable deficit in coverage
7 amounting to an effective absence of coverage.
8 Verizon failed to prove this; thus, this application
9 should be denied.

10 Wants: Verizon wants the optimum
11 service. They want 11 towers to cover service for
12 Chatham but do they really need all those towers
13 when other wireless carriers are able to do it with
14 fewer towers? So basically, they want to ensure
15 they provide better service than the other
16 companies, which is any business' goal. This
17 Board's goal is not to grant variances to improve a
18 business goal. If these variances are granted, this
19 is at the detriment of a residential neighborhood,
20 again, an R3 zone less than 44 feet away from a
21 property. Rear yard residential setbacks are
22 greater than this distance. Where is the proof that
23 it is not Verizon's own technology that they
24 testified in the transcripts that they had trouble
25 with that is their problem? The Board is not

1 obligated to grant variances based upon optimum
2 service or technological problems that stem from the
3 company. This Board should vote "no" to this
4 application and variances.

5 Sharing: Verizon is given the option
6 to collocate on the AT&T tower, the approved tower
7 that is less than 200 feet closer to the objective
8 site and able to get a better signal to their
9 objective area since it is not high over the valley.
10 Verizon has a two-pronged approach since they can't
11 get the signal over the hill.

12 When cellular companies do not
13 collocate, the US Fish & Game should be given
14 written notification and their guidelines should be
15 followed as to why they did not collocate when
16 within the federally preserved areas.

17 Verizon provided no written proof
18 other than hearsay from PSE&G. Verizon did not show
19 any proof from AT&T as to the number of panels
20 proposed on the Shunpike tower. Again, all options
21 must be documented and Verizon did not provide this
22 documentation.

23 Rules: Pine Street is an R3 zoned
24 area. We need to protect these areas as
25 residential. There are thousands of Chatham

1 children that walk past this area each year.
2 Residents walk past this site daily. That is a
3 quantifiable amount. There is no parking lot or
4 street as a buffer, just residences that are less
5 than 44 feet away, again, 10 feet of a taxpaying
6 resident's property, as Verizon indicated is their
7 radius compound.

8 There is a height variance for a
9 reason. It is not commonplace for residents to see
10 cell towers on this street as it is a pedestrian
11 street; it is not a busy vehicle-traveled street.
12 The interests of a commercial company should not be
13 put before the interests of the taxpaying residents
14 of Chatham Township.

15 The US Fish & Wildlife Services along
16 with DEP have concerns for these cellular towers
17 with potential threat to migratory birds and fly
18 zones. Verizon should be held accountable to the
19 National Environmental Policy Act. They should do a
20 migratory bird study, Wetland study and abide by all
21 the guidelines set forth by the USF&W. If they do
22 not collocate with other towers, this Board should
23 vote "no" to all the variances.

24 A "no" vote to Verizon is not
25 unreasonable, arbitrary or capricious, rather the

1 reasons to say "no" to Verizon are unmistakably
2 comprehensible and validated. Verizon is requesting
3 multiple variances in an R3 zone with both borough
4 and township children being impacted daily. It is
5 quantitatively impacting numerous streets and
6 residents within the neighborhood and town. The
7 guidelines of not having a cell tower near Wetlands
8 or wildlife habitats should be implemented. There
9 will be an impact on the rights of a child with a
10 diagnosed hearing disability and his quality of
11 life.

12 An existing gap in coverage has not
13 been established and all other sites have not been
14 thoroughly explored. There will be an annual
15 potential loss of revenue for Chatham Township in
16 the amount of \$24,504.58 if this Board does not deny
17 these variances.

18 This zoning board needs to draw the
19 line and send the message that Chatham Township does
20 not want a cell tower corridor in their
21 residentially zoned areas. Do not take the path of
22 least resistance. Why do we have laws and codes if
23 they will not be enforced to the benefit of the
24 taxpaying Chatham residents?

25 For Verizon, this tower is a want.

1 Again, Verizon has not proved a significant gap in
2 service nor have they proved they have explored all
3 alternative sites. These variances should be denied
4 for this application.

5 So up to this point, I hope you have
6 not forgotten that with a problem, we bring a
7 solution that we hope Verizon and this Board will
8 explore. Again, there is a location that both wants
9 and needs Verizon and their cell tower along with
10 the possibility of others to collocate. This option
11 allows Chatham to not potentially lose \$24,504.58 in
12 tax revenue and decrease the home values and while
13 this location would significantly benefit from the
14 income. It is a win- win, the church.

15 (Exhibit O-22, photograph, was marked for
16 Identification.)

17 MS. HERR: I will now expand upon the
18 viable location that Verizon did not explore. This
19 location is right in the epicenter of the so-called
20 significant gap and is visible within all sight
21 lines of the other PSE&G towers. Gloria Dei
22 Lutheran Church on Shunpike currently has a
23 temporary tower so, already, it is a viable option.
24 It already has a gated road that has been excavated
25 for the temporary tower and a cleared location for a

1 compound. There is a parking lot buffer and it is
2 away from residential homes and is not close to
3 unsupervised children. We hope this Board and
4 Verizon as well as other cellular companies
5 seriously explore this viable option as it would
6 benefit all parties and give control back to this
7 Zoning Board for current and future cellular
8 service. Mr. Pierson testified that it would be
9 easier and better for them if they had a tower other
10 than PSE&G.

11 I plead with the Board, as a mother,
12 please vote "no" granting Verizon these variances.
13 The hearing needs of my son, the view my daughter
14 will see out her window if this compound is built,
15 the fear of safety and security it places on us and
16 our families, quality of life, the children of
17 Chatham, the teenagers of Chatham and the taxpaying
18 Chatham residents are more important than the wants
19 of the Verizon Corporation. This is an R3 zone;
20 please, keep it that way.

21 (Exhibit O-23, medical records, was marked
22 for Identification.)

23 MS. HERR: I close with this: Again,
24 the Statute Section 332 (c) (7) of the Act is titled
25 "Preservation of Local Zoning Authority" and it

1 addresses the authority of a state or local
2 government over decisions regarding the placement,
3 construction and modification of personal wireless
4 service facilities. The federal government reserved
5 this right to you to protect the values, rights and
6 safety of our community. The voice of the citizens
7 should be heard with our substantial evidence.

8 Has Verizon adequately notified
9 residents in writing according to Municipal Land Use
10 Laws? No.

11 Has Verizon proved a significant gap
12 in service from a user's perspective that cannot be
13 filled by another cellular provider? No.

14 Has Verizon provided documentation
15 that they have made a full effort to evaluate all
16 other available alternative sites? No.

17 This addition proposed by Verizon will
18 not substantially change the physical modifications
19 to the tower and surrounding areas, the negative
20 criteria; the character of the neighborhood and
21 Township zone plan and ordinance will not be
22 substantially impaired if the relief is granted?
23 No.

24 Have all environmental laws been
25 followed by Verizon? No.

1 There will be no impact of commercial
2 operations in this residential community? No.

3 Property values will be increased or
4 stay the same? No.

5 Approximately \$25,000-per-year tax
6 income from these properties will be lost to the
7 township yearly? Yes.

8 The current and future safety of both
9 Township and Borough of Chatham citizens will be put
10 at risk in this walking residentially-zoned area?
11 Yes.

12 Substantial Evidence has been provided
13 to deny this application? Yes.

14 Has the Federal Communications
15 Commission purposely left the preservation of local
16 zoning authority in place to ensure that personal
17 wireless service facility siting occurs in a manner
18 consistent with each community's values and gives
19 the Zoning Board the right to vote "no"? Yes.

20 Has the Board been given evidence to
21 deny and should the Zoning Board vote "no" to deny
22 Verizon's Application? Yes.

23 Although a petition cannot be
24 submitted, there are 144 residents that signed
25 against this cell tower on Pine Street with

1 comments.

2 Thank you for listening.

3 CHAIRMAN VIVONA: Thank you very much.

4 We will close the public comment.

5 MR. SHAW: This will be carried to
6 June 16th.

7 MR. FERRARO: I would ask to give a
8 summation, no more than 15 minutes.

9 CHAIRMAN VIVONA: Okay.

10 MR. SHAW: This will be carried to
11 June 16th. There will be no further notice.

12 (The hearing concluded at 11:00 p.m.)

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C E R T I F I C A T E

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I, ALISON GULINO, a Certified Court Reporter, Registered Professional Reporter and Notary Public of the State of New Jersey, do hereby state that the foregoing is a true and accurate verbatim transcript of my stenographic notes of the within proceedings, to the best of my ability.

ALISON GULINO, CCR, RPR
NOTARY PUBLIC No. 2415679
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