

The meeting was opened by **Ron Palmieri**, Chairman,

Mr. Palmieri read a statement of compliance with the New Jersey Open Public Meetings Law as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.

Mr. Palmieri then led the meeting in a salute to the flag.

Present: Messrs. Palmieri, Lomangino, Moafi, Rickert, Porzio & Roche

Absent: Messrs. Slazyk & Battista

Also present: Mr. Christopher, Acting Board Attorney
Mr. Feist, Board Engineer
Mr. Rauch, Board Engineer
Mr. Gleitz, Board Planner
Mr. Gotfredsen, Board Secretary

Mr. Palmieri read a statement of procedural guidelines.

FRANK MATULA 43 LENNOX DRIVE OVERSIZED SHED	BA 2008 – 13 BLOCK 58.01 LOT 34
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Frank Matula, the applicant, came forward.

Mr. Christopher advised he had reviewed the affidavit of publication and proof of service and found them acceptable as to form.

A motion to accept service in the Matula application was offered by Mr. Roche and seconded by Mr. Moafi. A voice vote in favor was unanimous.

Mr. Matula, after being sworn in by Mr. Christopher, advised the Board he had some exhibits and Mr. Christopher marked them into evidence.

A-1 3 Photos

Mr. Matula stated the first picture in the exhibit shows the grouping of trees right smack in the center. That's where I'm going to be placing the shed and that meets all the setback requirements without any problems. There's two properties that border on me on the left side when you're looking at the picture. There's a fence off to the right.

Mr. Palmieri said I'm looking at the site plan you submitted with the application...it's probably easier for the Board to understand this...if I'm on Lennox Drive and looking to the rear of your property...the lot to the right of you would considered Lot 35. Is that correct.

Mr. Matula stated there's two properties that border me...Lot 35 and 36 and that's on the lefthand side of your drawing...

Mr. Palmieri asked so the proposed shed that you're talking about is going to be on the side on the common property line with Lot 35.

Mr. Matula replied with Lot 36...towards the back.

Mr. Palmieri stated okay, I see. So there's two lots. In the front there's a Lot 35 and to the rear, there's a Lot 36. I guess those two properties don't face Lennox. They face Neville St.

Mr. Matula replied yes, they face Neville.

Mr. Palmieri stated so their rears are to your side. Then the lot to the rear is Lot 65.

Mr. Matula said yes, and that's actually open wetlands to the back. That's part of the...I guess...the Swimming River...I don't know what it's called but there's nobody behind me. There's no houses.

Mr. Palmieri stated and you said the shed will meet all the setbacks as far as rear and sideyard setbacks. So the only thing we're really concerned about is the size of the shed where 150 square feet is required and you're asking for 192 square feet.

Mr. Matula replied correct.

Mr. Palmieri said I guess this is just going to be a common shed. There's no electricity or water running to it.

Mr. Matula replied right, just a common shed.

Mr. Palmieri asked is this going to be one of those sheds that they would deliver on a flatbed that's already pre-built.

Mr. Matula replied I'm going to build it myself.

Mr. Palmieri said with the town ordinance, we run into these shed things quite a bit...and I know we've come across other people looking to get larger sheds and I always kind of wrestle with the idea of giving up one shed and then getting more requests. It's probably better if the town has some additional ordinance based on which zone you live in. We've got one blanket statement to cover the entire town with 150 square feet.

Mr. Christopher marked another piece of evidence.

A-2 Survey

Mr. Lomangino asked is this shed going to be used for personal use or for business.

Mr. Matula replied all personal. I've got camping equipment. If you look at the photos, on the second page it actually shows the standard stuff. I have actually two mowers, one that is for the plow because I use that to snowplow. All the junk that I have in here. I've got bicycles. I've got a ton of camping equipment that I keep in there. I have two long 13 foot ladders. It's the size that's actually perfect to fit everything in there plus I've got patio equipment that I'm going to be putting in there. But it's strictly for personal use. No electricity. I just want to keep it simple.

Mr. Palmieri said Paul, I have a quick question. I know we're going through the zones and stuff. Did we address the sheds.

Mr. Gleitz replied I went through that standard just this week. I'm trying to get it all...I want to deliver it to the Council on Tuesday. At least the first draft of it. I don't remember. I think we did have just a max size to it. I can take a look. Something like you're suggesting...perhaps different sizes for different zones based on lot size. A lot of towns I work in, we do it one of two ways. We measure it based on the lot size or we measure it based on the size of the principal structure. Sometimes you get 5 percent, 10 percent, 7 percent. It depends on how big the houses are. So if you allowed a shed 10 percent the size of the principal structure, he'd be okay...because if he's at 2100 square feet of house, you'd let him do 210 square foot of shed. That may be a reasonable way to go. I'll make sure...I have already written it down. I could hear your wheels turning so I already wrote the notes down with a big star next to it.

Mr. Palmieri said I kind of remember something when we were looking at the R-1s and R-2s to have 200 square feet. That comes to mind in our thinking. Of course now we have to deal with the current ordinance but we've had people come and ask for garage-size big sheds...

Mr. Gleitz stated I'll take a look at it.

Mr. Matula said I've also spoken to my neighbors. There are trees and shrubs along that area, along that fence line to the right with 35 and 36, actually more so with 36, and I spoke to Dennis Bateman of Lot 36. He does not have any problem. He obviously is not here to testify but he didn't have any issue. In fact he was pretty much and do whatever you want back there. The owners of Lot 35 had no issue either. And actually there's nobody behind me as well.

Mr. Palmieri stated I'm just letting the Board know that you're obviously making statements for somebody else who's not here and we can just take that on fact value. Of

course, they've been notified through certified mail so we're okay with that. Going to Lot 36, how close is that house to your common property line. Do you have any idea.

Mr. Matula replied it can't be any closer than 50 feet...behind that's actually their back yard. They have a pool that actually in their immediate back yard when they walk out of the house.

Mr. Palmieri asked on the survey, it shows fencing. Is that your fencing or is that their's.

Mr. Matula replied that's my fencing.

Mr. Palmieri said it seems like there's a picket fence and a wood fence.

Mr. Matula replied that little thing on the bottom used to be a wood stacker.

Mr. Palmieri asked is the fence that's currently there is it board on board.

Mr. Matula replied it's 6 foot. The previous owner put it up. I don't know how to describe it. I'm sorry.

Mr. Palmieri said board on board...like you can't see through it.

Mr. Matula replied no, you can't see through it.

As no other Board members had any questions, **Mr. Palmieri** opened the floor to the public or questions or comments.

There were none.

Mr. Christopher asked I don't know if we asked but what are you doing with the equipment now.

Mr. Matula replied if you look at Exhibit A-1, that is just half of my garage. I have stuff at my family members' houses and I have a classic car that I just inherited that needs to be housed in there as well.

Mr. Palmieri asked what kind of classic car.

Mr. Matula replied an MG... '58 or '59.

Mr. Christopher asked what is the shed going to look like...aesthetically.

Mr. Matula answered it's going to be 12 X 16 and it's going to have a standard pitched roof with the doors in the front. When you look at it from the back yard, if you're looking towards the back of my property, you'll see the double doors that would open

up as an entranceway into it.

Mr. Christopher said you said something about the trees there. Are you going to remove any.

Mr. Matula replied actually it's actually not a tree. It's a giant overgrown yew. That needs to be cut back.

Mr. Palmieri asked you referring to A-1 in the drawing.

Mr. Matula replied correct.

Mr. Christopher asked are going to buffer your shed between you and Lot 36. I saw the picture and I see the survey. I was just wondering.

Mr. Matula replied well, we have several trees along the property line where the fence is and a lot of shrubs along the front.

Mr. Christopher asked are they going to stay.

Mr. Matula replied actually I plan on planting more. Nothing will be taken down. I forgot to say, actually I have two kayaks that will go in there too which are 9 and 13 long. Suspend them above inside the shed. I actually have been storing the one kayak in my garage right now and it's causing my rafters to bow so I need to get everything off my rafters.

A motion to close the public portion of the Matula hearing was offered by Mr. Lomangino and seconded by Mr. Roche. A voice vote in favor was unanimous.

A motion to approve the variance for an oversized shed in the Matula application was offered by Mr. Moafi and seconded by Mr. Rickert.

ROLL CALL

Yes: Messrs. Moafi, Rickert, Palmieri, Lomangino, Porzio and Roche

No: None

Abstain: None

MONMOUTH-OCEAN EDUCATIONAL SERVICE COMMISSION BA 2008 – 12
900 HOPE ROAD BLOCK 122 LOT 9.01
INTERPRETATION OF ZONING OFFICER'S DECISION

Thomas Warren, Esq., with McOmber & McOmber, Red Bank, the attorney for the applicant came forward on behalf of his client. He advised he had with him **Timothy Noguiera**, Superintendent for the Commission, as well as **Patrick Collum**, the Board Administrator's Secretary.

Mr. Warren advised before his witnesses were sworn in, he wanted to advise the Board that this is an appeal of the Zoning Officer's determination. We had filed an application for a zoning permit for commercial use to use the property in question, which is the former fire house, for basically school office use. That was denied. As a result we're here this evening basically to indicate to the Board that it is strictly for an office use as Mr. Noguiera will testify to. The Board has received a memorandum from its planner and we'll also go over the questions raised as a result of that memorandum.

Mr. Christopher swore in Mr. Noguiera.

Mr. Noguiera advised I am employed by Monmouth-Ocean Educational Commission as their superintendent of schools. The Commission is one of the 10 educational service commissions in the State. We operate just like a school district. We have a \$57 million budget. We receive no State, federal or local taxes. I run special ed schools, alternate schools. I do the bussing coordination for both Monmouth and County counties. I do 10,000 students a day...at 100 Tornillo Way...that's our building. We run an alternate school for high school students, a special ed high school student program and a program for substance and abuse students for those students who need counseling. In that building, there's also the MAECOM adult program. It's the oldest adult program in Monmouth County. We do about 300 adults a year. We also run schools in Lakehurst and Lakewood. We're the largest provider of New Jersey virtual online schools for students throughout the State. We do about 2,000 students a year and we're also the online training in-service seminars for teaching staff members. We've done 88,000 teachers online for mandatory topics. So we run just like a school district. I hire teachers. I follow all the 18A regulations except I don't receive any taxes. We have to make our own money and the building we're talking about is the administration building for the senior administration. It is not a school building for principals. It would contain the superintendent, the assistant superintendent, the business administrator, and associate clerks.

Mr. Palmieri asked where you located currently.

Mr. Noguiera advised 23 Christopher Way right now...off 35 in Eatontown. It's a leased property.

Mr. Palmieri asked then I guess you're going to be purchasing this property.

Mr. Noguiera replied yes.

Mr. Warren stated you've already indicated what the intended use is, could you tell the Board and I'm going now to Mr. Gleitz's letter...what are the hours of operation.

Mr. Noguiera replied the hours of operation are 8 to 4 twelve months of the year.

Mr. Warren said okay and how many full-time and part-time employees will be using this site.

Mr. Noguiera replied including myself there are 17 employees who will use the building. Our board of directors meets on Wednesday once a month from 9 am to 11 am, which would add another 15 people to the building just for that day and for that time period.

Mr. Warren asked and those board of directors consist of other superintendants.

Mr. Noguiera stated the board of directors are 15 superintendants, active superintendants, right now in Monmouth and Ocean Counties.

Mr. Warren asked and what are your hours of operation.

Mr. Noguiera replied 8 to 4.

Mr. Warren asked do you intend to have any school classroom instruction or anything else at this site.

Mr. Noguiera answered no, it's not a classroom setting nor are we requesting the the local Monmouth County Superintendant of Schools approve it as such. There's no children in there. Senior office operations.

Mr. Warren asked will there be parent-teacher conferences or anything of that nature.

Mr. Noguiera replied no, those are activities that are relegated to school buildings and school administration. I have principals in school buildings that do that. This is the central office as it were – operations.

Mr. Warren asked and is it your understanding that previously the Board of Adjustment had granted a use variance together with preliminary and final site approval for this site on or about September of 2004.

Mr. Noguiera replied yes.

Mr. Warren stated and that was basically to convert the existing structure to an office facility. Is that correct.

Mr. Noguiera replied that's correct.

Mr. Palmieri asked with the current owner from whom you're looking to purchase...did you go and inspect how their operation worked. He had his employees and they had some extended hours.

Mr. Noguiera replied I don't know about the hours but I know he was a software company and he had two bays of carrels, if you will, with approximately 20 or 24 people doing software online work. The carrels are now out of there. I don't need the carrels and again I'm only going to have 17 people in there but I did see how he worked. Mine does not go past 4 o'clock and I've been the superintendant for 7 years and I've had no, and you might like this, no night meetings. And I don't intend to have night meetings so 4 o'clock is when it ends.

Mr. Warren asked so you'll have less employees than the present seller of the property.

Mr. Noguiera replied there's 48 parking spaces there and my best guess, and again I visited him a couple of times...he had near 40 employees. I'm fairly sure of that.

Mr. Warren said and there are no night visitors, no night meetings, as you indicated at that site.

Mr. Noguiera replied no.

Mr. Palmieri stated I'm having a little difficulty with the understanding...with the business that was in there currently...more employees...longer hours. You're looking at less employees except for board meeting times where you might have an additional 15 max. So you would still be less than what is currently in use...it's going to be still an office setting...no schools, no classes, no children, no come and apply at this building to go to a different location...This is all administrative and there will be no outside people to come and visit there except for the people who are employees there and maybe the superintendants for the 15 other locations.

Mr. Warren said it's actually a less intense use than...

Mr. Palmieri stated because we're talking about what's going on and I know the engineer's report and Paul's report...

Mr. Warren said I think Mr. Chairman, if I can comment, I think the application that we made for this appeal and the application we made initially to the Zoning Officer...I tried to elaborate in the initial application what the Commission was etc., etc. and I think it maybe got...and I also said it was non-conforming use when it was an office use...but that somehow got lost in the translation. It is strictly an office use as Mr. Noguiera has testified.

Mr. Noguiera stated and we did not want to hide the fact that we were a school district. We are a school district but I'm talking about the operations that we're doing. Maybe it was misconstrued that I was a school...I am a school district. We said that in the application. I was not trying to hide who we were but the operations are, as you say, strictly office operations with less personnel.

Mr. Gleitz said I think some of the confusion began with the initial application...because the initial application said...the rider attached purported that in the R-1 schools were a permitted use and that since this was an administrative office related to schools, they fell under the blanket of the school use...and the Zoning Officer felt "No, we have standards for elementary schools, middle schools and high schools. You must have a campus. You must have adequate parking and have all kinds of things related to a school use. She found this not to be a school use and then when the second...the application for the interpretation of the denial came, it wasn't in furtherance of the argument of the permitted school use in the zone. It was in the furtherance of the existing zoning, the existing variance approval and then the office use. So there were two different types of uses being purported for the same property and I think the Zoning Officer simply said "You know what. It's best to present your information before the Board and let them go through the history with the applicant. Put everything on the record. Pass the resolution either way so it makes sense and, in a public hearing sense, to get all the information out. But I think if the original application was for the continuation of an office use, rather than for the blanket of the school use in the R-1, I think that's what created some of the initial confusion at the same time. So now we're here to hear all the facts before the Board and make an interpretation....

Mr. Palmieri said not to get too deep into the reports and all that stuff yet...forgetting that they're a school business...they're just going in for office use...forgetting who they are...if they came and bought the building and said "yeah, we're putting an office here" and they're doing engineering and they meet all the requirements of the previous owner, would they even be in front of us.

Mr. Gleitz replied I don't believe so. I believe that as long as it was a similar type of use under the original...well, there were two approvals. There was an original approval that went from firehouse to the HVAC plus catering business. Then that use extinguished and they came in for the office use, and that was for a software company...and as this Board knows, your attorneys and your professionals grill the applicant to determine all the nooks and crannies of their proposed use. And then we try and craft resolutions to...because they're a use not permitted, we want to understand the breadth, the length, and all the facets of this use and make sure we do our best to minimize impacts on the surrounding residential uses because it's a non-conforming type of a situation here. So, again, as long as...the Zoning Officer has some leeway in looking at the original resolution of approval talking about it's a software office, the hours of operation, the numbers of employees, that the Board and its professionals were satisfied with access and right in and right out only, those kinds of things...if they to come in with another application saying we're an office use with the same number of employees, same number of hours, the same type of access and all those other kinds of things...it would be within the Zoning Officer's purview to say "it's an office to an office"...simply come in for a site plan waiver and move forward under the blanket of the original use variance. But since there was some confusion about school use, instruction, hours of operation, and all those other kinds of things...that we weren't sure if there was going to be teacher in-services, those kinds of educational processes...it wasn't known at the time so the Zoning Officer being conservation said come before the Board and make your case and I think

that's where we are now. And if you notice, that's why all my questions were leading towards what are you really going to do, what's the operations...we've heard many of those answered and now the Board can kind of consider what they are and if the Board wants to craft additional conditions on that...or just make sure that they follow all the original conditions from the prior two and have the engineer go out and inspect for compliance because there were some conditions in terms of buffering and fencing and those types of things and make sure the site is the way it's supposed to be...I think the Board can be comfortable.

Mr. Palmieri said and obviously with a change of ownership, all those things would have to be met before they can get their...

Mr. Gleitz stated I think the Board might want to...in its resolution...as long as they go ahead and comply because there were some recommendations in terms of evergreens and other kinds of things.

Mr. Palmieri asked I have a question, Mr. Christopher, if the Board was so inclined to say that they're meeting all the requirements of the previous resolution...how would that be crafted in a resolution...saying "based on the testimony that's been given, there's no violation of the..."

Mr. Christopher said well, the use is less intense or has equal intensity...but like your planner said here...if there's other requirements in the prior resolution that weren't taken care of, it's within your purview to say "yes, you'll take care of those." I don't know exactly whether it's buffering or whatever...

Mr. Gleitz stated I'll look now. I think I remember a few things.

Mr. Palmieri said Mr. Warren, I'm assuming you went through the prior resolution. Was there anything in the prior resolution that, in your looking at it, that you said you're not going to be able to comply with.

Mr. Warren replied I don't believe so, Mr. Chairman. I don't have the benefit of the prior engineering reports that were incorporated into this by reference but basically, in going through this, for instance the number of employees...we're less than that. There will be no tractor trailers to the site except maybe to get Fedex once a day or what have you. As far as customers, there really aren't any customers other than the other superintendants that go there for their monthly meetings. So, really, indicate that it's particularly suited for an office use because there's a light usage of it. I would assume that when the last applicant was here, the present owner and seller of the property, he put in the evergreens or whatever. To be honest with you, I never looked at the site. We basically want to take it as is, buy it and have a turnkey operation and go and do our thing.

Mr. Noguiera said, Mr. Chairman, I was able to through what the previous requirements were for the current owner...the parking spaces, the landscaping, and the buffers...and it

appears to me, not being a planner or an expert in that area...all those things were done. He told me something like \$34,000 worth of shrubbery were put in. We have no intention of changing one white line in the parking space, no one shrub, so whatever has existed with the current owner, we're happy to maintain. If there was something that he failed to do, we'd be more than happy to do that. We're not aware of that today but if somebody makes us aware of any changes that are required, we'd be happy to do.

Mr. Christopher asked and the number of employees are going to 17.

Mr. Noguiera replied 17 employees on a daily basis and then once a month will be meeting of 15 superintendants in the morning. So there'll be parking spaces available.

Mr. Warren said I had asked Mr. Noguiera, too, with regards to signage...what they intended to do with that. Evidently there's a sign of the prior owner on the building. At some point in time, we'll take that down and come back to the Borough and get the MOESC put up on top. So we can identify who's there.

Mr. Noguiera stated and I'd like to take down the catering sign as well, if that's alright.

Mr. Lomangino joked you're not into catering.

Mr. Noguiera stated no, we gave that up.

Mr. Palmieri said I guess, Paul, my question to you would be based on your letter, I mean we should go through the whole thing but I think we probably touched on quite a bit of it.

Mr. Gleitz replied I believe we did. We did talk about the intensity of the use, the hours of operation, the number of employees. There will be no classroom instruction on site. They don't intend on having any number of individuals leaving after the typical hours of 9 to 5. And they said it's solely office functions rather than seminars and other things of educational services. So those were the kind of things I thought that might exceed your typical office use. In the 2004, there were some findings and some conditions such as the re-design of the spaces from perpendicular to parallel. There will be additional landscaping in the area...new landscaping along the loading area and the median parallel to Green Grove Road will be 30 inches per the landscape architect. The next recommendation was the applicant will remove an existing chain link fence and install a fence that will comply with the fence ordinance. The sign detail was supposed to be submitted to ensure that the signage was installed as permitted by the ordinance. I think you just heard testimony that they're going to remove two signs and put up one sign within the space of one of those signs. So I think that's probably within the findings of the original Board. And again, of course, there's landscaping that was supposed to be installed so as not to disturb the drainage facilities and there was some question about access in terms of ingress and egress would be...

Mr. Palmieri said that would be in the front, if I remember correctly.

Mr. Warren stated quite frankly, Mr. Chairman, whether or not the present owner has complied with all of these requirements and submitted a revised plan to the Board indicating it was done...we don't have knowledge of that. Basically we submitted, I guess, a preliminary site plan by Benchmark that they provided us together with the resolution but there's no way that we've been able to go through and verify that all this has been complied with. We can only hope that it was based upon the fact that they got a CO to take occupancy...but we've made no independent investigation of all of these items that he's indicated.

Mr. Christopher said well, they've agreed to do whatever is required by the resolution. Is there anybody that can go out to the site and do it administratively so we don't have to check each one.

Mr. Gleitz stated either myself or the engineer could. I just wanted to make sure that the original Board found the site to be suitable under the Municipal Land Use Law for the office use based on certain conditions...those being the changing of the fence, some details of landscaping, the re-direction of the parking lot and the access from Green Grove and Wardell. I just want to make sure that if this Board relies on those findings and the testimony provided that it's a less intense use...I would just hate to see the Board give an approval to a condition that the original Board might not have found to be prudent. And I don't have all the files...I can work with Doug at some point...if you find it necessary just to make sure that the landscaping is the way we think it is. If the Board has been to the site and is happy with the functioning of the site for the past four years, this might be a non-issue. I just wanted to make sure the Board wasn't approving that the previous Board found was required.

Mr. Christopher said if the engineer or you go out there and see everything that's there, basically, you can just say it's substantially complied with...or there's one or two items that have been left out.

Mr. Palmieri asked wouldn't the Zoning Officer take care of that.

Mr. Lomangino said right. How do we normally do it. The Zoning Officer or one of them go out and make sure.

Mr. Feist stated the normal course of action after that approval of the site plan, a bond would have been posted with the township engineer's office, not our office, the township engineer would then have certified, prior to a CO, that all the work had been completed on the approved site plan, release the performance bond and a CO would have been issued. I understand Paul's point. If we don't those records in front of us this evening, it's fairly safe to assume that a CO was issued. The township engineer's office would have done those things and then ultimately signed off on the site plan.

Mr. Christopher said the last resolution was 2004. It's not old, is it.

Mr. Palmieri asked Charlie, you were here for this one, right, in 2004.

Mr. Lomangino replied no. It must have been right after that. 2005. Well, you were here (pointing to Mr. Rauch).

Mr. Rauch said everything being discussed here was brought up at that original meeting for the office. One of conditional things but I'm not positive is, I though, on the corner there was a freestanding sign.

Mr. Noguiera stated that's the one that says "catering." It's still there.

Mr. Rauch said it was supposed to have been removed.

Mr. Lomangino stated no, that one's still there.

Mr. Rauch said that was one thing and then there were two residents that bordered the parking lot...there was supposed to be landscaping along there to mitigate the parking lot.

Mr. Noguiera stated there is landscaping along there and a fence. There's quite a bit of landscaping.

Mr. Gleitz asked what's the nature of the fence on that side.

Mr. Noguiera replied I think it's board on board between the property right next to it and there's landscaping between the fence and the parking area plus there's landscaping at almost every corner.

Mr. Gleitz said if that's the case then this Board might be comfortable simply saying remove that catering sign and ensure that the existing landscaping and the board on board fence remain in good condition.

Mr. Warren stated Mr. Chairman, if I can, I did find a non-residential transfer of title that was issued by the Zoning Officer to the prior owner dated September 24, 2004. I would think that that would be proof that they did what they were supposed to. I can show you this.

Mr. Gleitz said if we had the C of O, that would seal the deal.

Mr. Christopher said it looks like all these items have been done...but you would still be subject to compliance with it. If it's done, it's done and again, run by me the specific things...remove the catering sign.

Mr. Gleitz stated I think if the Board's going to act favorably and find this to be a consistent use of the prior approval, the removal of the catering sign, ensure the maintenance of the landscaping, particularly adjacent to Lots 11 and 12, and making sure of the maintenance of the board on board fence adjacent to Lots 11 and 12, and also ensure the maintenance of the landscaping of the median strip between the angled parking and Green Grove Road.

Mr. Palmieri said I guess any replacement of the sign on the building would be consistent in sign with the previous sign.

Mr. Gleitz stated in compliance with the ordinance and should remain at the same size as the existing signage.

Mr. Warren said we don't have any problem with that, Mr. Chairman.

Mr. Noguiera stated even less letters.

Mr. Palmieri said alright, being all that has been said, I don't know if any Board members have any additional questions about what's gone on so far. There were none.

Mr. Palmieri then opened the floor to the public for questions or statements. There were none.

A motion to close the public portion of the Monmouth Ocean Educational Services Commission was offered by Mr. Lomangino and seconded by Mr. Porzio. A voice vote in favor was unanimous.

A motion that the proposed use by Monmouth Ocean Educational Services Commission is consistent with the prior use and the prior site plan be adhered to was offered by Mr. Moafi and seconded by Mr. Lomangino.

ROLL CALL

Yes: Messrs. Moafi, Lomangino, Palmieri, Rickert, Porzio, & Roche

No: None

Abstain: None

METRO PCS
375 ESSEX ROAD
CONDITIONAL USE VARIANCE & PRELIMINARY & FINAL SITE PLAN
APPROVAL

BA 2008 – 02
BLOCK 128.03 LOT 4

Mr. Gleitz, the Board Planner, had a conflict with Metro PCS and **Mr. Feist** acted as the Board Planner in this application

Mr. Christopher reviewed the proof of service and affidavit of publication and found them to be in order.

A motion to accept service in the Metro PCS matter was offered by Mr. Roche and seconded by Mr. Lomangino. A voice vote in favor was unanimous.

David Soloway, attorney for the applicant, came forward on behalf of his client. He advised the Board that the applicant seeks to collocate a wireless communications facility on the subject property consisting of ground located equipment, a GPS antenna, six telecommunication antennas and antenna cables on an existing lattice tower. At this time he introduced **Daniel Penesso**, an electrical engineer who is the applicant's radio frequency design expert.

Mr. Christopher swore in Mr. Penesso who introduced several exhibits.

A-1 Proposed coverage from planned sites in and around Tinton Falls

A-2 Proposed coverage from planned sites together with proposed site on Essex road

Mr. Soloway pointed out just so we're clear, the blue other sites depicted on A-1, nothing is actually in this area now.

Mr. Penesso stated that's correct. There currently are no sites on there. Metro PCS as a company designs the network in such a way as to utilize existing structures the best we can to build our network, our grid, and in doing so I can go through and list them...to the north we have a site which is going to be proposed on the guy tower at 750 Hope Road. To the southeast of that, we have a monopole which we are proposing to collocate which is on 2112 Kings Highway in Ocean. South of that we have a site which is a lattice tower at 3435 Sunset Avenue in Ocean. Just south of that another lattice tower which is located at 2113 Summit Drive in Neptune. South of that in Wall we have another monopole which is located on Highway 18 on Marconi Avenue. And then, even further south, another monopole located on the Garden State Parkway at Exit 98. And then west, northwest, we have a transmission tower on Highway 33 and Highway 34. So the network was designed in such a way that we utilized existing structures to co-locate and put our equipment on, our antennas on.

Mr. Palmieri said I have a quick question...with the location over in Eatontown...you said was on Hope Road in Eatontown.

Mr. Penesso replied no, in Tinton Falls.

Mr. Palmieri said oh, okay, because you said Hope Road.

Mr. Penesso stated no. Eatontown is the next town over.

Mr. Palmieri stated because when you said "Hope Road in Eatontown"...you said.

Mr. Soloway said it's just inside the pink...so I guess that's...

Mr. Penesso stated I misspoke...if you heard me...I was just naming the town surrounding Tinton Falls.

Mr. Soloway asked the areas in green then, do they depict existing towers and Metro PCS is operational on them.

Mr. Penesso replied that's correct. Yes.

Mr. Soloway said okay...and the area surrounding the star, this site, is white. What does that mean.

Mr. Penesso replied the area in white represents the gap in coverage which we would need to fill. This is the Garden State Parkway. We have Asbury Avenue and in order for a subscriber, if they were...I'm sure you heard before...if the subscriber is in the area where this NY5350 is being served and they want to travel south along the Garden State Parkway, an area where we do not have seamless coverage, once the network is launched.

Mr. Palmieri said not to keep going back to the Hope Road location...is that already pre-existing.

Mr. Penesso replied the site is pre-existing but we are not on any of these sites I'm mentioning.

Mr. Palmieri said so all the sites that you've shown us tonight, none of these locations are up and running. You're starting with the first one in this area located on Essex Road.

Mr. Penesso replied to my knowledge, yes, and then we have one other application before you...I don't know if they're going to be before you or not...which is this site here which is located 750 Hope Road.

Mr. Palmieri said that's why I was asking the question about the one on Hope Road because the way you described it, it seemed like the other locations that you've mentioned with the green areas showing their pattern of coverage...I was under the assumption that you already have these...so those are your coverage areas based on those antenna locations and the one that you're missing is the one that we're talking about, Essex Road, tonight. None of those locations are set up yet. You haven't gone to those towns yet for applications or even if you need approval...maybe you don't need approvals to get on some of those antennae.

Mr. Penesso replied correct.

Mr. Palmieri asked and the other question is, with the other location on Hope Road...assuming that it is in Tinton Falls, you would have to come back in front of this Board again.

Mr. Soloway said or the Planning Board.

Mr. Palmieri advised it would come in front of this Board...the question would be why not package them both together.

Mr. Soloway said it's a fair question. These things are kind of complicated to put together...and time-wise, in particular...you have landlords to deal with...and people have to go out and talk to landlords and set up leases and line up all their ducks in a row. Essentially, because my office has a lot of these files, they come to the attorney to file when the ducks are lined up...but Mr. Penesso, I think, will confirm that...and again, it's kind of starting from ground zero here...the idea is to co-locate on existing structures, particularly towers...there will be a lot of applications in New Jersey in a relatively short period of time...and the objective is when you get to critical mass, hopefully by the end of the year...where you've sufficient approvals and you've built them out, then you go on air. This happens to be one of the first ones, at least, in this area. They're a little further along a little further north. Correct.

Mr. Penesso replied that's correct. Yes. Just about every night of the week we're out doing this in other towns.

Mr. Palmieri stated right. I guess north of us, in North Jersey, you already have approved sites...well, I'm sure there's antennas up that are already set.

Mr. Penesso replied right. Construction is already going on. Those sites...we've already pulled the building permits.

Mr. Soloway asked but the network is not on the air yet in New Jersey

Mr. Palmieri stated right. That's why, I guess you kind of answered the question about if you've got two antennas in Tinton Falls...and I guess you're going to end up coming back...unless that antenna is already allowed and it already meets the requirements, then you don't have to come in front of the Board.

Mr. Soloway replied that's correct and since you're the Board of Adjustment, I'm sure you've heard many of these cases. The difference with this case is at the moment, in a sense, everywhere is a gap...but what we're trying to do is show you how it's being designed, that we're using existing sites...so that you have a feel for where this is going. In this particular case, yes, the one other application you can anticipate seeing...

Mr. Christopher asked is that in the works...that application...or when do you anticipate...

Mr. Soloway replied I don't know the answer to that.

Mr. Christopher asked but you do have a lease or some relationship with the landlord or owner...

Mr. Soloway replied I don't do the leasing so I can't answer that question.

Mr. Lomangino said I just got a bit confused or maybe I just lost track for a second...the blue spots on that map...there are existing antennas there and you're just not on them yet.

Mr. Penesso answered there's existing structures and we're proposing to co-locate or put our equipment on them...

Mr. Christopher asked could you tell the Board what you mean by co-locate.

Mr. Penesso replied "co-locate" is a term given to a site which already exists and we're actually going to acquire a lease with a landlord, whoever that may be, and place our equipment on the tower and the radio cabinets at the base of that structure.

Mr. Christopher said and that would normally be without any modification to the tower or making it larger, etc.

Mr. Penesso replied right, for example, for this one the tower exists at 420 feet. We are not changing anything to the structure itself. We're just going to a rad center which is lower than that...at 290...so we're not changing anything to the structure at all...for these particular locations, that's the case.

Mr. Christopher asked and how many antennas will be co-located, for example, on a given site.

Mr. Penesso answered it depends. Right now we have a limited amount of spectrum for each of the carriers...so we have currently, I think, five carriers in the area. And it doesn't mean necessarily that every carrier is co-locating or placing equipment at the same location as another carrier...depending on their needs, their coverage needs, they will apply...

Mr. Soloway asked is that the question you asked...are you asking how many Metro PCS will have on each site. I wasn't sure.

Mr. Christopher said well, how many would be on the site.

Mr. Penesso replied we are proposing 6 antennas.

Mr. Christopher said and the co-locators, if you will, they could have another 6 or whatever.

Mr. Penesso stated depending if the structure can handle it because it all has to have structural integrity in order for it...because there's coaxial cables that run on the structure and those coaxial cables are mounted to it and then the antennas are mounted.

Mr. Christopher said but in this application, you're going to have 6.

Mr. Penesso replied correct. Six antennas, yes.

Mr. Lomangino said my question is to Ron...what they're talking about is what we were doing at the American Red Cross...remember they were saying you put the tower up and then you have to get a permit for the...

Mr. Palmieri interrupted saying but the Red Cross wasn't sharing their tower with anybody.

Mr. Lomangino replied no and remember we said if they wanted to share it, they would have to come back in front of us. Is that what we're discussing here...that these guys are going on towers that are already existing, especially that other one in Tinton Falls, is what I'm asking you. There's an existing tower there. They're going to be coming to us...

Mr. Soloway said correct. These applications...in fact I think every one he mentioned on his map...all the towers already exist...and what Metro PCS would be doing is putting additional antennas on each tower with their equipment at the ground and, for the most part...there are occasional exceptions...you need approval from the planning board or the board of adjustment within the municipality to do that. You know, once in a while, you can do it as a building permit...but as a practical matter...you generally need board approval, usually the board of adjustment.

Mr. Lomangino stated and that was my question to Ron...why wouldn't they just be in front of the Planning Board is the tower already exists...why are they in front of us...just to add rings, you know different antennas to an existing tower. What do they have to come in front of Zoning is my question...just to add the antennas.

Mr. Palmieri said the antennas are pre-existing. They're adding more antennas to it. That's part of our ordinance.

Mr. Feist stated your new ordinance specifically requires that a new application...each time a set of antennas are added to a location for co-location. In addition, the existing structure at this site is in a pre-existing variance situation with regards to height and the attorney for the applicant spelled out most of the pre-existing variance situations. But regardless of a variance or not, the ordinance would require a site plan approval to add a new set of rings, antennas...and generally you're adding equipment cabinets at the base...hence the site plan application.

Mr. Lomangino said so just for clarification for some of the members on the Board...really everything is already there. The tower's there. They're asking to put more antennas on the tower and a base unit at the base of the tower, a control panel at the base of the tower.

Mr. Feist stated that's correct. The application, in essence, is simply adding those 6 antennas onto the existing tower that's there and there are equipment cabinets that will be

placed on a 7 foot X 14 foot concrete pad. That's the extent of the application this evening.

Mr. Palmieri asked the other question would be what's the maximum capacity a tower could handle and that would have to rely on engineers to say the structural integrity of the tower that can handle the cables, the weight...and you know, if it's a safe kind of thing...obviously a 400 foot antenna.

Mr. Feist replied that's obviously a good question to ask. This is not the witness that addresses that.

Mr. Palmieri said I guess you know how many antennas are currently existing on there. What would be, based on what you've done with the antennas so far, the existing antenna, what would be the maximum capacity of stuff, additional antennas that would be allowed to be put on that.

Mr. Soloway replied we have an A & E witness who will be testifying and he'll answer that question for you.

Mr. Penesso said right. It's not my area of expertise.

Mr. Soloway stated I think we've gone over A-1 in detail. Why don't we go to A-2, please.

Mr. Penesso said flipping over to A-2, this exhibit depicts what the coverage would look like if the proposed location were up and how it fills the gap in coverage. We have the Parkway seamlessly covered as well as Asbury and it's particularly suited to fit within the grid.

Mr. Soloway asked the blue, just for the record, would that be the area where you would get coverage if this site were approved.

Mr. Penesso replied that's correct, the blue area. Yes.

Mr. Porzio asked would that be just for that one tower or for all the towers.

Mr. Penesso replied the blue represents the coverage provided by the site that we're proposing here tonight...at 290 feet.

Mr. Palmieri said that seems like it's a very critical tower to have.

Mr. Penesso replied yes.

Mr. Soloway stated again, it's right along the Parkway. It kind of fits in with your ordinance in a way. Your ordinance not only encourages co-location but I think it tries to

direct these facilities towards major transportation corridors and this site is right off the Parkway. Correct.

Mr. Penesso replied that's correct. Yes.

Mr. Palmieri asked is that it.

Mr. Soloway replied I'm not sure I have any other questions, Mr. Palmieri.

Mr. Palmieri asked do any of the Board members have any questions of the testimony so far.

Mr. Christopher asked how about our planner.

Mr. Feist said I don't think there's specific questions of this expert. His purpose is to generally lay out the fact that there's a gap in coverage and a need for this location. So, to some degree, he's laying the groundwork for the planner to give the proofs, which the major proof for any cell tower application or antenna added to an existing tower, is to indicate that there's a need for it, that there's gaps in coverage and one of the Board members said everything's a gap right now, which is technically correct in this particular application. And the reason that I thought you would say this, maybe more clearly...the reason the antennas proposed on this tower create a large coverage area is that the existing tower is very tall. It exceeds the height that would be permitted under most ordinances that have been written today. So these antennas, although nowhere near the top of the tower, they're at a height that you typically won't see on a monopole. You typically see a 100 feet, 150 feet, maybe 200 on a monopole, he's going to be at 250 feet, which again is planning testimony...planning testimony is going to come later but I think the testimony is going to say that the variance with respect to the pre-existing height and where the antennas are going to be located, minimized the number of locations that will have house antennas and equipment for this service.

Mr. Soloway asked is that correct, Mr. Penesso.

Mr. Penesso replied yes.

Mr. Christopher asked how tall is this tower now.

Mr. Penesso replied 420 feet.

Mr. Christopher said I thought you said 250.

Mr. Penesso replied no, the antenna placement is 290. The entire structure is 420.

Mr. Palmieri asked how high is the one on Hope Road, the other located in Tinton Falls.

Mr. Penesso replied the antenna center line is 310 feet...so the tower is probably about the same height as this one. These are guy towers. They are structurally anchored with guy wires...so that's why they're so tall.

Mr. Palmieri asked do Board members have any additional questions.

There were none.

Mr. Palmieri opened the floor to the public for questions of the testimony given.

There were none.

At this point, Mr. Christopher swore in **Daniel Collins**, Chief Technical Officer with Pinnacle Telecom Group, an engineer testifying on radio frequency exposure.

The Board accepted Mr. Collins's credentials.

Mr. Soloway asked Mr. Collins, were you maintained by the applicant to undertake an analysis of whether the levels of electromagnetic frequencies or radio frequency emissions are in conformance with applicable governmental regulations.

Mr. Collins replied yes.

Mr. Soloway asked who sets the regulations.

Mr. Collins advised the standard is in the Federal Communication Commission's regulations...by the way, not because the FCC is a medical or health expert but because they hold the licenses that carriers like Metro PCS use and if Metro PCS or other carriers don't follow the rules, they lose their license and therefore the ability to provide service. The standard actually came out of an FCC public process that involved medical and scientific professionals nationwide.

Mr. Soloway asked have you, in fact, undertaken that analysis.

Mr. Collins replied yes, I did.

Mr. Soloway asked and is your analysis and any conclusions you may have reached contained in a report.

Mr. Collins replied yes, I produced a report and I apologize for the lateness of this but I thought I had actually done it earlier. The report is titled and it's on company letterhead "Antenna Site FCC RF Compliance Assessment and Report for Metro PCS dated May 14, 2008,

Mr. Palmieri asked do you have copies for the Board.

Mr. Collins replied actually I have 8 or 9 copies in the back.

Mr. Palmieri asked is this something that our engineers needed to read beforehand.

Mr. Collins replied I'll be explaining this in layman's plain English.

Mr. Soloway said if you would like us to distribute copies, I'd be glad to do that.

Mr. Christopher stated I think that's a good idea and before we admit the report, he'll lay a foundation...and if there's any questions that have to be reviewed, then it would be up to the Board whether or not they want to defer until...

Mr. Soloway interrupted saying I should note, Mr. Chairman, I think under your new ordinance, this is a submission item but this application was filed before the new ordinance. If we come back with the next one, you'll probably have this kind of report in your meeting package.

The reports were handed out to the Board members and professionals.

Mr. Soloway asked now, Mr. Collins, undertaking this analysis which is the subject of your report, did you make certain worst-case assumptions.

Mr. Collins replied yeah, actually, I'll describe the process a little bit here. The way I do the reports is first of all, there's an FCC standard that we're going to work against for safe, continuous exposure to the emissions from antennas. Second, when the FCC produced the standard, it also provided for those who might not have been aware of the math before that, a series of math formulas, standard mathematical models based on physics and radio frequency engineering that's more than 100 years old, that can be used to calculate the radio frequency levels around antenna facilities. The third thing, then, is the client provided me with the set of the site drawings so I know what the height of the antennas are and I have a feel for the other antenna facilities that already exist at the site, and then we perform the math by...and we'll get to the conservative assumptions built into the methodology...basically we assume the antennas that are directional are actually pointed pretty much at you no matter where you around this facility...we assume the antennas are always operating at their maximum capacity, maximum radio frequency power and that the exposure to which you may be subjected is actually not really a result of a straight line exposure between you and the antennas but instead the exposure is enhanced by a mirror-like perfect reflection off the ground in front of you. These and other conservative aspects of the analysis result in an overstatement of the radio frequency levels that come out of the calculation vs the radio frequency levels that actually exist when the antenna is operating. Just, if I can go on here then, the results of the analysis can be explained easy layman's terms without any reference to technical jargon or units. In a simple fashion as follows: let's assume the standard is a 100 percent reference point...so we don't want to have a radio frequency level that I can express in percentage form exceed 100 percent. Anything below 100 percent is in compliance with the FCC's limit. Anything over, obviously is not good. And in this case, considering all

the antennas that are on the facility...in fact, I went further than all the antennas...I assumed all of the cellular carriers you have ever heard of are on this tower along with the dish that's up there as well and performed the calculation of the worst-case result of that combination along with Metro PCS's antennas and the worst-case calculated radio frequency level is actually less than one quarter of one percent of the FCC standard. In other words, it worked out to 480 times below the FCC's standard. So, it's comfortably in compliance. There also is a New Jersey limit for safe, continuous exposure and believe it or not, the New Jersey limit is not as protective as the federal limit. That usually isn't the case. The federal limit in this subject area is five times more protective than the State's limit. So if you're in compliance with the federal limit, you automatically are in compliance with the State's limit and just for record purposes, in this case, we're in compliance by the factor of 2,400...under the State's limit, which in my estimate, doesn't count. So it's 480 times below the limit that counts...but at least it satisfied this federal as well as the State's limit.

Mr. Christopher asked and how many antennas are on the tower.

Mr. Collins replied actually there are four sets of panel antennas and a dish. The panel antennas are like the ones that Metro is providing here.

Mr. Christopher said four sets.

Mr. Collins stated sets...meaning there are four other players and in the work I do, we try to be as conservative as possible. The four other players easily could represent Cingular...they're now called AT&T...AT&T, Verizon, Sprint, Nextel...

Mr. Christopher asked they each have six antennas like you're proposing.

Mr. Collins replied in my analysis, we don't care. The number of antennas is not significant. The fact that they're at a certain height and transmit at a certain frequency with so many channels and so much power is all that cares. If it's coming out of three antennas facing you, or two antennas facing you, or one antenna facing you...they all have these directional antennas and they can only use so many channels, so much power, whether or not they distribute them among one antenna, two, three, four, or even five.

Mr. Palmieri asked then why do the additional antennas.

Mr. Collins replied alright, that's a question that probably is better directed to the fellow who preceded me here but I can explain it a little bit. #1 is there's a limit you can crank out of any one of these antennas. #2 – there's a limit to how much power you can put into any one of these antennas. There's also a good technical reason to have more than one antenna for a receiving purpose because when the little phone you're holding at ground level sends a signal back to the antennas on the tower, you need what's called "spatial diversity". That means two antennas get to receive the same signal but if the signal is not good at one of the antennas, if it's basically faded or attenuated because of multi-path reflections and the like and refractions, propagation problems basically. When

it's bad at one antenna, it's good at the other one. This is the engineering design that's been around since the 80s. So, as a result, you use what's called diversity reception. Now, Metro PCS's two antennas, both antennas receive and at least one of them will transmit...but that's why you would have more than one antenna. Verizon operates in two frequency bands. In fact, in some areas, they're operating at three frequency bands. They need different antennas for each frequency band as well as multiple receivers. By the way, Mr. Penesso, sitting behind me...you can nod or say...if you want more detail, I can defer.

Mr. Soloway said I have no further questions of Mr. Collins.

Mr. Feist stated Mr. Chairman, I've had an opportunity to do a quick review of the report that was given to me this evening from Pinnacle Telecom Group and I've seen many of these reports through the years...the methodology is a standard, very conservative methodology taken into account ground reflection as the witness had testified to. The figures presented, which although sound like they're very low but they are very typical of what comes off of these types of antenna arrays. I would have no reason to doubt the accuracy of what has been testified to this evening.

Mr. Soloway said actually, Mr. Chairman, I have one more question because it was raised in the May 12, 2008 report from Feist Engineering that was sent to us. Item G references Section 40-77.0 of your ordinances and I'm reading from this "requires setbacks due to Electric and Magnetic Fields (EMF). Unless there are Federal or State guidelines to the contrary, the shortest distance between major electric distribution supply lines and homes, schools, businesses, and other uses accommodating concentrations of people shall be such distance in conjunction with design techniques that will generate a field of less than two (2) miligauss."...if I'm pronouncing that correctly. I sent that to you yesterday, Mr. Collins, and asked if you could address the applicability of that ordinance. Can you.

Mr. Collins replied yeah, in two aspects. First of all, if you read this quite carefully, even though it's talking about "electric and magnetic fields" which is what I deal with, the provision appears to apply "the shortest distance between major electric distribution supply lines and homes" or whatever. The key phrase here...what do we say about this is...we are not here proposing a major electric distribution supply line or even a minor one. This is not an electric distribution supply line. That's actually an electric transmission tower is what you're talking about. The other thing is I happen to know something about miligauss and I'm not sure exactly what the logic is behind this rule but you don't need a rule that restricts the positioning even of electric transmission towers to the tune that it doesn't cause two miligauss because not a lot of people know this but you can stand directly under the worst case power line and the earth's magnetic field, which is what miligauss is about, the earth's magnetic field is five times more significant. So it would be impossible to sort of satisfy this requirement and yet live on the earth. That's just a side comment.

Mr. Soloway said so this ordinance section, in your opinion, is not applicable to this installation. Is that correct.

Mr. Collins replied no. It doesn't apply.

Mr. Soloway stated no further questions.

Mr. Palmieri said I guess one of the comments is well...obviously we don't like getting reports the night of a meeting and I don't think the attorney has anything to do with this but we've got another application with Verizon and I'm sure your office is handling...

Mr. Soloway stated I work for all the carriers...some of them all the time.

Mr. Palmieri said we got the report from Pinnacle for them. Not to say that I'm upset a little about getting a report, but I know for the Verizon application from your office, we got the report already. I'm not saying that it's going to sway us either way about not getting the report but obviously I'm not an engineer or have your expertise in this area...but obviously just for the future...getting the reports on time is most appreciated.

Mr. Collins stated I apologize for that.

Mr. Palmieri asked do any of the Board members have any questions.

Mr. Lomangino replied I'm going to defer completely to our engineers because he might as well be speaking Chinese. I appreciate his efforts and everything he's put forth here but we're lay people. We don't have the capability of determining whether we're putting the citizens of this town in any kind of jeopardy with this. That's what we pay engineers for and the engineer's report should have gotten to them so that they feel comfortable with it. This is something that far exceeds any of our expertise or even knowledge of. Like I said, it's one thing if we're talking about the positioning of the tower and where the tower is going but all this technical stuff, I'm just going to defer to our engineers' expertise...if that's alright.

Mr. Feist stated quick frankly, a lot of this is beyond my area of expertise. I'm not an electrical engineer. I'm a civil engineer. Again, I would point out though that I've certainly seen these reports. I've read and studied the rationale and methodology that's used to generate these reports as well as the standards at both the federal level and the state standard and they were correctly stated...and they are well in compliance with any published standard by order of a magnitude of 480 times, I believe, was the testimony of their expert. And again, I have no reason to disbelieve that. And some of those standards have been around for a long time and aren't necessarily there to protect for this particular generator of radio frequencies.

Mr. Collins said actually, there's a couple of things here. One is my reports include all of the formulas and all of the technical data that if you're reasonably facile with a calculator, you can repeat the calculations and that part of it, believe me, is not rocket science. The

second thing is the FCC actually has a regulation in the same section of the rules that says here's what the standard is for safe, continuous exposure. It has a section that says "oh, by the way, for cellular radio facilities and other similar facilities that basically use fairly low power and directional antennas, is that the antennas are on a tower, which these are, and if the antennas are mounted a minimum of 10 meters off the ground...ten meters is about 33 feet...individually and collectively, they are automatically deemed in compliance", and since they're in compliance, if you read that standard...by the way you can do the math even on a bunch of antennas at 33 feet...they all meet the standard collectively. If you meet the FCC standard you are automatically deemed #1 – to be in compliance and #2 – by that virtue you represent no significant, and actually zero, health hazard to anybody in the area as a result of the emissions.

Mr. Palmieri asked maybe this is not the right question to ask you, but based on the location on Essex Road, do you have any idea where the nearest residence or anybody that...I'm not saying they will be affected...any individual homes or anything in that area.

Mr. Soloway replied according to the zoning chart on the site plan, the nearest residential zone or property is more than 1800 feet away.

Mr. Collins said let me offer this, if a residence was right under the tower or anywhere within 500 feet, the reason I don't get too excited when I have a number like less than a quarter of a percent as a result, is that if the residents are inside their house, they're typically subjected to 5 percent and when they leave that house, residents, two human being standing next to each other, staring at this facility, worrying about the radiation that it causes them, are actually radiating each other a little harder.

Mr. Feist stated it is 1850 feet to the nearest residential zone so a house within that zone had another 50 feet or so.

Mr. Moafi asked how far is it from Seabrook.

Mr. Feist replied I believe that's the closest...1850 feet.

Mr. Palmieri asked that would be from the common property line to it...not from the tower itself.

Mr. Feist replied from the tower to the nearest residentially zoned or occupied piece of land.

Mr. Palmieri asked and there's only one tower on that property...or are there multiple towers on that property.

Mr. Feist indicated just one tower.

Mr. Palmieri said just one tower unlike some of the other locations that have multiple towers.

Mr. Porzio stated I'm just confused on something that was asked about. You said there were 6 antennas on there. That's what you had said, Mr. Penesso. We asked that question but then if there's four other carriers there...then you kind of did not answer that question...so there'd be how many antennas are on this.

Mr. Collins replied the total number of antennas is not significant from the point of view of an exposure analysis. What is significant is what type of antenna they are, what height each one of them is, how many radio frequency channels they spray in each direction...

Mr. Porzio asked do you know what's on that now and what you'll be adding. I'm just really confused.

Mr. Christopher said you're saying the number of antennas doesn't matter. Can you tell us anyway.

Mr. Collins replied no because it doesn't matter.

Mr. Palmieri stated no, no. It matters to the Board member.

Mr. Soloway asked do you know how many antennas are on the tower.

Mr. Collins replied no, I don't know the number of antennas on the tower.

Mr. Soloway stated I think it's approximately 24 or it will be with this application.

Mr. Collins replied plus there is a dish.

Mr. Soloway stated the next witness might be able to show you.

Mr. Feist said the site plan shows the location of the existing antenna arrays as you go up the tower. It doesn't call out the number of antennas on each array. Certainly it's probably on the order of 6 or 8 for each carrier, I would know, for those numbers. When we say the word "antenna", it's a series of antennas that wrap around the tower...360 degree coverage.

Mr. Lomangino stated we were calling them rings, weren't we, when we were talking the American Red Cross. There's the tower and then off the tower there were rings of antennas.

Mr. Porzio asked we talked about the location...how close is this to where they're building that new mall.

Mr. Palmieri said well, this is off Essex Road, I mean, what you're talking about is on Route 66. So it's really far away.

Mr. Porzio asked is there a back entrance.

Mr. Palmieri stated I don't think there's going to be a back entrance to the new mall. On Essex Road. Right. They didn't allow that.

Mr. Lomangino said there's a construction entrance now but I don't think they're going to have that.

Mr. Palmieri asked any questions from anybody in the audience about the testimony so far.

There was no response.

Mr. Christopher asked Mr. Chairman, was there a prior resolution.

Mr. Soloway said oh, I don't think we ever really admitted that as an exhibit. You were holding off on that.

Mr. Christopher stated oh, we haven't.

Mr. Soloway said I like to move that as A-3 I think we're up to.

Mr. Christopher asked the report, you indicated again you're satisfied with it.

Mr. Feist replied yes, I'm satisfied with the report and the testimony given with regards to the report.

A-3 Antenna RF Compliance Assessment & Report by Pinnacle dated 5/14/08
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Mr. Palmieri said you said there was a prior resolution.

Mr. Christopher replied I don't know. I'm asking was there a prior resolution from the last person who antennas up on the tower.

Mr. Feist stated in our package I had a series of four applications for either adjusting the height of antennas or adding new antennas to presumably this tower, it would appear. They date from 2000, 2001, 2001, and 2005.

Mr. Christopher said I was just curious if there were any other conditions.

Mr. Feist stated I did a quick read of these and I didn't find that there were any specific conditions outlined in any of these, frankly. There was a series of findings. They were

all approvals. I'll get the BA numbers on the record in case someone needs to look them up. It was BA 2001-15, BA 2001-24, BA 2000-02 and BA 2005-12.

Mr. Palmieri asked who was the last one in '05. Does it say the name.

Mr. Feist replied in 2005 it was Sprint. They were relocating an existing ring of antennas to a height of 273 feet. They were going up high.

Mr. Palmieri said I remember that one. Right. Wasn't that the resolution that said they didn't have to be in front of us. That they were still in compliance.

Mr. Feist replied there was a finding...I'm not sure if it was that one...but there was one that said that it was not a new variance...and I think that was it because it was a relocation to a higher elevation. There was an application to locate 12 antennas at a height of 153 feet. Another was Nextel and XM Satellite to locate antennas on a tower...it doesn't appear that the resolution...it was 6 new antennas...it didn't give the height for Nextel and XM Satellite. And then the final was once again related to XM Satellite...that was the dish that's been spoken of.

Mr. Palmieri asked is the dish at the highest location.

Mr. Feist replied the dish was 26 inches in diameter and 60 feet in height. Those were the resolutions that I had available as it related to the existing structure.

Joshua Cottrell was sworn in by Mr. Christopher. Mr. Cottrell, French & Parrello Associates, was accepted as an expert in civil engineering.

Mr. Soloway asked Mr. Cottrell, are you familiar with the plans that were submitted with this application.

Mr. Cottrell replied yes, I am.

Mr. Soloway asked and are you familiar with the property that's the subject of the application.

Mr. Cottrell again answered yes, I am.

Mr. Soloway said I see you have something on the easel there. Can you tell us what that is please.

Mr. Cottrell stated these are site plans prepared for the applicant.

Mr. Soloway said these plans are identical to the plans submitted with the application. Some boards markl them as an exhibit. Some don't. So I'll defer to you as to whether we should do it.

A-4 Site plan consisting of 6 sheets done by French & Parrello 4/30/08

Mr. Soloway said why don't you explain to the Board, Mr. Cottrell, exactly what it is the applicant is proposing to do here and you can reference particular sheets as A-4, whatever, if you might find that helpful.

Mr. Cottrell stated first it's Block 128.03 Lot 4, 375 Essex Road, located in the IOP-35 Industrial Office Park District. The site contains approximately 10 acres. I'll explain the existing site conditions as depicted on Sheet SP-1. As I said, the site is approximately 10 acres. Access is provided through Essex Road on a gravel driveway located within a 20 foot wide access easement. Existing on the site is an existing telecommunications compound enclosed by a 7 foot high chain link fence. Within the compound is the 420 foot guy tower which currently contains existing antenna. And at the base of the tower is the existing equipment supporting those antennas.

Mr. Soloway asked what is the size of the compound in square footage.

Mr. Cottrell replied in square footage the compound is 4, 418 square feet.

Mr. Soloway asked is it proposed to be expanded at all by this application.

Mr. Cottrell replied no, it will not be expanded.

Mr. Soloway asked so everything proposed by the application will be located within the existing boundaries. The applicant proposes to place...

Mr. Palmieri interrupted asking did you say the chain link fence was just around the compound area or the whole 10 acres.

Mr. Cottrell replied the plan doesn't show it but there is fence surrounding the property.

Mr. Palmieri asked the whole 10 acres.

Mr. Cottrell replied a portion thereof. I don't know how much exactly the fence encloses.

Mr. Palmieri asked did you say it was a 7 foot high chain link fence.

Mr. Cottrell replied 10 foot high chain link...around the compound itself, not necessarily around the property.

Mr. Soloway stated I think, Mr. Chairman, the existing fence, at least in terms of the compound, is depicted on Sheet SP-2.

Mr. Cottrell said Sheet SP-2 will give you a blow-up of the compound area alone.

Mr. Palmieri stated I just have a quick question about the fence height. I thought it was supposed to be 6 foot. Is 7 foot permitted in a facility like this. Not that it's pre-existing and it's already there.

Mr. Feist said it's certainly a pre-existing condition, the fence has not changed. I didn't notice any discussion of the fence in the prior applications. The new ordinance, I believe, is silent with regards to the fence. In our general ordinance, there's probably a 6 foot height...maximum fence height.

Mr. Rauch stated the general says 6 foot, I believe. I can quickly check that but this is an existing fence around the compound and probably of the nature of the compound, dealing with telecommunications equipment, it was put at a higher height to keep people out of the compound and vandalizing the equipment.

Mr. Palmieri asked is it any kind of fencing...I'm not familiar with the site...is it any kind of barbed wire fencing or is it just a straight chain link fence.

Mr. Cottrell replied not on this particular site. I believe it's just straight chain link.

Mr. Palmieri said okay, you can keep going. I just wanted to check to find out about the fence site stuff.

Mr. Soloway stated the new wireless ordinance requires the fence be at least 7 but no higher than 8 feet.

Mr. Palmieri asked that's our town ordinance, you're saying.

Mr. Soloway replied correct. Again, as has been pointed out, this is pre-existing. It's probably been there a while and presumably this Board has heard other applications involving similar type uses. This applicant is just working with what's there...staying inside the existing compound.

Mr. Cottrell said going back to Sheet SP-2, this shows a larger picture of the compound. As you can see, there's several shelters and equipment within that compound. Metro PCS proposes to put their equipment at the southwest corner of the existing compound. The equipment consists of four cabinets on a 7 foot X 14 foot concrete slab. Antennas will run in an elevated cable tray to the tower where it will run up the tower to the proposed antennas.

Mr. Palmieri asked you say elevated cable tray, you're saying this is going to be something that's 4 or 5 feet off the ground.

Mr. Cottrell replied it's probably about 6 – 8 feet, typically, off the ground. It's just for site access and so it's not in the way...a safety hazard.

Mr. Soloway asked is there any lighting proposed for this application.

Mr. Cottrell replied there will be equipment lighting which will shine towards the equipment for maintenance purposes.

Mr. Soloway asked when you say “will shine towards the equipment”, the light is not on at all times, is it.

Mr. Cottrell replied no. When the technician...if maintenance is required, the technician will turn on the switch manually and the light will have a four hour timer.

Mr. Soloway asked is there any signage.

Mr. Cottrell replied there’s no signage. Possibly some warning signs on the equipment itself or hanging on the fence.

Mr. Soloway asked could you turn, if you don’t mind, to I think it’s SP-3 which has elevations of the existing tower. Is that correct.

Mr. Cottrell replied yes.

Mr. Soloway stated show the Board please what’s depicted there.

Mr. Cottrell replied on Sheet SP-3, it shows the elevation view of the guy tower. You can see the top of the tower...it’s at Elevation 420 feet above ground level. Existing antennas – the highest set of existing panel antennas is approximately 297 above ground level. Metro PCS proposed their 6 antennas at centerline Elevation 290. There’s also additional antenna below that at Elevation 190 and at approximately 180 as well as several whip antennas above that elevation.

Mr. Soloway asked is this a manned facility. Is anyone going to be required to work there on a regular basis.

Mr. Cottrell answered no. The facility isn’t intended for permanent employee occupancy. A technician will perform maintenance to the equipment approximately once every 4 – 6 weeks. He’ll visit the site probably for an hour or two, perform the maintenance and leave.

Mr. Soloway asked is there parking available onsite for those maintenance visits.

Mr. Cottrell replied the site is wide open. There’s plenty of parking to accommodate the technicians.

Mr. Soloway asked is there any water or sewer service required for this kind of use.

Mr. Cottrell replied no water or sewer is required. The only utilities required will be the telephone and electric which will be tapped in from existing utilities onsite.

Mr. Palmieri asked with the facility itself, there's multiple antennas that are on there currently and I'm assuming this is a gated, locked facility. I guess some kind of access would be given to each antenna leasee. Is that how it works.

Mr. Cottrell replied the locks that are provided have codes on the locks so they're given access codes and they can gain access.

Mr. Soloway asked is there any waste generated by this type of facility.

Mr. Cottrell replied no waste will be generated.

Mr. Soloway asked are there any hazardous substances involved with this kind of facility.

Mr. Cottrell answered the only possible hazardous substances would be through the battery cabinets. However, the type of batteries that these wireless companies use...they're called gel batteries...where it's not typical battery acid. The electrolytes are suspended in a gel-like substance so if the cabinets were to be tipped over or leak...nothing will spill out.

Mr. Soloway said there were certain bulk requirements, for lack of a better term, imposed under the ordinance. Is that correct.

Mr. Cottrell answered that's correct.

Mr. Soloway said and there's a setback requirement here under the new ordinance for the tower itself. It would be 630 feet from the property line. Is that correct.

Mr. Cottrell replied that is correct.

Mr. Soloway said and the existing tower does not comply. Is that correct.

Mr. Cottrell replied yes, the existing tower does not comply.

Mr. Soloway asked does this application exacerbate that in any way.

Mr. Cottrell answered not at all.

Mr. Soloway said again the compound size is technically not compliant. Is that correct.

Mr. Cottrell replied that's correct.

Mr. Soloway said but this application isn't increasing it.

Mr. Cottrell replied no, it will not increase at all.

Mr. Soloway said I think the question was asked and we might as well have you confirm it on the record...how far away from the tower is the nearest residential zone or residential property line.

Mr. Cottrell replied as indicated on Sheet SP-1...1,850 feet.

Mr. Soloway asked is there any storage proposed in connection with this application.

Mr. Cottrell answered there'll be no storage.

Mr. Soloway said alright. The question was asked, I think in the Board Engineer's report, about stormwater management. Is that an issue here.

Mr. Cottrell replied it will not be an issue. A minimal increase in impervious areas are proposed. Existing drainage, contouring...will not be altered. Therefore there will be, maybe, a de minimus increase in stormwater runoff.

Mr. Soloway asked will there be any impact from the drainage on the neighboring properties.

Mr. Cottrell replied no, there will not be.

Mr. Soloway said you said additional impervious...this is being added. Is it correct that you're referring to the concrete slab.

Mr. Cottrell replied correct. The 7 foot X 14 foot concrete slab which is being placed on the existing gravel cover so it's not...

Mr. Christopher interrupted asking again, what's the size of the slab.

Mr. Cottrell replied 7 foot X 14 foot.

Mr. Soloway asked the rest of the installation is in the air. Is that correct.

Mr. Cottrell replied that's correct.

Mr. Soloway asked any landscaping being proposed by this application.

Mr. Cottrell answered there is no landscaping. The property is surrounded by wooded areas...so from outside of the property line, you're not going to be able to see the compound itself.

Mr. Soloway said okay. I don't think I have any more questions of this witness, Mr. Chairman.

Mr. Rauch stated Mr. Chairman, if I may...does the applicant have any problems with providing...one of the things we had in our report was providing a full boundary survey so that we could actually verify the distances that were depicted on the plans. The plans are not based on a full boundary survey so some of the numbers are plus or minus. We would require that a boundary location survey be submitted so that these numbers can be actually verified.

Mr. Soloway replied well, like any applicant, you know, we'd rather not but we would certainly accept that as a condition. I would note...and again in terms of everything that's proposed as part of this installation...we're inside the compound anyway...but if that's what you require...

Mr. Palmieri asked I have a quick question as it relates to that with the previous applications that were before the Board for antennas...do we have to have that boundary survey done.

Mr. Rauch replied we did not review the past applications from 2005 and past to see if there was a survey there. We would have to go back through the records to see if there was.

Mr. Soloway said what I might suggest, Mr. Chairman, that if the Board's agreeable, as a condition, we'll work with your engineering staff...frankly, if a boundary survey was done, for example, on the 2005 application...

Mr. Palmieri stated well, that's why I asked the question.

Mr. Soloway continued and we appreciate that...with all due respect, I don't know that there's a necessity but we'll work with you. We don't know what you have.

Mr. Rauch said and then, as part of that condition, when we go through the files from the past applications, if there is a boundary survey locating exactly where the compound is in relation to the property lines, that would be acceptable.

Mr. Soloway replied that's certainly reasonable, Mr. Chairman.

Mr. Rauch said the other thing, Mr. Chairman, in answer to your question as far as the fence height goes, for non-residential uses, fences and walls shall not exceed 10 feet in height. However, the height shall not exceed 4 feet when located in the front yard, within 20 feet of a public right-of-way, or located in a front yard and either at a distance least than the minimum principal use setback in a abutting residential zone. So, for here, that fence is within the zoning requirements.

Mr. Palmieri asked do any of the Board members have any questions of the testimony so far.

Mr. Rickert asked I don't know if you can answer this or maybe our engineer...is there a structural limitation to the amount of antennas that go on this particular tower.

Mr. Cottrell replied yes. A structural analysis has been performed on this particular tower which revealed that the tower and the foundation is adequate to support the existing antennas as well as the proposed antennas and cables.

Mr. Palmieri asked do you have an idea of what the maximum amount of antennas that would be...because obviously it's a very large antenna.

Mr. Cottrell replied well, I can tell you that when the existing and proposed...the tower is at least 95 percent capacity...so there's additional 5 percent capacity.

Mr. Palmieri asked so 5 percent meaning what...another one more array of antennas or two more arrays of antennas.

Mr. Cottrell answered I don't know that information.

Mr. Christopher asked how performed the analysis.

Mr. Cottrell replied Vertical Solutions out of Holly Springs, North Carolina.

Mr. Palmieri asked I guess do we get that report too.

Mr. Cottrell replied I can give you a copy here.

Mr. Soloway said it's certainly suitable as a condition in terms of getting a building permit. I'm sure that something like that's required anyway...that appropriate reports and certifications be submitted to the Construction Department.

Mr. Feist stated I don't disagree with that, Mr. Chairman. Certainly, we're not in a position to review a structural engineering report this evening but the attorney for the applicant is correct. It would be a function of the Construction Department prior to issuing a building permit and typically, in a case like this, they would require a report to be signed and sealed by a licensed structural engineer in New Jersey.

Mr. Palmieri said obviously the report currently...they're saying it's at 95 percent capacity with the addition of this antenna.

Mr. Cottrell replied that's correct.

Mr. Palmieri said so I guess my question goes back to the additional 5 percent that's left...is that two more antennas, one more antenna...but obviously you're saying you can't answer that question.

Mr. Cottrell stated not without...

Mr. Palmieri said calling them up in North Carolina and saying...you know...I'm sure they're not there.

Mr. Feist stated if it's a copy, I'll be happy to take a quick look through it and see...

Mr. Soloway said that's probably a trickier question than you might think because it might depend not only on the number of antennas but how high they are on the structure.

Mr. Palmieri stated right. It depends on location and everything else.

Mr. Cottrell said location, weight, and how they're located...how close to the tower.

Mr. Palmieri stated the higher you go, the less the percentage and you might not be able to put an antenna...we don't know the answer to that question.

Mr. Cottrell said correct...without knowing the specifics.

Mr. Palmieri asked any more questions from the Board.

Mr. Rauch said I have just one more question. In regards to the Engineer's letter. Is there anything on the Engineer's aspect, the engineering comments, that you can't comply with or...

Mr. Soloway asked which is what...just so we're clear on what we're talking about...because there are a lot of sections to this report. It's comprehensive and there are a lot of different categories and a lot of it is "can you testify about this and that"...so if we're going to be talking about specific conditions.

Mr. Feist asked if we could go to Page 7 of 11, Item J - General Site Plan Review Comments...we had indicated the comments that you've made a formal request for a waiver and in all cases, we have no objection to the waiver being granted.

Mr. Soloway said okay, addressing J - #1 - I think we've provided sufficient information in all due respect. #2 - We don't have the resolutions but apparently you do. #3 - I have that. I can either leave it with you tonight or just mail it in. #4, 5, 6, and 7 are all fine. #8 is a waiver. #9 is a waiver. #10...

Mr. Feist stated that would fall into the survey category.

Mr. Soloway said we're not proposing any easements.

Mr. Feist stated well, access to the site is through an easement so we want to be sure that the easement is enforced and that the applicant is entitled to utilize it.

Mr. Soloway said if it's not here somewhere in this report, there's a recommendation that we provide a copy of the existing deed and access is through an easement and I certainly will provide it.

Mr. Feist replied okay, #11 would also apply to the survey as it relates to easements.

Mr. Soloway said okay, again, we'll work that out with the engineering department as per the discussion earlier...based on what you have. What you don't have, we'll fill in the blanks. #12 – Is that a problem.

Mr. Feist stated that's a waiver. We don't have an issue with that. #13 – We have no issue with that waiver.

Mr. Soloway said #14 has already been testified to. #15 – I believe is. #16 – That's what the ordinance requires. I assume that is imposed later in the process when you get to the actual permitting. #17 is what we just discussed in terms of deeds and deed restrictions and easements...which is fine. #18 - We testified to. #19 – If that's an error, we'll correct it. #20 is a waiver. That's the end of Item J.

Mr. Feist replied that's correct. With regards to Item K...is a request for waivers regarding grading since no new grading is being proposed...we'd recommend the granting of that waiver. Stormwater Management, Item L...the testimony given is sufficient. We just wanted some testimony about the de minimum amount of new impervious area and that's been given. With regards to Environmental, we don't have an issue about the request of a waiver from an environmental impact report. With regards to M, #3, #4, and #5...I think he answered the issue of safety hazards. The equipment cabinets, any noise generated by that equipment...that would be above State standards.

Mr. Cottrell answered not above State standards...no.

Mr. Feist stated Item N was the survey. Item O, Utilities...you provided testimony as to what utilities are being provided. I believe it was electric and telephone and they're coming from existing services. They're coming from Essex.

Mr. Cottrell replied correct.

Mr. Feist stated and Lighting...you had described the lighting. The lighting is a little odd. Within the wireless communications part of the ordinance it talks about not having any lighting at the site and this citation is from the general ordinance. I think the lighting testimony that you provided and what you're providing on the site is adequate. Item Q is standard fees and Item R is outside agencies that may or may not be required.

Mr. Soloway said those are obviously appropriate conditions.

Mr. Feist said I think that's it from an engineering perspective.

Mr. Lomangino asked during the requirements you were talking about...did I hear you say that we're not requiring any environmental impact study.

Mr. Feist replied no. What's being proposed is not changing the conditions at the site. The study that's been provided with regards to the levels of emissions generated by the antenna would really supersede the requirements of a standard environmental impact study.

Mr. Palmieri stated I guess we've covered all the engineering aspects. Alright. Anybody else have anything else to add.

Mr. Soloway called his next witness, the applicant's planner, Ronald Reinertsen, Pennoni Associates, Cedar Knolls who was sworn in by Mr. Christopher.

The Board accepted Mr. Reinertsen's credentials as a planner.

Mr. Soloway stated Mr. Reinertsen, you're familiar with this application, listened to all the testimony tonight, and are familiar with the property and the surrounding area.

Mr. Reinertsen replied yes, in fact, previously a few years ago, this was part of my market before becoming a planner actually and I used to do site acquisition for cell firms...cell companies...and this particular case was AT&T Wireless and, in fact, I was looking for a site north of this site and I kept asking the radio frequency engineer what about that tower down there...that big guy. He said "No, it's too far out." Well, it's a small world and I'm back here testifying as a planner for an application for this tower.

Mr. Soloway asked are you also familiar with the ordinances of the Borough that are relevant to this application.

Mr. Reinertsen replied yes, I am. I was familiar with the ordinance that previously existed and now the new one that was passed. I would say, for lack of a better term, it's a very comprehensive ordinance now, specifically geared to this industry.

Mr. Soloway asked could you please assess this project from a planning perspective.

Mr. Reinertsen answered sure. You know, part of it, I always take my experiences, because I went to many zoning hearings in different roles and I'd sit in the back and I'd listen and sometimes it gets lost in the shuffle...you get different experts and when everyone's testifying, it's hard to get the full picture together. Really what it comes down to is that the applicant such as Metro PCS, or even AT&T or Cingular, are all licensed by the FCC and the federal government has mandated...they have seen that it is in the public interest to have such enhanced radio coverage. In essence they've auctioned off these licenses to applicants such as Metro. Their obligation is to provide coverage everywhere. What they've done also...they have put the burden of siting on the Boards, upon local authorities and in Tinton Falls, as I mentioned previously, they have passed this new ordinance and set certain guidelines and designated certain areas as preferable

sites. In this particular case, this is a designated area, the IOP Zone has been seen as a suitable area for this type of facility.

Mr. Soloway said I had indicated in our opening that this use is permitted as a conditional use in this zone. Do you agree with that.

Mr. Reinertsen replied yes, it is.

Mr. Soloway asked does this application comply with all the technical conditional use requirements.

Mr. Reinertsen answered no, it's not and I think, as one of the Board members before had said...well, if it's permitted, why are we here. Well, it's because we don't meet certain conditions and when we don't meet certain conditions under the Municipal Land Use Law, that triggers a d-3 variance which comes before the Board of Adjustment, and not the Planning Board, for a typical site plan.

Mr. Soloway asked in particular, what are the conditions that are not met by this particular application.

Mr. Reinertsen replied well, first, and foremost, is the height. The monopole...well, the way the code is written...poles are limited to 150 feet. This is a 420 foot pre-existing structure. The compound size is limited to 3600 square feet, if I'm recalling. Again, we've had testimony is larger. It doesn't meet certain fall-down requirements. It has to be 1 1/2 times the size of the tower. Again, this is a pre-existing tower. We don't meet those conditions. And there was also one other one that has not been mentioned. I think it was parking...an improved parking spot is required as part of the wireless ordinance. And the way the ordinance is written, each of those...some of them may seem like design issues...but if it is a deviation, it's not a waiver or a design. Actually, it says specifically that it is a conditional use variance.

Mr. Soloway asked all these deviations are pre-existing. Is that correct.

Mr. Reinertsen answered every one of them is pre-existing.

Mr. Soloway asked are you familiar with the applicable law standards relating to conditional use variance.

Mr. Reinertsen replied yes, I am. Many times when...and I'm sure the Board has heard applications here before where it's actually a use variance. This actually is a conditional use variance and that is governed by the Coventry Square decision...which made a distinction between variances that are required for the use itself...from this particular type of variance which really deals more with design issues. The use itself has been contemplated. It's been approved for this site so the site suitability issues have already been settled. Really what we're talking about are design issues and what we have to do is

weigh out each of these variances from the code and judge whether or not the Board can be justified in granting these variances.

Mr. Soloway said alright, now the test for the so-called positive criteria is, and correct me if you disagree, essentially that this site continues to be appropriate for the proposed use. Again, it's allowed in this zone notwithstanding those aspects of the application that don't comply with the specific use requirements. Is that correct.

Mr. Reinertsen answered that would be correct and I think if I deal with each of them separately, just very briefly...the size of the tower...much of that impact is absorbed due to the 10 acre size of the lot. It's not a small lot. It's a very large lot. The same with the compound size since we're not increasing it. On a smaller lot, maybe a large compound may be a problem. There's no issue here. We're putting the equipment inside and we're not increasing the compound. I don't think an improved parking pad really would be an issue here. It's not a shopping mall or anything else. It's visited once a month, I believe, the testimony was and there seems to be sufficient parking with the gravel area. So, each of them, I think...functionally it should work. We've had testimony by our engineering expert and they've offered structural analysis and other testimony that the site can accommodate this improvement and be within all standards.

Mr. Poloway asked is it accurate to say the site already accommodates this kind of use.

Mr. Reinertsen replied yes, it does. And in addition, since we're not really...many times in talking about site suitability, we refer to the radio frequency expert...I think even though that's not a major issue because the use is permitted...but Mr. Penesso has put ample testimony on the record that he needs this site. So I think it's suitable for the applicant and also we've had testimony that it will comply with all FCC guidelines when it comes to radio frequency emissions.

Mr. Poloway asked in your opinion, does the application meet the positive criteria required for the granting of a conditional use variance.

Mr. Reinertsen replied yes, it does. Again, I think the main thing is we're not increasing any of the non-conformities. We're basically, for the lack of a better term, this is an adaptive re-use of this guy tower, which probably back in the day was an AM radio tower...I'm not really too sure on that...I've seen it for years. My in-laws live in Toms River. That's one of my landmarks. I know when I'm getting close, especially if there's not a lot of traffic, we can always call and say "We're getting near. We'll be there for lunch."

Mr. Soloway asked what about the negative criteria.

Mr. Reinertsen answered well, within Coventry, really, what it deals with is you have to look at each of the aspects of the variances being requested and apply them and see how it affects the surrounding properties.

Mr. Soloway asked how would you assess the impact on the surrounding properties based upon the specific deviations from the ordinance requirements.

Mr. Reinertsen replied well, I think at this time, I do have some photo simulations. I'll bring them over to be marked in evidence. I do have 8 ½ X 11s of these in case people can't see them. If you want to label them as a package.

A-5 Aerial photo of existing location

The surrounding area is industrial to the south. I believe the outlet center is being built south of Essex Road...so this is an older photo. Other industrial area...we've got Seabrook Village up to the north. The entrance is actually 2000 feet away. I took one photo there. I didn't dare ask to go in the complex itself. When I took a photo at the gold complex, that's similar in distance to Seabrook so that should give you an idea of what it's going to look like from the community up there. And then we have the golf course to the right...a heavily wooded area...heavily buffered, natural buffering. It's not really near anything...any of the current uses. And the Garden State Parkway off to the west.

Mr. Palmieri said I have quick question before you move onto the next photo. Staying with the aerial, in the Seabrook Village area, I think there's a Phase III that's going to be built in Seabrook and I don't know if you're aware of it and I'm just trying to remember...Charlie, do you remember Gary Baldwin, the councilman...isn't it going to be

Mr. Lomangino stated to the left as you're looking at it...to the left side.

Mr. Palmieri asked towards the Parkway area...that's Essex Road below...because the existing gate entrance that's 2065 feet away. So if we head, I'm assuming, south along Essex Road...that's where the location of the new Phase III of the Seabrook Village...so that would be closer to where the tower is. I just got to bring it on the record.

Mr. Reinertsen replied absolutely and when we get to A-6...it's one of the reasons I went up so close is just in case there was anything in the future. The 420 foot photograph is much closer than anyone would be...most of the public there...for the lack of a better term, it's a little underutilized...some of those buildings look like they were half vacant and such. Okay so here's A-6

A-6 Photoboard of existing tower taken from 410 feet SW of site

Normally this is the only picture you'll see that I actually had to turn the camera. I normally like to keep it...I don't like to take a vertical picture because I really want to show what your eye would see...but unfortunately the tower's so darn big, I just couldn't get the whole tower in doing that but I wanted to get up close. The before pictures are all to the left and the after are always going to be to the right on these four boards. It's very hard to see on the 8 ½ by 11...this here is the Metro PCS after photo on A-6...underneath the triangular array that is probably 310 feet...I don't know. I don't have the plans in

front of me...and then Metro PCS is below that and then you have a set of guy wires going just below the Metro. So, again, it's very hard to see. I'll bring the board up to you if you want...up close. It's easier to see on this picture.

Mr. Palmieri said oh, okay.

Mr. Reinertsen stated again, the question about visual impact...being such a large tower and only 6 antennas and the way they're mounted, it really get absorbed into the current array. I have good farsight. I need reading glasses, too, myself but there's no way I'd be able to see this from a normal distance. Okay, we go onto A -7

A-7 Photo of tower taken from 915 feet W of site

A-7 is taken from 915 feet from Essex Road...really the entrance to that industrial area. I took this because this would be a perspective...I think really as close as people from the Parkway would be seeing it or even from the Outlet stores would be seeing it. In fact, the Outlet stores, that would be their parking lot so I think it would even be further away...but just to give you an idea about...before is to the left and for the record, you can see the antennas on the after picture to the right but again it's very difficult...so I'll bring it on over again. Oh, we're good. Okay, I'll keep going. Is there's no other questions, I'll go to the last two.

A-8 Photo of tower 1320 feet SE of site (by Twin Brook Golf Complex)

This is from Twin Brook golf complex...1320 feet away. I would say that's probably the distance...and being the way this tower is...there's no difference, the antennas are all around equally. That's probably the closest view you would get from Seabrook...from the closest condos...if you look at the key map...just the estimate...maybe I'm off by 100 feet but that basically would be the same type of view there...minimal impact...unless you really know it, I don't think you'd ever notice it...that the antennas are there.

A-9 Photo of tower taken 2065 feet N of site (by entrance to Seabrook Village)

Last, but not least, is 2000 feet away. Normally I don't go so far away but since this is the entrance to Seabrook, I did take a picture from here just to show, again, before and after...and here, you'll hardly notice the additional antennas. That would be A-9.

So I think with the visual on the antennas, you see they have minimal impact. Because the compound is already within that 10 acre site and heavily wooded, we won't see any improvements there. So really, there's very minimal impact upon the surrounding properties, even taking into consideration if Seabrook enlarges at a certain point.

Mr. Soloway asked so how would you assess this as far as negative criteria.

Mr. Reinertsen replied just to sum it up, I think it has minimal impact. We've already discussed about the zone plan and the ordinance. The zone plan has already specified that they would like this use in the site. We're here really because the nature of the beast, so to speak. The tower and such is non-conforming. The variances being asked are unique to the site. It shouldn't cause any harm to the ordinance itself because it's really because of these non-conforming conditions. We're not increasing anything. We're not asking for relief that could be seen as a precedent in another tower. You know, we were not asking to build a new 200 foot tower. We're really just asking, again, to just re-use this site and add these minimal antennas to it.

Mr. Soloway asked so in your opinion, could these variances be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and the zoning ordinance.

Mr. Reinertsen replied I would say so. Now, normally, just to sum it up, I would just...really understand the FCC mandate of being in a public interest to use...to provide these types of services. We've identified that really the impact visually is minimal. The coverage has been testified as needed. I think you can really sum it up and balance it saying the positives of this application far outweigh the negatives and that would be my expert opinion.

Mr. Soloway said one final question...the ordinance, and I'm talking about the wireless ordinance, lays out certain objectives, does it not.

Mr. Reinertsen replied yes, it does and I will say that it does meet every objective. I summed it up...okay, here we go...the objectives...#1 – co-locate on existing facilities and the other major point that is made is to locate it near major arteries, travel arteries. Well, there's nothing more major than the Garden State Parkway and the other local streets around...you've got #66 just down south...so it's really in a very strategic location. I think that's what they had in mind when they enacted this ordinance. Again, just because of the technicalities of this...because of the previous physical structures, that's why we here before the Board.

Mr. Soloway stated thank you, Mr. Reinertsen. I have no further questions, Mr. Chairman.

Mr. Palmieri said any of the Board members have any questions of the testimony so far.

Mr. Feist stated Mr. Chairman, I don't have any particular questions. I think the applicant's planner has outlined the necessary proofs for the Board to grant the variances and as I stated earlier, the bulk variances are existing variances. They're not proposing to raise the tower. It's an existing facility. The applicant did touch on something that I was also going to touch on which is the beginning of the new ordinance which sets forth the purpose of having this ordinance and they are meeting intent of the ordinance through the purpose part of it. The ordinance creates this variance situation for a large degree because it contemplates construction of new monopole antennas. The ordinance wasn't

written specifically to deal with existing conditions like this but the intent clearly is to encourage locations that are unique in the sense that it provides a great deal of coverage without having to create more antenna sites. And that was something that I spoke about a little earlier this evening that the fact that you've got a lattice tower of this height, they're able to get the antennas up so high, you get a better coverage area with a single structure. The alternative would be to not allow the antennas on this site and build two new monopoles or three new monopoles to get that same coverage. So I think from a planning perspective, I don't think they're stepping on the new ordinance and I think that the Board can grant the requested variances without feeling the new ordinance is being ignored.\

Mr. Palmieri said I'm going to open it up to the public. Does the public have any questions of the testimony given so far. There was no response.

Mr. Palmieri then asked Mr. Soloway is there anything else you would like to add.

Mr. Soloway replied no, I think both planners have really summarized this. I think this is a good application. I think it does what your ordinance wants it to do and I think as type of installation goes, this is about as minimal an impact as you can have in this type of an area. As Mr. Reinertsen indicated, you can hardly see this and I think it works and I hope you approve it.

Mr. Rickert asked I have a quick question. On your after pictures, is that something you imposed on there or are the antennas actually already there.

Mr. Reinertsen replied actually I should have said, I used a standard camera, a Fugi camera, nothing fancy and what we do at Pennoni is take the photos and we have equipment specifications from the client and our graphic artists basically mock up what this would look like and we take the plans, the zoning drawings produced by the engineer and superimpose the antennas on the photos. So, no, they are not there but that is a replication of what they would look like based upon...

Mr. Rickert asked so that is what they will look like. They won't look like the one above it.

Mr. Reinertsen replied it should not. If they install it the way they did and my graphics guys did their jobs and they usually do a good job, that should be how it looks.

Mr. Soloway said to also answer your question, no we can't put the antennas up. That's why we're here.

Mr. Rickert stated that wasn't really my question. My question was are they going to be what I see there or is it going to be something like above it or below it.

Mr. Soloway replied they should be substantially similar to what's depicted in the photo simulations.

Mr. Reinertsen stated yes, that would be accurate.

Mr. Palmieri asked are there any comments from the public. There were none.

A motion to close the public portion of the Metro PCS matter was offered by Mr. Lomangino and seconded by Mr. Porzion. A voice vote in favor was unanimous.

A motion to approve the conditional use variance was offered by Mr. Moafi and seconded by Mr. Rickert.

ROLL CALL

Yes: Messrs. Moafi, Rickert, Palmieri, Lomangino, Porzio & Roche

No: None

Abstain: None

A motion to approve the site plan with conditions for Metro PCS was offered by Mr. Porzio and seconded by Mr. Rickert.

ROLL CALL

Yes: Messrs. Porzio, Rickert, Palmieri, Lomangino, Moafi & Roche

No: None

Abstain: None

A motion to adopt the Muller resolution was offered by Mr. Lomangino and seconded by Mr. Porzio. Messrs. Moafi, Rickert and Roche were not eligible to vote. A voice vote in favor was unanimous by the three remaining members.

A motion to adjourn the meeting was offered by Mr. Lomangino and seconded unanimously.

Respectfully submitted,

Doug Gotfredsen
Board Secretary