

**TOWN OF SOUTHEAST
ZONING BOARD OF APPEALS
Town Hall
One Main Street
Brewster, NY 10509
January 24th, 2005**

Board Members

Edward Colello	Chairman	Present
Ronald Kobbe	Vice Chairman	Present
Thomas Costello		Present
Timothy Froessel		Present
Kevin Sheil		Present
John Gallagher		Absent
Joseph Castellano		Present
Willis Stephens	Town Attorney	Absent
Richard Honeck	Town Board Liaison	Absent
Linda M. Stec	Administrative Assistant	Present

Ed Colello – Let’s stand for the Pledge of Allegiance. Pledge of Allegiance said. Good evening everyone. Welcome to the January 2005 meeting of the Town of Southeast Zoning Board of Appeals. First of all let me introduce our Board members, my name is **Ed Colello**, Chairman. Members introduced. We have one more member, **Tom Costello**, he should be here shortly. First of all let me apologize for the inconvenience of this evening and the reason we are in this reason. This happens a couple of a times a year, last Monday our regularly schedule was Martin Luther King Day and when we have multiple Board going on at once it is very tough for us to get good locations and it always works that we have to meet in this room we have a big crowd. I apologize for the inconvenience and I apologize for the fact that we don’t have seating but we will get through it and we will do the best we can. I just ask because of the size and the acoustics etc. when people are speaking if you try to speak up a little bit so that we can all hear and see what is going on. I am going to read the agenda, I am a little cripple I don’t have my glasses. It has been a rough week I forgot my glasses and I got my letter to join AARP this week. So it has been a tough time, I don’t have my glasses, I am turning 50 and my life is falling apart.

Ron Kobbe – We have eight items on the agenda, the first is Louis and Sylvia Pauta, second is Vails Grove Course LLC, number three is Victor Valesquez, four, Anthony and Stephanie Fanelli, five is Stephen H. Johnson Family, LLC, six, Francine Monti, seven, Barbara and Martin Tublib, eight, Lucille Chappelle.

Ed Colello – I believe our first four items are on the agenda are carry overs and I just ask when you come up to speak just to remind you if you were sworn in you are still undear oath and if there is anyone else that is going to speak we have to swear him or her in and also if you could start by sort of recapping what the application is about to refresh

everyone's memory because there may be people in the room that are interested in that application. We will start with that.

1) Louis and Sylvia Pauta
19 Root Avenue
TM# 55.12-1-17

Ed Colello – How are you? This is a carry over application.

Sylvia Pauta appeared for this application.

Ed Colello – If you could speak up so we can keep good minutes. Last month there was some confusion maybe on our part in regard to where you wanted the deck.

Sylvia Pauta – The first time we applied for everything this time we decided to leave it the way it was, with just the side.

Ed Colello – So you are not going to do anything in the front of the house?

Sylvia Pauta – No.

Ed Colello – So it is just a side yard setback?

Sylvia Pauta – Yes. From here to here.

Ed Colello – From here it is 14.4 from this property line to this quarter. This is all ready built, correct?

Sylvia Pauta – Yes.

Ed Colello – So from this corner to the closest part?

Sylvia Pauta – Yes. Do you have a copy of the letter?

Ed Colello – Yes, we have a copy.

Sylvia Pauta – Do you want to look at the pictures again?

Ed Colello – Yes. If you could do me a favor and just take this map and just show Kevin Sheil and Joe Castellano what you are doing?

Ed Colello – Can you show us the side of the house you are going to do the work on?

Sylvia Pauta – This one.

Ed Colello – So here we are. So the front of the house is here, this is the side.

Let me ask you one more question. From the part of the deck where this line is, this is 15 feet some odd feet.

Sylvia Pauta. – That is 15.4.

Ed Colello – That is right on this corner.

Tim Froessel – The letter from Ron Harper states “that the new roof will overhang the existing deck by 1’2” plus the rain gutter, for a total of approximately 1’8”.”

Tim Froessel – The letter states that “plot plan as submitted does not include a dimension between the sideline and the side deck at the point where the front edge of the new roof will end. I have asked the application to provide that dimension to the Zoning Board of Appeals.”

Ed Colello – What is that?

Sylvia Pauta – 15.4

Tim Froessel – And if you take off the 1’8”?

Ron Kobbe – 13.8 feet.

Ed Colello – The side yard is 20 and the total is 50. And the other side is 19.

Ron Kobbe – So she has 33, so she needs 17.

Tim Froessel – No, one more, it will be 13.8 on the side.

Ed Colello – She needs an 18 foot variance on the total and a seven on the side yard. It will be what side of the property?

Tim Froessel – South.

Ed Colello – So we need 7 foot on the side yard and 18 overall. The applicant needs relief from the side yard setback which is a 20 foot requirement the applicant appears to have approximately 13 feet, so she would need a seven foot variance on the south side of the property and on the overall requirement of 50 feet it appears that the applicant needs an 18 foot variance from the overall total side yard requirement of 50. Does anyone have any questions or thoughts or opinions in regard to this application? Does the Board have any other questions of the applicant? Before we close the public hearing are there any final comments you would like to make?

Sylvia Pauta – No.

Ed Colello – Do you think you have had a fair and adequate opportunity to state your case?

Sylvia Pauta – Yes.

Ed Colello – Have a seat we will close the public hearing.

Public hearing closed.

Ed Colello – If there aren't other comments I would like to make a motion to grant the applicant relief from the side yard setback of seven feet from the south side of the property and an 18 foot variance from the overall requirement which is 50 feet.

Tom Costello – Second.

Ed Colello – I will address the criteria.

1. Whether an undesirable change will be produced in the character of the neighborhood, (or a detriment to nearby properties will be created by the grant of the variance).

I don't think so at all it is a relatively small lot I don't think it will change the character of the neighborhood whatsoever. I think it will improve the property and again I don't think it will have any undesirable changes whatsoever.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

The applicant really has no other choice only because the existing deck that the applicant is trying to cover is already too close to the property line which is very common with upzoning in our town and etc. When you have smaller lots and properties that are close together because of upzoning as I said before many, many times the person has no other alternative other than a variance.

3. Whether the requested variance is substantial.

I think you might want to look at it as being substantial from a 20 foot requirement the applicant at the closest point is 13 feet and overall on the 50 foot requirement the applicant has 32 feet so you could call it substantial in the character of the neighborhood there is nothing else the applicant could have done.

4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.

I think it will have none.

5. Whether the alleged difficulty was self created.

It could be self created because the applicant wants to cover the deck but I think we can call it self created because our zoning laws and Code prohibit the applicant from doing almost anything on that property without a variance.

Roll Call Vote:

Kevin Sheil – In favor

Joseph Castellano – In favor

Tim Froessel – In favor

Tom Costello – In favor

Ron Kobbe – In favor

Ed Colello – In favor

Ed Colello – So your application is approved. You are all set. We are going to give you something to take the Building Department and they will give you your building permit and you can move ahead.

2) Vails Grove Golf Course, LLC
230 Peach Lake Road
TM# 1-45

Lucia Chiochio, attorney, Cuddy & Feder, Shahed Husain, engineer, Bechtel Telecommunications, and Donald Leffert, of Tectonic, and Sara Lethbridge of Tectonic appeared for this application..

Lucia Chiochio – Good evening. My name is Lucia Chiochio, I am with Cuddy & Feder and we represent Cingular Wireless formerly known as AT&T Wireless. We are here in behalf of the application. I will give you a brief description of what we are proposing and then bring everyone up to speed as to what we have done in the last month. I will try to talk both ways. We are proposing 128 foot flagpole wireless facility as Vails Grove Golf Course. The proposed facility will have antennas within the flagpole. The facility is needed to provide wireless service along 121. Cingular is also using surrounding sites to provide service. This site is needed to provide service where those other sites have not been providing service. We are already co-located at the tower on Joes Hill Road. We are also co-located on the tower at Turk Hill Road and we are proposing on the approved T-Mobile site over on Hillside Park. This tower is needed, this flagpole facility is needed in order to provide coverage where those other sites are not providing coverage. We performed a balloon test on January 15th, last Saturday. We flew an approximately three foot diameter red balloon at the proposed height of 128 feet from

approximately 10:30 AM to about 4:30 PM. We took photos from ten locations while the balloon was up and prepared photo simulations and I will pass out what we have. It took us about a week to get them prepared so that is why I am handing them out this evening. I am going to ask Sara Lethbridge from Tectonic who was here doing the balloon test to talk briefly how she raised the balloon and how she got it to 128 feet and maintain that height and the weather conditions of the day. Sara can you come up. Sara needs to be sworn in as she was not here last month. **Ron Kobbe** swore in Sara Lethbridge.

Sara Lethbridge – On Saturday, January 15th I was asked to fly a weather balloon about 128 feet where the proposed flagpole structure would be located at Vails Golf Course on Peach Lake Road. I arrived at the golf course at 10:00 AM to meet a gentleman from Vails Golf Course. I got the red three foot balloon up at approximately 10:35 AM. It was sunny, bitterly cold and it there was some wind in the morning. I was trying to keep it tethered, trying to maintain the balloon the best I could. Due to the wind and actually being a long balloon float. Due to it being so cold and due to the length of the balloon flight I did have to take the balloon down around 1:00 PM. Due to the cold it lost a lot of its elasticity and so I exchanged it. The balloon was down for about ten to 15 minutes and after that. At 1:15 the balloon went up and actually it did a lot better in the afternoon and I took the balloon down at about 4:25 PM.

Lucia Chiocchio – Thank you. We also provided a supplement submission some additional information about sites we did investigate. There was also a request from the Board to provide some information about existing flagpole facilities so that if you wanted to go and view them and see what they look like. I will give you a list and some maps. We have here what these facilities do look like. We also put on the survey of the property to develop what is called ? so that we could an analysis regarding the need for FAA registration since it is somewhat proximity of an airport. We have done an analysis that no registration will be needed, no FAA registration. We are going to submit the analysis simply because it is different from what we previous thought. But the difference may be due to the fact that we have better coordinates. Our analysis is a little more sophisticated this time with the data. Like I said it did indicated that FAA registration is not required for any kind of lighting, marking. And finally I know Mr. Duffy had called Tectonic and had a couple of questions about distances and so forth. I have a couple of answers for you.

Tom Duffy – I have the AMASL, the government sea level differential on the visual impact from the other firm. That was 680 above sea level and these are 78.

Lucia Chiocchio – It is about 680.

Tom Duffy – It is about 680.

Lucia Chiocchio – So this is correct.

Ed Colello – Can you do me a favor before we get into individual questions and thoughts and opinions which we are going to open up the floor to questions in a few minutes. From a legal prospective can you explain because some were here last month, some weren't could you fill everyone in on why exactly you are here and why you have to be here.

Lucia Chiocchio – We are here this evening seeking a use variance. Wireless facilities are not permitted use in the zoning district in which the golf course is located. However, wireless facilities are subject to a different standard for granting of a use variance than most other types of facilities. Wireless facilities are considered a public facility from

New York State Law and rather than go through the several factors that you would typically go through for a use variance the courts have said that the standard should be used as a balancing test. We have to balance the need for the facility against the impact to the community. So it is a little bit different standard. Some have said it is a lesser standard due to the fact that it is considered a public utility and the government has said that is important to have utilities. They consider it like a Con Ed line and a regular phone line. Do you want me explain the health effects?

Ed Colello – If you could, if you would like.

Lucia Chiocchio – Pursuant to the Telecommunications Act, a federal law, the zoning boards and local planning boards or any local municipality cannot make any kind of zoning decision based on what are perceived health effects from wireless facilities as long as the applicant has shown that we have meet the federal standards for radio frequency energy. We did provide documentation and calculations to the Board in our initial application that indicate that the proposed facility was far below the federal standards. If you want more information on the standards the FCC has issued, they have a very good website, call them for more information on that.

Ed Colello – At this time do any of the Board members have any questions for the applicant.

Kevin Sheil – We were supposed to be notified about the balloon test?

Lucia Chiocchio – I sent a letter. I gave it to Linda, I sent it to the Planning Board and the Town Clerk, I sent it to everybody, it went out certified mail to everyone that was on the distribution line for our initial application.

Woman in audience – You changed the date.

Lucia Chiocchio – On the 7th there was inclement weather and I did notify the Town that there was inclement weather. I just didn't have time to get another notice out. There is nothing I can do about the weather.

Tom Costello – There was some questions concerning some construction that was going on last month?

Lucia Chiocchio – I provided a copy to the Board of a building permit that was issued. There was some construction not related to the wireless facility that the golf course was involved with. They have been working with the Building Department to make sure that they get the proper permits in order to do the work they need to do.

Tom Costello – There is no outstanding violations?

Lucia Chiocchio – As far as I understand.

Tom Costello – Last month there was also a question about the right legal entity? Has that been resolved?

Lucia Chiocchio – The right legal entity?

Tom Costello – Someone raised the question of who has the right to the property to be able to lease it to you.

Lucia Chiocchio – I don't recall that.

Ed Colello – Somebody brought up the question something about Vails, I don't have it in my notes, but there was a question about Vails Grove LLC is not the legal entity anymore?

Lucia Chiocchio – I am sure in our records we have the deed.

Tom Costello – Can you make sure we have that, the correct owner?

Ed Colello – At this point I will open it up to questions, a couple of things, please state your name and your address only for our minutes and please try to speak up so that Linda can get it on tape or write it down and all we ask is again everyone is going to have a chance to say what they like but for the sake of time, for the sake of proceeding with the meeting if the person before you said everything you want to say it will be understood if you say my name is **Ed Colello**, I live at Scenic Ridge Drive I echo Mr. Jones' sentiment 100%, just so we don't get repetitious but everyone is going to have their chance we are not going cut anybody off. Who wants to start?

George Calcagnini – I would like to make a comment follow up on things counsel said about the law and the standards and governing this.

Linda Stec – Can I have your name please?

George Calcagnini – George Calcagnini, One Coyote Court, Brewster. This Board can and should and is permitted by the courts to consider the aesthetics of the situation. Moreover the applicant is required to mitigate to maximum extent possible to mitigate the adverse environmental visual pollution by these towers. We haven't heard anything about would a 60 foot tower satisfy their alleged needs, 70 or 80 so the applicant in their presentation is really deficient in failing to address these real legitimate concerns. When they originally came in they completely ignored at sites due east of the tower. They have now come in with their simulations and their photographs and those photographs which I assume the Board has does show that those sites to the east are visually impacted by the tower sticking up there. I think their application is deficient in this regard I think the Board is required to consider the aesthetics and we are going to be stuck with these towers and one thing the applicant also hasn't done is come forward with a comprehensive plan for their future development or future towers in this town. We know that the Cingular company and all the cell towers are putting up towers all over this country. We should have a comprehensive plan to know exactly what they are planning to put in our town. Are we going to have 50 towers 120 feet? What we are going to be left with in this county in a couple of years is towers all over the place and we are dealing with the technology that we know is not going to be here forever and we all know that eventually and in a few years down the line we are going to be having satellite. Just like now we are getting satellite radio, we are getting On-Star and people are walking around now with satellite phones because it is a much better technology because it all comes straight down and it is all line of sight. So we are dealing with a situation where we are being asked to approve what is essentially an obsolete technology and when it is abandoned we are going to be left with these sites they are not going to come back in ten years when they abandon the tower, they are not going to take this down. So we are going to be left with that. But it is really important that we mitigate to the maximum extent possible the adverse visual impact on our community. The other thing is I notice there are some petitions going around and the petitions have asked people to characterize their cell coverage. And I believe that uniformly all the people in the relevant area have pretty good cell coverage here. So we have a terrible visual impact and we already have an applicant that has good coverage and accessibility here. Last time there was a technical person and I forgot his name was here he indicated that the reason some people I believe it was Mr. Cousens who indicated that he had AT&T and had good coverage is because they buy roaming. It is not obligation to make sure that they get the cheapest possible. They have adequate coverage. I guess they are buying that coverage through

another company and it is costing them a couple more cents. But they got their adequate coverage. So I think the Board should consider.

Ed Colello – Can I say a couple of things on that. Couple of points you made, one of them, let's do the aesthetics I made a joke last month how I like the ugly looking tree on the Hutch and I meant that purely as a joke. Certain things, and I will say this very open how I feel about these things is that my biggest concern and it is along the same lines where you are talking about is that we start with a pole and then a pole has a 12 foot antenna over here, and then pole has a 12 foot antenna over here. There is not a heck of a lot that we can demand from a public utility that is the biggest problem that this Board faces. And we have been through a few of these already but what we can try to do, is come up with the best solution and I am just throwing this out. One of the things that I appreciate the fact is that the pole has no outside antenna, one of the things, not as a Board member but as member of this town and community that I would like to see restrictions are there are no other antennas placed on it down the road. The other question is a valid one what is going to happen in 20, 30 years when this system is outdated. Well, hopefully the same judge that said they are a public utility and that they have to play by different rules and the same federal government that we appoint into office is going to say not it is your job to go in and take down these poles. Do I question that that is going to happen you are probably right on, I agree with you. Unfortunately I don't know what we can do about that is what I am saying in that record. But the one thing that I want to make sure that everybody wants to understand that this is not a building, and what I mean by this is that if the applicant was coming forward to put an apartment building, not a 100 foot apartment building, a 30 foot apartment building, we would have all the power and the all the ability to approve it, disapprove it, do whatever we want to do with it. Unfortunately, we have limited power in these situations and that is because and I will be very blunt if we deny this for reasons, they would have to be very strong reasons let me rephrase that, they will go into court and the judge will overrule us like that.

George Calcagnini – That is were I differ. There is case law and I can give you a couple of cites if you look but there is case law where Sprint has lost a couple of cases based on the aesthetics of the situation and the federal judges have said no they are not getting their tower because of the aesthetics that this has caused to the community. For instance we have Sprint Spectrum vs. Zoning Board of Appeals of Brookhaven, 244 2nd 108 and that is a case from 2003 another one is Sprint Spectrum and that is the town on Onatario, 176 federal 3rd, 630, that is a case from 1998. These are cases where the federal courts have said no to towers based on the visual impact they are entitled to deny the applicant. I know that they would want you to believe that it is a slam dunk for them to be here. That is not the case.

Ed Colello – Maybe I gave you the wrong impression. Slam dunk, I don't want to you think it is a slam dunk, I agree with you there. But I think that our job is obviously make sure that the applicant does do it due diligence that does look at all the sites that just doesn't pick the easiest site, the cheapest site, you see what I am saying.

George Calcagnini – But there is also a big difference between a 60 foot tower and a 128 foot tower and they haven't addressed that at all. Also the Town code limits to a 100 foot even with their variance.

Ed Colello – Do you have that information because that is one of the specific questions?

Lucia Chiocchio – We understand that there is some concern about the visual antenna. We did come in we didn't propose a monopole we tried to come in and propose something that would be more aesthetically pleasing. We did look our coverage, our radio frequency cover in the area. We designed it initially to allow for co-location. The Town wireless law does encourage co-location. So we designed it at 128 feet considering some other carriers are going to come in and use the pole also. If we don't allow co-location or if we don't provide what we think would be an acceptable height for another wireless carrier and we do find a site further down on 121 and we do have ? in North Salem and we can find a site there at about 100 feet we could reduce this flagpole to about 100 feet. We are going to lose some coverage but from what I understand we can live with it. It is not the ideal situation for us from a coverage prospective we understand your concerns about the visual impact to come down to 100 feet that is another 30 feet. We don't necessarily have to put a flag on this. We have sites where we put the antenna inside the pole, we painted it brown so that it blends in with the vegetation. We have a lot of flexibility and some people think that looks better, some people do. Obviously all the things you can condition. As far as concerns about someone attaching antennas outside we can make that a condition of the approval so that if another carrier if they want to use the site has to figure out a way to get inside.

Ed Colello – But your application is currently at 128 feet?

Lucia Chiocchio – Correct. And like I said we designed it that would be the best coverage we can get without going too tall. At a certain point they are not going to get any more coverage put it taller and to allow for co-location. We can come down to 100 feet. We are going to compromise some coverage but like I said we can live with it that point. Ideally we would like to have coverage but we are not going to in the real world.

Ed Colello – Has your engineer told you that is the absolute size you need 100 feet?

Lucia Chiocchio – After that we would start sacrificing coverage on 121 which would probably need us to put another site at some point. The lower you go the more sites you need.

Ed Colello – I understand.

Lucia Chiocchio – We are balancing it and taking a risk that we are going to find a site to the south at about 100 feet. It is not always easy to plan and get all your sites on line at the same time.

Ed Colello – Since we just came down 30 feet in six minutes, if we stayed here a couple of hours it would look like a shrub and we would know it was there! In all seriousness I would appreciate it if you could meet with the engineers.

Lucia Chiocchio – We did it from the last meeting. We understood.

Ed Colello – When were you going to tell me you could go down to 100 feet?

Lucia Chiocchio – Tonight. Everyone understand the concerns, I understand the concerns. I understand that the visual impact is something you have to balance. Like I said 100 feet is not ideal for us. We are not going to get the coverage we were looking to get but we can live with it. And like I said there is flexibility here we don't have to put a flag on it. We can put a different flag. We can paint it.

Ed Colello – I don't think the flag is the big issue.

Lucia Chiocchio – It has a huge visual impact.

Ed Colello – That is a minor point. The height of the pole, the pole itself I think is why most people are here. Not what flag or if a flag.

Lucia Chiocchio – We don't even have time to revise our visual materials. What we can do for a proposed 100 foot. We flew the balloon at 128 feet because that is what we proposed.

George Calcagnini – One of the things they didn't address is the long term conceptual plan, we all know that are not just planning this one tower in our town and the Zoning Ordinance for our town does say that the Board can require them to produce. I would ask the Board to make them lay their cards and give us their long term for our town. You have power why not just point blank tell them give us this plan.

Lucia Chiocchio – Our rate of frequency plots we plot our existing and proposed sites in town. We are as I said earlier co-located on two of the existing towers a third one that has been approved, additional use permit approval from the Planning Board. We are seeking to co-locate on that. Very soon the Planning Board will have an application for that.

Ed Colello – You mean the Zoning Board of Appeals?

Lucia Chiocchio – Actually it is site that received conditional use and site plan approval from the Planning Board. And according to the approval any additional carriers must go before the Planning Board.

Ed Colello – The tower is already up?

Lucia Chiocchio – No, it is not up yet, but it is approved.

Ed Colello – How high is?

Lucia Chiocchio – 120 feet.

Ed Colello – And the Planning Board approved that?

Lucia Chiocchio – Yes.

Ed Colello – Without coming to the Zoning Board of Appeals?

Lucia Chiocchio – It didn't need Zoning Board of Appeals.

Ed Colello – And why is that?

Lucia Chiocchio – Because it was located in a district.

Ed Colello – But it is over a 100 feet isn't it?

Lucia Chiocchio – I believe it is 120 feet which is the maximum permitted height for three users. I don't have the code in front of me but I believe that is what it is. We are not proposing to make it any taller, we are proposing to co-locate. That is an existing site. We can supply more detailed information about coverage but at this point that is what we are proposing.

Ed Colello – What is this location?

Lucia Chiocchio – It is 87 Hillside Park.

Ed Colello – And when were you given approval?

Lucia Chiocchio – We weren't given approval, another carrier.

Ed Colello – I know that, when did they get it, do you remember?

Lucia Chiocchio – February of last year, maybe.

Tim Froessel – It was the village.

Lucia Chiocchio – March 8th.

Ed Colello – OK, yes sir.

Charles Voelkl – 23 Bonnieview Street, North Salem, NY. Thank you for giving me the opportunity to speak I am in Westchester County, North Salem, but I would like to ask the Board members to have mercy in consideration of this application because the lake as an open field there is no trees or anything to obscure our view I am on the other side of

the lake and of course I love to boat and everything and I am always down on the lake and if you just envision unfortunately as this gentlemen said they didn't even get the opportunity to see the balloon test. I did walk along the shore line on North Salem side all the way down it is very, very visible. At a minimum I would hope that the height is brought down, that the flag could be taken down from my standpoint. We don't want this thing to be see hopefully if this could be hidden. And I would like to see I echo the sentiments of the gentleman ahead of me. I would also like to point out in North Salem we have a cell tower on Delancey Road, right at Hardscrabble Road, in the winery. It is beautiful. You can go all along the road, I invite the members of the Board to do it. You never see it. None of the houses there obstruct it. It is up on a hill. Perfect co-location site. I urge the Board members they have the power to hire an expert to do their own investigation because the applicant says they need it do they really need it or could they relocate. The FCC does suggest co-location when necessary. I would hate to see three poles here. And unlike the chairman, go forbid it has to go in, maybe we should have a model site so there is only one. I don't want other areas being impacted also. So I would urge the Board members to have mercy look for other sites, hire your own expert to determine if they could co-locate over to Delancey. Thank you.

Lucia Chiochio – We did look at that site on Delancey. It does not provide coverage where we need coverage along 121.

Charles Voelkl – Again that is her word! You can hire your own experts.

George Cousens – 3 Coyote Court. I am Vails Grove nearest neighbor. I wasn't raised to treat neighbors like this. Coventry Lane was developed by a company called Building and Land Technology. Thank you for reminding me you are a public utility. Because when they brought in the public utilities they were not allowed to put them on poles. They had to bury them. It had to be the Zoning Board of Appeals that made them put them underground.

Gail Cousens – 3 Coyote Court. Unfortunately this action has caused us to quickly delve into wireless facilities. I have spoken with a firm in California and another one in upstate New York and they totally disagree with your position that tower is the only way to go. California is no longer using the pole towers. More than 50% their personal wireless facilities are small units that are placed on telephone poles, on public buildings, in church buildings, anything to get them out of site. Yes, do they need more of them, yes they do. But they said these cell towers are so quickly becoming obsolete. You are going to have more and more cell towers in between and it is not because their coverage is so poor it because there are more and more servers requiring their services so the result being emissions or whatever you want to call them, because alluded. And that is why poles are off, because there are so many people using it. So I think rather than go for a tower you really need to ask them to investigate. It may be more costly to them but frankly we don't really care because this is where we live and we are the ones being effected. Let them go for a more expensive wireless facility. Lower them, hide them. I saw one that was constructed it was a barn and since they are talking about adding a 65 foot building to house all the machinery what a nice thing to do make it a barn with the little towers as the antennas. Totally unobtrusive compared to this thing.

Ed Colello – What other types of facilities do you use rather than towers?

Lucia Chiochio – We do all of those things except maybe telephone poles they are not tall enough for coverage but proposing a brand new structure from the ground up is a last

resort. We will look and try to co-locate on existing towers first, we will look for tall structures, tall buildings where we can put the antennas and we look at commercial areas before looking at residential areas. This is a last resort and it is not a matter of cost as far as what we are willing to do because we are proposing a facility that would cost more than a typical monopole to hid antennas to make it less visually intrusive it will cost us more because we will have to look for another site that we are not sure that we are going to get along 121.

Gail Cousens – We were talking about it being lower and hidden in the trees. Or a small building.

Lucia Chiochio – The problem with being hidden in the trees you have to make sure that you can get a signal. If you don't clear the trees then you don't get a signal.

Shahed Husain – My name is **Shahed Husain**, Bectel Telecommunications. The tree leaves absorb signals that is one of the reasons we try to overcome that difficulty and go above the tree line. There are ways of doing things I am sure who you spoke with or what they are referring to in general terms we would like to build the tower as a last resort. We try to co-locate and use structures mainly because we know that provide services.

Gail Cousens – California is doing it unobtrusively.

Lucia Chiochio – So do we.

Gail Cousens – We all have cell phones but we all have a right to enjoy what we worked for.

George Cousens – Is there any precedent in the area that will effect as many residential homes as this tower will?

Ed Colello – Sure. Are there other towers in the town?

George Cousens – Yes. That is this close to a residential area and effects this many people? Go down Route 7 in Connecticut there are six towers in three miles.

Ed Colello – A couple of things, there is one on top of the building on 312, the glass office building. There is one there. In Manhattan you will see them on apartment buildings.

Man in audience – They are not visible to the residents there. On the main road.

Gail Cousens – Once you set the precedent you are opening the door.

Ed Colello – I don't know about that. I don't know if I agree with you there that we are opening the door.

Tom Duffy – 67 Lakeshore Drive, Vails Grove. I just want to bring up a couple of things people said in the beginning the code of the town is 120 and we are going for a 128 foot pole it reminds me of my daughter when she wants a piece of candy she goes for five pieces of gum when she really only wants one. So it is little silly that the code says 120 and she is showing her cards early in the thing that she is willing down. But we look at it as this is very intrusive size tower. I had called up Teutonic Engineering because they had the wrong AMSL, above mean sea level, they had it at 700's it is 680. I just wanted to bring to the Board's attention that the Peach Lake sits at roughly 525 above mean sea level. The hill that this tower is at 680 is a difference of 150 feet. When I am sitting on my front law I turn around I can see the tower. I am looking before this tower goes in I am looking at 150 feet of open straight ahead right up there. AT& T wants to put a 128 foot tower just so everyone knows the Statute of Liberty, the metal part is 150 feet. So I am looking at that height. Now she wants to put something about 22 foot under Statute

of Liberty sitting on one another. So I think it is an excess height in a place that stands that you can see from the entire lake. We have a photo layout that we did. I would like to point out that I thought we were going to have notification to our people of 1,000 surrounding the property, of the thing. I did get a call, but is it incumbent upon as chairman of Vails to notify everyone. It is a very difficult thing to do on such short notice and we did make an attempt it got changed. Now we have to scramble again. It is not incumbent on us to scramble and let the people know.

Ed Colello – I thought we left it last month and I am not trying to put the onus on you, that you were going to sort of be the lead person on this.

Tom Duffy – I said I would do the best I can. But I don't think it is incumbent upon me, by law as far as the Zoning 138-54 states they have to put it up for eight hours, notify people within 1,000, put up a good size balloon. I think they lowered the dimensions by two feet the first time they put a four foot square or round balloon. Now they used a two feet. It should be done by a crane. It was very windy, it blew around. I was the person out there taking photos and it was very difficult because it was at least a foot differential fluctuation from the wind and it was very frustrating. The other thing about the photos that present the lake from the impact that many people here from the west side of Peach Lake are going to see as they look east, we all call the front of our homes the lakeside. I walked to the front of my home but really what I look out on the lake is the front. What I would like to bring to the Board's attention they bring the Rosenberg case for a public utility that gives the criteria from a court case but we also find in that case after looking into it that there is a burden they need to show demonstrating that there is a need to fill a gap. They did a DD planner, this gentleman we ask for a field survey. We have taken petitions around town and have 340 petitions against this and we interviewed numerous people who say I have AT&T and I don't know why they are putting the tower up. And we really don't know either. And we would really like to have a field survey done where people go out in a measurable way with it on the phone instead of doing a DD planner that does the measuring from a computer analysis.

Ed Colello – Can I stop you right there? Can you address that?

Lucia Chiochio – We can provide drive by data, we can do drive test. We do have some data that we did use as one of the tools to provide those plots the show the coverage. As you said at the last hearing people who do have coverage on AT&T, now Cingular, that is roaming on another carrier's network. It is incumbent upon the carrier to as part of their FCC license to provide their own facilities and their own coverage. We can take a look at our drive test data.

Tom Duffy – Did you do a drive test data?

Lucia Chiochio – We have data, we can verify.

Tom Duffy – But you didn't do that? You did a DD planner?

Shahed Husain – The simulation that they use which is pretty close to what we see in real life. We don't drive test as a practice where we set up a cast to see how far the site would cover for every site. Mainly because this is as close to real life would give us. However, we did some coverage by a different company which gives us an indication that we don't have coverage on 121 that is the area we are trying to cover.

Tom Duffy – In your professional opinion which would you think would be accurate, a DD planner computerized simulation or an actual test in the field.

Shahed Husain – DD planner does take information that was done in the situation and that is how tune model we call it technically and that test gives you from the tower itself to answer your question both would give you a correct answer but it is how you look at it.

Tom Duffy – The keep going on about the sighting that they have difficulties because there are highs and lows. How does the DD planner that is a computerized planner deal with actualities of the different levels and contours of the surrounding area. I can't see how they can come close to that.

Shahed Husain – The way the it is does it take into consideration the height and the terrain. We would use also is the height of the structure we are proposing too, the antenna and the transmitting power from that. So to answer your questions we do have better information.

Ed Colello – Can I ask a question, so you are saying you don't do the drive test?

Shahed Husain – Not for every site.

Ed Colello – Would you do one for this one?

Lucia Chiocchio – Sure, we do a drive test.

Tom Duffy – The burden of prove, I have gone over this Federal Telecommunications of 1996 and it clearly says the burden of proof is upon AT&T or whoever the applicant is that the user has no alternative source and the supplier commonly has no alternative means of delivery. Meaning as the main user, Tom Duffy, has no alternative means. I do have alternative means and the supplier, you, has no alternative means to deliver. You do, you have the Joe Hill, you have the 684 at Deans Corner, and you gave us a map of a pink rendition and green rendition that didn't even include the Delancey site which I have a map for this panel if they would like to see in North Salem. Which brings me a question to you, is this Board concerned about anything south of the Putnam County, of coverage, are you concerned, you know there is a coverage situation here.

Ed Colello – This Board is not concerned about coverage per say, this Board is concerned about this pole.

Tom Costello – Critical gap. We can tell you there is no critical gap on 121 from our own tests which aren't professional tests obviously, we do know how to listen to a phone and know if we can dial out.

Ed Colello – Let me interrupt and ask a question because this has been bothering me a little bit. One of the things we talked about last month was that people said they had coverage and that had AT&T and they had good coverage and you brought up the word roaming, not that they are roaming, but you are roaming, in layman's terms. Is the fact that you are roaming and you are probably paying somebody else for air space or whatever it is called I am going to talk to our attorneys because is that enough to prove the need for a cell tower.

Lucia Chiocchio – What were are obligated to do under our FCC license is to provide service with our facility.

Ed Colello – Now we are in an area, that I am a babe in the woods about, because how do we define our facility, it is me. If has AT&T and he is hearing everything on 121 as clear as a bell and he is not losing calls if you are giving it to him from AT&T through roaming through someone else's network if you want to use those expressions isn't that OK.

Lucia Chiocchio – That is not our network. That is someone else's.

Man in audience – Profit.

Ed Colello – I don't know if it is profitable or it is costing them money one of the other maybe they are both the same thing, you see that is why I wanted to talk to our town attorney about it because that is again where we need some help on this.

Lucia Chiocchio – I would like to provide some more information on that in a submission if you like.

Ed Colello – I would.

Lucia Chiocchio – As I said earlier we looked at the Delancey site it didn't provide we have what areas or search rings for areas that need coverage, it won't make it.

Tom Duffy – I need to ask you a specific question towards that, number one it wasn't included in your map.

Lucia Chiocchio – It is too far away actually

Tom Duffy – It is in the map.

Marie Miele – If you could just whip out the plot plan that would be really cool.

Tom Duffy – It is in the map because I have done extensive walking around. Do you have copy of the map?

Lucia Chiocchio – I understand that it is not listing in this map.

Tom Duffy – It is not listed on this map, Delancey is covered in that map and the range I have serious questions if I could approach, I will just bring this to your attention, this is the Joe Hill spot and this map should have a whole other map if you are renting space, you call it co-locating?

Lucia Chiocchio – Yes.

Tom Duffy – If you are co-locating at Joes Hill and Deans Corner and you are saying this pink area is where you are not served, where you are not covering.

Shahed Husain – What we are trying to cover is 121.

Lucia Chiocchio – It will overlap.

Tom Duffy – You are saying that the pink area under the pole itself that you don't have coverage, how could you not coverage, if I am at the pole looking down.

Shahed Husain – What we are to provide coverage is along 121. The nature of the network is there should be some overlapping coverage. So when you are driving for example from north to south on Route 121 you should not experience any dropping of calls. It is seamless coverage and it is for handing off so that is why we have overlapping coverage along that area.

Tom Duffy – Do you have to use roaming charges, if I get my signal here from Joe Hill, are you paying roaming charges?

Lucia Chiocchio – No, because I have a network there.

Tom Duffy – That is right you have a network there and you have it at 684.

Lucia Chiocchio – Cingular has a facility and we have our antenna, our network.

Tom Duffy – And how many channels do you have on that pole?

Lucia Chiocchio – I don't know, do you Shahed?

Shahed Husain – Two channels.

Tom Duffy – I would like the Board to look at this he is demonstrating that this pink area is area that he doesn't have service in this is what is on the record in the minutes from last time when we asked, this was asked by one of the Board members? Mr. Gallagher, I think he asked it? I am just saying to bring to the Board's attention that if you have this site I can't could see how you couldn't cover at least to the border but I am told from people that have done their own field survey that we have coverage right now and 121.

and you are saying there is a critical gap and I don't think you have adequately proven there is a critical gap and in your application you speak about 911 service which isn't really a factor because if I have an emergency and my wife needs a doctor I will be paying the roaming charges.

Lucia Chiocchio – We can provide by drive test data to show the gap in coverage along 121. Our sites will overlap. It is the nature of the network.

Ed Colello – But he brings up a very valid point and I would like some clarification. Point out the Joes Hill site.

Lucia Chiocchio – Right here.

Ed Colello – And what I would like to see is that is all the coverage you have from the Joes Hill site?

Lucia Chiocchio – The pink and the green is Joes Hill and the proposed site and it overlaps right here.

Ed Colello – OK, but what are you getting from Joes Hill now?

Lucia Chiocchio – I understand.

Ed Colello – He is absolutely right that pink is showing what the new tower is going to do for you, correct?

Lucia Chiocchio – Yes.

Ed Colello – Show me what you already have. We can provide drive test data and a plot. Woman in audience – And what are you going to get from the site that is going in North Salem. Delancey?

Lucia Chiocchio – I don't know if we are proposing to use Delancey.

Woman in audience – If it works.

Lucia Chiocchio – It is not going to work for 121.

Shahed Husain – The area we are trying to cover is not going to help in our using that site. It is for down south and we drive past on and it turned that we are not going to be able to use it.

Ed Colello – Why would you use both on Delancey and not in this other site?

Shahed Husain – We find that we might be able to use it.

Ed Colello – Might not be able to use what?

Shahed Husain – Delancey, so we said let's track this just in case if there is anything we are missing, just to double check.

Lucia Chiocchio – Drive test data and our modeling in our plot is not one or another, we kind of use both.

Ed Colello – You didn't with us in our application.

Lucia Chiocchio – We used the drive test data was actually developed by another company and the model looks at terrain, looks at tree cover, it is not just like are we going to put one here, we try to determine heights from that.

Ed Colello – Let me interrupt. I don't want to speak for the Board, but I think you owe it to the Board, to prove it to this Board from Joes Hill and I don't know if Deans Corner is going to help you that much and if you can put your antenna on Delancey how much of that pink is going to be covered?

Lucia Chiocchio – We can provide drive test data for the site and show you where our gap is in coverage. We can also provide data that we have for the Delancey site indicating that it won't provide coverage along 121. We can provide that data.

Marie Miele – The amazing thing is part of your application process is that all of these things should have been done and you are required to try to co-locate and you are required to include the documentation that you have tried to do so in your originally application. There is a statement in there, if I remember right that states you tried to re-located, on don't even see Delancey pole on your RF map.

Lucia Chiochio – We looked at it, it is no where near.

Marie Miele – But you are supposed to include that.

Ed Colello – Let's move on.

Steve Stokes – Lakeshore. There is one issue that wasn't addressed here and that is the profit angle. Now I have heard we need this thing. Cingular would not propose the tower without a 30% ROI. You got them down from 128 to 100 feet, you could probably beat that down to 26%. Is it our requirement to make sure that AT&T Wireless makes money off of this? I don't think it is. You could probably cut it down to 50-60 feet, get your own needs covered and not make a profit of it. Are we required to make sure that AT&T has a ROI of 30% on this project?

Ed Colello – No, of course not! But I agree with what you are saying and obviously no company is out there to lose money. My big thing, is and I am only one person, I said this earlier and I will say this again, if you have looked at Joes Hill, if you looked at Deans Corner and maybe Delancey maybe then this pole can be 40 feet high. And then you can nestle it in there so it is really not going to be sticking up above the trees. Maybe you don't need a 100 foot. OK, that is the theory.

Lucia Chiochio – I understand. Our design for the site is based on projected profits it is based on where we are able to provide the greater coverage.

Steve Stokes – I don't think Cingular would propose a tower without a ROI objective of 30%. It is business.

Ed Colello – This is not Miss Cellular by the way. The money is not going to go in her pocket.

Lucia Chiochio – It is based on need.

William Crusitell – I live at 68 Lakeshore Drive. I have a little presentation here because I accompanied Tom Duffy on the 15th when the balloon was set up. We went around for pictures. We put together a little package here for the Board to see what exactly a 128 foot tower would look like. I want you folks to really look at this because it is to our advantage to take into account which everybody stressed already and I am going to just ditto it the aesthetics and environmental impact in this case a very major residential area. I would like to include this. These are the original photographs nothing has been doctored it is a 13 count photo array here. As you can see from map A and map B that what took into account every possible variance here which would be houses, parks, which are all under the New York State Guidelines in terms of the way we need to look at this. And if this goes down the line you are basically going to see that this thing is very, very much towering over the tree line and we are not simulating by putting in any kind of flagpole or a flag itself. The dock is pretty visible we circled it. Again we took into account every possible vantage point that this thing would see by which is the area we did in terms of going around and asking people with the petition to sign against this. I would also like to point out the fact that there is a simulation that we did that basically shows a pole.

Tom Duffy – If you look at the map, the first map it has Peach Lake, if you start at the north end it goes to 1-2. One is looking southeast towards the pole from a little community center from Starr Ridge and you see that it is fully open, fully exposed, that is there dock area right there in exhibit 1. That is the northern part of Peach Lake. Exhibit 2 is a little west of that site again the northern most part of Peach Lake. This is from a residence at 27 Oak in Starr Ridge that is the family members there in the right corner and you can clearly see this below the tree line. Going to 3 this is down to Bloomer side which the cooperative has 100 homes that is looking directly east. These homes are on the west side of Peach Lake, you look straight across that big house there is mine. That is looking west. Going to the next shot 4 is from the Bloomerside pavilion right in their front dock where they have their life guards. That is community center that they have all recreation activities. They have socials, weddings, dances, birthday parties. Going to the next shot that is the other side of the house that AT&T in their photo array last month. They had photo 2 that showed the roof line. This is from the same house on the front deck. So we are a little upset that they didn't really show any photos of what the impact would be from the other side of Peach Lake looking east. This is Bonnieview in view 6. this is the little island they have in Peach Lake and this is where they have picnics and little get togethers and social events. Going to 7 this is from the southern part of Lakeside Field Club this is a community center with a pool for people that don't live on Peach Lake. This about 500 members and that is looking directly north. That is the southern part of the lake. Going to 8, that is Vails Grove, this picture is actually at the foot of the lake looking east and in the impact visual done last month done by AT&T then included a yellow marking that would indicate how much is visible and they didn't include all of Peach Lake. This is the western most tip of Peach Lake on lane not even in the water and you can clearly see that you can see the balloon so we thought that if they were going to make yellow marks to indicate what was visual all of Peach Lake would have been included and the acreage would have been much more substantial in the 252 acres or less than 3% as they indicated on their photo visual array. This is from our end too we have five entrances. This is roughly in the middle of Vails Grove looking northeast past the horse farm and you can see it substantially sticking out there. Going to the next picture 10, this is on the horse farm directly south of the golf course. You can see the people enjoying their time on the horse here. Going to picture 11 this is from Eight Bells Horse Farm this is looking northwest so this whole area is open just south of the golf course and I think again the company that did that last month said that they made assumptions that you couldn't see the tower from the 500 ranges but you can clearly see this is about 70 feet south of where the proposed tower is, so it is all open. This is looking directly east from 311 Dingle Ridge Road from the man's back yard this is his pool. They included a picture from the front of his house where you just see his roof line. This is from the west side of his house or the rear where he entertains. Final shot is from Rockledge Drive, and this is looking directly east. Actually it is looking west as far east as you can probably see it. And I think they included the same shot. And finally this is just for your own information that shows you the cell outline exact where the land begins and ends. You don't see in many other photos. It clearly defines the configurations of the land you can see with the snow. We just tried to give a rough rendition. We didn't put a flag in there we just did a pole. We are not saying that is the diameter of the pole. We just put a pole there. Roughly they represent the canopy of trees being 65 foot high.

That is what we think it an additional 65 up for a total of 128. We just wanted to give you a presentation of the impact on the lake mainly from the other side of the lake. The west side of the lake looking east. It critically diminishes their view. People go out on the lake and have a serene, enjoyable time and now they are going to have 21st century technology right there. It just doesn't seem like it conforms to the whole recreational theme of what the lake is all about and historically what it has been about.

Man in audience – Looking at the New York State Guidelines that the Board should be aware of there is two things, the RF road test in all cases, it is recommended that it be done with leaves on the trees. That is explicitly noted in the guidelines. There is also a notation that there needs to be an FAA rule in writing as to what it happening. It can not be taken by the applicant's own interpretation that that is not necessary.

Lucia Chiochio – We will confirm that with the FAA.

William Calcagnini -There is a whole slew petitions, my wife, Gail Cousens, various other people have gone around asked people to evaluate this and if they were in opposition to so indicate. Petitions that my wife and Mrs. Cousens also went around with indicated the cell coverage. If I am hand this off to show that there is wide spread community opposition there is literally hundreds of people I think that should be part of the record.

Ed Colello – These are the same petitions right?

Tom Duffy – There are three different petitions. The one from the veterans there are 12 signatures that find it offensive that AT&T would use an American flag for a marketing tool for a cell tower. And the next petition has a whole list. If you want I can introduce it to the record and read it.

Ed Colello – No, we can do that.

Tom Duffy – We would like to have all of these to the record.

Ed Colello – We will. And all of these other ones are the same. And how many names?

Tom Duffy – There is 363 and then there is 12 veterans so there is a total of 375.

Ed Colello – I would like to read this into the minutes.

“We undersigned residents affected by an approved AT&T Wireless use variance petition each member of the Zoning Board of Appeals to deny the use variance on the following grounds.

- A) The variance, if granted, will visually and aesthetically alter the essential character of the neighborhood. B) The applicant has failed to adequately demonstrate that other sites are not better or equally suited with far less aesthetic impact on the surrounding residential area. C) The applicant has not exercised good faith by failing to provide the Board with visual impact from ALL directions. D) The proposed use will require additional similar public facilities by other Wireless providers and E) The applicant has failed to demonstrate that a public necessity exists for such use in Southeast and admitted that it (Applicant) has not exhausted, with due diligence, the use of alternative sites where the adverse impacts (visual, health, et cetera) are minimized; F) Building Code Violations exist on the premises, although not cited; G) Failure to submit the Affidavit required by Section 138-54.1 D 10: h Vails Grove Golf Course, LLC is

operated by its Owners solely for pecuniary gain Section 138-55 A; and I) all other reasons expressed at the Public Hearings.”

Ed Colello – Just to let you know as we said earlier that problem at Vails Grove has been taken care. They were cited for what they have done up there. I have a letter from the Enforcement Officer Ron Harper and a building permit has been issued. So that is not an issue that we have to be concerned about any longer.

George Cousens – Can I ask why they moved a 500 gallon fuel tank?

Ed Colello – I have no idea.

George Cousens – There are violations there.

Ed Colello – I have to tell you Ron Harper is pretty good at what he does. The hundreds of people that have been cited by him he is pretty good. He doesn't miss too many things. I am not saying that hasn't been moved. Do you have copies of this?

Gail Cousens – No.

Ed Colello – You don't have copies of this? Do you trust me with the original? I am going to give this to Linda. Any other questions new? A couple of things. There is no body that is going to refute the fact that you are going to see this baby. OK, so as far as the visual impact everyone understands, the applicant understands that. Any other issues that anyone would like to bring up that are new to this application.

Lynn Eckardt – I am here for Concerned Residents of Southeast, I just wanted to clarify on the Hillside tower that is 120 feet. This is the third one of these public hearings I have been to in two years it seems like there is really a lot of cell towers in Southeast I can come up with six right off the top of my head. There is a approved tower along 22 I believe that the Planning Board approved, I don't know if it is in yet, it is along Reed Farm, Hillside is 120 feet, with 12 antennas. Now I believe, that was approved February 23 rd and the performance bond was done on March 8th. But the Planning Board negotiated a take down I believe with them which I take the worst case scenario if this goes in I am sure residents would appreciate that as part of the condition. Thank you gentlemen.

Ed Colello – I agree with you 100% on the take down issue again it goes down to a somewhat of an enforceable issue. As anything else is in this world. But I do think I would much rather have a take down provision from Cingular and AT&T rather than Eddie's deli. You see what I am saying?

Lynn Eckardt – There is by the way another cell tower in the village that no one has seemed to notice. That is on Main Street. So I think a lot more can do as far as height goes. It seems to me that Southeast is being dumped on with these compared to neighboring towns, from people I have talked to.

Gail Cousens – A question for the Board, how do you derive the Zoning Regulations with regard to cell tower placement and construction?

Ed Colello – No, we didn't.

Gail Cousens – I will offer this up for what it is, if you throw it in the garbage, you are not under obligation, I would love to have you folks read some of the information I have gathered it is basically an educational process. And we are facing an inundation as she just said of cell towers, like it or not. And we have to be prepared, we can be prepared and we can deny this kind of intrusion in our lives. There are other options and other states and towns are using them. If we don't know about them, we can't.

Ed Colello – Thank you. I will make copies for all the members.

Charles Voelkl – Can you tell me what your thinking is just with regard to the project as you envision do the members of the Board vote this evening? Wait a week?

Ed Colello – No. First of all we are not prepared to vote on this. There are legal issues I want to discuss with our Town Attorney. There are three or four issues the applicant has to get back to us on. We want to see results of more testing. We want the results of better, let me rephrase that, better is not a good word, questions of the people who quite frankly I am one of them, the coverage map when using Joes Hill and so on, we want to see that a little bit better. I would like to get a little more information on the Delancey site as far as what that can do for 121 and then everything will be talked about next month again. There will be no voting tonight?

Marie Miele – With regard to the power density, I don't expect to Shahed to go through this whole report and explain it, I just want to look at it and have one question answered, and that is exactly what the FCC guidelines are and number form what your reading is. When I read that it looked like it failed. You have a graph on the back, I just want to see the box where it says maximum power density regarded not be exceeded and I wanted to see the results right next to that?

Lucia Chiochio – Shahed?

Marie Miele - So you are saying that maximum power density at the location cannot exceed .40 which is what we are concerned about. It cannot exceed .40?

Shahed Husain – Inaudible response.

Marie Miele – This was your calculation?

Shahed Husain – That is this over here.

Marie Miele – Table 1 shows the maximum permissible exposure limits established by the FCC. These are the ones.

Shahed Husain – Inaudible response.

Ed Colello – Can interrupt?

Marie Miele – One more question. What is this?

Shahed Husain – That is the combination of these two.

Ed Colello – OK!

Woman in audience – We found the application to be offensive with many inaccuracies. I would like to read it into the record but I understand that time is of the essence but I would like to submit to the Board our corrections, where it says that Peach Lake is five acres, where it says the facility housing the machinery will be 2500 square feet, where Teutonic says it is going to 3600 and the height of the tower is going to be 79 inches and it is 129 feet. There are so many issues. And by the way it says there will not be opposition from the community, here we are with our petitions and here we are with our concerns. We wanted you to have this.

Ed Colello – Next meeting Linda is?

Linda Stec – February 28th.

Ed Colello – That will be hopefully back at the Civic Center?

Linda Stec – No, it is supposed to be here, but I will talk to Laurie to see if we can switch.

Ed Colello – Worst come to worst if we can't get the Civic Center we will get Lakeview at Lake Tonetta. The building that is owned by the Town on Lake Tonetta.

It is right on Lake Tonetta. We can fit 500 people in there and it is a lot more roomy and comfortable. Linda when do you think we will be able to find out about the Civic Center?

Linda Stec – Tomorrow.

Ed Colello – We will post that here in Town Hall?

Linda Stec – Also post on the website.

Ed Colello – You can check on the website where the meeting will be. 8:00 PM.

Tom Costello – Can I ask you if you can submit at the next meeting what the coverage would be if the tower were 100 feet tall instead of a 120?

Lucia Chiochio – Yes.

Tom Costello – You are going to show what the coverage on one map of all the existing towers and then you will give us one of the coverage that will provided by a 100 foot tower.

Lucia Chiochio – Yes.

Tim Froessel – You are presently co-located at Joes Hill and Deans Corner?

Lucia Chiochio – Yes.

Tim Froessel – Does your client own any of those?

Lucia Chiochio – No.

Tim Froessel – Hypothetically if this application were to be approved and you are at 128 feet are you going to discontinue the use at Joes Hill or Deans Corner?

Lucia Chiochio – No.

Ed Colello – OK, thank you. See you all next month. Let's take a 10 minute break.

3) **Victor Valasaquez**
142 Milltown Road
TM# 57.-2-55

Victor Valasaquez – You asked me to provide additional copies.

Ed Colello – Mr. Valasquez you had pictures last time?

Victor Valasaquez – That is what I am looking for. You guys wouldn't have kept them?

Linda Stec – I have the pictures.

Ed Colello – Did this go to the county? Did they respond?

Linda Stec – Yes, they did.

Ed Colello – How long has this been up?

Victor Valasaquez – A year.

Ed Colello – You did this yourself?

Victor Valasaquez – Yes.

Ed Colello – I don't remember if we talked about this last month did you get any letters from neighbors?

Victor Valasaquez – I did make an attempt to reach my neighbor but with the holidays they weren't home. I called several times.

Ed Colello – That would be the neighbor to the back of the property?

Victor Valasaquez – The neighbor to the back of the property, I tried to contact them. Everyone in the area complimented me on it.

Ed Colello – Once again why did you put this up so high?

Victor Valasaquez – Safety reasons, privacy.

Ed Colello – Safety from what?

Victor Valasaquez – Someone from going into his property. Also he has a dog that runs around. And the reason I needed to put the ties, which is the concern is I believe the ties.

Ed Colello – It is with the height. It is the overall height, that is the concern.

Victor Valasaquez – Well if I had put just the six foot fence it really wouldn't serve me. If I am standing in the middle of my property I am looking at something that is really low. Not something that is providing reasonable privacy or preventing anything from going over into his yard for that matter.

Ed Colello – One more time if you could just point this out to me here.

Victor Valasaquez – This is my backyard, this is my driveway right here. When the driveway ends this is where I have one panel that faces this way and the rest of it this way.

Ed Colello – What is along the backside of the property?

Victor Valasaquez – There are trees there.

Ed Colello – So the fence goes one panel over here and down to here.

Victor Valasaquez – And about five panels this way and where it ends there is a tree there and we have made it so there is runoff. It doesn't come all the way to the back of the property?

Ed Colello – And why did you stop there?

Victor Valasaquez – Because this dips down their further I would have had to put many ties in order to build this up.

Ed Colello – I don't understand why you stopped there and number two if you are concerned about a dog that is surely is not going to stop a dog because he would be able to run there or around the back or whatever. Is there something over here you are trying to block?

Victor Valasaquez – There is stuff there that I would rather not look at but I don't think that is not what I am trying to prevent.

Ed Colello – Do you have a patio here?

Victor Valasaquez – All I have is a fence there, my yard and that is basically it. I don't have a patio there.

Tom Costello – What is on the other side of the fence that you are trying to screen from view?

Victor Valasaquez – He has a pool. He does a fence around it I have a kid they are all adults there. The fence is for reasonable privacy and I am looking for safety. I don't want to worry about anything falling over on his property. I don't want to have to worry about his pet coming over and taking care of his needs on my property.

Tom Costello – Normally if you are trying to keep a pet from coming onto your property you are going to have a fence along the whole property line to prevent the pet from crossing the property line so it seems inconsistent that you just stopped it arbitrarily at that point. And if you are just trying to get screening or you are afraid things are going to fall into his yard a four foot fence could probably have done the same thing. Typically if an applicant comes before us looking for screening we tend to try to encourage to use more natural screening through vegetation rather than put in another fence right on the property line over the allowable six foot height. We find that tends to be more practical and effective as a screening.

Ed Colello – This is the front of the fence, this is that "L" right here?

Victor Valasaquez – Yes.

Ed Colello – Whose shrubs are here, yours?

Victor Valasaquez – Yes.

Ed Colello – From the ground level is this the highest point of the fence including the ties?

Victor Valasaquez - Yes.

Ed Colello – The fence itself is how high?

Victor Valasaquez – Six foot.

Ed Colello – The fence is a six foot fence? And on the top at its highest point at the ties is another 36. So the highest point is about nine feet high?

Tim Froessel – Let me ask you a question, you built the structure here with the landscape ties? That is part of the same construction?

Victor Valasaquez – Yes.

Tim Froessel – On your side did you level it off?

Victor Valasaquez – No.

Tim Froessel – So it is just a natural slope right there, a steep slope?

Ed Colello – The landscape ties are visible from your side of the fence as well?

Victor Valasaquez – Yes.

Tim Froessel – It doesn't look like very much if you look at this picture.

This is your back yard?

Victor Valasaquez – Yes. You don't see all of them. But you do see some of them.

Ron Kobbe – If he faces the wall and moves them off the ties, this ground is level over here, if he moves them off the ties it will be six feet high. Move it off the top of the ties and put it on the ground that would make it six feet and you wouldn't have that problem. You wouldn't need a variance.

Tim Froessel – The issue is that you are allowed a six foot fence and because the retaining wall on one side is exposed.

Ron Kobbe – If you go to the ground up.

Victor Valasaquez – I am two feet in from the property line.

Ron Kobbe – If you were further from the property line, 2/3 of the total setback you would be all right.

Ed Colello – If you butt it up against the landscape ties. If he took the fence off the ties, if you are facing the back of his property, moved it over and put it on his side of the ties, ground level.

Ron Kobbe – This would be moving it this way. Right now the tie is here.

Ed Colello – If he moved it over here.

Ron Kobbe – If you are even with the ties would you land on this side of the fence?

Victor Valasaquez – Yes.

Ron Kobbe – So this is the neighbor's?

Ed Colello – That is this corner right here?

Ron Kobbe – And this would be the neighbor's elevation, then it jumps up. Is this side of the fence is this built in so it is even with the top of the ties here?

Victor Valasaquez – On my side?

Ron Kobbe – Yes.

Victor Valasaquez – Yes. It slopes down a little bit.

Ron Kobbe – So if you remove the fence this way, took it off the wall, moved it in over here and this is six feet high from his property.

Ed Colello – Well, the bottom line is that he is allowed a six foot fence.

Ron Kobbe – Taking it off the ties.

Tom Costello – All he has to do is take it off the ties.

Ed Colello – How big a job is to remove the fence?

Victor Valasaquez – Well, I can't do it tomorrow. How big of a job is it?

Ed Colello – See what we are saying right now you have the fence on top.

Victor Valasaquez – So it one unit.

Ed Colello – So for example, one thing you could do and I am not saying you have to do this, is cut the fence down so that the fence and the ties are no higher than six feet. And that is probably going to ruin the fence and it will destroy it. If you take the fence all the railroad ties, if you make the fence hypothetically back on the ground you don't even need a variance.

Victor Valasaquez – I can just get a permit.

Ed Colello – Correct. Now understand no one is going to ask you to do that in the middle of January. I am sure if you talk to Mr. Harper and told him you plan what you want to do because you want to keep the six feet. For all practical purposes with your land being higher it is still going to give you the same effect. You are still going to have your privacy at six feet high. You see what I am saying. You won't even see the railroad ties, the landscape ties because they will be on the other side of the fence.

Victor Valasaquez – That is something I would be willing to do. Should I call Mr. Harper tomorrow?

Ed Colello – Call him and tell you came before the Board and we suggested that you take the fence off the landscape ties and put it on your side and just put it on the ground and that we suggest that is the best thing to do and you won't need a variance. Talk to Ron Harper and tell him we suggested this and he is a reasonable guy and talk to him about a timetable of when you can do it in the spring when the ground thaws and it not mush. We will keep the application open after you talk to Ron Harper tell him to call me. And will discuss it with him and tell him exactly what you are telling me.

Victor Valasaquez – Thank you very much.

Ed Colello – Good luck.

4) **Anthony and Stephanie Fanelli**

40 Milltown Road

TM# 57.2-47

Anthony Fanelli – I am here for a variance from frontage on a shed that was constructed at the end of the fall. It was approved by the Building Department and Ed Jasko and Joe and there was a little misunderstanding with regard to the front.

Ed Colello – If you remember this application the property is on Milltown. The shed does not face Milltown Road it runs parallel. What it is 10 x 18?

Anthony Fanelli – 12 x 18.

Ed Colello – If you look over here Milltown is going this way and what they did is they looked at the side yard but not the front yard setback, I guess somebody in the Building

Department, gave you a CO but he is really too close to the road with the front yard setback.

Tim Froessel – You were given a building permit before you put this up?

Anthony Fanelli – You have to apply put the permit and Bonnie called me and said it was approved by Ed Jasko. After it was built, three months later, Ron Harper passes by and see where it is, he says how did you get that and I said Bonnie approved it. He didn't believe me and my front window has the tape that I got it and Ed Jasko and Joe called me for a sit down meeting and said sorry it was a human error and go before the Zoning Board of Appeals and get ask for a variance. At the last meeting all you gentlemen were there you tried to scale it. My septic system is on and going down my driveway on the left hand side there is no where to fit it. There is watershed property.

Tim Froessel – Did you get this letter from them after they called you?

Anthony Fanelli – Yes, three months later.

Tim Froessel – I don't know how you can deny an application that is already been approved.

Anthony Fanelli – There was an error. I was pretty shocked. I had a \$5,000 shed built.

Ed Colello – Here is my question, we discussed this last month, what about screening?

Anthony Fanelli – I am going to plant three or four nice things that the deer don't eat. Right there coming out from your street, it slopes down you can still see it. You asked me the last time, the last meeting in December and I would put some nice trees.

Ed Colello – It is my opinion, it is close to the road. It is a nice looking shed, don't get me wrong. I pass it twice a day, sometimes three or four times a day, it is not offensive obviously and I understand what the contour of the property it does slope down, he is on the reservoir, he has concerns. You wouldn't want him to put it in his front yard. I only say thing about this applicant. You are the third person to own this house. This property it is a beautiful home, when it was being built, I said it could be a real showplace, great location, right on the reservoir. The first guy ran out of money. When you got it I don't know how it closed when you didn't have a deck.

Anthony Fanelli – There was an open CO.

Ed Colello – There was sliding glass door to no where. It was a four foot drop.

Anthony Fanelli – There was no deck there.

Ed Colello – And the first guy was living in there with a dirt basement. They didn't have a poured concrete basement, they ran out of money. The bottom line is the property looks 400% better than it ever did. He does have a tricky situation, I think the plantings while the shed is still going to be there, it will just think it will screen it a little.

Anthony Fanelli – At the back of the shed it flattens, when you are coming up when it fills up with the leaves you can't see it coming up Milltown. If I put a nice one in the back blocking the back two across the side where that development is, find some decent size ones right off the bat I think it will be fine. Ron Harper didn't notice it until the leaves fell off the trees so it couldn't be that noticeable because he passes every day. He noticed it three months after the fall leaves.

Ed Colello - So you need a 50 foot setback, here is what I don't like is the "proposed location of the shed will be less than" not will be, is, "is less than 24 feet." Is he assuming that it will be 23 feet and some change?

Anthony Fanelli – Ron Harper said he was on the property, I don't know if he is allowed to go on my property, but that is beside the point, but he said when he measured it. When

I measure it from the front of the wall, from the big stone wall is 26 feet, so I didn't want to question him at that point and start arguing it when he measured it. So I don't know where he got his exact measurement.

Ed Colello – So let's say for the sake of argument you are 23 feet from the property line, because he is saying it is less than 24 feet.

Tim Froessel – So it would be a 27 foot variance.

Ed Colello – We can use 23. Any questions or any thoughts or opinions from anyone in the audience? So Mr. Fanelli if we grant a variance on this do you have problem if it is subject to plantings on the roadside, the side facing the front of the house and the back? Do you have any other questions of the applicant before we close the public hearing? Anything else you would like to say before we close?

Anthony Fanelli – No.

Ed Colello – Do you think you have had a fair and adequate opportunity to state your case?

Anthony Fanelli – Yes.

Ed Colello – Take a seat.

Public hearing closed.

Tom Costello – I will make the motion to grant the variance of 27 feet on the requirement of 50 feet on the front property line.

Tim Froessel – Second.

Tom Costello – The motion is contingent upon the applicant's to put in screening on the roadside of the shed.

1. Whether an undesirable change will be produced in the character of the neighborhood, (or a detriment to nearby properties will be created by the grant of the variance).

I don't believe so the shed for some time there has been evidence submitted that it has done anything to hurt the character of the neighborhood and appears like the property has actually been enhanced since the current owner has taken possession of that house so the neighborhood has been approved.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

The applicant in his testimony compiled with the Town's rules and regulations in applying for a building permit and getting a CO but due to an error by the town the need for the variance so I believe whether some feasible method other than variance can achieve the same benefit I get the shed could be moved to a site that would require less of a variance at some expense to the applicant and I believe that there is little that would be achieved by asking the applicant to relocate the shed.

3. Whether the requested variance is substantial.

It is substantial in that it more than 50% of the required front yard depth but due to the nature of the shape of the property I believe that this mitigates the requirement for a substantial variance.

4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.

I have no evidence that would indicate there is any impact on the environmental conditions.

5. Whether the alleged difficulty was self created.

As Mr. Froessel aptly stated during the discussion this was not self created at all. It was created by the error made by the town in granting the building permit and a CO improperly so it was not self created.

Roll Call Vote:

Tom Costello – In favor

Ron Kobbe – In favor

Joseph Castellano – In favor

Kevin Sheil – In favor

Tim Froessel – In favor

Ed Colello – In favor

Ed Colello – So your application for a variance has been approved by a vote of 6-0, 1 absent.

5) Stephen H. Johnson Family LLC
38 Argonne Road
TM# 68-05-2-30

Anthony Mole, attorney, Curtiss, Leibell and Schilling appeared for this application. Anthony Mole – What I did was as you recall at the last meeting when you requested a letter I suggested to the Board that we divided up the area variances we are seeking the issue that the Board has that there is no occupant currently there. I drafted that letter I am awaiting for information for the engineers which I got today and I attached some of that information to my letter and there is some more information coming from the engineer a letter from the engineer regarding access grade as the Board requested and the final revised map as everything exists now on the lot will be submitted by the engineers as well. They did have all that today so I brought what I was able to get to the Board today for your review. I would request that the Board consider the letter that we are submitted and by the next hearing we should have all the engineer reports that the Board requested and proceed at that point.

Ed Colello – You will get us the rest of that information?

Anthony Mole – It should come pretty soon I just didn't have it for you today so by next meeting I should have everything that the Board requested at the last meeting.

Ed Colello – So when you get it can you work it out to get it to Linda so Linda can get it to us so we can all have it before the next meeting. The sooner the better Linda will distribute it to us. Our next meeting is February 28th. All right.

Anthony Mole – Thank you.

6) Barbara and Martin Taublib
1048 Drewville Road
TM# 67.6-1-1

Martin Taublib was sworn in by Ron Kobbe.

Ed Colello – Can you walk us through your application?

Martin Taublib – I am requesting to build a four foot wall on my property. Everything thing was fine I received the county regarding a four foot wall and everything was approved it gave it to the Town afterwards and they denied because they only permit three feet instead of four and I am requesting a one foot height variance on the wall.

Tim Froessel – The date of the denial letter is 2003?

Martin Taublib – Yes.

Tom Costello – Can you show us on the map where the wall is?

Martin Taublib – Here, here.

Tom Costello – The applicant pointed to the front property line. Across the entire front property line except for the two roadway cuts to the driveway? Is that correct?

Martin Taublib – Yes.

Tom Costello – So how high is the existing wall?

Martin Taublib – Right now it is three feet. Right now it is a little under three feet because I didn't put a top on it due to the inclement weather I didn't top it off. It is about 2'8" at this point.

Tom Costello – But it is proposed to be four feet high?

Martin Taublib - My proposal for four feet.

Tom Costello – Our ordinance allows a structure like this up to three feet within the front yard. So you are requesting a variance to go from three feet to four feet?

Martin Taublib – Yes.

Tom Costello – What is the reason you want to do a four foot high? What is the reason for the variance?

Martin Taublib – Road noise, pollution. Because the building I am constructing is two stories high.

Ed Colello – What is on the property now?

Martin Taublib – There is a building with a garage extension on the back. I have building permits for construction and the garage is in the back.

Ed Colello – But there is a residence on there now?

Martin Taublib – Yes.

Ed Colello – You are living in that residence?

Martin Taublib – Yes.

Ed Colello – Say that one more time what are you going to do?

Martin Taublib – We are going to build up and over the existing building.

Ed Colello – And you have gone for building permits for that?

Martin Taublib – Yes.

Ed Colello – And you have the building permits to do that?

Martin Taublib – Yes.

Ed Colello – The wall is already built?

Martin Taublib – Yes.

Ed Colello – How high is it now? Four feet?

Martin Taublib – It is under three feet, 2’8”.

Ed Colello – So it is under three feet?

Martin Taublib – Under three feet. As a finished product it has to be according to Mr. Harper exactly three feet at the highest.

Ed Colello – Correct. And how do you plan on finishing it? Right now it is cinder block?

Martin Taublib – With blue stone with a masonry top.

Ed Colello – Will the masonry top put it over the three feet?

Martin Taublib – No, not according to Mr. Harper.

Ed Colello – I guess what you are asking us for is a variance to put on hypothetically an extra layer of block on?

Martin Taublib – A little over. I think the height would be under four feet.

Ed Colello – Let me ask you this question. What does four feet do for you that three feet doesn’t?

Martin Taublib – If you drive by the house the structure I have is a story and a half and the walls looks very miniscule even though with the beige color, it looks miniscule compared to the house. The house is going to be large and high it looks very out of scale.

Ed Colello – So it is really for aesthetic purposes?

Martin Taublib – It will also cut down on the noise and pollution.

Tom Costello – Approximately where on Drewville Road is the house?

Martin Taublib – Fourth house on the right on Route 6.

Tom Costello – Do you want to look it at?

Ed Colello – Absolutely.

Ed Colello – When did you start this wall?

Martin Taublib – Beginning of September.

Ed Colello – This is the house on the property now?

Martin Taublib – Yes.

Ed Colello – Was there a wall there before you built it? There was nothing there, no stone wall or nothing?

Ron Kobbe – Survey was done in 2000 and it shows a block wall.

Martin Taublib – They mismarked it this is a brand new survey.

Ron Kobbe – They indicate the wall.

Ed Colello – What is this right here?

Martin Taublib – That is this. It is going to be covered in stone and/or brick.

Ed Colello – The wall is going across the front of the property. I know you are only three feet high I know you want to go four but let’s assume for a minute you leave it at that height, the whole wall is done up to the three feet?

Martin Taublib – Not completely.

Ed Colello – I don’t understand what I am looking at here, that I understand, you see what I am saying.

Martin Taublib – It is in three sections. One long one, and then two short ones.

Ed Colello – I got it. How long have you lived in this property?

Martin Taublib – Since 2000.

Woman in audience – It has been a mess since 2000.

Ed Colello – Everyone will have a chance.

Tom Costello – Do you have any outstanding violations from the Town on your property?

Martin Taublib – No. Inaudible.

Tom Costello – Linda did you hear that?

Linda Stec – No.

Martin Taublib – I said there was a violation of littering because I was too close to the boundary line.

Tom Costello - But the violations have been corrected. I just want to make sure it is on the record. So do you have a current building permit for the stone wall?

Martin Taublib – Yes, from the county and the town.

Tom Costello – You do? So what you are doing is you got denied on the request to build the wall four feet high?

Martin Taublib – Yes.

Tom Costello – That is why you are before us.

Tim Froessel – That denial was in 2003?

Ed Colello – I am trying to find the letter of denial.

Tim Froessel – It is from 2003.

Ed Colello – Help me out with this? You started the wall this fall?

Martin Taublib – Yes.

Ed Colello – But you were denied in 2003, so in 2003 you went for a permit to put up a four foot wall, is that correct?

Martin Taublib – Yes.

Ed Colello – And you were denied so you started the construction for a three foot wall, so right now with capping it and everything done you will be under the three feet, if you just stop where you are now, but you are here today. Does it matter when the denial was?

Tim Froessel – Yes, it does. There is a provision of state law that says you have to apply for a variance within sixty days of the denial. You can ask Willis.

Ed Colello – No. So you did submit another application?

Martin Taublib – I submitted for three feet. My original application was for four.

Ed Colello – I know that. So you submitted another application for three feet.

Martin Taublib – And getting a building permit for three feet.

Ed Colello – My question is how did you come here?

Martin Taublib – Because they told me that I had a choice the town didn't permit four feet.

Ed Colello – But as Mr. Froessel said your denial was in 2003. Technically what you should have done is gone back to the Building Department applied for building permit for a four foot wall and have them re-deny you, is that correct?

Tim Froessel – Our jurisdiction is of an appellate nature, appellate only. We can only review a denial from the Zoning Enforcement Officer.

Ed Colello – Your denial was too long ago. I understand what you are trying to do and I know what we are saying probably doesn't make a lot of sense and I am saying it makes sense I am just saying it is the way it is because you are saying wait a minute I have

approval for a three foot wall, I want to go for a four foot wall and you guys on the Board has the authority to grant me that. And you are absolutely right if that is what you are thinking. The problem is that to come before this Board you have to be referred to us by either the Building Department or the Planning Board. In essence the way you get here is for the Building Department or the Enforcement Officer denying you a building permit. Unfortunately your request for a building permit was denied in 2003 so technically you are not even supposed to be here.

Martin Taublib – Again, I don't know the laws.

Ed Colello – Well, here is what you have to do then. What you have to do is go back to Mr. Jasko or the Building Department you have to apply for a permit, I know it sounds redundant it is redundant but you have to do what you did before, apply for a permit to make the wall four feet, he is going to deny you again and then that denial let's you come before us. Now the six million dollar question. Does he have to renotice?

Tim Froessel – Yes, it probably would. It is a whole new application.

Ed Colello – That is what you are going to have to do.

Martin Taublib – If I applied for four does that negate the three foot?

Ed Colello – No, you already have approval.

Tim Froessel – You don't need approval, you can build a three foot fence. You get a building permit for it and it is a matter of course. The fact that you go for four feet.

Martin Taublib – I need a current denial.

Ed Colello – If you wanted to do your finishing with your brick or blue stone or whatever you are going to cover it in and cap it off and keep it under four feet you never have to see us again. I am sorry, three feet or under. It has to be no higher than three feet. If that is what you chose to do you would never have to come before this Board again. If you want to bring this to four feet you have to start the process all over.

Martin Taublib – OK.

Ed Colello – So, Linda, make a note that we are referring the applicant back to the Building Department because his letter of denial has expired and he has to reapply for a new building permit and then get redened and then he can come before us. And make a note that the applicant has to renotice because it is a whole new application. So if Ron Harper calls or Ed Jasko calls and ask what we are doing just so we can fill them in.

Mr. Folchetti – Any final comment on that because the application is moot at this time.

Ed Colello – It is because quite frankly it is not even an application at this point. I understand that people want to say some things but to be quite frank it is a moot point really this hypothetically this should not have happened.

Mr. Folchetti – I don't understand if there was not a denial for the application it got before the Board.

Tom Costello – He had the denial it just was not a current denial.

Christine Lilley – As it stands now with this existing wall does it have to be capped or some finish on it or can these concrete blocks stay out there facing the road. Is there any provision in the law that says he has to face it with something?

Ed Colello – That is a good question. That is out of my area of expertise. That is something the Building Department could answer that question for you. I understand that you might want to say some things but again it is a moot point because this never happened.

Mr. Folchetti – We will appear at the public hearing when the application is heard.

Ed Colello – Well, anyone that was noticed has to be renoticed.

Mr. Folchetti – The Board has a submission of some of the people in this audience. I am Greg Folchetti, Costello and Folchetti, 1875 Route 6, Carmel, NY. I submitted that to Mr. Harper as well and hopefully there will be some action taken by Mr. Harper to get the property in the shape it should be in prior to this Board's with all respect taking any action so that applicant can adhere to the Zoning Laws. Thank you.

**8) Francine Monti
19 Birch Hill Road
TM# 67.15-1-22**

James Nixon, architect, Francine Monti, Allan Bonamici, Frank Munno appeared for this application and were sworn in by Ron Kobbe.

Tom Costello – Do we have the mailings?

Linda Stec – Yes.

James Nixon – I believe you have the site plan and the application in front of you for Francine Monti.

Tim Froessel – Before you get started Jim if I read this letter correctly is my interpretation of Mr. Harper's letter correct than when she does this her setbacks will actually be increased?

James Nixon – That is correct. It is still non-conforming. The applicant has a modest sized one story house and there is an existing shed which is attached or contiguous to the existing house.

Ed Colello – If I am coming up Birch Hill?

James Nixon – Third house on the right.

Tom Costello – Where is Birch Hill?

Ed Colello – Birch Hill is across from Electrazone.

Ron Kobbe – The light at Turk Hill you go past that to the next light. There is a yield.

Ed Colello – Across 22.

James Nixon – We are proposing to move that shed where the existing shed is non-conforming and the total setbacks are non-conforming and add an addition. The proposed setbacks and the total will be more conforming but still non-conforming. Referring back to Mr. Harper's letter the town requires a side setback of 30 feet, 75 feet total, we are in the R60 zone and the existing house and attached shed is non-conforming in that the side setback is 5.73 feet on the south side which is the side where the shed will be demolished and side where the addition will be constructed and 25.94 feet on the north side for a total side setback of 31.67 feet, where 75 feet is required. The proposed addition would increase that side setback on the side setback to 7.92 from 5.73. A small increase but slightly more conforming, closer to being conforming than it is now. This is the photo from the rear and the shed is in that photo. These sketches are preliminary but they give you a good idea would the result would be in terms of bulk. The first of the two is the house in the rear similar to the photograph that you were just looking it and you can see the addition where the site is rendered.

Ed Colello – Do you have a picture of what it looks now from that side? Is that window going to stay as it is?

James Nixon – The larger window?

Ed Colello – Yes.

James Nixon – Yes, it will stay as it is.

Ed Colello – And what are you gaining as far as rooms?

James Nixon – A family room, a little under 300 square feet total. And as seen from the side, the south side, the closest neighbor to the existing house, the main wall will be extended to a point to where that setback was five feet. You will also see in the rear elevation in the roof line that setback is five feet which will be site plan which the entire addition would be within the setback we are proposing. Lastly this is a view of the house, and the house immediately to the south, the closest neighbor to the addition that is proposed. And in general this house to the south and the house to the north are all similarly plotted on their lot. Apparently that was the design when the structures were done, I am supposing that was the sign and the three houses in a row are not parallel to the street they are at a similar angle and therefore they all have their similar corner being closer to the property line than we would do it now. Any questions at this time?

Tom Costello – How long has the applicant owned the house?

Francine Monti – Five years.

Ed Colello – Years ago they were built. He is right I have been up the street a lot of times, all the houses are at sort of a angle and it looks nice it is a beautiful street.

Joseph Castellano – When was the house built?

Tom Costello – It has a reference to a map of July 1947. Birch Hill Acres.

James Nixon – The house will not be an taller. It is a one story house it will still be a one story house in fact the peak of the addition will be somewhat lower than the peak of the existing structure.

Allan Bonamici – From the front it will look almost exactly the same except that front is going to be set back with the house. It will further away from the property line by two feet.

Ed Colello – Is there anyone that has any comments or opinions on this application?

Tom Costello – Have you discussed this with your neighbors?

Francine Monti – Yes.

Tom Costello – Do they have any input?

Francine Monti – They are excited. I have two small children. They understand that I need the space.

Frank Munno – There is also large trees that buffer between the two houses so the extension would be almost totally covered.

Ed Colello – So Jim what we are doing here, we need 30 feet from the side, so we have 5.7 feet and it is turning 5.7 to almost eight?

James Nixon – Right.

Ed Colello – And the 26 feet is turning into, the total side yard is going from 31.6 to 33.8?

James Nixon – That is right.

Ed Colello – So it is only one side we have the problem on?

Tim Froessel – The side and the total.

James Nixon – The other side is a problem but it is not changing. Both sides are non-conforming with the total being non-conforming.

Ed Colello – I understand.

Tom Costello – And then he cited the enlargement in the denial.

Ed Colello – I don't think you guys need to look at this. Plus we have an application where they are looking to put an addition in that is getting further away from the property line which is a pretty good thing to have. How soon were you, obviously we just had a snow storm, in the perfect world when is your timetable to get rolling on this?

Allan Bonamici – April. I don't see before that.

Ed Colello – I will do whatever the Board feels fit, feels comfortable with, we can vote on this tonight or we can hold this off to February and give anyone a chance to take a look?

Tim Froessel – Personally I feel comfortable voting on this.

Ed Colello – Do you guys feel comfortable voting on this tonight?

Ron Kobbe – Yes.

Ed Colello – Any other further comments you would like to make?

James Nixon – None that I can think of.

Ed Colello – Do you think you have had a fair and adequate opportunity to state your case?

Francine Monti and James Nixon – Yes, we do.

Ed Colello – We will close the public hearing.

Public hearing closed.

Ed Colello – We are looking from relief from the side yard, relief from the total side and relief from 138-11.

Tom Costello – I will make a motion to grant the variances requested a 23 foot side yard side on the south side where 30 feet is required and an overall variance on the side yards of 42 feet where 75 feet is required and also the motion includes a variance for the enlargement of the structure's non-conforming status covered by 138-11.

Ed Colello – Second?

Ron Kobbe – Second.

Ed Colello – Will you address the criteria?

Tom Costello –

1. Whether an undesirable change will be produced in the character of the neighborhood, (or a detriment to nearby properties will be created by the grant of the variance).

I don't believe so the applicant testified that the discussions with the neighbors they are excited about the proposed addition of the family room and it is relatively minor enlargement of the existing structure and it happens to actually reduce the amount of non-conformity.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

Well, the angle that the house was built and the relatively small size of the lot would make it very difficult for the applicant to build any kind of addition to the house that would not require a variance.

3. Whether the requested variance is substantial.

Yes, it is substantial being more 50% on the side yard and the overall but I think that is mitigated by the size of the lot and the age of the property it looks like the original subdivision was done in the 1940's the house is situated in a neighborhood where this addition proposed would be in the character of that neighborhood.

4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.

I don't believe so, no testimony has been provided that indicates there would be any environmental impact at all.

5. Whether the alleged difficulty was self created.

It was self created in that the applicant is looking to add on a family room to the house but I think it is mitigated by the fact that the proposed addition is in the character of the neighborhood and is proportionate to the size of the house and the size of the property.

Roll Call Vote:

Kevin Sheil – In favor

Joseph Castellano – In favor

Ron Kobbe – In favor

Tim Froessel – In favor

Tom Costello – In favor

Ed Colello – In favor

Variations were approved by a vote of 6-0, 1 absent.

8) Lucille LaChapelle 18 North Road TM# 56.14-3-10

Bruce LaChapelle appeared for this application and was sworn in by Ron Kobbe.

Tom Costello – Do you have your mailings?

Linda Stec – I have them.

Ed Colello – Can you walk us through your application?

Bruce LaChapelle – What is there is an existing detached garage and existing one story house what we would like to do is incorporate the existing garage and add another story onto the house. The setbacks are existing non-conforming. We are going to maintain the existing footprint we are just want incorporate the garage.

Ron Kobbe – Tie the garage into the house?

Bruce LaChapelle – Yes.

Ron Kobbe – And put a second story above both.

Tim Froessel – This house has been unoccupied for about 15 months by my calculations.

Bruce LaChapelle – That is possible.

Ed Colello – Did you just recently buy it?

Bruce LaChapelle – Yes, I did.

Tom Costello – So you are going to fill in the space between the garage and the house?

Bruce LaChapelle – Yes.

Tom Costello – And add a second story over the whole structure?

Bruce LaChapelle – Yes.

Ed Colello – Oh, the second story is going over the whole structure. This is a two story structure already?

Bruce LaChapelle – No, one story.

Ed Colello – How many more square feet are you going to gain?

Bruce LaChapelle – Approximately 800.

Ed Colello – What is the house now?

Bruce LaChapelle – 1,000.

Tom Costello – The access to the rear of the yard on the left side of the house, on the west side is that to free to access the rear of the house?

Bruce LaChapelle – Yes.

Tom Costello – There are no stone walls?

Bruce LaChapelle – No.

Tom Costello – No big trees to block the way?

Bruce LaChapelle – Just grass and the garage and a fence.

Ed Colello – It is on 18 North?

Bruce LaChapelle – Yes.

Tom Costello – The existing garage is approximately 2 1/2 feet from the property line.

Ed Colello – That is not going to change whatsoever?

Bruce LaChapelle – No.

Ed Colello – And what is the house on the other side? The other side of the garage how close is that?

Ron Kobbe – 21 feet.

Tom Costello – I think Ed is asking on the other side.

Bruce LaChapelle – I think we are both the same.

Ed Colello – Do you have a picture of the house now? If you have one that is great but if you don't.

Bruce LaChapelle – Just the real estate picture.

Ed Colello – This roof here is that already there? Or is it?

Bruce LaChapelle – No, we are going to change that, the roof will come down.

Ron Kobbe – This is only going to be a second story from here?

Bruce LaChapelle – Yes.

Tom Costello – Does the house have a basement?

Bruce LaChapelle – Yes.

Tom Costello – What do you plan to build on this space between the garage and the house, a basement?

Bruce LaChapelle – A crawl space.

Tom Costello – And what about under the garage?

Bruce LaChapelle – Leave that as is just upgrade it structurally. The top will have to be removed and redone theoretically we would like to incorporate that.

Tom Costello – I was wondering why you just wouldn't tear down the garage and put in a full basement under that whole new section?

Bruce LaChapelle – It would be nice but it is a little cost prohibitive for us.

Tom Costello – In the new design will you have a garage?

Bruce LaChapelle – Yes.

Tom Costello – You currently have a one car garage.

Ed Colello – It will go to two car, one door two car garage?

Bruce LaChapelle – Yes.

Ed Colello – I think we should see this, you are not going to start this tomorrow?

Bruce LaChapelle – No, but in an ideal world I would like to start right away.

Tom Costello – I would like to see this because a couple of feet from the property line is pretty substantial.

Ed Colello – I agree with you. I just want to see the character of the neighborhood. Although we know the neighborhood in the Heights, it is a nice neighborhood it has zoning issues because of upzoning and everything is close there by Town Ordinance. We will be prepared to vote on this next month. I don't know what you can do in February anyway.

Tom Costello – Are you going to do the work yourself?

Bruce LaChapelle – Yes.

Tom Costello – Can you give us a set of drawings that have measurements?

Bruce LaChapelle – Yes.

Tom Costello – Because I don't see what is the length of the house going to be.

Ron Kobbe – 61 feet maybe. The depth will be at 24 because he is not building over this. The new addition will be 61 by 24.

Ed Colello – You said you were only get about 800 square feet of additional space?

Bruce LaChapelle – Without the garage, living space.

Tom Costello – But if it is 61 long the second floor and 24 deep.

Bruce LaChapelle – I don't see how it scales 61.

Ron Kobbe – That is from the edge of the garage. The existing house now without the garage is about 37.

Tom Costello – But you are going to get a second floor that is the whole length?

Bruce LaChapelle – Yes.

Ed Colello – First of all where the garage, in the proposal, this wall where the living area meets the garage is that the end of your house right now?

Bruce LaChapelle – That is.

Ed Colello – So what you are picking in here is the space between the garage to make it a two car garage, so you are retaining all the living space excluding the garage on the first floor.

Bruce LaChapelle – Yes.

Ed Colello – You are building this out here, correct?

Bruce LaChapelle – That was there.

Ed Colello – But the only thing you are gaining is the top floor of living space.

Bruce LaChapelle – Yes.

Tom Costello – The scale on here says 1/4 inch equals one foot.

Ron Kobbe – With the top floor I have 1464.

Tom Costello – So it is more like doubling the square footage.

Ed Colello – Are there going to be any bedrooms in the first floor?

Bruce LaChapelle – We are going to try to make this one bedroom.

Ed Colello – So right now the house is currently how many bedrooms?

Bruce LaChapelle – Two.

Ed Colello – You are going to two, three, four?

Bruce LaChapelle – Yes.

Tim Froessel – Only two bedrooms?

Bruce LaChapelle – This bedroom and the foyer.

Tom Costello – Where is the second bedroom?

Bruce LaChapelle – This is one bedroom and this is the other one.

Tom Costello – Where is your living room?

Bruce LaChapelle – This is the actual living room and a small dining room.

Tom Costello – So this “L” part is all bedroom?

Bruce LaChapelle – Yes.

Tom Costello – Must be a large bedroom?

Bruce LaChapelle – This wall is currently at this location.

Ed Colello – Is your septic going to be OK for a four bedroom?

Bruce LaChapelle – It is sewer up there.

Ed Colello – If you didn’t have sewer they may give you a problem with this study.

They are going to look it and say it isn’t four bedroom it is five bedroom. Since you have a sewer it solves a lot of problems. All right so we are going to look at the property, we are going to keep the public hearing open. Linda we would like to set the agenda for next month, let’s put Mr. LaChapelle first, then AT& T, Cingular. So you will be number one.

Bruce LaChapelle – Is there any other information you need?

Ed Colello – We are going to do a drive by, you probably won’t even know we are there.

February 28th, 8:00 PM.

Bruce LaChapelle – Thank you.

Tom Costello – I will make a motion to approve last month’s minutes.

Ed Colello – Second?

Tim Froessel – Second.

Ed Colello – All in favor?

All in favor.

Meeting ended at 11:45 PM.

Submitted by:

Linda M. Stec

