

**MINUTES OF THE REGULAR MEETING OF THE  
BOARD OF ZONING, PLANNING AND APPEALS**

**CASE NUMBER:** 17-ZPA-10-001

**HEARING DATE:** January 11, 2018

**PROPERTY ADDRESS:** 30 Northwest Highway

**PETITIONER:** PI Telecom Infrastructure T, LLC

**PROPERTY OWNER:** Gary and Amber Fisher

**PIN NUMBER:** 20-18-154-018

**REQUEST** Conditional Use for the installation of a 100-foot telecommunications structure and related ground equipment (Sec. 17.20.030)

**MEMBERS PRESENT:** Khoury, Chairman  
Kretschmer  
O’Laughlin  
Graziano  
Jasper  
Williams

**MEMBERS ABSENT:** Phippen

**STAFF MEMBERS PRESENT:** Brian Simmons, AICP  
Community Development Director

Chairman Khoury called the meeting to order at 7:30 PM. Chairman Khoury called Village Case No. 17-ZPA-10-001 to order.

Please see the attached transcription of Village Case No. 17-ZPA-10-001.

1. *Chairman Patrick Khoury entertained a motion to recommend to the Village Board of Trustees, approval of a conditional use for a telecommunications antenna for the property located at 30 Northwest Highway subject to the conditions listed in the staff report.*

*Member O’Laughlin moved, seconded by Member Graziano to approve of a conditional use for a telecommunications antenna for the property located at 30 Northwest Highway subject to the conditions listed in the staff report.*

*Ayes: Williams, Graziano, O’Laughlin, Kretschmer, Jasper and Khoury*

*Nay: None*

*Abstain: None*

*Motion Passed*

2. *Chairman Patrick Khoury entertained a motion to make the following findings of fact:*

*In support of a negative recommendation:*

- a. *The proposed use does not satisfy the standards to qualify for a conditional use because it will impede the orderly development or redevelopment of parcels within the Cutoff Properties area, insofar as the use conflicts with the commercial land use designation in the Village's Comprehensive Plan.*
- b. *The proposed use does not satisfy the standards to qualify for a conditional use because the use would be the primary use of the subject property and would limit the ability to add other retail or service uses which would support the Comprehensive Plan's commercial land use designation for the property.*
- c. *Evidence for reviewing coordinated multiple installation options, including but not limited to the two existing water towers, near the search area ring was not provided which would demonstrate the proposed tower is the least impactful facility needed to satisfy a gap in coverage.*
- d. *Insufficient evidence has been presented to demonstrate that collocation on the existing Com-Ed high tension power line utility poles directly adjacent to the subject property is not a viable option and would not be supported by Com-Ed. Similar installations have previously been reviewed and supported by the Village for cellular collocation on these existing utility towers and would reduce the proliferation of additional towers in the area.*
- e. *There is conflicting evidence of whether a significant gap in coverage exists in this area based on a comparison of the information submitted as part of the petition to information displayed on T-Mobile's website depicting cellular coverage within the Village.*
- f. *There is conflicting evidence of whether a significant gap in coverage exists and whether existing collocation options are not viable based on conflicting documentation provided in support of the petition which presented two different search area rings and the subject property falling outside of one of these search areas.*

*In support of a positive recommendation:*

- a. *The proposed use satisfies the standards to qualify for a conditional use as stated in the Village's Zoning Ordinance by not substantially diminishing or impairing the values of property within the neighborhood, not contributing to an overburdening of municipal services, and is consistent with the policies and future land use maps in the Village's Comprehensive Plan.*
- b. *The proposed use of the property for a telecommunications tower is appropriate for the B-2 zoned property and is compatible with the surrounding area based upon the adopted recommendations as contained in the Village of Cary's Comprehensive Plan.*
- c. *Evidence provided as part of the petition indicates a significant gap in coverage exists within the search area and the proposed telecommunications tower will adequately satisfy the service needs within this gap.*
- d. *Evidence provided as part of the petition indicates that options for collocation on existing towers or utility structures, such as Com-Ed power lines or nearby water towers, are not practical and would not adequately satisfy the service needs within the coverage gap area.*

*Member Graziano moved, seconded by Member O'Laughlin to recommend to the Village Board a positive finding of fact.*

*Ayes: Williams, Graziano, O'Laughlin, Kretschmer and Jasper*

*Nay: Khoury*

*Abstain: None*

*Motion Passed*

Chairman Khoury entertained a motion to adjourn at 9:17 pm. Member O'Laughlin moved, seconded by Member Graziano to adjourn at 9:17 pm.

*All Ayes by Voice Vote*

Respectfully submitted,

  
\_\_\_\_\_  
Susan Greene, Deputy Village Clerk

Village of Cary 1-11-18  
ZPA Meeting Minutes/Case 17-ZPA-10-001

IN THE MATTER OF THE APPLICATION  
OF  
CASE NO. 17-ZPA-10-001  
PI TELECOM INFRASTRUCTURE T, LLC,  
FOR A CONDITIONAL USE FOR THE  
INSTALLATION OF A 100-FOOT  
TELECOMMUNICATIONS STRUCTURE  
AND RELATED GROUND EQUIPMENT  
OWNER: GARY AND AMBER FISHER  
LOCATION: 30 NORTHWEST HIGHWAY

(Public hearing held before the Village  
(of Cary Board of Zoning, Planning and  
(Appeals on January 11, 2018, at the  
(hour of 7:30 p.m. at 655 Village Hall  
(Drive, Cary, Illinois.

Q & A REPORTING, INC.  
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Crystal Lake, IL 60014  
(815)477-2230  
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1 CHAIRMAN KHOURY: So welcome back. Let me just try to  
2 set the table for us tonight so everybody knows who everyone  
3 is.  
4 To my left, to your right, this is Joan  
5 Holub, who's recording our meeting. So welcome back, Joan.  
6 Happy New Year. And you may recall to my right here is  
7 Mr. Simon. He's legal counsel for Village of Cary. And this  
8 is Director Simmons, and I think some of you may have met us  
9 previously at previous ZPA meetings.  
10 So, gentleman, I just want to refresh. I  
11 know we've a little bit of a gap between when we were together  
12 last. You may recall that this original application came  
13 before us on November the 9th, and the request was made to  
14 extend it to a new date, which became December the 14th. And  
15 you recall that during that meeting that we mutually agreed to  
16 carry that application forward once again to get some clarity  
17 around some of the questions that were being asked. I think  
18 you know from on your dais in front of you tonight you would  
19 have received some additional communication regarding the  
20 application. I, personally, for the record want to state that  
21 I received this information approximately 4:21 p.m. central  
22 standard time today by e-mail from Mr. Simmons. So,  
23 Mr. Simmons, thank you. And I think we'll probably review some  
24 of that information further.

1 PRESENT: PATRICK KHOURY, CHAIRMAN  
2 JAMES GRAZIANO  
3 PATRICK JASPER  
4 ERIC KRETSCHMER  
5 FRANK O'LAUGHLIN  
6 NEIL WILLIAMS  
7 BRIAN SIMMONS, DIRECTOR OF COMMUNITY DEVELOPMENT  
8 APPEARANCES:  
9 ANCEL GLINK DIAMOND BUSH DiCIANNI & KRAPTHEFER, by  
10 ADAM B. SIMON,  
11 On behalf of the Village of Cary;  
12  
13 HUSCH BLACKWELL, by  
14 J. MICHAEL LONG and RODNEY CARTER,  
15 On behalf of the Petitioner.  
16  
17 PUBLIC SPEAKER:  
18 GARY FISHER  
19  
20  
21  
22  
23  
24

1 But before we begin tonight, I just want to  
2 make sure that I answer any questions in advance of our  
3 proceedings from the ZPA members or from counsel.  
4 MR. SIMON: Just a reminder that the public hearing is  
5 still open. We have not closed the collection of evidence, and  
6 so we're still accepting more information relevant to your  
7 deliberation.  
8 CHAIRMAN KHOURY: Thank you very much. That's a great  
9 comment, Mr. Simon.  
10 And so by way of background again in terms of  
11 the process, I'm going to ask Mr. Simmons to give us an  
12 overview from where we were last time. We may have some  
13 additional questions for Mr. Simmons. We'll then subsequently  
14 turn it over to yourselves to make your additional requests.  
15 Once that's closed off, we may have some questions for  
16 yourself, and I think you're familiar, Mr. Long, how that  
17 process works. We'll open it up to the public. If anyone has  
18 any questions or comments, we'll do our best to respond to  
19 those. Remember that the public comment section is really for  
20 the public to comment and not necessarily designed to be a back  
21 and forth between yourselves and a question for ourselves and  
22 the question. We'll be flexible. And then once we close that  
23 portion of our meeting, the ZPA members will take consideration  
24 of the application. A vote will be taken and obviously

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1 delivered back to our elected officials. So that's the process  
 2 for tonight.  
 3 Thank you again for reminding, Mr. Simon.  
 4 That's very helpful.  
 5 So with that said, I'm now going to call  
 6 Case No. ZPA-10-001. This is in fact for PI Telecom  
 7 Infrastructure LLC.  
 8 And I'll turn it over to Mr. Simmons for an  
 9 overview.  
 10 MR. SIMMONS: Thank you, Mr. Chairman. It's just kind of  
 11 a refresher summary of the proposal.  
 12 The subject petition is reviewing a  
 13 conditional use for a telecommunication antenna at 30 Northwest  
 14 Highway. The slide which is currently shown on the display  
 15 indicates the location of the property and also the location of  
 16 the tower on that subject property.  
 17 This slide indicates in further detail the  
 18 construction drawings that would show further location of the  
 19 cell tower leased area and then also the construction of the  
 20 tower that would potentially the approval for up to four  
 21 antenna installations on the same watt pole installation.  
 22 A little background further on the hearing  
 23 schedule. Obviously, we've discussed this project previously.  
 24 Originally, the public hearing was scheduled for October 26th.

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1 Per the Petitioner's request, that was continued without  
 2 discussion during that evening. The main crux to review this  
 3 petition was held on November 9th of last year where the staff  
 4 report was presented and also additional information was  
 5 provided by the Petitioner in support of their petition. Based  
 6 off the discussion that evening, that item was continued to a  
 7 future date to allow for additional documentation to be  
 8 submitted that would provide responses to three additional  
 9 areas that the ZPA had expressed the desire for additional  
 10 information. That was continued to December 14th; again, was  
 11 asked to continuance by the Petitioner for additional time to  
 12 present the information. And then this evening would be the  
 13 second hearing review proposed petition.  
 14 As of this afternoon, as Mr. Chairman  
 15 mentioned, staff did receive some additional documentation that  
 16 was provided to the ZPA which is provided on the dais this  
 17 evening. The Petitioner has provided additional support for  
 18 their proposed conditional use.  
 19 A little further background on the  
 20 November 9th continuance. The three items that were requested  
 21 to be reviewed further are highlighted on the slide. In  
 22 summary, the first was looking at the Com Ed right-of-way and  
 23 existing high-tension power lines that are existing there. The  
 24 board and staff requested that the Petitioner determine if

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1 colocation on these adjacent towers was not a physical option  
 2 that would be supported by Com Ed. As the board may recall,  
 3 previously the Village had reviewed prior installations on  
 4 those towers which were supported by Com Ed. Ultimately, one  
 5 was approved by the Village, and one was not supported by the  
 6 Village. However, there was history as far as allowing the  
 7 installation colocation of cellular equipment on those towers.  
 8 The request was that determination from Com Ed be provided  
 9 whether that was an option or not for colocation.  
 10 The second request was reviewing colocation  
 11 of existing towers or water towers in the area, review if the  
 12 service gap which was alleged in the petition would be  
 13 satisfied for more than one existing co-lo option was  
 14 installed. That could be a combination of either two existing  
 15 water towers in the area, a water tower or the existing  
 16 monopole that exists along Main Street, or possibly even a Com  
 17 Ed right-of-way if that were approved. The request was to  
 18 provide additional information to see if the service gap could  
 19 be satisfied in lieu of installation of both monopoles.  
 20 The third and final request was to provide  
 21 additional documentation or response to how the proposed  
 22 improvement for the monopole installation could be installed  
 23 which would sustain the ability to allow for future  
 24 redevelopment of the Cutoff property area. The Petitioner --

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1 and the response was received a little bit earlier this  
 2 evening -- has provided a written response as far as speaking  
 3 toward the potential options there may be towards that  
 4 development or how it will not restrict future development.  
 5 But that is information they provided today.  
 6 As the board may recall, staff at the  
 7 previous meeting in the staff report had recommended that the  
 8 ZPA subject case made findings of fact that the application did  
 9 not satisfy the standards for conditional use; that, two, there  
 10 was an existing conflict in evidence of whether a significant  
 11 gap in coverage exists in the area; and, three, insufficient  
 12 evidence has been presented to demonstrate that colocation  
 13 cannot be used to satisfy a gap in coverage if one exists.  
 14 Staff recommendation still based off the information that's  
 15 provided is similar to what was presented before.  
 16 I'll be happy to answer any more question you  
 17 have, but I'd like to give the opportunity for the Petitioner  
 18 to also provide additional testimony for information they  
 19 provided this evening and also the information as far as  
 20 furthering their requests tonight.  
 21 CHAIRMAN KHOURY: Thank you very much, Mr. Simmons.  
 22 Before we proceed further, gentlemen, does  
 23 anyone have any questions at this time for Mr. Simmons?  
 24 MEMBER O'LAUGHLIN: I have one, if you could. Maybe I

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1 have it here.  
 2 I'm trying to remember, should ZPA recommend  
 3 approval of the request staff recommended the approval be  
 4 subject to the conditions as listed in the 10.6/17 staff  
 5 report. I don't have that with me.  
 6 Can you refresh my memory on those, Brian?  
 7 MR. SIMMONS: Sure. It should have been in the documents  
 8 you received.  
 9 MEMBER O'LAUGHLIN: I can't find it here. I went through  
 10 everything.  
 11 CHAIRMAN KHOURY: I was looking for this.  
 12 MR. SIMMONS: If you received your packet the agenda for  
 13 the previous meeting --  
 14 CHAIRMAN KHOURY: Previous meeting.  
 15 MR. SIMMONS: Yeah -- it was one of the items that was in  
 16 that.  
 17 MEMBER O'LAUGHLIN: That's all I wanted. He had a copy.  
 18 I wanted to refresh it in my head. I thought I brought that  
 19 with me, but I guess I did not. Oh, here it is. I do have it.  
 20 Sorry.  
 21 MR. SIMMONS: Does anybody else not see that document or  
 22 have questions?  
 23 (No response.)  
 24 CHAIRMAN KHOURY: Gentlemen, any additional questions at

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1 this time?  
 2 And, Frank, have we assuaged the concern that  
 3 you have?  
 4 MEMBER O'LAUGHLIN: I couldn't remember what they were,  
 5 so refresh my memory. And I do have them here in my packet.  
 6 CHAIRMAN KHOURY: All right. Unless there's any other  
 7 questions, I'm going to turn the floor over to the Petitioner.  
 8 So at this time, Mr. Long, if you would like  
 9 to -- or Mr. Carter -- if you would like to present. It's up  
 10 to yourselves.  
 11 MR. LONG: My name is Michael Long. I'm counsel for the  
 12 Petitioner.  
 13 CHAIRMAN KHOURY: Welcome back.  
 14 MR. LONG: Thank you very much. I'm with the Law Firm of  
 15 Hush Blackwell up in Milwaukee. And with me to my left is my  
 16 colleague Rod Carter, also with Hush Blackwell.  
 17 CHAIRMAN KHOURY: Welcome back. And welcome,  
 18 Mr. Carter.  
 19 MR. CARTER: Thank you.  
 20 MR. LONG: Is it possible for me to go back to -- can I  
 21 use this computer?  
 22 CHAIRMAN KHOURY: I don't see why not. It's not mine, so  
 23 I don't want to speak.  
 24 MR. SIMMONS: Go ahead.

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1 MR. LONG: Okay. We sent a letter to Mr. Simmons this  
 2 afternoon addressing the items that are on the screen right  
 3 now, which were the three items that the ZPA asked us to review  
 4 at the November 9th meeting, and Mr. Carter and I would like to  
 5 address these three items. And what I'd like to do is take the  
 6 third one first if you don't mind --  
 7 CHAIRMAN KHOURY: Absolutely.  
 8 MR. LONG: -- which is the redevelopment issue related to  
 9 what the applicant could do to re -- more or less insure that  
 10 redevelopment of the parcel could take place. And in this  
 11 instance really the best thing to do is to reduce the square  
 12 footage of the fenced-in compound that would be put around the  
 13 perimeter of the tower and any ground equipment. And when  
 14 looking at our proposed site -- and we've got the Com Ed  
 15 right-of-way that forms of western boundary of the parcel, and  
 16 we have leased basically a piece of property that adjoins and  
 17 shares the same boundary with the right-of-way. And in looking  
 18 at this, I've got a diagram I can show you what -- more or less  
 19 what we could do here to reduce the footprint. But the goal  
 20 would be if you have the survey -- do you still have the survey  
 21 of the property handy?  
 22 CHAIRMAN KHOURY: So, gentlemen, I think for your  
 23 reference -- I know I have an iPad with me. This was provided  
 24 to you in the packet, I believe, October the 26th, which is --

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1 MEMBER O'LAUGHLIN: Yes.  
 2 CHAIRMAN KHOURY: -- Frank was just referencing a moment  
 3 ago. Yeah. And so I don't know whether or not we could do  
 4 this simultaneously.  
 5 Is that what you're looking for?  
 6 MR. LONG: If you go to the next slide. Perfect.  
 7 Okay. If you take a look at the site plan,  
 8 and what's depicted on the screen right now is what we've  
 9 proposed in the building plans or site plans that were  
 10 submitted to the Village with our application. And in this  
 11 instance, the screen shows, the drawing shows, a fenced-in area  
 12 for the tower and the land below it to accommodate the  
 13 equipment, and the dimension of that fenced-in area is  
 14 approximately 58 by 58, so it's 58 feet by 58 feet. And what  
 15 we did was we went back to the applicant, and they evaluated  
 16 this, and they gave me a drawing of what they've done on a  
 17 similar project with a monopole tower. And what they can do in  
 18 this instance and what they've done here is shrink that  
 19 fenced-in area, still trying to keep -- with the effort of  
 20 keeping the western boundary of the fenced-in area consistent  
 21 and sort of shrinking it towards the west boundary with the  
 22 intent of having the initial installation being significantly  
 23 smaller than what's depicted here in this site plan of 58 feet  
 24 by 58 feet.

1 I just handed out a drawing to you, and it's  
 2 a monopole project that the applicant has done at another -- in  
 3 another community, and in this instance the initial footprint  
 4 of the installation is approximately 25 feet by 16 feet. And  
 5 so when you're looking at that, I did the math, and that's just  
 6 I think a little under 700 square feet compared to over the  
 7 3400 square feet or 3300 square feet that the 58 by 58 would  
 8 take up. Now, the thinking is is that that 25 by 16 could  
 9 accommodate the tower and the space necessary for one carrier,  
 10 and in this instance that would be T-Mobile. But then as  
 11 additional tenants come onto the site, the intent would be to  
 12 be more judicious with space and to do what they could do,  
 13 basically work with any oncoming tenants to reduce the  
 14 equipment footprint. So over a period of time you'd have  
 15 somewhere in the neighborhood of, you know, three tenants, but  
 16 they wouldn't be taking up the 3600 square feet. It would be,  
 17 you know, significantly smaller.

18 The other thing that the applicant is looking  
 19 at and it has some discretion to do so but not a lot would be  
 20 to move the monopole closer to the western boundary of the  
 21 property towards their right-of-way. So if you look at the  
 22 screen, right now that monopole is approximately 29 feet from  
 23 the fenced-in -- from the fence line on the west boundary. And  
 24 the intent would be to move that closer towards the west

1 boundary. That would allow, you know, greater space over here  
 2 for development, and, you know, in the event that a building  
 3 were to be built on this property the tower wouldn't be so  
 4 close to the building's edge. I'm not sure how much discretion  
 5 the applicant would have in moving the tower, but there is  
 6 some, and somewhere in the neighborhood of 10 to 15 feet they  
 7 move it this way I think would have a significant impact on,  
 8 you know, reducing the amount of footprint that the fenced-in  
 9 area would eventually take up.

10 MR. CARTER: So the message is really that the applicant  
 11 would work with staff or work with the Village upon approval to  
 12 design something that would be satisfactory, recognizing, you  
 13 know, that the carriers will need some space there but there's  
 14 some room for adjustment.

15 MR. SIMON: I have some comments and questions.

16 CHAIRMAN KHOURY: Good, Mr. Simon.

17 MR. SIMON: Assuming for the sake of argument this is  
 18 approved and you have the small size available just for  
 19 T-Mobile, under more recent federal law the Village essentially  
 20 has no discretion to deny colocation carriers, so if Sprint  
 21 comes on, like they represented in the correspondence we  
 22 received, there would be additional space on the ground and we  
 23 won't have discretion to go through this process again to  
 24 minimize the size of the square footage that they take up. And

1 so while I recognize that we can limit the size of the area for  
 2 T-Mobile because they're the current applicant or companion  
 3 applicant in front of us, we lose some discretion for  
 4 colocation applicants because the federal government has taken  
 5 away that discretion. Once a monopole is built and that's a  
 6 base station, they basically said we cannot deny colocation  
 7 applicants. So we would have to come up with a condition that  
 8 applies from the beginning that is designed to minimize the  
 9 impact instead of relying upon you exercising your commercial  
 10 discretion in the future. So that would be one concern that we  
 11 have to address in that condition.

12 Is it possible to instead of having separate  
 13 compounds have one master shed developed where all the carriers  
 14 can share space inside one building?

15 MR. CARTER: Yes.

16 MR. SIMON: That would further minimize the space, I  
 17 think.

18 MR. LONG: I think that that is something that we could  
 19 look at, or at least we could set the first installation up to  
 20 be expanded, you know, in the future.

21 MR. SIMON: So I'm familiar with how these sites were  
 22 built, and there's a lot of open space.

23 MR. LONG: Sure.

24 MR. SIMON: Whereas if you stick everything in one

1 building, you eliminate that open space and you consolidate the  
 2 site.

3 MR. LONG: Right. Yeah. And I think I've seen these  
 4 done in the manner that you just described, but they're  
 5 typically done in this modular fashion where -- it's almost  
 6 like Lego's where the next person comes in and sort of attaches  
 7 their equipment area basically to the previous one that's  
 8 already there.

9 MR. SIMON: You would eliminate the dead space.

10 MR. CARTER: We could agree to that if there were  
 11 approvals as a condition that we could construct something --

12 MR. LONG: Sure.

13 MR. CARTER: -- similar to that or what you have in mind.

14 MR. SIMON: Thank you.

15 And then my recollection from the staff  
 16 report was that one of the concerns about the orderly  
 17 development of this area is the change of topography, I  
 18 think -- is that right, Brian?

19 MR. SIMMONS: Yes.

20 MR. SIMON: -- and where the tower is located in that  
 21 highest point in the Cutoff property area and that one way to  
 22 facilitate the development of the tower without frustrating  
 23 development nearby is to make the topography more even and  
 24 less -- you know, with less grade.

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1 MR. LONG: Sure.

2 MR. SIMON: Is it possible to lower the grade where the

3 original tower is located so it's easier to develop around it?

4 MR. LONG: When you say lower the grade, you mean flatten

5 everything?

6 MR. SIMON: Yeah. The curb to back before the property

7 is more level instead of this.

8 MR. LONG: A pitch. You know, maybe -- Mr. Fisher is

9 here. He may be able to shed some light on that.

10 CHAIRMAN KHOURY: Mr. Fisher, if you'd be kind enough for

11 the record just to state your name and address.

12 MR. FISHER: My name's Gary Fisher. My home address is

13 106 Sherwood Drive, Cary.

14 CHAIRMAN KHOURY: Thank you very much.

15 MR. FISHER: I'm not sure the exact drop, but I would

16 estimate it as about six feet. And you're talking about

17 lowering the property line, which would increase the hill

18 behind it where Com Ed is and make us more even with Manfred,

19 All Marine and all that down there.

20 How far do you think you'd have to drop it?

21 MR. SIMON: I think that --

22 MR. FISHER: Because then it even drops more when it

23 reaches Burger King. There's like three levels, four levels:

24 Com Ed, where Gage Grain was, where Manfred is, and then where

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1 Burger King is. So it's quite a hill.

2 MR. SIMON: I'm not as familiar with the topography. I

3 don't have a topographic map here. I just know that the staff

4 report indicated that leaving the hill there would make it more

5 difficult to build retail development around it, and so if the

6 grade was more slight and -- it will facilitate easier

7 development along the frontage.

8 MR. FISHER: I'm pretty sure it could be dropped a couple

9 feet because there is a hill going from Route 14 up to the

10 corner of the property. There is an increase, a hill there,

11 but it's not as -- even at the end of the driveway where it

12 reaches Route 14, there's still a two, three-foot drop there

13 because we built a retaining wall along there that separates

14 from Manfred's and our driveway, and all the way down to

15 Route 14, almost at the very end it's level. So there's a drop

16 all the way down. So I don't know -- I'm not a landscaper or

17 whatever, you know. But it could be dropped.

18 CHAIRMAN KHOURY: Thank you Mr. Fisher. Thank you,

19 Mr. Simon.

20 Mr. Simon, before we move forward did you

21 have any other questions?

22 MR. SIMON: No.

23 MEMBER JASPER: Can we -- do you want questions following

24 that later on?

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1 CHAIRMAN KHOURY: We're flexible here, gentlemen, so we

2 can stop and pause on the third question first.

3 You have questions, Mr. Jasper?

4 MEMBER JASPER: Well, we're concerned about redevelopment

5 of this Cutoff property, and if I recall correctly, you've got

6 an odd-sized lot --

7 MR. FISHER: Yes.

8 MEMBER JASPER: -- on the property. So therefore for

9 there to be any redevelopment it's probably going to take at

10 least two of the property owners to get together to, you know,

11 develop that property; in all likelihood three, four, maybe

12 five in order to put something in there that's probably viable

13 and meets the plan that we've got for that corridor. So in

14 order for that to happen, the tenants on those properties are

15 going to have to give up their contractual right to that

16 property or there's something in their lease already that

17 allows the property owner to move them out, to cancel the lease

18 and move them out.

19 You know, rather than sitting here talking

20 about whether we change elevation or we move it closer or we

21 lower the -- or we shorten the lot size, why don't we

22 concentrate on a contractual relationship that says that if

23 that property gets developed and other tenants or however we

24 want to -- I'll leave that to the lawyers -- but you're going

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1 to lose your lease and you're going to have to relocate. In

2 other words, we're going to kick you out if we decide to

3 redevelop that Cutoff property. Because in order for that to

4 happen, like I said, at least Burger King is only a tenant on

5 that property. They're going to have to leave.

6 CHAIRMAN KHOURY: So, Mr. Jasper, would you allow me to

7 make a comment to this?

8 MEMBER JASPER: Sure. It's an idea.

9 CHAIRMAN KHOURY: We appreciate that, and I appreciate

10 that, Pat. But I think as it relates to our discussion this

11 evening, I think it's important to stick to what the request is

12 for tonight. I understand a hundred percent where you're

13 coming from. I know we're trying to --

14 MEMBER JASPER: Well, their -- their request and part of

15 what we're talking about in order for them to get a positive

16 recommendation on this request is to meet this requirement of

17 being able to redevelop that Cutoff property, and they're

18 approaching it from, you know, the fact of their little corner

19 of the property. What I'm saying is, in my opinion, if that

20 property were to be developed, okay, it's going to be a fairly

21 big undertaking. It's going to take more property owners than

22 just a property owner for this property, and there are going to

23 be other tenants that are forced out.

24 MR. FISHER: Wouldn't you say that the Village has



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1 already started redeveloping the property when they allowed a  
 2 Burger King to go in there?  
 3 You just let them in a year ago. You're not  
 4 going to throw them out of there.  
 5 MEMBER JASPER: If somebody's coming in that's going to  
 6 bring more money into the village --  
 7 MR. FISHER: You'll throw them out?  
 8 MEMBER JASPER: I'm not doing it. I'm sitting here only  
 9 worried about planning and zoning.  
 10 MR. FISHER: Okay.  
 11 CHAIRMAN KHOURY: All right, gentlemen. And so I think  
 12 Mr. Simmons has a comment about this.  
 13 MR. SIMMONS: Just to interject, from a development  
 14 standpoint obviously there's multiple properties -- parcels on  
 15 this corner, the southwest -- or the western corner of Jandus  
 16 CutOff and 14. So there's five parcels that comprise the  
 17 Cutoff property area. Any redevelopment may require inclusion  
 18 of two or more of those parcels. You know, the goal for --  
 19 from the Village's perspective in the comprehensive plan was to  
 20 have more cohesive development. It may happen piece-parcel  
 21 like it has thus far with the Burger King going in. There may  
 22 be opportunities for three other parcels to combine to  
 23 redevelopment. Yes, there will be multiple owners in there  
 24 that all would have to participate in that project or sell to

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1 be able to be part of that project. So depending on the scale  
 2 of the project or development that does occur and what parcels  
 3 are included, the comment from staff was to insure that this  
 4 proposed installation would not impede whatever future  
 5 development may occur. Looking at the grades might be one area  
 6 that you can make a modification now to accommodate what the  
 7 existing contours of the surrounding properties are so that as  
 8 they do develop or if parcels do combine for redevelopment that  
 9 this structure would not restrict that future development from  
 10 occurring. It would allow for cross connection or connectivity  
 11 between the parcels for traffic circulation, as an example.  
 12 MEMBER JASPER: And that's my concern as well. And what  
 13 I'm saying is that parcel is so small, that whole area there is  
 14 so small, that anything in there is going to more than likely  
 15 impede what a developer is trying to do, whether it's traffic,  
 16 whether it's parking, whether it's their own service buildings  
 17 or whatever may be back there.  
 18 MEMBER O'LAUGHLIN: If I could echo you, Pat, in just  
 19 looking at the parcels that we have on the current map up here,  
 20 this is really the backyard to the two front parcels on 14, so  
 21 you would have to have more than one come in just to put  
 22 anything -- it would have to be more than one parcel for sure  
 23 to redevelop that area.  
 24 MEMBER JASPER: All I was saying was -- the main thing

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1 that I was trying to say is rather than come up with an  
 2 immediate solution, constructive --  
 3 construction-related--excavating, you know, lowering the size  
 4 of the footprint, you know--focus on a contractual solution.  
 5 CHAIRMAN KHOURY: Well, again, Mr. Jasper, I think this  
 6 is the Petitioner's request, and so maybe as a suggestion if we  
 7 can give the floor back to the Petitioner because I think that  
 8 was question 3 of 2 more to go.  
 9 MR. SIMON: Was there questions about the redevelopment  
 10 piece?  
 11 CHAIRMAN KHOURY: Yeah. But I think -- I'll be flexible  
 12 with this. Typically what we do is have them present and ask  
 13 questions back. They're just going to ask one question and  
 14 respond back.  
 15 I guess if you're asking, Mr. Simon. If you  
 16 want to respond to any of these comments, Mr. Long or  
 17 Mr. Carter, you're welcome to.  
 18 MR. LONG: As far as the grading issue, I think that we  
 19 could address that. If that is something that is of concern,  
 20 we'd be glad to have our client in the construction phase or  
 21 building permitting phase evaluate, you know, what type of  
 22 grade change can occur at the property to -- I guess from what  
 23 you're saying to set the stage for development, and possibly  
 24 also it may be the case that it may have to occur anyways for

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1 drainage anyways.  
 2 I think we can evaluate that, don't you  
 3 think?  
 4 MR. CARTER: Yeah. And I guess to the redevelopment  
 5 point, I've been involved in a number of tower sites where the  
 6 property is redeveloped. Most recently a municipal complex was  
 7 converted into a high school up in the city of Oak Creek  
 8 outside Milwaukee. They made the decision there, they actually  
 9 talked about relocating the tower on the property, and they  
 10 made the decision there to go around the tower, but that's not  
 11 to say that the carriers in that case weren't open to  
 12 discussing relocation. It's just tough to do it at this point  
 13 in time because we're speculating on different properties being  
 14 sold and coming together in a development. One benefit always  
 15 a tower like that adds is, you know, there's going to be income  
 16 coming from the property which is attractive to any purchasers  
 17 as well. But it isn't unheard of if there's a redevelopment  
 18 and even if the parcels aren't combined for a tower to be  
 19 relocated down the road, but that typically is done, you know,  
 20 with some incentive going back and forth between the owner of  
 21 the property and the tower operator.  
 22 MR. SIMMONS: To that effect, would that be a condition  
 23 that the Petitioner would be open to redevelopment of three  
 24 parcels or something like that, if that were to occur, that as

1 part of the redevelopment offer that might be an option, that  
 2 relocation of the tower could be something that could be  
 3 explored or pursued if that impacted that future development?  
 4 MR. CARTER: Typically, what that would involve is there  
 5 would be a guaranteed period of time that the tower will be --  
 6 because they want -- you don't want to build the tower and a  
 7 year from now have them say well now it's going to be  
 8 redeveloped. So normally it's at least one or two terms under  
 9 the lease. And then there would have to be some sort of  
 10 alternate location on the property that would be made available  
 11 to house the tower.  
 12 MR. SIMON: Perhaps the way to solve this without  
 13 being -- without having a term limitation is to say that should  
 14 redevelopment occur in a way that conflicts with the location  
 15 of the tower the new buildings will allow for colocation of the  
 16 antennas on the building as a substitute for the monopole as a  
 17 frame to holding the antennas on where they serve so they  
 18 continue to provide service.  
 19 Does that make sense?  
 20 MR. CARTER: If the buildings are going to be by the  
 21 tower --  
 22 MR. SIMON: I don't know where the buildings are going to  
 23 go. Where's the wall?  
 24 MR. CARTER: I think it might make sense. You don't know

1 what you're going to get in terms of building. You could get  
 2 one-story retail, which isn't going do -- that won't work from  
 3 a coverage standpoint.  
 4 CHAIRMAN KHOURY: So, gentleman -- Mr. Graziano.  
 5 MEMBER GRAZIANO: I'm having trouble wrapping my head  
 6 around why we're so worried about the redevelopment of these  
 7 properties. As I understand it, there's five parcels. I  
 8 believe at least four have either a structure or an ongoing  
 9 business on them, and across the street you got a huge piece of  
 10 property. Across Route 14 there's a piece next to CVS.  
 11 There's another three parcels down the road by Second Street.  
 12 Got all this open property that's just waiting to be developed.  
 13 Why are we worried about redeveloping five  
 14 parcels that are already occupied?  
 15 MR. SIMON: The comprehensive plan for the village  
 16 indicates that the goal for that property is to be redesigned  
 17 or redeveloped, and so for one of the conditions of  
 18 satisfying -- that they need to satisfy to obtain the  
 19 conditional use is that it doesn't impede the orderly  
 20 development and that it's consistent with the future --  
 21 MEMBER GRAZIANO: But the properties are developed  
 22 already.  
 23 MR. SIMMONS: The comprehensive plan, as Mr. Simon  
 24 pointed, does point to redevelopment of those properties, so

1 it's looking at future use.  
 2 MEMBER JASPER: So the comprehensive plan says that the  
 3 properties aren't developed correctly and the Village wants  
 4 them redone eventually.  
 5 MR. SIMMONS: Correct. They're existing properties that  
 6 were developed prior to existing codes. They were on the  
 7 outskirts of town when they were developed. The comprehensive  
 8 plan is looking at not just that properties but also the South  
 9 property across the street and kind of redeveloping the area  
 10 for more commercial activity. So you do have to have  
 11 commercial uses that are in the area now. The subject property  
 12 should be industrial use, so you're starting to see a  
 13 transition of uses there currently, but the comprehensive plan  
 14 recommends or has recommendations to try to develop a more  
 15 cohesive redevelopment of that corner similar to across the  
 16 street where CVS is at. There used to be several buildings on  
 17 that corner, gas station, office building, bank, as well and  
 18 that redevelopment occurred and now offered additional  
 19 opportunities across the street. So it will be a similar type  
 20 of development that the comprehensive plan is proposing or  
 21 seeking for this corner as well.  
 22 MEMBER GRAZIANO: The comprehensive plan also would like  
 23 to see the other three empty properties developed.  
 24 MR. SIMMONS: Correct.

1 MEMBER GRAZIANO: I don't understand the concern.  
 2 CHAIRMAN KHOURY: So, gentlemen, as a suggestion, I think  
 3 what we'll do is we'll turn the floor back over to you,  
 4 Mr. Long. I know you were trying to address the three  
 5 questions that were previously presented that was -- I know we  
 6 took the third one first. That leaves two more.  
 7 But before we leave this issue, I do have an  
 8 obligation just to ask, are there other members, do you have  
 9 any questions about what was just presented firstly?  
 10 (No response.)  
 11 No? Okay. So back over to Mr. Long.  
 12 MR. LONG: Okay. Thank you.  
 13 So the second item we'd like to do is the  
 14 first item that's depicted on this screen, which is a  
 15 discussion on the Com Ed colocation.  
 16 And have you all had a chance to read our  
 17 letter today?  
 18 (Indicating.)  
 19 Okay. The -- T-Mobile, who's the anchor  
 20 tenant on our proposed tower, believes that the colocation of  
 21 the Com Ed power line support structures is not the best or  
 22 even a feasible alternative to collocating, and there are  
 23 several reasons why Com Ed -- or why these Com Ed power support  
 24 structures are infeasible.

1 The first one is -- and let me get the letter  
2 here. The first one is the fact that when you install antenna  
3 on a power line support structure the structural capacity is  
4 much less than what you find on a monopole tower or any type of  
5 telecommunications tower. These power lines support structures  
6 were not designed to accommodate antenna, and as a result, what  
7 you typically find is that the loading of the equipment is much  
8 less than what you could accomplish it being on a tower. As a  
9 result, the functionality, the operability of the site on a  
10 Com Ed facility or any type of utility facility is far less  
11 than what you'd find in a situation with installation, the  
12 standard installation on a telecommunications tower.

13 The second thing is is that there's concerns  
14 that T-Mobile has with regard to repairing equipment that's  
15 installed on a tower or a power line support structure, and  
16 that is that typically there's access issues that have to be  
17 worked out in order to get to the structure in times of a  
18 network failure or a site failure, and the down times are too  
19 great for what T-Mobile would tolerate, and it's -- typically  
20 those response times are far greater than what T-Mobile  
21 experiences when they're going to service their antenna on a  
22 regular telecommunications tower. That being said, you know,  
23 there's some other concerns as well, and T-Mobile as is -- you  
24 know, in looking at these things they've known that the Village

1 has not always been receptive to having antenna installed on  
2 the Com Ed power structures or power line support structures.  
3 I think a few years back that the Village denied an application  
4 for colocation on such a structure.

5 So, you know, in looking at sort of the  
6 totality of all these circumstances, you know, T-Mobile  
7 believes that this is not the right home for its antenna these,  
8 Com Ed support structures.

9 MR. CARTER: The other -- from a practical standpoint, we  
10 question, too -- and I'm looking up there like I'm going to see  
11 the power lines, so I'll stop looking at the screen. But  
12 there's a question of how they would access the Com Ed property  
13 because there's no cut in the road to actually access the tower  
14 area. Com Ed's response with regard to these requests has been  
15 essentially not noncommittal. We'd hope to have something for  
16 you to demonstrate just that, but all we're going to have is  
17 our representation that they're noncommittal. And as Mike  
18 indicated, any installation that would be put on those lines  
19 could not be to the extent of the installation that you're  
20 going to have on the monopole. So you're still going to have  
21 the coverage gap existing. You're still going to have us back  
22 here begging you for solutions to in fill that coverage.

23 MR. SIMON: Actually, let's -- can I kind of dive into  
24 that comment you just made?

1 The location of the Com Ed tower is less than  
2 a hundred feet away from the proposed site, and the site they  
3 were proposing is designed to -- what the application said is  
4 it's to close the coverage gap.

5 Can you tell me honestly that an antenna less  
6 than a hundred feet away is not going to close the same  
7 coverage gap that the proposed tower is going to close?

8 MR. CARTER: We aren't talking about just one antenna,  
9 though. If you look at the plans submitted, there's a number  
10 of antennas and different apparatus that are going on the  
11 monopole. Those Com Ed towers -- and that's in  
12 Mr. Mead's (phonetic spelling) sworn statement.

13 MR. SIMON: We're talking about T-Mobile right now.  
14 We're not talking about any other colocator right now. We're  
15 talking about just T-Mobile --

16 MR. CARTER: Correct.

17 MR. SIMON: -- and whether or not this can close a gap  
18 in coverage for T-Mobile.

19 MR. CARTER: The Com Ed towers cannot because you cannot  
20 install everything that T-Mobile is proposing to install on the  
21 Lendlease tower on the Com Ed structures.

22 MR. SIMON: Such as?

23 MR. CARTER: Such as all the equipment that's listed in  
24 the application. I mean, you've got -- I'll pull out the sworn

1 statement. I've got the drawings here.

2 MR. SIMON: While you're looking, I'm reviewing the  
3 letter that we received this afternoon. It doesn't describe  
4 the ability for the Com Ed location to close the gap in  
5 coverage. It's signed. It only discusses the accessibility of  
6 the tower for service purposes primarily. The --

7 MR. CARTER: Lack of access.

8 MR. SIMON: -- lack of access. But, you know, if Com Ed  
9 would allow you to put something on the tower, I imagine  
10 they'd also provide you with access. That would go hand in  
11 hand. That goes hand in hand with any lease. On any tower you  
12 get an access easement.

13 MR. CARTER: The Village would allow a road cut --

14 MR. SIMMONS: It would be Route 14.

15 MR. CARTER: -- at that intersection.

16 MR. SIMMONS: Yeah. If there's -- the previous when we  
17 discussed this were two applications that had been reviewed in  
18 the past for colocation on the Com Ed towers; one that was  
19 actually approved by the Village for a tower that was directly  
20 next to the site. That had access that was provided right off  
21 of Route 14, if I recall correctly.

22 MR. CARTER: What you have from T-Mobile in their sworn  
23 statement is, paragraph 24, due to the structural limitations  
24 of these types of towers themselves, i.e., the Com Ed towers,

1 the type and quantity of antennas and associated broadcast  
 2 equipment that can be installed on such structures is limited,  
 3 which will cause diminished service as compared to the site.  
 4 Then it goes on to say: In addition the challenges associated  
 5 with working on these types of tower structures and limited  
 6 line site access in times of service outages and interruptions  
 7 make Commonwealth Edison tower structures unacceptable as  
 8 viable colocation options for providing the required level of  
 9 service to T-Mobile subscribers.

10 MEMBER JASPER: That's T-Mobile's position. The point  
 11 that's on the screen is, was not a physical option supported by  
 12 Com Ed. Now, forgetting everything else that's being said here  
 13 about whether, you know, you can engineering-wise put the  
 14 equipment up there. Essentially, what you'd be doing was  
 15 instead of leasing the land from the current lessor you would  
 16 be leasing it from Com Ed, and Com Ed would then be receiving  
 17 the fees and the income associated with that lease. So it  
 18 would be a -- potentially, a fee income, you know, most profit,  
 19 almost no expense, to Com Ed. And what I'm hearing you tell me  
 20 is that in your conversations with Com Ed --

21 MR. CARTER: I haven't had conversations with Com Ed.

22 MEMBER JASPER: Has anybody had conversations with  
 23 Com Ed?

24 MR. CARTER: There have been no conversations with Com Ed

1 on this issue. I don't have a landlord for you.

2 MEMBER JASPER: Com Ed would be the landlord.

3 MR. CARTER: Right. I don't have a commitment from  
 4 Com Ed to bring to you tonight.

5 MEMBER JASPER: I know. But what I'm saying is you've  
 6 had conversations with Com Ed as to whether you could actually  
 7 place your equipment on the tower.

8 MR. CARTER: At this location?

9 MEMBER JASPER: Yeah.

10 MR. CARTER: I have not had conversations with Com Ed. I  
 11 don't have -- I have one landlord. It would be as if T-Mobile  
 12 came to you and asked to put antennas on your house and you  
 13 said no, and the Village said go to Mr. Jasper's house, that's  
 14 where you're going to locate.

15 MR. SIMON: But you don't have a note from Com Ed.

16 MR. CARTER: I don't.

17 MR. SIMON: Yeah.

18 CHAIRMAN KHOURY: All right. Can I --

19 MEMBER JASPER: So we don't know whether Com Ed -- the  
 20 answer to question no. 1 has not been answered. We don't know  
 21 if Com Ed would be interested.

22 CHAIRMAN KHOURY: That's already established, Pat.  
 23 So I'm going to come forward to your  
 24 questions to Mr. Simon and Mr. Jasper. I do just want to step

1 back, gentlemen, and we're going to be discussing question 1.  
 2 We seem to be presenting and asking on  
 3 question 1 now; correct?

4 MR. LONG: Yes.

5 CHAIRMAN KHOURY: Okay. Are you comfortable with that,  
 6 Mr. Long?

7 MR. LONG: Yes.

8 CHAIRMAN KHOURY: So I just want to step back for a  
 9 minute because as Mr. Simmons articulated in his opening  
 10 comments this is our fourth meeting. We had extended from the  
 11 26th to the 9th of November. We met in person on the 14th. We  
 12 articulated a request to deliver back responses to these  
 13 questions.

14 Do you agree?

15 MR. LONG: Yes.

16 CHAIRMAN KHOURY: Thank you. So we received a memo from  
 17 yourselves today, and as I mentioned earlier, I received it  
 18 personally at about 4:21 p.m. All the gentlemen at this table  
 19 are working as you are. I recognize fully, Mr. Long and Mr.  
 20 Carter, that you're probably busy with other accounts, other  
 21 clients. I respect that.

22 What I'm trying to understand is that since  
 23 the 14th of December when we had that agreement to find a  
 24 common ground -- November 9th. Thank you -- you've had time to

1 respond to this prior to tonight, and I'm sincerely trying to  
 2 understand why we received this tonight -- today as opposed to  
 3 maybe a week ago. We all receive our packets about a week in  
 4 advance of our meetings in order for all of the ZPA members to  
 5 be fully briefed and prepared. So I'm sincerely trying to  
 6 understand that question.

7 So you can pause for a second with regard to  
 8 your comment about -- this is your page 2, Mr. Carter. It's  
 9 the last paragraph, last sentence under item no. 2, we know the  
 10 Village has denied permits in the past. That was about 12  
 11 years ago at the village level, at the elected village level,  
 12 just so you're aware. About 12 years ago. I doubled checked  
 13 it for you this evening. It was 2006.

14 So I guess one of the things I was trying to  
 15 understand from the memo, Mr. Carter, is that the gentleman  
 16 started to speak to this. I think I heard that the driving  
 17 factor for your T-Mobile request is coverage. Is that still  
 18 accurate tonight?

19 MR. LONG: I think the driving force behind the  
 20 application and what we're trying to accomplish is is that  
 21 we're trying to develop a site within the village that's  
 22 acceptable to telecommunications carriers, and, you know,  
 23 T-Mobile has indicated that they find our site superior to, you  
 24 know, any other colocation option in the village, and in fact

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1 some don't work because they're outside the search ring.  
 2 I'll admit that the physical location of the  
 3 Com Ed structure is in the search ring. However, you know, I  
 4 don't think you'll get T-Mobile to go on the Com Ed structure.  
 5 I just don't -- I don't think that that's going to happen.  
 6 CHAIRMAN KHOURY: That's a fair comment, Mr. Long, and I  
 7 understand that. But I think what I'm trying to understand, I  
 8 just want to confirm with you because there's other elements in  
 9 the memo that don't necessarily speak this, but I think the  
 10 driver in the original request is coverage for T-Mobile.  
 11 MR. LONG: The driver for the application and for the  
 12 tower is certainly to provide the coverage, filling the  
 13 coverage gap for the anchor tenant T-Mobile, yes.  
 14 CHAIRMAN KHOURY: And I think what some of the other  
 15 gentlemen were talking about, Mr. Carter or Mr. Long, is that,  
 16 at least the way I was reading the memo, it goes on in quite  
 17 some depth about the cost of potentially using Com Ed  
 18 facilities or making other arrangements. And I'm trying to  
 19 balance that with -- I'm on your page 3 now. It goes into  
 20 quite some detail on the cost besides the 325 percent rent  
 21 increase. So it talks specifically about the additional costs  
 22 that T-Mobile might be required to pay to use existing  
 23 structures. So that's what I'm trying to understand. Is the  
 24 driver cost or is the driver -- what's the driver here?

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1 MR. LONG: I think for the applicant it's -- the driver  
 2 is providing a facility that's acceptable to telecommunications  
 3 companies that is in a strategic location that allows at least  
 4 one wireless carrier that we know of to accomplish its coverage  
 5 objectives to fill a service gap in the village in the most  
 6 efficient means possible. I think the cost issue is something  
 7 that's germane to T-Mobile.  
 8 CHAIRMAN KHOURY: I understand, Mr. Long. I'm sincerely  
 9 understand and appreciate that.  
 10 MEMBER JASPER: To finish or restate what he was trying  
 11 to say is it's an economic decision as well as a physical  
 12 property decision, and I think that's what -- you know, when I  
 13 read it that's what T-Mobile was trying to show us, was that  
 14 anything else is significantly economically worse for them from  
 15 a business perspective.  
 16 CHAIRMAN KHOURY: I agree, Mr. Jasper.  
 17 And I guess I'll come back to Mr. Long and  
 18 Mr. Carter because I'm personally still trying to understand  
 19 why we're receiving this communication tonight. I think  
 20 Mr. Carter said he hasn't really had any communication with  
 21 Com Ed even though we agreed at the last meeting that we would  
 22 try to resolve the best we could some of those questions, and  
 23 you were taking those away. That's why we agreed.  
 24 I'm sincerely trying to understand, did it

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1 really take until this afternoon to get this information?  
 2 MR. CARTER: Well, to get no information, I mean, you're  
 3 asking for a negative. We've given you everything that we  
 4 have, so it's not as though we're springing, you know, another  
 5 proposal to put up another tower at the 11th hour. We're  
 6 telling you this is what we have. So the arguments that we  
 7 have are essentially what we had at our first meeting.  
 8 CHAIRMAN KHOURY: That's the point.  
 9 MR. CARTER: The letter did have to go through Lendlease  
 10 and through T-Mobile for approval, and it was several different  
 11 layers of approval. So we worked to get it out to you as  
 12 quickly as we could.  
 13 CHAIRMAN KHOURY: So, Mr. Graziano, please.  
 14 MEMBER GRAZIANO: What I'm having trouble with, like I  
 15 had trouble before, I'm reading item no. 1 on this list from  
 16 November 9th. It says determine if collocation on adjacent  
 17 towers was not a physical option supported by Com Ed. That's  
 18 no. 1.  
 19 I'm hearing Mr. Carter say oh, we haven't  
 20 talked to Com Ed. Why not?  
 21 MR. CARTER: What I'm saying is I don't have a response  
 22 from Com Ed.  
 23 MEMBER O'LAUGHLIN: You contacted them, but they haven't  
 24 responded.

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1 MR. CARTER: Our site acquisition has contacted them, and  
 2 they have been noncommittal, as indicated in the last paragraph  
 3 on the page 3 of our letter.  
 4 MEMBER JASPER: Do you know of any other locations that  
 5 Com Ed has allowed collocation on their towers?  
 6 Is that something that Com Ed does, again,  
 7 when economically feasible to them?  
 8 MR. CARTER: In the village or --  
 9 MEMBER JASPER: Anywhere.  
 10 MR. CARTER: I mean, I can represent that there probably  
 11 are installations on Com Ed towers. I can't cite to any off  
 12 the top of my head.  
 13 CHAIRMAN KHOURY: Mr. Simmons might have some insight  
 14 here.  
 15 MR. SIMMONS: Mr. Jasper, you might recall from our last  
 16 hearing in November there were two installations that are on  
 17 the boundary between Kane County and Cook County on Algonquin  
 18 Road where -- a few miles south of the subject property where  
 19 there are two collocations that have been installed. You have  
 20 the images in the slide projection if you wanted to go back to  
 21 that. But there are local examples of that that have allowed  
 22 it previously.  
 23 MEMBER JASPER: So engineering-wise they can install  
 24 facilities on their towers. Whether they want to or not is a

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1 different question. And what the Petitioners are telling us is  
 2 that that couldn't get to the person that would give then an  
 3 answer.  
 4 CHAIRMAN KHOURY: So can we explore that a little bit  
 5 further, Mr. Carter, because I think that's an important  
 6 question and Mr. Graziano's encapsulated it very well.  
 7 When you say noncommittal, did you or anyone  
 8 in your firm have a discussion with Com Ed? Or how do we know,  
 9 by the fact that they didn't respond? Is that how we're  
 10 interpreting that?  
 11 MR. CARTER: There wasn't -- no one in our firm has had  
 12 any conversations with Com Ed concerning this project or any  
 13 other site installation that I'm aware of. Lendlease's real  
 14 estate agent had attempted on multiple occasions to contact  
 15 Com Ed to explore this following the latest. There was -- I'm  
 16 told that there was a noncommittal response -- the first  
 17 acknowledgement to those repeated requests came fairly  
 18 recently, as in like maybe Friday of last week, but it was  
 19 noncommittal. It was an acknowledgement.  
 20 CHAIRMAN KHOURY: They're reviewing your request?  
 21 MR. CARTER: Well, no. If -- to pursue and to actually  
 22 make a determination if the towers could hold the equipment,  
 23 you'd have to submit a complete set of design drawings like you  
 24 have tonight. So we haven't done that.

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1 CHAIRMAN KHOURY: So I think that's kind of the crux of  
 2 question no. 1, gentlemen. I think you'll appreciate that that  
 3 when -- you remember well that we talked about this very  
 4 specific issue, and I think we found ourselves in a similar  
 5 circumstance now that we thought there was going to be some  
 6 dialogue between someone in Com Ed around this idea, could it  
 7 work. And it sounds like, if I'm hearing you correctly,  
 8 noncommittal means there's been no meaningful dialogue  
 9 whatsoever around question 1 from our previous meeting on  
 10 November the 9th if I'm recalling that meeting correctly,  
 11 gentlemen. I think that's one of the requests being made.  
 12 So I don't have any questions further about  
 13 question 1. But that was why we agreed, if I'm recalling  
 14 correctly, why we agreed to continue, to give yourselves some  
 15 time so go back and pursue question 1.  
 16 MR. CARTER: And I think represent, because I was the one  
 17 pushing, I was pushing the real estate representative to get  
 18 something from Com Ed. We didn't have anything. If we did, we  
 19 would turn it over to you. But I've got nothing more than if  
 20 you say go and talk to property owner B; you've talked to A,  
 21 talk to B and he picks up the phone and says, well, maybe  
 22 something to look at. I don't know.  
 23 CHAIRMAN KHOURY: So, gentlemen, I guess the question  
 24 is -- I'll be the one to try and kick the can. We're sincerely

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1 trying to reach some common ground, but I think the reason why  
 2 we kept an open mind, as we said we would and I think I  
 3 remember saying it to yourself -- we would need specific  
 4 response to these because you're well aware of the information  
 5 as we all have in the staff reports, and so I guess you could  
 6 have requested a continuation from the last meeting further to  
 7 tonight because we don't really have any information about  
 8 question 1. I'm not putting any blame on anyone, Mr. Carter.  
 9 It's just the agreement we reached at the last meeting.  
 10 All right. So we won't beat that one up  
 11 anymore unless others have questions about question 1, the  
 12 second.  
 13 (No response.)  
 14 All right. So we can move on -- if we're  
 15 concluded with question 1, we can move on to question 2 as  
 16 stated on the list there.  
 17 MR. CARTER: So the last question was filling the service  
 18 gap with additional colocations. And, you know, I think the  
 19 simple answer, to break it down, is if we put antennas on the  
 20 Com Ed lines and if we put antennas on the water tanks and if  
 21 we put antennas on the SBA structure and we put antennas on the  
 22 CVS building and we put some small cells along the roadway, you  
 23 would have your -- the coverage gap would be filled, but that  
 24 gets to the cost and the economics of it. And, you know, when

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1 companies look at supplementing and improving service in an  
 2 area, they look at the need, and they've identified Cary in  
 3 this area as a need based upon customer service complaints and  
 4 what have you. To fill that need, there isn't an unlimited  
 5 budget. So there's a set number of dollars and there's a set  
 6 number of dollars to invest in Cary and in your neighboring  
 7 communities. We had looked at -- I think the most viable means  
 8 to fill the coverage gap would be the two water tanks. The SBA  
 9 tower is outside of the coverage ring, and it just won't do  
 10 anything. We wouldn't be here proposing any tower. The Com Ed  
 11 lines, as we've discussed, aren't an option at this point for  
 12 the reasons we won't go back into it, but T-Mobile doesn't feel  
 13 that they're an option. If you combine the coverage on both  
 14 water tanks or if you combine the installation on both water  
 15 tanks, you're going to improve coverage because those water  
 16 tanks kind of straddle the area in question. The problem with  
 17 that is that to put the installation on both water tanks  
 18 you're looking at a 325 percent increase in what they would pay  
 19 for just this one monopole installation, and that's -- from an  
 20 economic standpoint, it just doesn't make sense.  
 21 So if that's -- and I don't think --  
 22 with all due respect to the Village, I don't think that the  
 23 Village can deny on the basis of, well, if you fill up and you  
 24 put your installations on our water tanks you'll have ideal

1 coverage. In the code, as we know it in the letter, the code  
 2 doesn't talk about doing any sort of alternative analysis  
 3 either, and we're happy to do that, and I think we have. But  
 4 that boils down to a money situation. And, also, when you're  
 5 looking at paying a 325 percent premium in rent, we identified  
 6 some of the issues that are generally there with water tank  
 7 leases, and one of those -- it sort of goes back to the issue  
 8 we had with the Com Ed lines -- if you stock up a water tank  
 9 with installations, the water tank right now might not support  
 10 it from a structural standpoint, but who knows how these  
 11 installations are going to be modified in the future and if  
 12 structurally the water tank is going to be capable of handling  
 13 because water tanks are designed to distribute water. The  
 14 primary purpose isn't like this monopole. It's not to hold  
 15 carriers' cell equipment. So there's a concern about what the  
 16 water tank can and can't accommodate.

17 But then there's also the fact that you  
 18 have probably ten major tower companies in the United States  
 19 who have established relationships with these carriers, so  
 20 their leases are very carrier friendly. If equipment's  
 21 damaged, it can be swapped out easily. If there's upgrades in  
 22 equipment, they know what they're going to pay. The rental  
 23 rates and escalators are more competitive. There aren't issues  
 24 with access. So we talked a little bit about access with

1 Com Ed lines and the delay. And, again, access -- and if lines  
 2 go down, you're talking -- you could be talking safety issues  
 3 and 911, the liability. And to get on the water tank, we  
 4 certainly understand that you aren't going to grant anyone  
 5 access to your water tanks, but there's a delay there. There's  
 6 also a very significant cost with repainting the tanks because  
 7 they've got to remove the equipment, they've got to put up  
 8 temporary towers, and that -- and this figure startles me --  
 9 but that's a \$250,000 cost to repaint it.

10 So from a business standpoint, using those  
 11 two towers just didn't -- it's not a viable option for this to  
 12 go forward and be a means to address the coverage. One or the  
 13 other towers, you know, just one tower here or there isn't  
 14 going to do it either. And for both of the them, they can't do  
 15 it.

16 MR. SIMON: Did anyone approach the Village to ask what  
 17 the terms of a lease might be for a new lease? Not looking at  
 18 the existing leases because those are for -- those are separate  
 19 installations. Did anyone contact the Village to see what  
 20 could be negotiated for T-Mobile on those two towers? Or these  
 21 numbers are just extrapolated from other leases.

22 MR. CARTER: We took the numbers from two existing leases  
 23 that we have, and those two existing leases, I'll tell you,  
 24 they're fair market rates in Chicago. I wouldn't expect if we

1 came to you that they could get pricing on those leases.  
 2 MR. SIMOM: I can't speak for the Village Board because  
 3 they haven't considered this. But if they charge half the cost  
 4 for the rent, you'll get new antennas, you won't have a  
 5 monopole. I don't know what they'll say.

6 MR. CARTER: It's less than half, you understand, too.

7 MR. SIMON: Whatever it is. If all things are equal, you  
 8 said earlier that the dual installations on the water tower  
 9 would effectively close the coverage gap.

10 CHAIRMAN KHOURY: So, Mr. Carter, can I come back,  
 11 because I think we are getting to the crux of it, which is  
 12 coverage gap; that was the original request.

13 I recall from our last meeting that there was  
 14 a discussion about gaining coverage inside of buildings, and so  
 15 what I'm trying to recall is, is the coverage gap inside the  
 16 buildings or is it when you drive or both? And do you have  
 17 order of magnitude on either side of that?

18 MR. LONG: I can speak to that. Our understanding from  
 19 T-Mobile and what I went through at the last meeting was that  
 20 T-Mobile wants to improve its data coverage both outdoor and in  
 21 indoor situations. And so when you look at this site, you  
 22 know, it's -- you know, there's a -- when you look at it, you  
 23 are looking at, you know, what can we cover from a strategic  
 24 location, and in this instance you've got the village, you've

1 got population density, you've got a need for not only, you  
 2 know, people outside from the point of view of being in  
 3 vehicles traveling along 14, but in addition to that T-Mobile's  
 4 also trying to accomplish and improve their indoor coverage as  
 5 well.

6 CHAIRMAN KHOURY: Okay.

7 MR. LONG: So it's both. It's both outdoor and indoor.

8 CHAIRMAN KHOURY: That's my recollection. I just didn't  
 9 know if it was more of one area or another. I don't think you  
 10 know either. It's both.

11 So, gentleman, let me give everyone an  
 12 opportunity to ask question on question 2. So we're at  
 13 about --

14 MEMBER O'LAUGHLIN: Wait. I did have one.

15 And I forget the gentleman that was with you  
 16 before, but he had stated -- or I thought he stated. Maybe I'm  
 17 incorrect of my recollection of it -- that hitting on the two  
 18 towers would improve it but it would not close the gap. Was  
 19 that correct? Was the two towers would close -- or the two  
 20 water towers would close the gap?

21 CHAIRMAN KHOURY: My understanding, it would. I don't  
 22 want to speak for them. I thought I heard the affirmative.

23 MEMBER O'LAUGHLIN: When you said that, I thought the  
 24 person from -- I forgot his name. The gentleman that was with

1 you, I thought he said the two towers would potentially close  
 2 portions of gap but not all of it. I'm trying to remember the  
 3 red diagrams that we had.  
 4 MR. CARTER: The difference in rent with two towers  
 5 versus the monopole is \$2.8 million more.  
 6 CHAIRMAN KHOURY: So there's a cost issue and the  
 7 coverage issue.  
 8 MR. CARTER: And the structural integrity. We don't know  
 9 the structural integrity of those tanks.  
 10 MEMBER JASPER: Yeah. But think that through rationally.  
 11 A water tower is built to hold how many thousands, hundreds of  
 12 thousands of gallons of water.  
 13 You know, what does a gallon of water weigh?  
 14 CHAIRMAN KHOURY: 7.2 pounds.  
 15 MEMBER JASPER: There you go. So it's meant -- it's  
 16 meant to put all that water on the tower is supposed to hold  
 17 that up.  
 18 You're telling me that that tower holding all  
 19 that water can't handle another 200 pounds of antenna?  
 20 MR. CARTER: Yeah.  
 21 MEMBER JASPER: That they're that delicate --  
 22 MR. CARTER: If you go to Cedarburg, Wisconsin, you can  
 23 check out their website. Their tank is failing. They're  
 24 decommissioning it. It can't hold any more antennas, and

1 they're looking to put up a monopole. I don't design them. If  
 2 I could, I could make a lot of money selling them to  
 3 municipalities.  
 4 But beyond the structural, you're talking  
 5 \$2.8 million and lease terms.  
 6 MEMBER JASPER: Right. Thank you.  
 7 CHAIRMAN KHOURY: Mr. Williams, any questions, sir?  
 8 MEMBER WILLIAMS: It obviously comes down to coverage  
 9 because you're trying to improve on. If you don't agree to  
 10 anything, what do we go back to? It comes down to coverage and  
 11 money. But if nothing happens, if the monopole didn't go up  
 12 and they decide not to do it because it costs too much money,  
 13 the customers are going to go back to what they have right now.  
 14 I don't know what the negative -- I don't know how bad it is.  
 15 Obviously, we talked about the maps, and the maps showed that  
 16 everything was covered, but then we broke it down into what it  
 17 really was.  
 18 If it was that bad, it would be worth it.  
 19 Right? If people were not getting coverage and T-Mobile was  
 20 like this is an issue, the amount of money to solve the problem  
 21 goes up versus, you know, just generalizations. So, you know,  
 22 we're trying to figure out if it can work with Com Ed. If it  
 23 can't -- I'm reading that mobile says no. Well, T-Mobile says  
 24 it's going to be bad because it's OSHA standards and this

1 happens, so apparently it's happening because they have  
 2 information on it and it's been done before. So if it's been  
 3 done before, obviously there was -- something was that bad  
 4 before because they had to do it because it was expensive.  
 5 The easy option is this and, I don't know,  
 6 future development -- same point, the future comprehensive plan  
 7 is there for a reason. We want to move forward with that. If  
 8 we don't have a plan, then we just start doing things that are  
 9 not making sense. So, again, I'm trying to grasp where we're  
 10 at with the plan for the future, but maybe one that makes sense  
 11 right for better coverage. What is T-Mobile -- what do they  
 12 feel it's worth to do. My two cents.  
 13 CHAIRMAN KHOURY: So, gentlemen, can we just pause here  
 14 for a moment. There's no need for a break at this moment,  
 15 gentlemen? Everyone's comfortable moving forward? Okay.  
 16 All right. So thank you, Mr. Williams. Did  
 17 you have anything further you want to comment on?  
 18 MEMBER WILLIAMS: No.  
 19 CHAIRMAN KHOURY: Okay. Mr. O'Laughlin?  
 20 MEMBER O'LAUGHLIN: I'm good.  
 21 MEMBER KRETSCHMER: I'm good.  
 22 MEMBER JASPER: Are we discussing or questioning?  
 23 CHAIRMAN KHOURY: We're not finished with question 2 yet.  
 24 I just want to make sure the Petitioner has an opportunity to

1 address any other items that they so choose at this point,  
 2 because once we close this part of the testimony we'll get one  
 3 more kick at the can for public comment and then we'll want to  
 4 review it again internally here.  
 5 MR. LONG: You know, if I may say something here.  
 6 You know, Mr. Carter and I are here before  
 7 you representing a tower construction company, a company that  
 8 makes its money managing wireless infrastructure. And, you  
 9 know, in it's work with T-Mobile as well as other carriers,  
 10 they've they got to the point where they have a proposal that  
 11 is something that is appealing not only to T-Mobile but now it  
 12 looks like Sprint may be interested in colocating on the site  
 13 as well. And, you know, if you ask -- and the people that  
 14 design water tanks, if you ask people that design the power  
 15 lines, you know, antennas don't belong on those things.  
 16 Antennas belong -- communication antennas belong truly on  
 17 towers, and, you know, the goal is to find a location for  
 18 the wireless carriers to be able to put their equipment on and  
 19 operate it most efficiently so that, you know, the customer  
 20 gets the best user experience possible. That can be  
 21 accomplished best from, you know, a communications tower rather  
 22 than a water tank and/or a power line support structure.  
 23 So, you know, please understand, the reason  
 24 we've been going through this exercise is that, at least for



1 purposes of T-Mobile, we believe that this is the best and most  
2 efficient and unobtrusive way for T-Mobile to close their  
3 coverage gap and accomplish their coverage improvement needs  
4 here within the village. And then, you know, in addition to  
5 that, as a result of this tower that it is gaining interest  
6 from other wireless carriers as well as evidenced by that  
7 letter from Strick(phonetic spelling) that we have in the  
8 record.

9 CHAIRMAN KHOURY: Thank you, Mr. Long.

10 Before we close this part --

11 MR. LONG: And then, lastly, our efforts in trying to  
12 shrink the parcel in the fenced-in compound that would enclose  
13 the tower and any type of equipment that's placed at the base  
14 of the tower, you know, that's done in an effort to remain sort  
15 of a long-term piece of the communications infrastructure of  
16 this community. You know, we don't want to interfere with the  
17 future development of the property, and I think in looking at  
18 the one or two schematics in the long-term development plan, if  
19 we aren't successful in shrinking down that compound it looks  
20 like we will stay out of the way of any future development of  
21 the -- of the cross-over properties. I'm sorry, the Cutoff  
22 properties.

23 MR. CARTER: Thank you.

24 CHAIRMAN KHOURY: You're welcome.

1 Just before we conclude, I think there may be  
2 one or two --

3 MEMBER WILLIAMS: The cost of moving it; right? So you  
4 did say that it's possible and you guys have done that in the  
5 past. So that's not a huge -- I mean, what are we looking at  
6 here. It's just relocating. It's not -- is it a building,  
7 half a building, a new one? What are we --

8 MR. LONG: The cost of --

9 MEMBER WILLIAMS: Let's say it goes in there and we say  
10 if redevelopment comes you would have to agree to put it in the  
11 best place for redevelopment. What is to you guys, to the  
12 T-Mobile, whoever's paying, what is the cost-ish?

13 MR. LONG: A monopole would -- and then the relocation of  
14 all the -- a new monopole and the relocation of the equipment  
15 onto a new monopole and the decommissioning of the existing one  
16 would be somewhere in the neighbor of about \$200,000.

17 MEMBER WILLIAMS: Which is what percentage? So it's  
18 basically all brand new?

19 MR. LONG: Yes. You'd have to build a whole brand new  
20 tower.

21 MEMBER WILLIAMS: So it's not really not moving. It's --  
22 okay.

23 CHAIRMAN KHOURY: Gentlemen, anyone else for the  
24 Petitioner at this time?

1 (No response.)

2 So, gentlemen, I want to say thank you. What  
3 we're going to do now, unless you have any other comments,  
4 we're going to go close this part of the meeting. We're going  
5 to open it up to public comment. And you can see we have a  
6 rather large crowd gathered here.

7 We will give the benefit to Mr. Fisher, if  
8 you have any other comments you'd like to offer.

9 MR. FISHER: Well, the answer to your question about the  
10 need for coverage, last time I was in the meeting I said to you  
11 guys want to come to my shop, you want to go downtown Cary to  
12 my daughter's shop. I can show you where they had to put  
13 handle bars in because there's definitely a need.

14 I feel like I'm ground hog days here. We ask  
15 the same questions over and over every time I'm up here. I  
16 think I agree with James Graziano. What's going on? If we got  
17 an aesthetic problem, I don't think so. With all the towers  
18 behind it and everything, everybody I talk to laughs about it  
19 is it a development problem? Maybe. But if you lived in this  
20 town all your life like I have, you know there's certain people  
21 over there that aren't going to move without the Natural Guard  
22 coming in. And like all the other property around here, that  
23 property ain't gonna be developed for a very, very long time.  
24 We'll all be gone.

1 The other thing is the -- who wants the  
2 money? Who wants the money from the cell tower? I don't care.  
3 I've offered -- I've called the Village and offered the  
4 property to the Village. Technically speaking, if you do the  
5 math, over 30 years if it develops into a four-tier tower,  
6 maybe \$700,000, plus you still own the property. I got an  
7 offer right now on the property -- I don't know how serious it  
8 is -- for 200-grand. I'll take it. I'm going to take it if I  
9 don't hear something soon, if the guy's serious.

10 I mean, I just don't understand what's going  
11 on. If it's all about the money and the greed, take the  
12 property, make me an offer. I don't care. I can't build  
13 anything on it because everything I try to build on it is going  
14 to be a problem. I wouldn't literally build a dog house in  
15 this town anymore. I've been through a lot in this town. But  
16 I'm not trying to piss anybody off, but I've had it. So I'm  
17 not fighting anybody on it.

18 I didn't tell these people to come to me and  
19 offer me a cell tower. They approached me. They said that's  
20 where we got to put it. There's a grid. It's A, B, C. You  
21 only had to put it here or it ain't gonna work. I don't know  
22 why we spend an hour and a half every month. Last year I guys  
23 let that fly through. It flew through. Got to the Village and  
24 it didn't quite make it. If there's a big plan that's coming

1 up between now and then that they want that corner and  
2 everybody's afraid to let it go, maybe. I don't know. But  
3 they should be realistic because they ruined the corner by  
4 putting Burger King there. I said that before. Burger King is  
5 dependent on me to give them parking. The whole thing is a  
6 mess.

7 So I just wanted you guys to know that I'm  
8 willing to just give up on the whole thing, and if you guys are  
9 worried about where to put this thing so you can make the rent  
10 off of it, consider buying the property. Then you can do what  
11 you want with it. You can get the income for the next 30  
12 years, and you can put a building on it if you want. Get the  
13 Masons to move; they'll move. I don't know about Manfred's  
14 because their owners are in Chicago or Florida now. But I do  
15 know that Mr. Strike is going to be a big problem for you; has  
16 been in the past, and it will be in the future. So it's up to  
17 you guys, you know. If this thing doesn't -- they can't go on  
18 forever. We can't afford to send lawyers here every month or  
19 every year from Indianapolis or Milwaukee or wherever, and I'm  
20 sure the Village of Cary is spending a lot of money in lawyers,  
21 too. I don't know if you got a lawyer on duty all the time or  
22 if he gets just paid when he works or how it is, but it's  
23 costing the village people a lot of money, probably almost as  
24 much money as it would cost to buy the property. You buy

1 property by the bank and nobody can use it. They can't even  
2 sell it. It's not worth half of what we paid for it in this  
3 town.

4 So, I mean, I don't know why this is such a  
5 big issue. That's all I'm saying.

6 CHAIRMAN KHOURY: Thank you very much, Mr. Fisher.

7 So, gentlemen, I think we've been at this now  
8 a long while. And what I do need to do is I need to step back  
9 for a moment now with Mr. Simon and Mr. Simmons because when I  
10 originally read the motion that was about the time that we  
11 agreed to continue it from last case. So I need to understand  
12 formally, gentlemen, if it was a continuation in our last  
13 meeting where I read the motion, do I need to go back and  
14 reread the motion and do I need to modify the motion because we  
15 may have discussed some new issues tonight.

16 MR. SIMON: I don't recall there was a motion to approve  
17 on the table.

18 MEMBER O'LAUGHLIN: You only made the motion to continue.

19 CHAIRMAN KHOURY: I never read through the entire motion?

20 MEMBER O'LAUGHLIN: No.

21 CHAIRMAN KHOURY: So my question becomes if -- I'll read  
22 through it?

23 MR. SIMON: If you'll indulge me.

24 CHAIRMAN KHOURY: Yes.

1 MR. SIMON: And I want to address something that the  
2 Applicant said in the memo that we received today about what  
3 basis you should make your decision upon in terms of weighing  
4 the application.

5 You should base your decision on the  
6 standards for a conditional use permit. Okay? Those standards  
7 are described in the staff memo. We emphasized those  
8 throughout the hearing tonight about whether or not the  
9 building of the tower will be consistent with or not impede the  
10 orderly, normal development and whether it's consistent with  
11 the comprehensive plan. There are some other standards, but I  
12 don't know if there's any evidence presented in respect to  
13 those.

14 In the event there is a denial and in the  
15 event because of the denial there's a challenge, the challenge  
16 will be that the denial has caused an effective denial of  
17 coverage, which is a term of art they use in federal  
18 telecommunications law. If the claim is that our denial has  
19 caused an effective denial of coverage the Court will make a  
20 two-step analysis. First, they'll evaluate whether or not  
21 there's a gap at all, and if there's a gap, they'll determine  
22 whether or not there are reasonable alternatives or whether or  
23 not the Village is so antagonistic to towers at all that  
24 applying for any other location is fruitless. So while we

1 heard testimony about a gap in coverage and we've heard  
2 testimony about alternatives, that testimony and that evidence  
3 goes to whether or not a potential denial would be  
4 characterized as an unlawful denial under federal law.

5 Does that make sense?

6 MEMBER O'LAUGHLIN: Yes.

7 MEMBER JASPER: Uh-uh.

8 MR. SIMON: So the question you're asked tonight is  
9 whether or not they meet the conditions for a conditional use  
10 permit, and if you said yes, it would go to the Village Board  
11 and they'll decide. If you say no, it would go to the Village  
12 Board, and they'll decide. But if there's a denial, ultimately  
13 the other testimony we heard tonight would be relevant to  
14 determining whether or not the denial would stand its ground.

15 CHAIRMAN KHOURY: Thank you very much, Mr. Simon. I  
16 appreciate it.

17 All right. So as it relates to proceeding,

18 Mr. Simon, I'm just going to share this with Mr. Simon. It's  
19 the notes from our August -- October original 26th application.  
20 So I'm just going to show Mr. Simon that that is in fact the  
21 case.

22 MR. SIMON: Yes.

23 CHAIRMAN KHOURY: And the motion that I have to read to  
24 the ZPA members, unless someone else wants to read it. It's

1 quite extensive so I do need --  
 2 MR. SIMON: There are two motions in the alternative  
 3 there.  
 4 CHAIRMAN KHOURY: So I think when we were together last  
 5 time, Mr. Simon, we agreed that because all of the members had  
 6 it in front of them it wasn't necessary to read it. But do you  
 7 think there's value in reciting each and every item because  
 8 we're recording this?  
 9 I don't know if everyone has this actual  
 10 document with them tonight. This is from October the 26th,  
 11 gentlemen.  
 12 MR. SIMMONS: It's page 7 of the original staff report  
 13 that's dated October 26th.  
 14 MEMBER O'LAUGHLIN: Right here.  
 15 CHAIRMAN KHOURY: Does everyone have it?  
 16 MEMBER GRAZIANO: As I read this, page 7, these are not  
 17 conditions for the conditional use. These are just things that  
 18 have to be satisfied.  
 19 CHAIRMAN KHOURY: Correct.  
 20 MEMBER GRAZIANO: So we're at a point now where if we  
 21 make a recommendation we also have to come up with any  
 22 conditions that we might want to --  
 23 CHAIRMAN KHOURY: Right.  
 24 MR. SIMMONS: There's actually two -- if I can clarify,

1 on page 6 the recommendation section of the staff report  
 2 begins, and then there is a list of seven should the ZPA  
 3 recommend approval request, staff would recommend they approve  
 4 subject to those conditions.  
 5 MEMBER GRAZIANO: I was going back one page. Sorry about  
 6 that.  
 7 CHAIRMAN KHOURY: That's my fault.  
 8 MEMBER GRAZIANO: You got me confused, Mr. Khoury.  
 9 MR. SIMMONS: The motion that's on page 7, if there's --  
 10 in support of a negative recommendation there's six -- yes,  
 11 sorry -- six findings of fact that would be recommended to  
 12 support the board's decision for a negative recommendation, and  
 13 if the board supports a positive recommendation, there are four  
 14 additional findings of fact that would go into that decision.  
 15 CHAIRMAN KHOURY: So, gentlemen, what I'm going to  
 16 suggest -- and I'm going to give you all a few minutes -- I'm  
 17 going to go ask you to go back to your document and from  
 18 page no. 6 under the recommendation through page no. 7 -- so  
 19 there's page no. 6. It talks about how the conditional use  
 20 shall be granted and the terms. So 1 through 6, if you could  
 21 please read those. And then on the motion, I'd like you to  
 22 read in support of a negative recommendation, what it says, A  
 23 through F; and in support of a positive recommendation, A  
 24 through D. So I'm going to give you a few minutes to read

1 through those and make sure that there's no confusion about  
 2 what you're voting on tonight. And I know we've been at this a  
 3 little while, but I think it's an important part of the  
 4 discussion. So why don't we take a few moments to read  
 5 through.  
 6 MEMBER O'LAUGHLIN: Did you get that one?  
 7 MEMBER KRETSCHMER: Yes.  
 8 (Members reading.)  
 9 MEMBER GRAZIANO: What happens if I say so moved?  
 10 MEMBER O'LAUGHLIN: You can't yet because I didn't say  
 11 moved. Well, you could say so moved once you finish reading  
 12 it. This is the motion based on conditions.  
 13 MR. SIMON: Those are findings of fact.  
 14 CHAIRMAN KHOURY: Did you all have a chance to read  
 15 through?  
 16 MEMBER WILLIAMS: Didn't we go to 75 feet? Why am I  
 17 thinking 75?  
 18 MEMBER GRAZIANO: That was one of the points of  
 19 discussion.  
 20 CHAIRMAN KHOURY: We never got to -- so, gentlemen, I  
 21 think what I'll do is I'll try to call the motion, and I know  
 22 we're going to have some discussion. I'm going to do two  
 23 things. One is that we're going to entertain a motion -- this  
 24 is back to page no. 6. I'm going to entertain a motion to make

1 the following findings of fact, and those are in support of a  
 2 negative recommendation items A through F.  
 3 MEMBER GRAZIANO: No. No. That's not the motion.  
 4 CHAIRMAN KHOURY: I thought we had two.  
 5 MR. SIMON: So it's a two-part approval. It's a two-part  
 6 decision. Okay?  
 7 MEMBER GRAZIANO: I understand that.  
 8 MR. SIMON: You can decide which way you want to make the  
 9 ultimate decision, but before you make the ultimate decision,  
 10 you have to make findings of fact in support of the decision  
 11 you will recommend.  
 12 MEMBER GRAZIANO: Which is what we've been doing for the  
 13 past four meetings.  
 14 MR. SIMON: Yes.  
 15 MEMBER GRAZIANO: So I would make a motion to recommend  
 16 to the Village Board the approval of the petition for the  
 17 conditional use subject to the conditions as listed nos. 1  
 18 through 7 in the staff report with the exception that where the  
 19 plans that were submitted are subject to change based on a  
 20 reduction in size.  
 21 MEMBER O'LAUGHLIN: I'll second.  
 22 CHAIRMAN KHOURY: All right. So we now have a motion and  
 23 a second.  
 24 So is there discussion, gentlemen, on the

1 motion?

2 MEMBER JASPER: Yes. I'd just like to go back through  
3 the three points that came to the extension or the bringing us  
4 to this meeting rather than voting last time.

5 While nothing was given factually to show us  
6 what Com Ed's position is, I think the fact that we don't see  
7 just on our own recollections -- I don't know what the lawyers  
8 call that -- but when you drive past the Com Ed high wire  
9 lines, you don't see a whole lot of telecommunications  
10 equipment on those lines, and there's a reason for that.  
11 Basically, Com Ed more than likely doesn't want to or doesn't  
12 find it economically advantageous to use their property for  
13 such purposes.

14 The colocation, point no. 2, you know, very  
15 interesting that the gap between what the tower -- the tower  
16 builder, the tower contractor, is willing to collect and rent  
17 versus what village's, governmental entities, are imposing on  
18 the telecommunications company for their uses. And, you know,  
19 I can see why, you know, while putting the equipment on the two  
20 towers would solve the coverage issue, it's not going to solve  
21 and probably makes more of a problem from an economic  
22 standpoint for the parties involved. No. 1, it cuts out the  
23 tower contractor completely who's brought this petition to us  
24 tonight and increases the cost of doing business for the

1 telecommunications company.

2 So we come down to point no. 3, the  
3 redevelopment. I stated earlier that if we really want to  
4 solve it we have to solve it contractually rather than going  
5 and doing something from a constructive -- from a construction  
6 standpoint to the land today because we don't know what the use  
7 of the land is going to be in the future and anything we do can  
8 either harm this or improve that or end up somewhere in  
9 between. Contractually, hopefully, it would give us the  
10 flexibility to solve the problem if it ever comes about.

11 My third point, which I didn't raise earlier,  
12 is the fact that I think this footprint whether as originally  
13 presented or as has been shown can be reduced on any kind of  
14 development could probably be built around and left where it's  
15 at. So on that basis, just to tell everybody else where I'm  
16 at, I'm for this petition.

17 CHAIRMAN KHOURY: Thank you very much, Mr. Jasper.  
18 Gentlemen, any other comments of the motion?

19 So, Mr. Simon, I have a question for yourself  
20 because I'm sensitive to Mr. Graziano because, as you'll  
21 appreciate, through the years we don't always have counsel. We  
22 don't always have court reporters. I just want to double-check  
23 that the motion was called from a legal perspective correctly.

24 MR. SIMON: To restate what the motion was, the motion

1 was to recommend approval -- motion to recommend approval to  
2 the Village Board for the conditional use permit subject to  
3 conditions 1 through 7 in the staff member and subject to the  
4 plans changing which will facilitate a reduction in size.

5 MEMBER JASPER: Mr. Chairman, we didn't call the case  
6 number.

7 CHAIRMAN KHOURY: I did at the beginning.

8 MEMBER JASPER: Okay. You didn't re-read it as part of  
9 the --

10 MEMBER GRAZIANO: By the way, you could also close the  
11 public portion of the meeting.

12 CHAIRMAN KHOURY: Thank you, Mr. Graziano. He's always  
13 keeping me on my toes.

14 The public portion of the meeting is formally  
15 closed. Thank you very much.

16 MR. SIMON: So I think I -- did I restate the motion  
17 correctly?

18 CHAIRMAN KHOURY: Yeah. The reason for asking is that we  
19 have items A and B, Mr. Simon, below that on page 7. So I just  
20 want to make sure that those items are A through D.

21 Did you mention those, Mr. Graziano?

22 MEMBER GRAZIANO: No, I did not. It's not part of the  
23 motion.

24 MEMBER O'LAUGHLIN: Those are findings.

1 CHAIRMAN KHOURY: I was going to do two different things.

2 MR. SIMON: If the board votes in the affirmative for the  
3 motion that's on the floor, then there will be a second motion  
4 to make findings of fact consistent with your recommendation  
5 because they have to go hand in hand.

6 MEMBER O'LAUGHLIN: Okay. I got you. It's going to be a  
7 double. Okay. It will be a double motion.

8 MR. SIMON: There was no deliberation on topography.  
9 That was discussed during the hearing.

10 MEMBER WILLIAMS: That's not part of the --

11 MR. SIMON: That's not on the floor right now.

12 CHAIRMAN KHOURY: I guess that's the question: Do you  
13 want to include it as part of this evaluation?

14 MEMBER GRAZIANO: No. I go along with what Pat said, you  
15 can build around it.

16 MEMBER O'LAUGHLIN: And as the second, I agree.

17 MEMBER GRAZIANO: Can we also recommend to the Village  
18 Board that the Village buys the property?

19 (Laughter.)

20 CHAIRMAN KHOURY: Included it in the notes. How's that?

21 MEMBER GRAZIANO: Okay.

22 CHAIRMAN KHOURY: Are you ready to go?

23 You want to do a roll-call on the second one?

24 MR. SIMMONS: Sure.

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1 MEMBER JASPER: Yes.  
 2 MEMBER KRETSCHMER: Yes.  
 3 MEMBER O'LAUGHLIN: Yes.  
 4 MEMBER GRAZIANO: Yes.  
 5 MEMBER WILLIAMS: Yes.  
 6 CHAIRMAN KHOURY: Yes.  
 7 All right. So do you want to go to the second  
 8 one, Mr. Graziano, since you're on a roll?  
 9 MEMBER GRAZIANO: No. I don't have a recommendation on  
 10 that.  
 11 CHAIRMAN KHOURY: All right. So I think on the second  
 12 one we're going to say that I'll entertain a motion to  
 13 recommend to the Village Board of Trustees approval of a  
 14 conditional use for a telecommunication antenna for the  
 15 property located --  
 16 MEMBER GRAZIANO: We just did that.  
 17 MEMBER O'LAUGHLIN: This is the findings of fact.  
 18 CHAIRMAN KHOURY: I'm sorry, gentlemen.  
 19 MEMBER GRAZIANO: Why do we need a motion to --  
 20 CHAIRMAN KHOURY: That's why I was trying to separate  
 21 them, Jim.  
 22 MEMBER GRAZIANO: I don't understand the need for a  
 23 second motion.  
 24 MR. SIMON: There need to be findings of fact in the

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1 record.  
 2 MEMBER GRAZIANO: Apparently, we've all decided that the  
 3 findings of fact are consistent with the conditions in our  
 4 zoning code.  
 5 MEMBER JASPER: I thought we done the findings of fact  
 6 first and then approve.  
 7 MEMBER O'LAUGHLIN: I think we needed to figure out if we  
 8 made a positive or a negative recommendation. Then it depends  
 9 on this. So what we're looking at basically is entertaining a  
 10 motion to make the following findings of fact in support of the  
 11 positive recommendation; A, that the proposed use satisfies the  
 12 standards to qualify for conditional use as stated in the  
 13 village zoning ordinance by not substantially diminishing or  
 14 impairing the values of property in the neighborhood, not  
 15 contributing to an overburdening of the municipal services, and  
 16 is consistent with the policies and future land uses in the  
 17 village's comprehensive plan; and that the proposed use of the  
 18 property affords telecommunications tower is appropriate for  
 19 the B-2 zoned property and is compatible with the surrounding  
 20 area based upon the adopted recommendations as contained in the  
 21 Village of Cary's comprehensive plan. Is there two? And C,  
 22 evidence as provided as part of this petition indicates a  
 23 significant gap in coverage exists within the search area and a  
 24 proposed telecommunication tower will adequately satisfy the

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1 service needs within the gap; and evidence provided as part of  
 2 the petition indicates that options for colocation on existing  
 3 towers or utility structures such as Com Ed power lines or  
 4 nearby water towers are not practical and would not adequately  
 5 satisfy the service needs within the coverage gap area.  
 6 MEMBER GRAZIANO: Second.  
 7 CHAIRMAN KHOURY: Thank you very much. I was trying to  
 8 do that earlier.  
 9 So, gentlemen, do you have questions or  
 10 comments around that particular motion?  
 11 So just so we're clear on what we're saying  
 12 now here, gents, is that this is in support of a positive  
 13 recommendation. The previous one was obviously for the  
 14 conditional use which was voted for in the affirmative. This  
 15 is in support of a positive recommendation to send this forward  
 16 now to the Village. Okay. So just so --  
 17 MEMBER GRAZIANO: I still contend that we already did  
 18 that.  
 19 MEMBER O'LAUGHLIN: It's a double motion. Just go with  
 20 it, Jim.  
 21 MEMBER JASPER: It's a mirror motion.  
 22 CHAIRMAN KHOURY: Do you have questions, Mr. Graziano?  
 23 MEMBER GRAZIANO: No. No. No.  
 24 CHAIRMAN KHOURY: You sure?

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1 MEMBER JASPER: Do you want me to repeat my comments I  
 2 said earlier?  
 3 CHAIRMAN KHOURY: Mr. Simon, is there anything you wanted  
 4 to add?  
 5 MR. SIMON: No. I'm all right.  
 6 CHAIRMAN KHOURY: Thank you.  
 7 Without further to do, we'll ask Mr. Simmons  
 8 to call the roll.  
 9 MEMBER JASPER: Yes.  
 10 MEMBER KRETSCHMER: Yes.  
 11 MEMBER O'LAUGHLIN: Yes.  
 12 MEMBER GRAZIANO: Yes.  
 13 MEMBER WILLIAMS: Yes.  
 14 CHAIRMAN KHOURY: No.  
 15 So, gentleman, thank you very much for your  
 16 patience with us as we've worked through this. You have a  
 17 positive recommendation. I think you know what the process is  
 18 as you've stayed very close to Mr. Simmons.  
 19 And I don't know if you would know tonight,  
 20 Mr. Simmons, when this would go before the Village Board.  
 21 MR. SIMMONS: It would likely be scheduled for our first  
 22 board meeting in February.  
 23 CHAIRMAN KHOURY: So I would remind everybody before we  
 24 conclude that, you know, when we were coming in it was raining.

1 It's going to be very icy outside. Everyone please be careful  
 2 going home.  
 3 Before I conclude the meeting, does anyone  
 4 else have anything they wanted to discuss?  
 5 (No response.)  
 6 All right. The Chair will entertain a motion  
 7 to adjourn.  
 8 MEMBER O'LAUGHLIN: So moved.  
 9 MEMBER KRETSCHMER: Second.  
 10 CHAIRMAN KHOURY: Thank you very much. The meeting is  
 11 adjourned.  
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STATE OF ILLINOIS )  
 )  
 COUNTY OF MCHENRY )

I hereby certify that I reported in shorthand the proceedings at the above-entitled public hearing and that the foregoing reported proceedings, consisting of pages 3 through 73, inclusive, is a true, correct, and complete transcript of my shorthand notes so taken at the time and place aforesaid.

*Joan M. Holub*



JOAN M. HOLUB  
 Certified Shorthand Reporter  
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