

# Town of Clifton Park

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APPROVED

9-20-16

## Zoning Board of Appeals



## ZONING BOARD OF APPEALS

July 19, 2016

**Present:** Chairman, Michael Dudick, Chris Lemire, Jerry Cifor, Lisa McCoy and Michael Bloss

**Also Present:** Joel Peller, Esq., ZBA Counsel  
Steve Myers, Director, Building and Zoning

**Absent:** Randy Gifford, Tony Morelli and Mario Fantini

Meeting was called to Order at 7:08 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Mr. Dudick informed the public that this is a 7 member board with 1 alternate member and that in order for an application to be approved, 4 votes of approval are required.

### OLD BUSINESS

1. Application from Craig Werner for an area variance from Section 208-12A which requires 10' minimum setback from side or rear property lines for accessory structures, plus 1' for every foot the structure height exceeds 15' (taken at roof midpoint). Newest proposed structure requires 17' setback, 1' available. 16' variance required. Structure built in 1988 requires 12.5' setback. 7.1' available, 5.4' variance required. Applicant proposes to use easement area to meet setback requirements. Property is located at 677 Riverview Road, Rexford, NY 12148. (Permit #81080)

No one appeared for the continuation of Mr. Werner's application. Mr. Myers indicated he had spoken to Mr. Werner the day after the last meeting. Mr. Werner advised him, that although he had still not worked anything out with Mrs. Barrett-Prescott, he would be present at tonight's meeting.

Mr. Peller asked Mr. Myers whether the Board should deem the application as abandoned or make a determination on the application, as it appears Mr. Werner has presented everything he is going to present.

Mr. Myers indicated that if the application is considered abandoned by the Board, he would call Mr. Werner and tell him he must tear the structure down. He additionally confirmed that he is still under a stop work order.

Mr. Dudick requested Mr. Myers contact Mr. Werner again to let him know that if he doesn't present by the August meeting, a motion would be made to abandon the application.

**2. Application from Brooks Teele for a use variance from Section 208-53A, permitted uses in B-5 Zone. Residential is not a permitted use in this zone. Owners propose to develop property as a single family residential community. Property is located at Route 146, Tanner Road and Miller Road, Clifton Park, NY. (Permit #81085)**

Chairman Dudick announced that the Public Hearing is still continued and that since there has been significant modification to the previous application, any member of the public who had commented in the past would again have an opportunity to comment.

Jon Lapper, Esq. from the Bartlett Pontiff Law firm and Joe Dannible from Environmental Design Partnership were again present. Mr. Lapper stated that in response to what they had heard in the past from both the public and the Board, they had submitted a letter modifying the application by withdrawing the request for relief for the Miller Road side, which is about 2/3rds of the land in question and are now here seeking a more modest variance for the 22 acres on the north side. He opined it would be hard to argue the proposal is incompatible in terms of the use, because the Vista project is right across Tanner Road from this parcel and this project would be somewhat of a mirror image of that project in terms of the townhouse design. He explained that are seeking a use variance because the applicant had purchased the property when it was residential, before it was rezoned by the Town in the early 1990s and therefore it was not a self-imposed hardship. He reiterated that have unsuccessfully tried to sell the property for development of a permitted use and that as previously established, no economic return based on the current allowed uses has been realized, but not without effort on the owner's part. He stated they are now hoping the Board will approve the modified request for the small 22 acre parcel, based upon the withdrawal of the larger parcel from the application, which is about a third of the acres that the application was before.

Mr. Peller asked if the applicant had made an application to the Planning Board or Town Board since the last time they were here and whether this was still the only application pending within the Town. Mr. Lapper responded that this is still the only pending application and that they had not applied to the Planning Board or Town Board, because it was his understanding that without approval from the Zoning Board, they can't proceed.

Mr. Cifor advised that the single biggest single concern he still has, is that for the original project, this Board was being asked to greatly modify the zoning. He did not feel that this Board was the right venue as the Zoning Board of Appeals cannot re-zone an area of the Town, the Town Board has to. He added that he feels it should be a select Board decision not a Zoning Board decision. He then asked whether any assurances could be made that the applicant wouldn't come back before the Board with the other parcel at some point in the future, seeking a residential use.

Mr. Lapper stated that the applicant is committed to continuing to market the other parcel for a permitted use, but advised that 5 years from now if nothing happens, then they would probably need some kind of relief. He stated at this point, they are committed to just develop the north parcel and see if they can find somebody to buy the south parcel as presently zoned, adding that nobody wants to hold a vacant parcel forever, but as a compromise they are withdrawing that request for relief.

Mr. Lemire asked if both the north and south parcels are currently being farmed. Mr. Dannible confirmed that the parcels have been actively farmed for many, many years.

Mr. Lemire asked whether any financial data had been presented as to the amount of income to the applicant for the farming. Mr. Dannible advised that there had been a mis-communication between himself and the owner and that there has been no income generated by the owner as a result of the farming activities. In fact, as part of the marketing of the property, the owner has been paying the farmer a small sum to seed and continuously work the land so that it didn't become fallow and so that when somebody came to look at the property, they could have a clear vision of the land and the potential the land has.

Mr. Dudick stated it was his understanding that land being farmed qualifies for reduced tax assessment. Mr. Dannible advised that there was no indication on the tax bills they had provided in their previous submission that there had been a reduction in taxes, adding that the property has not been entered into any agricultural zone or district that would qualify for that.

Mr. Peller reviewed the tax bills submitted and confirmed that the parcel is classified as vacant farmland and therefore, the Town has classified it as agricultural. Mr. Lapper advised that they still losing money paying the taxes without income, but that it would be worse if it wasn't zoned or taxed agricultural.

Mr. Dudick pointed out that there is some advantage to having it farmed even if the owner is paying somebody to farm it. Mr. Lapper responded that there is no advantage to owning vacant property and not having any income, regardless of how it's classified and Mr. Dudick stated he would agree with that statement.

Mr. Dannible confirmed that the parcel on the south is classified as vacant farmland, but the parcel on the north is classified as residential.

Mr. Dudick questioned the north side being classified as vacant residential, even though it's not zoned for residential and Mr. Dannible confirmed that the 2015 tax bills show it classified as residential vacant land.

Upon inquiry from Mr. Dudick, Mr. Lapper and Mr. Dannible confirmed that the 22 acres in the revised application represents about 15% of the developable land in the Corporate Commerce zone.

Mr. Dudick stated that at the last meeting, he had understood that the applicant was trying to obtain some sort of return on property that was purchased back in the 70s so that there isn't a complete loss or a taking, and that a discussion was had about what would be a reasonable amount of acreage for a use variance request and that the thought was 10 or 20 acres might be better.

Mr. Lapper advised that because the total 67 acres are 2 separate parcels, they had picked the smaller one in order to ask for the least relief they could and because it's adjacent to the Vistas project and seems compatible.

Mr. Dudick opined that as this parcel is in fact adjacent to the Vistas residential project, the argument would be that it would just be extension of a residential area and that arguments could be made either way as to which one would be ideal. He stated that he therefore believes the question is just the scope and acreage.

Upon inquiry from Mr. Lemire, Mr. Dannible confirmed that the Vistas is the development east of Tanner Road which was recently approved and that this Board had only granted area variances for some increase in density based upon various factors in that project and that this proposed project is essentially going to be an extension of the same character of development, on the opposite side of the road. He added that the Vistas Phase 1 is currently built with access off of Route 146 and the Vistas Phase 2 is going to the Planning Board in September, which would be an extension from the Vistas Court to Tanner Road.

Mr. Dudick opened the Public Hearing and asked for questions or comments. There were none. Mr. Dudick then made a motion to close the Public Hearing. Mr. Bloss seconded. All voted in favor and the Public Hearing was closed.

Mr. Peller advised that at this point, the Board needed to revisit the issue of whether or not they will take Lead Agency Status for zoning purposes only under SEQRA.

Mr. Myers added that it is his understanding through further education, that as this is the only application pending before any Board, the Zoning Board does not have to declare itself Lead Agency. Therefore, by default, they are already Lead Agency. Since this is an unlisted action, the Board doesn't have to declare Lead Agency status, they only need to make a negative or positive declaration on the SEQRA.

Mr. Lapper then stated that because this is not a Type I action, coordinated review is not required. Therefore, each Board would do an independent SEQRA review so the Zoning Board does not have to declare Lead Agency because it's an unlisted action.

Mr. Myers clarified that the Board still has to make a SEQRA determination and then depending on that outcome, go from there. He reminded the Board that at the last meeting that both he and the Town Engineer had recommended a negative declaration be made on this application.

Jackie Hakes, the Town's representative from MJ Engineering stated that because the applicant confirmed that this is the only application before the Town when Mr. Peller asked, the Zoning Board of Appeals is the only involved agency for this application and therefore they are considered the Lead Agency for SEQRA purposes.

Mr. Dudick then stated that as the Zoning Board is the only Board hearing this application, the Zoning Board of Appeals is now to be considered Lead Agency with regard to this application.

Ms. Hakes then advised the next step would be for the Board to consider the environmental impacts of the application and issue either a negative declaration, indicating there are no or small impacts as a result of the proposed project or issue a positive declaration, which would lead to an environmental impact statement indicating there are moderate or large impacts associated with the project.

Mr. Lemire asked if the Board had been given any information to make that determination. Mr. Lapper advised that Jackie had already made a recommendation.

Ms. Hakes confirmed that only a long environmental assessment form based on the original application had been provided by the applicant, but that in evaluating that, which was a worst case scenario, any impacts of the modified application which are significantly less than what had previously been applied for, would likely be less, but that it is certainly up to the Board to determine as they think about parts 2 and 3 of the environmental assessment form in terms of potential impacts.

Mr. Dudick asked Mr. Myers whether there was a reasonable risk that the smaller application presented now could have a greater environmental impact and whether they should have another review. Mr. Myers stated he did not believe so. Mr. Dudick called for a vote to determine if the Zoning Board was going to make a negative declaration with regard to this project.

*The secretary called the Vote:*

Ayes: Mr. Lemire, Mr. Cifor, Mrs. McCoy, Mr. Dudick and Mr. Bloss.

Noes: None.

As a result, the Zoning Board declared a Negative Declaration under SEQRA for the amended proposal.

Mr. Dudick advised that from his standpoint, he still believes this is a request to re-zone a significant portion of the zone and that he has wavered back and forth during the discussion, wondering whether 10 acres would be too great for a use variance. He added that 20 acres is too great for his comfort level and that he still believes it is too much of the zone for a change in classification. He advised that even though the property owner has held this property since the late 1970s, there has to come a point when a property owner acknowledges that there is a change in zoning and accepts the zoning as it was changed and then says the want to go back to a different zoning because of market conditions.

Mr. Lapper reiterated that the owner had listed it for sale with commercial brokers under the present zoning, which is an acknowledgment that is Corporate Commerce and that they have tried to get somebody interested in buying it or developing it, but there have been no offers.

Mr. Dudick opined that it just goes to a matter of timing as far as when the Town will mature enough so that all zones can see development.

Mr. Lapper advised that he believes, as a matter of law and case law, that 38 years of ownership and all the years of marketing it is sufficient, but that's a decision the Board has to make.

Mr. Dudick stated that he believes there is always a right price for every lot and that the market determines what that price is, adding that this Board is not set up to make sure that a property owner is guaranteed a profit. Some lots are more valuable than others and considering the original purchase price that was discussed, he doesn't know that the owner would need to develop 22 acres of it in order to get back to a point where there isn't a loss and he feels that would be beyond what is necessary in order to achieve relief.

Mr. Dudick then stated that in regard to the properties they had compared this parcel to, Mr. Dannible pointed out that most of them are on Route 9 because that's where most of the commercially zoned property is located, adding that the sale prices for those parcels were \$100,000 per acre at the low end and \$450,000 at the high end. Being a commercially zoned property, the latest listing price was about \$37,000-\$38,000 an acre which is significantly less than the comparable properties that they had presented to this Board, knowing that this land is more remote from the Northway.

Mr. Dudick agreed that they had discussed the fact that this property is three times farther away from an exit compared to some of the other properties that the applicant had presented as comparables, which makes a difference when you are looking to develop.

Mr. Lapper advised that is why the price is so much less on this land. He advised that it's a hardship because they've been asked under the zoning to hold all of this property without any economic return for all of these years, and therefore they are trying to compromise to do less acres, which is what the Board wanted, just so they could some kind of economic return with a portion of the property, adding that if they are being asked to hold it indefinitely, that is a clear case of why somebody should get a use variance.

Mr. Dudick advised he didn't believe that holding it indefinitely was ever something that ran through his mind, but that it was more a question of what is a reasonable compromise.

Mr. Dannible stated that the reasonable time frame in the Town's own documents - the Final Generic Environmental Impact Statement from 1991 - said that this zone would be more than half built out by the year 2015 and nearly fully built out by the year 2020. He added that currently, there is zero build out in the zone.

Mr. Dudick stated that is not true, there is not zero build out in the zone. Mr. Dannible advised that in the Corporate Commerce zone, the only thing that is built that meets the current zoning, was built prior to the zoning and that is the Enterprise building.

Mr. Cifor inquired as to how the subject property is unique to the other parcels in the B5 Zone.

Mr. Lapper advised that their unique argument is that it is such a large property and it takes somebody that wants to do a big project.

Mr. Cifor asked if the owner had made any attempts to subdivide it. Mr. Lapper again stated they had not, but that it had been listed for sale and if somebody came along to only buy a piece, they would have considered it, but that didn't happen and to subdivide it without knowing that you have a tenant or a user, they would be just guessing.

Mrs. McCoy asked what other lots are comparable in size now that the request has been reduced down to the smaller percentage.

Mr. Lapper stated he would go to the price. Mr. Dannible advised that the price under this contract for all of the land was \$1.1 million and therefore, roughly \$20,000 per acre, which is significantly less than other commercial properties that have a better location that are selling from \$100,000 to \$400,000 an acre.

Mr. Lapper stated that are certainly attempting to be reasonable with this request to let something happen on a portion of the property. Mr. Dudick replied that as a Board, they are also attempting to be reasonable with regard to requests that are made.

Mr. Cifor asked what attempts had been made to talk to the Town Board about re-zoning the area. Mr. Lapper replied they have had had discussions with the Town Attorney and were advised to go to the Zoning Board to ask for this relief.

Mr. Lemire stated that someone along the way had said that the north portion the applicant wants a variance for is next to the Vistas and to some people that may be persuasive, but to him that just means that the next parcel in this B5 zone will be next to the applicant's parcel and sooner or later there won't be any B5 zone, which he doesn't believe is the purpose of the Zoning Board of Appeals.

Mr. Lapper pointed out that other applicants might not any kind of an argument for a variance because if they purchased their property after it was zoned Corporate Commerce, they would have a self-imposed hardship. He added that no one else seems to be asking for relief, and therefore that was just speculative. He stated other people may be willing to wait, but these people have owned it for so long, and therefore he believes that the Board can distinguish this request.

Mr. Dudick opined that was the applicant's best argument. Mr. Lemire asked whether the uniqueness of this property is that the owner has owned it for so long? Mr. Lapper replied that the uniqueness is that this, as a whole, represents so much of the land in the zone.

Mrs. McCoy again asked now that that they are proposing a smaller parcel, how that smaller parcel is unique.

Mr. Lapper indicated that certainly you have to take into account that they have owned it for 38 years, which makes it really unique in terms of the hardship, but that in terms of the character of the land itself, the fact that it is across the street from The Vistas, now you're getting residential encroachment which makes it more incompatible to develop this for a big corporate project with lots of parking, lots of traffic.

Mr. Dudick asked whether anyone who would have purchased a residence in the newest phase of The Vista, would be doing so with the knowledge that the other side of Tanner Road is zoned B5 and Mr. Lapper responded that was correct. Mr. Dudick advised that someone might now want to be next to a corporate commerce zone, which would be an acknowledgement because that's the zoning that has been for 20 some odd years.

Mr. Lapper advised that if somebody came in with a corporate commerce application or they were here with a corporate commerce project, he thinks they'd hear a lot of complaints about that from the residential neighbors. Mr. Dudick stated that is also speculative.

Mr. Dannible pointed out that the impacts associated with a residential property, as previously provided to this Board, are significantly less than what would be involved in a commercial development. He stated that when they had talked about a commercial development of both parcels, that would have generated roughly 1,000 trips during a peak hour, adding that this project, with 50 single family attached dwelling units, would only produce somewhere in the range of 48-49 trips during the peak hours

Mr. Dudick advised that was all understood, but with that logic then there should never be development of any industrial or commercial zones, because it requires and guarantees that the traffic would be so much greater. He advised that with any municipal planning, you try to set up and determine what zones should be where, with the acknowledgement that there is going to be increased traffic in some zones and not in others and to say that's a hardship because this zone is going to have increased traffic, it's really just a function of the zone.

Mr. Lapper advised that the answer to Ms. McCoy's question is that they still own the whole 67 acres, which is the hardship. He stated that they have now taken that off the table to ask for the minimum relief that this Board could grant under the statute, but the uniqueness is that they still own a large percentage of the land in the Corporate Commerce zone and that is why they haven't been able to sell it because it would require a big use which would require big impacts and big mitigation of those impacts. They are here trying to

compromise and say we'll wait on the rest and hope something comes along, but they are least looking for relief on the smaller parcel, but are still stuck with the hardship of owning all of the land.

Mr. Dudick indicated that since this has been discussed for multiple meetings, he was going to call for a vote.

Mr. Lapper asked if it would be possible to poll the Board before the vote and Mr. Dudick responded he would not do because an applicant gets a polling of the Board based upon comments and questions. He added that the options at this point are for the Board to vote or they can withdraw the application.

Mr. Lapper advised they need some relief and that is why we are here. Mr. Dudick then asked if there was anyone who would like to make a motion to approve the application.

Mr. Bloss made a motion to approve the amended application as submitted. No one seconded the motion and the motion did not carry.

Mr. Lapper then requested that the application be tabled indefinitely, advising that if this Board is not comfortable giving relief, then they would go back and talk to the Town Board. He added that if they had a denial, they would have no choice but to protect their rights and bring an Article 78 within 30 days, adding that is not how they wanted to get this done and again asked the Board to grant them an indefinite adjournment so they could talk to the Town Board.

Mr. Dudick advised he did not have any problem granting an adjournment, but requested notice if at some point a decision was made not to go forward.

Mr. Lapper advised they would not be back on the Agenda unless they sent a letter to Mr. Myers asking to be.

### **Application tabled indefinitely.**

- 3. Application from Dan Lill and Thomas Lill for a use variance to construct multi-family dwelling units in a B4-A zone. 16 townhouses are proposed on a 1.56 acre lot, which is 2 lots combined. Allowed uses are anything permitted in a B-3 zone except dwellings which will not be allowed by special exception or otherwise. The area variances originally sought have been withdrawn from the application. Property is located at 13 and 15 Old Plank Road, Clifton Park, NY 12065. (Permit #81067).**

The applicant provided additional legal documentation in support of their application to the Town on Friday, July 15, 2016 which was disseminated to the Board members on Monday, July 18, 2016. Due to insufficient amount of time for review by the Board, prior to the meeting, the applicant requested that the matter be placed on the Agenda for the next meeting on August 16, 2016.

- 4. Application from Ruffigan Enterprises d/b/a Elements Massage for an area variance from Chapter 171(C) (1)(a) and (b): 1) 2 max. window signs per building tenant; applicant requests 7 signs, variance required = 5 signs; 2) No more than 50% of windows covered or 8 SF whichever is less; applicant requests 159sf; 151sf variance required; and 3) 100% coverage requested, 50% variance required. Property is located at 5 Southside Drive, Clifton Park, NY 12065. (Permit #81094)**

Mr. Dudick advised that this application was postponed by the applicant, to the August 16, 2016 meeting hoping for better attendance.

*The secretary read the legal notice as it appeared in The Gazette on July 14, 2016:*

- 5. Application from Cellco Partnership d/b/a Verizon Wireless for a use variance from Section 208-10, permitted uses in R-1 zone; from Section 208.95D(3)(h), new towers not allowed in R-1 zones; and from Section 208-95 E(3)(b), no new towers within 500' of the property line of an existing residential property. Applicant requests approval to construct a new cell tower. Property is located at 239 Moe Road, Clifton Park, NY 12065. (Permit #81091).**

***SECRETARY NOTE: Although the above application was inadvertently published as 239 Moe Road, the actual property address is 329 Moe Road, Clifton Park, NY. It has been verified that the required notifications to all property owners within 500' of the correct property address of 329 Moe Road have been made.***

David Brennan, Esq. from the law firm of Young Sommer in Albany presented the application. Sara Colman from AiroSmith Development, the site acquisition person for the project and Rick Andras, an RF Engineer for Verizon Wireless were also in attendance.

Mr. Brennan advised that he believes this application was tentatively going to be heard in June, but the Town's consultant had sent out a comment letter that was received either the Monday or the day of the meeting which was not enough time for the Board to receive and digest it, and therefore they were pushed out to tonight's meeting.

Mr. Brennan stated that he was here to do an initial presentation for a proposed telecommunications tower located at 329 Moe Road in an R-1 residential district, near the corner of Moe and Grooms Road, on property owned by Gordon and Valerie Just. Referring to Tab "14" of their submission, Mr. Brennan advised that they are proposing a 100' monopole telecommunications tower with a 4' lightning rod on top of it. He explained that a lightning rod is a copper alloy, which is about the diameter of your pinkie finger, with antennas mounted at the top and that the middle of the antennae would be at 96'; the top of the antenna would be flush or the same height as the top of the tower; in a 3 sided array; with each sector having 4 antennas and that it would have a total of 12 antennas which he stated was very typical to what is seen in similar installations in and around Town. He indicated that there would be room for additional carriers below Verizon with a 10' vertical separation distance, but that the tower would be set at a height that would allow 2 additional carriers below and keep them roughly above the tree line.

He advised they could lower the height of the tower by at least 10' down to 90' and that he had with him a response to Professor Johnson's comment letter which discussed that. He explained that as a practical matter, as they lower the tower, they would effectively make it difficult or impossible for anyone to co-locate because they would be down into the trees. First and foremost, their concern would be to make it work for Verizon, but that they would probably look at it with Professor Johnson, and lower between 10' and 15'. He indicated that as he goes through the visual simulations, pictures and the balloon test, the Board will see that the tower is already well into the trees and not visible by any significant amount. He stated the trade off would be how the Board wants to handle future co-location, adding that he cannot speak to whether the AT&Ts of the world would ever come in and want to use this tower because their network is not designed exactly site for site like Verizon's. He suggested one possibility the Board may want to consider is to make the tower extendable, which would give the flexibility to go up.

Mr. Brennan explained that he is not in the business of making a platform for any competitors to work off of and that he only wants it to work for Verizon Wireless. However, the Town's Code says you want the flexibility so that there are not multiple towers and therefore, there is a tension that exists between height and flexibility. The base of the tower is a 75' x 75' fenced compound area, which is bigger than Verizon needs, but he explained they always make it big enough for co-locators, because that is what the Code says.

He went on to explain that within the fenced compound would be an 11' x 16' steel frame equipment platform containing radio equipment, electrical equipment and a standby DC generator, which would have a shed roof over the top and not be enclosed, but would have a railing around the side; advising they have gotten away from a more pre-fab shelter. From there he stated, the fiber optic cable goes into the tower and up to the antennas. He showed a slide depicting the property owner's existing paved driveway and advised there would be a new 12' wide gravel driveway going out into the back field, which would curl in behind the existing stand of trees. He showed a blowup slide of the fenced compound area and the proposed tower, explaining that a cable bridge would be placed between the equipment and the tower, which is an industrial style grate supported on alternating fence posts about 6' apart, which basically protects the cables, adding that it would be 6' in the ground, with the monopole in the middle. He also presented a slide with a profile view of the tower, showing co-location with their antenna at the top and the 3 sided arrays.

Mr. Brennan stated that the nearest residence that is not the Just residence is 704' away and that as the public hearing notice states, the reason they are here before the Board is because of the Town's hierarchy of siting and first preference of locating on an existing tall structure or an existing tower. He advised that Sara Colman had first looked for existing tall structures to locate on, but there are no existing towers in this area of the Town. The next preference under the Town Code, is what is called an alternate tower structure, which is a defined term meaning a stealth or other facility and explained that the Code then goes down to other zones and then goes into residential zones, but says that towers are not allowed in a residential zone which is the bulk of the zoning in this area of the Town.

He explained that Sara Colman had gone through and found the large parcels and that they had also met with the Town, the Planning Department and the Town Attorney and had evaluated whether there were any Town properties they could utilize. Typically, he advised they first look to see if there are any Town properties that are available as an alternative to a private property and that they were directed towards the 180' existing tower at Town Transfer Station, but that upon testing, it came nowhere close to covering the hole in coverage. Mr. Brennan advised however, that they may circle back to that site in the future and see if they can work with the Town Board on a site there.

He explained that they also looked at a small Town Community Park, basically due north, located within one of residential neighborhoods. They had discussed with the Planning Department and Town Attorney that there is a pretty high bar on using parkland for non-park purposes. He explained that they would basically need to go to the State Legislature and get a special bill passed to alienate parkland for non-park use and that on top of that, it would be right in the middle of the residential neighborhood and they would have to build a driveway and put the structure in the middle of the park rather than in the screened area, and so for those reasons, they had decided that was not a viable option.

Mr. Brennan also explained that although there is an existing monopole before you get to Exit 9 on The Crossing Boulevard, about a mile from the Town Park, but that because Verizon is already on that tower, it would be duplicative coverage.

He presented a slide showing a plot from their RF Engineer, Rick Andras, which is located about 4 pages from the end of Tab "6" in their original submission, depicting a radio frequency design using a computer modeling program, to determine whether and where there is good or sufficient coverage in an area, drive testing it to figure where the signal is going and updating the model. He indicated that the Board's consultant, Professor Johnson, had seen this model repeatedly and has, in his letter, accepted the fact that there is not adequate coverage in this area of the community. He added that this does not mean your phone never works in this area of the community, but he knows they have dropped calls in this area and that they have drive test data that they will provide to Professor Johnson to show that up and down Grooms Road they have had significant failures of the signal strength. He explained that adequate capacity is what they call negative 95 DBM, which is the measurement of the signal strength at the receptor, and that the larger the DBM number, the weaker the signal strength.

Mr. Lemire asked if that was negative 95 in a structure or outside of a vehicle.

Mr. Brennan replied that it is both and that the negative 95 is used in urban and suburban areas like the Town of Clifton Park where they want the signal strength to be robust enough to enter into vehicles and enter into residences, indicating that more and more people are abandoning their land lines and are exclusively relying on their cell phones for coverage in their houses. He stated that what they propose as the coverage at negative 95 means in building and in vehicle, not standing in your backyard with nothing in between.

Mr. Brennan next presented a slide showing the odd blue color monopole tower at Exit 8, which they were going to deploy antennas on. He mentioned that site has been in some sort of litigation with the landlord, which has been now been resolved and that this pole is located in the Town of Halfmoon and that they'll hopefully be going to the Halfmoon Planning Board in the near future to add antennas to that structure as well.

Mrs. McCoy asked if they were going to expand on that tower and Mr. Brennan advised they would be in the next position below the antennas at the top and showed a slide of the coverage they would expect to gain from that, on which the area shaded in yellow showed where the gap in coverage would close and the white area showed where the remaining gaps in coverage would be.

Mr. Lemire asked if there is a strict boundary between the yellow and white areas on the slide such as if someone is on Moe Road they will never get coverage from that tower at Exit 8.

Mr. Brennan replied that it is not a strict line such as if you drive an extra 50' in your car it drops, but that RF does vary with season, foliage and weather conditions, adding that in certain circumstances, such as in winter when the leaves are off, depending on where you are trying to receive and also with network usage there may be issues. He explained it also becomes a capacity issue, because these sites only handle so many calls or so much data at once and that as more people get on a particular site, those sites can be overwhelmed and as that happens, the coverage shrinks in to handle those folks and the people at the periphery get dropped calls.

Mr. Lemire asked whether that was true with all of the maps he was going to present - that they fluctuate based on seasons, weather and those kinds of factors. Mr. Brennan replied that they are an accurate portrayal of signal strength that has been tested, which has been accepted by the Town's reviewer as being accurate, adding that there is a little bit of leeway.

Mr. Lemire then asked whether the area of deficiency in coverage was an area that had no coverage at all or if there is some coverage there.

Rick Andras, an RF Engineer with Verizon Wireless responded that the signal strength they are shooting for is negative 95 DBM and the intent is to have the ability to penetrate through trees into vehicles and also into homes. He explained that the standard to cover a long stretch of highway is negative 105, which is actually a weaker signal strength, because they are not trying to penetrate into homes through trees and therefore, if you were walking your dog or riding your bicycle, there would absolutely be coverage in the white area, but it is beyond what they would consider reliable for in-home or in-vehicle use on a consistent basis.

Mr. Brennan added that they are hard pressed to find areas in upstate New York and the Capital District, where there is truly no service and that because people are exclusively relying more and more on cell phones with 4G LTE service, as well as a humungous amount of data which needs to be handled, they are always looking out into the future because while it may work now, this is part of a planning initiative and the area described already has what they consider deficient coverage to begin with.

Mr. Brennan then presented a slide containing a cross hatched area, which he explained showed the estimated coverage they would gain off of a 180' tower at the Town Transfer Station. He stated that while he would love to lease this spot, it's not going to solve the problem, although they will ultimately probably go on that Transfer Station.

Mr. Cifor pointed out that if you look at the yellow shaded area and the brown cross hatched area together, it appears to almost fill in the puzzle in perfectly. Mrs. McCoy agreed and asked if the applicant had a screen that merged both of those coverage areas together.

Mr. Lemire asked whether the purple area was The Crossing site.

Mr. Brennan advised it was, but that he would ask the Board to defer to the Town's consultant, who had reviewed this and had stated in his letter that the applicant has in fact demonstrated the need for a site within the search area to provide coverage to the area. He added that he does this for a living and that if they could do it differently without being here, they would because not only is it time consuming, but its very expensive to deploy these sites and they don't do it unless its necessary, again stating that they had looked at various alternatives to come up with this proposed solution.

Mr. Cifor asked whether cost would be a consideration, as it would seem cheaper to put up 1 tower than add to 2 towers.

Mr. Brennan advised that if they could just deploy a co-location at Exit 8 and at the Town Transfer station to fill in the gaps, they would have given the Town the rent and do away with the headache of coming in front of the Zoning Board and the public. He reiterated that the Town's consultant has looked at this and said we do need a site in this area. He stated that they can't just put sites in Halfmoon and Colonie and beam into Clifton Park. They do need to be locally sited to serve the area and the population that's traveling through and living in this area of the community, which is driving the need for this site.

Mr. Dudick asked whether the Town consultant told the applicant they shouldn't put a tower at the Transfer Station and that he found this location as more advantageous.

Mr. Brennan advised that after reviewing their submission, Town's consultant had said that a significant gap area exists near the intersection of Moe Road and Engelmere Road and that subscribers will generally experience unreliable service if at all.

Mr. Dudick advised that was not the same as stating the Transfer Station tower would be ineffective.

Mr. Brennan stated the Town's consultant had requested a plot with the proposed site turned on and the Exit 8 tower turned on, so he could see how they work together. He advised that he had e-mailed that material to the Planning and Building Department and would hand copies out to the Board tonight for the consultant to review.

Mr. Andras explained that each site has 3 sectors, which basically makes up a 360 degree radius and therefore, the 3 pieces of pie, are 120 degrees separated and that if you look at coverage from the Transfer Station, its really only a 120 degree section that would cover this very large area which is where most of the population is. He added that each 120 degree piece of pie has its own radio equipment and can only handle so much simultaneous usage before people can't access the network or they experience dropped calls. He explained that during busy hours, the coverage tends to shrink and the network favors people that are in better RF conditions rather than those that are far away and require more power to communicate.

Mr. Andras went on to state that eventually they will end up at the Transfer Station, but if they build at the Transfer Station now, not only does it not completely fill the gap, but within a year or so they would need a site exactly where they are looking now because of a capacity issue, as that site wouldn't have the ability to handle the large area and the community population in the Grooms/Moe Road area. He explained that the spot they have selected is more or less right in the middle of the area, which would give them 3 pieces of 120 degree coverage or 3 times the capacity than they would get from the Transfer Station.

Mr. Brennan advised that they do have another submission for Professor Johnson to review, which he hasn't seen yet, and that the Board should refer that specific question to him, as he is very comfortable that his answer is going to be that these 2 sites we are talking about don't solve this localized need. He stated the applicant had put up \$7,500.00 to the Board in order to have a professional consultant, and that money is there for the Board to use to able to ask those questions and get a professional response from their own technical person. He added that if we disagree with the Town's consultant, which he doesn't think is going to happen, and then they will have to work through it, but he is more than happy to defer to what Professor Johnson has to say on that topic.

Mr. Cifor asked if the applicant had floated a balloon up to see what the visual impact would be.

Mr. Brennan advised that they had done so during leaf off conditions, which is the worst possible outcome and although it is visible, it is not as visible as you would expect and that he would get to more on that in a moment.

Mr. Brennan advised that Professor Johnson had reviewed the green area showing the proposed coverage to be gained from the proposed site and had commented that the Exit 8 tower coverage was not shown and requested additional information regarding the combination of Exit 8 tower and the Transfer Station, which they will prepare so that question can be addressed as well.

Mr. Brennan then showed a couple of aerial views that were not contained in the material submitted, but had been prepared to show the general screening of the site, which is behind a hedge of trees and then is surrounded at almost 360 degrees by a large stand of 70' to 75' mature trees, pointing out that the proposed tower, at a height of 100' would be peaking over the top of the trees. He again stated they could lower it a bit, but were taking advantage of this generally flat area, where the tower would poke above the trees so as to not be visible in largely any direction, but provide the needed coverage

Mr. Lemire asked for a copy of the aerial views that were not contained in his materials and Mr. Brennan replied that he would absolutely provide color copies to the Board.

Mr. Brennan then pointed to page "10" in Tab "G" showing the other private properties in the general area that they had looked at. He explained that the one labeled "B" is a very large treed parcel just north of Grooms Road and due north of the proposed site, which he believes is either owned an Estate or a woman who lives out of State and her son is dealing with her affairs. He advised that Ms. Colman had communicated with him extensively to see if they could propose a site, but that in the end, the son had declined as he was interested in exploring a longer term vision for the property to maximize his income, even though there is a fair amount of wetlands on the land, as it is one of the few large parcels left in this part of the community.

Mr. Brennan pointed to another parcel labeled as "A", which he explained is an old school Verizon telephone office or building and advised that they had looked at going there, but had decided not to pursue it because is a postage stamp sized parcel that is immediately surrounded by residential back yards with no buffer. He added that they would not even be able to meet Town Code's fall zone, which requires 110% of the height of the tower as a fall zone.

He pointed to another parcel labeled "E", which he described as a nice size piece of property with a road going in that has construction underway for a fairly significant subdivision and therefore they weren't able to locate there.

Lastly, he pointed to another parcel labeled "D" immediately to the east of the subject property, which he described as another large parcel that is bisected in multiple locations by a significant wetland area which precludes development, which had left them with the only other large parcel they could find in the center of their search area, which is the Just property.

Mr. Brennan then showed a slide he described as a drive test map. He explained that Verizon and independent companies hire other companies to go out and drive the main roads looking to see if there is adequate service. He explained that the data had pointed out the Grooms Road and Moe Road areas had a significant amount of red going east and west from that intersection, which is additional data demonstrating the lack of appropriate coverage in this area. He advised that this map is in the materials he would be handing out to the Board tonight and is the plot that Professor Johnson had requested, showing what the respective coverage footprints would be if both the proposed Grooms Road site was turned on and they had an antenna at Exit 8.

He indicated that after Professor Johnson had agreed they had a need in this area, he had requested more information on what the necessary height was and that they had come in at 100', which is a reflection of what Verizon needs for coverage, as well as what is needed for them to have the ability to comply with the Town's requirements that co-locators be allowed on the tower. He also indicated that Professor Johnson had

asked for some additional plots at different heights, and indicated he had a series of plots showing the shrinking footprint as they go from 60' to 80' to 90', but advised when you start getting between a 10' increment, the models are very pixilated with respect to any difference at all. He reiterated that from the outset, they had said they could definitely drop to 90', but then the trade-off becomes what the community wants to do with respect to co-location.

Mr. Brennan advised they will propose to Professor Johnson that they could do a different type of tree survey using a drone where it provides a panoramic view to get the exact heights of the various trees and provide a report, in order to determine the minimum they can live with which will provide appropriate service.

Mr. Dudick asked if the Board was to approve development of a 90' extendable tower and if there were other co-inhabitants on the tower, whether Verizon would just extend the tower by 10' to still be at the top of the tower or if they would sell the higher position on the tower to someone else.

Mr. Brennan replied that when you design a tower there are 2 related components. One is going to be having a foundation that is sufficient to support the potential loading and then basically it's largely wind stress blowing against the antenna or the rotational. As such, if you want to have something extendable, you need a foundation that is sized so it can carry additional load in the future and then on the structure itself, the monopoles are typically stacked, because you bolt the first one on the ground and then they slide on in sections until they get to the maximum height and that the tallest monopole you'll see is 150'. He went on to explain that with an extendable tower, usually there would be a flange at the top so that you could bolt on an additional 10' or 20' or whatever was decided upon, which is one way to do an extendable tower. He advised the other was is to do a lattice tower with cross member pieces that you can just basically bolt on to and go higher, but you don't build it to the maximum height.

Mr. Dudick again asked if they did an extendable the tower, would they move themselves to always be on top and Mr. Andras advised that typically they do not. Mr. Brennan advised that is what he thought the answer was because what happens is the cables are cut to length and if you want to go higher, you would basically have to re-cable the entire structure to add the 10' or 20' and that typically, unless there is a problem with coverage, they wouldn't spend the money on the equipment or the contractor to do that.

Mr. Dudick asked if they would put slack on the cable and Mr. Brennan advised they wouldn't leave 20' feet curled on the bottom, because there is as you go longer on the cables, you have power loss.

Mr. Dudick advised he just wanted to know how and extendable tower would be developed. Mr. Brennan advised that as galling as he would find it, they would just rent the next space above them to somebody else, unless there was a real problem with their own coverage which necessitated them going higher, but added he has never seen them unbolt everything and go higher, because it's a lot of work and they don't want to spend that kind of money.

Mr. Brennan showed another plot, which he indicated he would also hand out and send to Professor Johnson, containing various colors showing 60', 80' and 100' demonstrating the difference as you go lower. As explained in their submission, the other problem is that as you get down into the trees, the modeling becomes less reliable, because normally we're on a 150' tower and the modeling is made for that. He indicated that when you get right down at the tree level, and that is where we're suggesting we might want to talk to Professor Johnson about flying a drone so he would agree that 15' above the trees will work very well, which would take out the one variable doing the geometry to figure out how high the trees are from the ground, to

narrow that in and get the actual lowest tower possible, adding that although he does not think we are even close to vote today, they could definitely agree on a 90' tower, but they might be able to squeeze another 5' lower if they did another tree survey.

Mr. Brennan then showed a visual of the cell tower at the Elks Club in the Town that they have co-located on which he described as being a very visible 170' tower, almost twice the size of what they are proposing Mr. Bloss disagreed; stating that had negotiated the deal for the Elks Club cell tower and it is 140'.

Mr. Brennan advised that his construction manager had told him it was 170' but that they would go back and double check. He then drew the Board's attention to Tab "9" of the submission which he described as the visual resource evaluation. He stated that 3, 4 or 5 pages in after the text portion it turns into the exhibits and that when they run a view shed report, they look at a couple of things. He explained they float balloons and showed a couple of pictures of what those balloons look like, adding that because this tower is so low, there are 3 balloons and that the bottom balloon is the height of the tower. He added that the top 2 balloons are higher so the tower can be found when they get a distance away and that they also help to see if the wind is pushing it out because if they're vertical, it's not windy and they are drifting, they can then compensate for a little bit of movement.

He showed a visual containing a green area and explained that is what they had come up with as far as direct visibility of the site in some fashion, adding that it is remarkable as far as how little visibility is associated with it. He explained that the blue is the having flown the balloon and driven around and looked at where the tower is partially visible through stands of trees and vegetation and that the red is where the tower is not visible at all because they run a topo model of the various hills and valleys around the community and therefore, they can immediately rule out the red area because you are behind natural topography. He explained that the yellow is because of how heavily treed the area is, advising that he had driven some of it and there is no way you can see it through the bulk of the trees as you get any distance from the location. He explained that the next page was a key to the various pictures.

Mr. Brennan went through the various pictures, describing one as looking directly from Moe Road into the proposed site, which is an area of direct visibility where the 3 balloons can be seen; one as a simulation of what the proposed tower would look like when you are standing on Moe Road looking in which shows that the base of it is well screened; one from the intersection of Moe Road and Grooms Road where you can see the spotter balloons and pointed to an the arrow indicating where the top of the tower will be; and one being a simulation showing it from behind the trees with the leaves off labeled as "S-2", adding that if they were to float the balloons again next week, there would be no view of them because the leaves are on the trees, but that this is the more conservative way to do, which is why they had done it in April before the leaves came on the trees.

Mr. Brennan went through additional photographs labeled as "P-4" from 7 Arbor Lane, where there is some visibility of the balloons through the trees; one from the east side of Moe Road, south of the proposed site, from a cul-de-sac with approximately 12 homes where the tower can be seen with the leaf off conditions; one labeled "P-6" from Carlson Way which again had a little bit of visibility in leaf off conditions; and one labeled "P-7" from Jarose Place where a view of the tower and the 3 balloons can be seen.

Mr. Dudick asked what height the lowest balloon is at and Mr. Brennan responded it was 100', adding that they typically don't go to 104' because of the lightening rod.

An unknown member of the audience asked the applicant when the pictures were taken and with Mr. Dudick's permission, Mr. Brennan replied they had been taken on March 24, 2016.

Mr. Brennan advised that the materials submitted included a radio frequency safety report from a professional engineer indicating that with their antennas on and transmitting at maximum power, they don't transmit at 50,000 watts 24/7. He explained that the radios turn on and off in response to receiving a call or a signal for a call, then transmits and responds to receiving or transmitting a call and then powers back down to a reference signal. He indicated that if the antennas were on at full capacity, they are less than 1% of the RF strength of what the FCC allows any distance from the tower, explaining that the signal strength is basically a billionth of a watt, whereas a baby monitor operates at 1/10<sup>th</sup> of a watt and a cell phone operates at a ¼% or ½% of a watt, but that certainly Professor Johnson would be the one to talk to if the Board has any questions on RF safety.

Mr. Lemire asked the applicant if they had an aerial overview of the proposed area showing the streets in the materials submitted and Mr. Brennan referred him to page 10 of 15 in Tab "6" of the original submission, which shows the surrounding subdivisions and areas of the community.

Mr. Dudick advised Mr. Brennan that for the public hearing, he would invite people to come up, ask their questions or make any comments and that everyone would get a maximum of 5 minutes to speak. He stated that Mr. Brennan would have the option to either respond to each person individually or save up his comments until the end, but that all dialogue goes from the podium to the Board.

Mr. Brennan agreed, but indicated that he doesn't believe they are ready for a vote this evening. He indicated he had a submission that he would be handing and that despite the lack of a full Board this evening, they would like to have Professor Johnson review and comment on their submission and then take the matter back up with the Board at a subsequent meeting.

A recess was taken at 8:50 p.m. and upon the Board's return at 9:00 p.m., Chairman Dudick opened the Public Hearing and asked for questions or comments.

Mary Raciti of 522 Grooms Road, Clifton Park, NY, who was present with her husband Mike and daughter Rachel, spoke in opposition to construction of the cell tower. She advised they have lived in Clifton Park for over 30 years and raised their 2 children here. She indicated they feel it would have a negative impact on their property values and on the aesthetics that they enjoy in their property. She explained that although they have 18 acres of land that go with their home and that their house might not be within 200' feet of the proposed tower, they have future plans for the land behind their home to either subdivide for financial gain or subdivide to let their 2 children build homes there so they could continue to enjoy this parcel and therefore feel this plan would detract from their ability to share their land and family legacy with their children. She advised they would have never chosen to build a home next to a cell tower and don't feel they should be forced to live next to one now. Mrs. Raciti advised that she has a unique perspective because she owns commercial property in Albany County and happens to have a cell tower lease in place on that commercial property. She advised that there is regular maintenance conducted and that there will be other carriers joining on the tower. She advised that she didn't believe any of her neighbors would enjoy sitting in their yards or enjoy their pools watching workers hanging from a cell tower doing maintenance, making repairs, making additions and things of that nature. She requested that the Town stand by their residents and not allow this variance in an R1 residential zone so that the residents can continue to enjoy their land and have the future use of their property. She pointed out that the trees in the area are the resident's trees and that if

anyone chose to remove them, the cell tower will be visible despite the fact that it might currently be hidden as shown in the applicant's balloon demonstrations.

Upon inquiry from Mr. Lemire, Mrs. Raciti confirmed that she has adequate Verizon cell and data coverage in her home and does not experience dropped calls. She added that the pictures shown by the applicant of coverage that would be gained by adding to the existing tower at Exit 8 and the proposed tower at the landfill, seemed to fill the gap and that since they already have cell coverage in their area, that gain would be very little, but the impact the proposed tower would have on the residents, their homes and the value of their homes would be significant. She stated that the Board members would not want this in their backyards and again asked the Board to stand by their residents in this area. She concluded by inquiring as to whether any consideration had been given to putting up a small tower on a tall building in Town, such as the Hilton Hotel to supplement some of the coverage.

Mr. Teong Soo Kim advised he is a Clifton Park resident who works at Global Foundries and expressed concerns about the noise and human impact of the proposed tower, adding that from an engineering perspective, he had not seen any data concerning the impact of the power at different tower heights.

Cindy Just who resides at 327 Moe Road, located next to the subject property, spoke in opposition to the proposal. She explained that her husband Shawn is one of the last remaining original bloodline of the Just family and that the property they live on has been in the Just family since the 1800s. She advised that they have striven to keep this area as open and natural as it once was, even though they don't currently farm it. She indicated their hopes were to be able to offer their teenage son the opportunity to build a home of his own on the property. She explained that a portion of their property is deemed wetlands, which narrows down the options they have to offer and that if the cell tower is allowed on the property at 329 Moe Road, that would eliminate more of that option where their son can build in his future and make their dream of having their son here disappear completely. She asked that the Zoning Board keep the area as it is, open to wildlife, open to the natural space it once was, open to keep some of the history of what Clifton Park once was, and open for her family and the other families that surround them so that they all can still enjoy the serenity of Clifton park once was.

Mrs. Just also indicated that the trees surrounding the proposed tower that would help hide it are theirs and that if they or the people behind them were to log their property, it would become more visible and their property value would go down, adding that she believes the applicant's survey is wrong.

Shawn Just indicated that the subject property butts right up to theirs and that their son does play in the area, as they have trails and tracks there.

Mr. Cifor asked if there was a blood relationship between he and the property owners leasing and he replied that there is.

Mr. Just stated that he owns from the telephone pole to a corner stake and that his property goes at an angle and that the balloons were on his property. He advised that he knows where his property lines are and that he had reviewed his maps from 1977 and believes they are about 5' off, adding that he will have his property re-surveyed if this proposal passes.

Paul Lupien who resides at 520 Grooms Road advised that he lives about 250 yards from proposed area and that he believes Verizon's people were trespassing and had not obtained permission to go out and do their

field work. He advised he is against the tower just like the rest of his neighbors; that he has lived here for 36 years and his 2 kids grew up here and played in the field with the neighbor; further indicating that for years, the neighbor up the road had grown corn and pumpkins in the field. He advised that he believes the development in Town is too big and too fast and that they are losing all of the woodland areas, which is sad.

Richard Mills stated that he and his wife have resided at 13 Arbor Lane for about 21 years and from a review of the tax maps, it appears their property line is about 200' to the property line where the tower would be located. He stated that it seems evident that the structures that would go with the tower would be quite close to them. He indicated he appreciated and supported what Cindy Just had said. He appreciates the wooded area surrounding him and that people want to maintain the quality of life they have in the Town. Mr. Mills advised that although he respects the right of others to have a different view; respects the right of a company to pursue its business; and respects the right of a homeowner to entertain a proposal to put up a tower there, his preference would be to have an energetic effort by the applicant to solve their technical problems without building anything new and without disturbing this wooded area.

Dr. Margo Elacqua, who resides at 5 Towline Lane, about a quarter of mile from the proposed site, strongly opposed putting a tower in a residential zone, adding that it needs to be in a commercial zone. She stated she would prefer to see towers at the transfer station, Exit 8 and at the Crossing turned on to see if there were still areas of lower coverage. She indicated that it would be an unnecessary and an unsightly structure that would be visible from Moe and Grooms Road. She stated the trees are about 60' tall which means that the tower is going to be 40' above the trees and that it was her understanding the applicant can add to it each year without coming back to the Zoning Board. She advised it would be known as a Clifton Park eyesore, which she didn't think anyone wanted and that it is a known fact that property values will drop and people will not want to buy houses in that area. She further indicated that the 12' gravel driveway that had been mentioned wouldn't get anywhere near where that tower is going to go.

Dr. Elacqua also noted that because there are very few human studies which focus specifically on cell phone tower use and cancer risks, Verizon should not be saying that there is no health risk because that has not been proven. She indicated the major goal of the World Health Organization is to identify causes of cancer and has classified RF radio frequency fields as possible carcinogenic to humans. She added that there are other expert agencies such as the American Cancer Society, who say more research is necessary to look at possible long term effects. She stated that radio frequencies increase tumor growth rate so that before someone is even diagnosed, radio frequencies increase the speed in which tumors grow. She noted that her husband who was present with her tonight is a survivor of Non-Hodgkin's Lymphoma, who has relapsed 4 times, but is currently in remission because of stem cell transplants and that she doesn't want to put that at risk with a tower nearby. She further stated that she has Verizon, does not have a land line and does not have any coverage issues in her home. She advised that she had spoken with her neighbors and that 2 or 3 of them had written to the Board advising they do not have coverage issues at all.

Dr. Elacqua went on to state that she believed in 2014 Verizon came out looking to put a tower at the Fire House on Moe Road, which is about the same distance south of her as this would be north of her, which had been turned down. She inquired as to what had happened with that proposal and for what reasons it was turned down.

Upon inquiry from Mr. Dudick, Dr. Elacqua advised she is has a doctorate in occupational therapy in the medical field and that she does research on different topics in health care, not necessarily cancer risks, but that her son does that type of research, but that he was not present.

Tom Neiss of 21 Balsam Way stated that ironically enough, on all of the maps the new development, Heritage Point, was not drawn in which puts 100 houses in direct view of where this cell tower is going to be. He asked Mr. Myers if he had received the e-mails he and his wife Elaine had sent requesting that this proposal be denied and Mr. Myers confirmed that he had.

Mr. Neiss went on to explain that he has been in Clifton Park since 1985 and that when he lived in Springhill Estates on Esopus Drive, he had gone before the Board 4 times and successfully maintained the R1 status of that area when they wanted to put a gas station at Exit 8A and that he stands here today saying that this is an R1 residential area and is the only exit off the Northway in Clifton Park that is not zoned commercial. He stated that it was decided that it should be R1, it's been maintained R1, and he wants to continue the R1 nature. He stated there are several reasons why he doesn't want this proposal to pass; one of them being that it seems to him that Verizon is trying to solve a problem that doesn't exist. He indicated he is also a Verizon user and has fine service in his home and doesn't lose calls anywhere. He added that he believes Verizon is trying to solve a customer problem by subjecting all of the people that are here, that we have seen and known in his neighborhood, plus 100 new houses in Heritage Point, that don't even know this happening. He questioned what would happen when those people moved into their homes and now there is a cell tower there. He concluded by stating they didn't buy into that and neither did he when he moved into Carlson Farms 5 years ago.

From the audience, Dr. Elacqua asked for clarification regard the AT&T proposal to put a tower at the Fire House at the corner of Moe and Englemore. Mr. Myers advised that the Fire Department had withdrawn their application. When Dr. Elacqua asked what the reasons for the withdrawal were, Mr. Myers referred her to the First District, stating that he believed one Public Hearing was held and after, that they withdrew.

A comment was made by a member of the audience to the effect that they probably withdrew the application because they didn't want to die, which Mr. Brennan interpreted as a threat and he advised the Chairman he was not going to sit here and listen to threats.

Mr. Dudick advised that he had not interpreted the comment as a threat and asked that there not be any further direct communication between the audience members and the applicant. The audience member apologized and Mr. Brennan indicated he was satisfied that the issue was resolved.

Catherine Hull of 334 Moe Road spoke in opposition to the proposal advising it is not needed. She stated she has Verizon, has great cell service and pointed out Verizon's own marketing materials show full coverage. She stated that if Verizon is going to add additional cell towers in this area, they need to review the health risks associated with the duplicity and layers of different coverage. Ms. Hull indicated she believes there are about 18 other towers in the area and wondered if Verizon had looking into piggybacking on all of those in order to solve their problem. She indicated she felt it was a rushed timeline and that she had received a certified letter on June 13, 2016 and with planned vacation, time to go away for the weekends she had been rushing around like a maniac trying to notify all of her neighbors with a flyer to let them know what was going on, that they would be effected by it and ask them to come to the meeting. She further indicated she has friends in the legal and health fields and would love to have them come speak, but hasn't even had time to e-mail all of them. She also wondered if there was anyone here from the Clifton Park Nursey School because they are not in session right now.

Ms. Hull indicated that she had gone over the PDF and had a million questions. She advised that the building height was not entered on the application; Page 9 was missing; Page 2 of 13 on the Zoning

Application states the site is a New York State Heritage Area and in the Mohawk Valley Heritage Corridor and wanted to know what that meant; she also noted that Page 13F stated the proposal is located to an area designated as sensitive for archeological sites on the New York State Historical Preservation Office Site Inventory and wondered if that would have an impact; and whether there was going to be a light on the top of the tower because from her backyard planes come down pretty low. She further indicated that from what she had seen, the Full Environmental Assessment Form, the impact on the land portion did not seem to be completed.

She stated that page 7 of 15 on the RF justification claims they are no other Verizon facilities in the area and wondered why that was even a factor, when they can just sublet from another carrier or increase the height on existing towers. She stated that when she was at the Planning Board meeting, they had said something about being able to extend the height of a tower, which scares her because it could just keep getting higher and higher. She asked whether the Town took additional cell tower construction into consideration when plans for developments are being proposed like they would for water, electricity and other public utilities, because she believes that Verizon is trying say you have these new developments going in you're going to need new coverage, but is that ever really looked at so people realize that the more developments that are here, the more cell towers that are going to be asked to be placed. She wondered whether it was worth all of this time and effort on Verizon's part when they could be utilizing all of the new cell to cell and satellite technology that's coming out.

Ms. Hull stated that in May 2016 Scientific American magazine had published new findings about radiation linked to tumor formation in rats.

Addressing one of Ms. Hull's comments, Mr. Dudick clarified that if the Board granted approval for a 100' tower, then its going to be a 100' tower and that if they granted approval for a tower which can be expanded up to a 100', then it is not going to be expanded beyond 100', unless the applicant came back and made another application and went through the process again.

Ms. Hull pointed out that once the zoning is changed you can't change it back.

Mr. Dudick advised that was correct and agreed that once an approval is given to anyone with regard to any application, whether it be a tower or a deck or an extension on a house, once the variance has been granted, they can't come back 5 years later and say they changed their mind and want to pull it back. Once it's granted, it's granted for the life of the property

Ms. Hull then asked if there was a right of first refusal in their documents and the owner decides to sell, whether this would then be Verizon property.

Mr. Dudick replied that it would go with the property, adding that this is a variance for the property owner for the property itself and that if the ownership of the property changes, it goes to the next owner.

Mr. Dudick then advised he was going to leave the Public Hearing open just in case someone else decided that they wanted to speak and gave the floor back to the applicant to reply to any of the comments or questions that had been brought up.

Mr. Brennan advised he would like to briefly answer a couple of the questions.

Mr. Lemire asked whether notice was given to the property owners within 500' and if it had been submitted by the applicant. Mr. Myers confirmed there had been notice.

Mr. Dudick clarified that a use variance requires that local property owners within a 500' radius of the subject property lines are required to be notified by certified mail. He explained that if someone had 2 property lines that were beyond the 500' they would not be notified by certified mail. He pointed out however, that all applications to the Zoning Board are posted on the Town website, posted on the Town bulletin board and published in the Gazette newspaper and are out there to be seen if anyone is looking for it.

Mr. Brennan then handed the Chairman multiple copies of a letter in response to Professor Johnson's comments, as well as appraisal report. He explained that one of the comments was the effect on property values and that the appraisal report he just handed out was from 2015 at another location where appraisers studied the property values before and after towers were installed, did the analysis and concluded that there was not a negative impact on property values.

Addressing Mr. Kim's concerns about noise, Mr. Brennan advised that they do have a DC generator which runs or exercises once a week, usually on a Monday or Tuesday morning around 9 o'clock. He advised there is such a generator outside one of his office windows and that when it's exercising, conversations can be had right next to it, adding that it doesn't go on unless there is an extended power outage where the batteries need to be maintained. He pointed out that there is a noise analysis around Tab 9 or 10 in the material submitted for the Board's consideration.

Addressing Mr. Kim's concerns about the power levels at the different heights, Mr. Brennan advised that different plots were run at the same power level or at the same signal strength they are trying to maintain, which is negative 95 at the different heights, but that he would defer to the Town's consultant to review those materials.

Mr. Brennan stated that despite the comments about cutting down trees, they are not proposing to cut trees down as part of their proposal. Mr. Bloss clarified that the comments from the property owners were that they have trees that they own and that if they chose to cut them down, then other people would be impacted by the trees being removed.

Mr. Brennan indicated he was referring to Mr. Mills who said that he is surrounded by woods on Arbor Lane and likes that he has a very nice buffer landscape around his property, but that if they neighbors wanted to do that of their own volition, whether that's in accordance with the Town regulations was another thing, he just wanted to make it clear that they are not proposing that.

He added that he had conferred with someone remotely and confirmed that the tower at the Elk's Club is 170'. Mr. Bloss indicated he had the drawings and would bring them in.

Mr. Bloss stated that one of the questions asked was whether a light at the top of the tower is required, because he understood you need a light if its over 150' and the Elk's Club tower does not have a light.

Mr. Brennan replied that the standard is above 200', the FAA requires lighting regardless of location, but that as you get closer to airports, those heights can be reduced. He advised he suspects based on their experience, that they don't need a light on this tower because at a 100', but that he would get that answer because the Board and the public deserves that answer.

Mr. Brennan commented that in their experience, wildlife is not impacted by the installation of a tower and joked that it appeared the deer were using the trees around the bottom of the tower at Exit 8 as a buffet.

Addressing the comments that they had been trespassing, Mr. Brennan advised they have a partial topographic survey and believe the row of trees that shows up on their plans is on their landlord's property, but advised they would confirm that to make sure there is no discrepancy between the surveys.

Mr. Cifor stated that the land lease agreement included in the submission was only signed by the property owner. Mr. Brennan replied that the property owners typically sign first and then it goes into Verizon for processing and title review, adding that it has probably been signed by now and if not, it would be before they can do anything.

Mr. Bloss asked if the tower would actually be owned by Verizon or if it would be owned by Cellco or another company. Mr. Brennan advised that Cellco is the legal entity that operates the network and that although there are dozens if not hundreds of different companies like that, this would be a Verizon owned tower.

Addressing the comments regarding health risks, Mr. Brennan suggested asking Professor Johnson to opine as to the status of that discussion.

Addressing Ms. Hull's comments about the incomplete SEQRA environmental assessment form, Mr. Brennan pointed out that Parts 2 and 3 are not filled out because that is the Board's obligation as part of the SEQRA process.

Mr. Brennan advised that the Mohawk Valley Heritage area is basically as he recalls, an area approximately 2 or 4 miles wide up and down the entire Mohawk Valley and that when they fill out the form on the DEC computer, all of those things are triggered. He advised that essentially all of Clifton Park is considered an archaeologically sensitive area by the DEC, but that as part of their due diligence, they perform shovel tests and if there is anything that is identified, it is documented, recovered and cataloged.

Mr. Brennan then stated that unless there was anything else the Board had, he was prepared to be finished for this evening.

Mr. Peller asked Mr. Brennan if he had a particular meeting date in mind that he wanted to come back.

Mr. Brennan advised that they are submitting additional material to Professor Johnson and that he is going to take a little bit of time to review it.

Following a discussion about the next meeting dates and the fact that the Board will not have use of the usual room for the September 6<sup>th</sup> meeting due to the holiday, Mr. Brennan asked to be placed on the Agenda for the August 16, 2016 meeting and advised that if they needed to postpone, he would let Mr. Myers know.

Mr. Peller asked if the applicant would be willing to waive the 61 day rule the Board has within which to make a determination on the application.

Mr. Brennan advised that he would work with the Board and would not be pushing the Board for a decision, adding that although he has communities where that rule gets abused, he had no problem with that, was not going to press the issue and opined that he didn't think he'd even any way to legally force anything anyway, so absolutely he would.

Mr. Hill asked from the audience who Professor Johnson is.

With Mr. Dudick permission, Mr. Brennan advised that Professor Johnson is a Professor of electrical engineering at the Rochester Institute of Technology and that he works for communities and he has been hired by the Town so the Town can have a paid consultant on their side to evaluate the materials.

Mr. Peller then advised Mr. Brennan that his understanding was that we are going to put the matter on the Agenda for the next meeting and that if for some reason he was not ready, he needed to let the Town know, adding that if the Town hasn't had an opportunity to review the materials, the Town would let him know as well. He advised the audience that they should check before coming in to make sure that the matter is still on the Agenda. Mr. Brennan agreed, stating he certainly would not want people to show up and not him there.

Mr. Myers added that the public can either check the Town's website or call his office to confirm.

Mr. Dudick then made a motion to approve the minutes from the June 21, 2016 meeting. Mr. Dudick, Mr. Cifor, Mrs. McCoy and Mr. Bloss, who were present at that meeting, all voted in favor and the minutes were approved.

Mr. Dudick announced that he will be away for the next meeting and that Mr. Cifor would be sitting in his stead.

**Mr. Dudick made a motion to adjourn the meeting. The motion was seconded by Mr. Cifor. Approval was unanimous. The meeting was adjourned at 10:00 p.m.**

**The next meeting is August 16, 2016.**

Respectfully submitted,



M. Kathleen Smith  
Secretary, Zoning Board of Appeals

Cc: Town Clerk, Town Board, Town Attorney  
Zoning Board Members, Joel Peller, Esq., Steve Myers  
Department of Building and Development  
Town Assessor, Town Highway Department