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# Transcript of Hearing - Day 3

**Date:** October 13, 2017

**Case:** Cellco Partnership d/b/a Verizon Wireless

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Transcript of Hearing - Day 3  
Conducted on October 13, 2017

1 (680 to 683)

<p>680</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: :</p> <p>5 CELLCO PARTNERSHIP : Case No. CU-T-17-01</p> <p>6 d/b/a VERIZON WIRELESS :</p> <p>7 -----x</p> <p>8</p> <p>9 HEARING</p> <p>10 Before Hearing Examiner Tammy CitaraManis</p> <p>11 Rockville, Maryland</p> <p>12 Friday, October 13, 2017</p> <p>13 9:30 a.m.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job: 163863</p> <p>24 Pages: 680 - 957</p> <p>25 Transcribed by: Molly Bugher</p>	<p>682</p> <p>1 Rockville, MD</p> <p>2</p> <p>3 BRIAN E. SIVERLING, Engineer</p> <p>4 MORRIS &amp; RITCHIE ASSOCIATES</p> <p>5 1220 East Joppa Road, Suite 505</p> <p>6 Townson, MD 21286.</p> <p>7</p> <p>8 WILLIAM LANDFAIR, Land Planner</p> <p>9 VIKA Maryland</p> <p>10 20251 Century Boulevard, Suite 400</p> <p>11 Germantown Maryland 20874</p> <p>12</p> <p>13 SUSANNE LEE</p> <p>14 VP West Montgomery County Citizens' Association</p> <p>15 12900 Circle Drive</p> <p>16 Rockville, MD 20850</p> <p>17</p> <p>18 BRIAN PASHKOFF, Citizen</p> <p>19</p> <p>20 ALAN PRIVOT, Citizen</p> <p>21 8310 Snow Hill Lane</p> <p>22 Potomac, MD</p> <p>23</p> <p>24 JOE PACE, Citizen</p> <p>25</p>
<p>681</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 THOMAS H. BARNARD, ESQ.</p> <p>4 BAKER DONALDSON</p> <p>5 Counsel for East Gate Recreation Association, Inc.</p> <p>6 901 K Street NW, Suite 900</p> <p>7 Washington, D.C. 20001</p> <p>8</p> <p>9 CATHY G. BORTEN, ESQ.</p> <p>10 Counsel for Verizon</p> <p>11 137 Kent Oaks Way</p> <p>12 Gaithersburg, MD 20878</p> <p>13</p> <p>14 GREG DIAMOND, ESQ.</p> <p>15 Counsel for Cellco Partnership d/b/a Verizon Wireless</p> <p>16 7500 Woodmount Avenue, Suite 902</p> <p>17 Bethesda, MD 20814</p> <p>18</p> <p>19 CHERYL WETTER, Citizen</p> <p>20 6 Snug Hill Court</p> <p>21 Potomac, MD 20854</p> <p>22</p> <p>23 BILL CHEN, ESQ.</p> <p>24 Counsel for Opposition</p> <p>25 200A Monroe Street, Suite 300</p>	<p>683</p> <p>1 HOWARD FINKEL</p> <p>2 8318 Snug Hill Lane</p> <p>3 Potomac, MD</p> <p>4</p> <p>5 NORMA COLLENDANI</p> <p>6</p> <p>7 DAWN PACE</p> <p>8 8232 Windsor View Terrace</p> <p>9 Potomac, MD</p> <p>10</p> <p>11 JESSICA BEJARANO</p> <p>12 8306 Snug Hill Lane</p> <p>13 Potomac, MD</p> <p>14</p> <p>15 CAROLYN TEB0</p> <p>16 8209 Bucks Park Lane West</p> <p>17 Potomac, MD 20854</p> <p>18</p> <p>19 JERRY GARSON</p> <p>20 8308 Raymond Lane</p> <p>21 Potomac, MD 20854</p> <p>22</p> <p>23 FATMA SABRI</p> <p>24 10203 Gainsborough Road</p> <p>25 Potomac, MD 20854</p>

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2 (684 to 687)

<p style="text-align: right;">684</p> <p>1</p> <p>2 MATTHEW PHILLIPS</p> <p>3 10401 Windsor View Drive</p> <p>4 Potomac, MD 20854</p> <p>5</p> <p>6 BETH LILIENTSTEIN</p> <p>7 8319 Snug Hill Lane</p> <p>8 Potomac, MD</p> <p>9</p> <p>10 GERALYNN FRANCESCHINI</p> <p>11 8313 Snug Hill Lane</p> <p>12 Potomac, MD</p> <p>13</p> <p>14 ANNETTE PERLIN</p> <p>15 5 Snug Hill Court</p> <p>16 Potomac, MD 20854</p> <p>17</p> <p>18 MARILYNN LEON, Citizen</p> <p>19 10209 Gainsborough Road</p> <p>20 Potomac, MD</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">686</p> <p>1 CLOSING REBUTTAL OF THOMAS BARNARD 950</p> <p>2 CLOSING REBUTTAL OF GREG DIAMOND 950</p> <p>3</p> <p>4 EXHIBITS</p> <p>5 NO DESCRIPTION PAGE</p> <p>6 232 Letter of Ms. Heidi Way 689</p> <p>7 233 Hearing Testimony - Ms. Wetter 708</p> <p>8 233(a) Landscaping document from Ms. Wetter 708</p> <p>9 234 Exhibit from Mr. Finkel 759</p> <p>10 234(a) Federal government document HR 3630 760</p> <p>11 234(b) FCC Exhibit Public Notice of 01/25/13 780</p> <p>12 234(c) Report of David Burgoyne to FCC 761</p> <p>13 234(d) Smart Communities Citing Coalition 761</p> <p>14 List of counties and municipalities</p> <p>15 234(e) HUD report 763</p> <p>16 235 Photo from GERALYNN FRANCESCHINI of 694</p> <p>17 kids sledding</p> <p>18 77(a) Long and Foster letter with signatures</p> <p>19 and printed names</p> <p>20 190(a) Susanna Lee Exhibit 821</p> <p>21 190(b) Master Plan 822</p> <p>22 191(g) Data from Mr. MacPhearson 833</p> <p>23 236 Montgomery County government webpage 835</p> <p>24 Transmission Facilities Coordination</p> <p>25 Group/Tower Coordinator and</p>
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3 (688 to 691)

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<p>1 PROCEEDINGS</p> <p>2 TAMMY CITARAMANIS: Tammy CitaraManis; we are here to</p> <p>3 continue the hearing, which the last one was September</p> <p>4 27th. At that point, we were having individuals who were</p> <p>5 giving their testimony. We made it through two; I don't</p> <p>6 know if you've gotten the updated exhibit list. I did</p> <p>7 correct it so that it included the I's and everything that</p> <p>8 goes with some of the exhibits that were referred to.</p> <p>9 Anyway, this is a continuation of case number CU-T-1701,</p> <p>10 Cellco Partnership doing business as Verizon Wireless and</p> <p>11 East Gate Recreational Association, and a request for</p> <p>12 administrative modification of special exception S596. I</p> <p>13 see that we have a number of people; welcome back. If you</p> <p>14 are interested in testifying, I need you to sign in. And I</p> <p>15 understand we've had requests for a gentleman who needs to</p> <p>16 leave early, to go first. And I think that's Mr. Pashkoff.</p> <p>17 If nobody has any objections, I don't have any objection</p> <p>18 either. But just let me finish what I'm doing at this</p> <p>19 point.</p> <p>20 BRIAN PASHKOFF: Sure.</p> <p>21 TAMMY CITARAMANIS: At the last hearing, at that</p> <p>22 point, applicant had agreed to waive cross on individuals</p> <p>23 if they wanted to submit testimony because of -- and today,</p> <p>24 I just received a letter and I'm not sure if it's in lieu</p> <p>25 of testimony, but it's from Ms. Heidi Way (phonetic) and</p>	<p>1 -- before we get started, I wanted to thank those of you</p> <p>2 that stayed behind last hearing to help close down the</p> <p>3 room, but I have to say, we did get in trouble. The few</p> <p>4 water bottles that were left, I was admonished for that. So</p> <p>5 there's a sign that says, no eating or drinking. And if you</p> <p>6 do, everybody raise your right hand, you're going to take</p> <p>7 your stuff with you. So, anyway. If you could do that, but</p> <p>8 I do appreciate the help that everybody gave getting stuff</p> <p>9 down and closing everything up because I didn't know how to</p> <p>10 turn some things off. So we will do the individuals first,</p> <p>11 and then I believe the applicant has rebuttal. And we will</p> <p>12 go from there. Again, we will -- I don't know how long this</p> <p>13 is all going to take, but if we go beyond lunch, we will do</p> <p>14 lunch right around the same time we did last time. It will</p> <p>15 be for an hour. We absolutely are stopping at 5:00 today,</p> <p>16 just so everybody knows. So that might help with you and</p> <p>17 what you have -- what testimony you want to give and, you</p> <p>18 know, if you've already heard stuff, you can say I agree</p> <p>19 with that individual, but I would like to add, so it's not</p> <p>20 repetitive. And I believe there is bathrooms on every</p> <p>21 floor, but I think the fifth floor is closed. You can't go</p> <p>22 on the fifth floor. They are doing asbestos removal, I</p> <p>23 believe. Something -- I got a notice about that too; people</p> <p>24 kept going to the fifth floor. So anyway, with that, I</p> <p>25 believe we have -- can you bring up the sign-up sheet with</p>
689	691
<p>1 it's been marked as Exhibit 232. So just so that you know</p> <p>2 that there is one more.</p> <p>3 THOMAS BARNARD: Thank you.</p> <p>4 TAMMY CITARAMANIS: Yeah. So could I have everybody at</p> <p>5 the table just go and identify themselves before we proceed</p> <p>6 forward? We will start -- we will start on the applicant</p> <p>7 side.</p> <p>8 THOMAS BARNARD: I'm Thomas Barnard (inaudible) on</p> <p>9 behalf of The East Gate Recreation.</p> <p>10 CATHY BORTEN: Cathy Borten, on behalf of the</p> <p>11 applicant, Cellco Partnership.</p> <p>12 GREG DIAMOND: Greg Diamond, on behalf of the</p> <p>13 applicant Cellco Partnership.</p> <p>14 CHERYL WETTER: Cheryl Wetter, on behalf of the</p> <p>15 opposition to the tower.</p> <p>16 BILL CHEN: Good morning, Madam Examiner.</p> <p>17 TAMMY CITARAMANIS: Good morning.</p> <p>18 BILL CHEN: Bill Chen on behalf of several parties who</p> <p>19 are appearing in opposition, including Janine Resnick,</p> <p>20 Greer Delaforia, and Howard Finkel.</p> <p>21 TAMMY CITARAMANIS: Okay.</p> <p>22 SUSANNE LEE: My name is Susanne Lee. I'm here</p> <p>23 representing the West Montgomery County Business</p> <p>24 Association.</p> <p>25 TAMMY CITARAMANIS: Okay. Great. Thank you. And I also</p>	<p>1 you?</p> <p>2 BRIAN PASHKOFF: Yeah, sure.</p> <p>3 TAMMY CITARAMANIS: I mean, you can leave -- if there</p> <p>4 is a blank one -- just give me ones that's already written,</p> <p>5 because I will work from that.</p> <p>6 BRIAN PASHKOFF: Yeah, the first two (inaudible).</p> <p>7 TAMMY CITARAMANIS: Great. Great. Thank you, very</p> <p>8 much. Okay. You can -- the witness stand is over here. I'm</p> <p>9 going to swear you in and then you can -- your testimony is</p> <p>10 under oath and because you're speaking as an individual,</p> <p>11 you are just giving a narrative. Both sides have an</p> <p>12 opportunity to cross-examine you if they have any questions</p> <p>13 on your testimony.</p> <p>14 BRIAN PASHKOFF: Understood.</p> <p>15 TAMMY CITARAMANIS: So, could you raise your right</p> <p>16 hand?</p> <p>17 BRIAN PASHKOFF: (Inaudible) stand or --</p> <p>18 TAMMY CITARAMANIS: No, that's fine. Do you promise to</p> <p>19 tell the truth, the whole truth, and nothing but the truth</p> <p>20 in your testimony under penalty of perjury?</p> <p>21 BRIAN PASHKOFF: Yes.</p> <p>22 TAMMY CITARAMANIS: Okay. I need you to state your</p> <p>23 name and your address.</p> <p>24 BRIAN PASHKOFF: Sure.</p> <p>25 TAMMY CITARAMANIS: And then your testimony.</p>

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4 (692 to 695)

<p>692</p> <p>1 BRIAN PASHKOFF: Okay.</p> <p>2 TAMMY CITARAMANIS: Okay. Thank you.</p> <p>3 BRIAN PASHKOFF: My name is Brian Pashkoff.</p> <p>4 TAMMY CITARAMANIS: I think your mic is not on.</p> <p>5 (Inaudible) a green.</p> <p>6 BRIAN PASHKOFF: Yes, I have a green.</p> <p>7 TAMMY CITARAMANIS: (Inaudible) think it was on. It</p> <p>8 needs (inaudible) red. Left; to the left. Touch your mic.</p> <p>9 BRIAN PASHKOFF: Can you hear me?</p> <p>10 TAMMY CITARAMANIS: And can the court reporter hear</p> <p>11 you?</p> <p>12 COURT REPORTER: Yes.</p> <p>13 TAMMY CITARAMANIS: And I would recommend to</p> <p>14 everybody; spell your last name. They've got mine</p> <p>15 completely wrong, which we will have to correct. So, here's</p> <p>16 my spelling. So if you want your name to be correctly</p> <p>17 spelled, I would recommend that you do that for the record.</p> <p>18 Okay. And you are --</p> <p>19 BRIAN PASHKOFF: My name is Brian Pashkoff. Brian, B-</p> <p>20 R-I-A-N; Pashkoff, P-A-S-H-K-O-F-F, as in Fred Flintstone.</p> <p>21 TAMMY CITARAMANIS: Go ahead.</p> <p>22 BRIAN PASHKOFF: Sorry. Some people think it's an S.</p> <p>23 One thing I want to start off with, I think something that</p> <p>24 came up the last time I was here, was the letter. I was the</p> <p>25 one who had the Long and Foster office in Potomac -- Cabin</p>	<p>694</p> <p>1 was told is that because it's just signatures, you couldn't</p> <p>2 read the names.</p> <p>3 TAMMY CITARAMANIS: Oh, I see.</p> <p>4 BRIAN PASHKOFF: Now the names are printed. Unless I</p> <p>5 handed you the wrong one, now the names are printed right</p> <p>6 next to the names.</p> <p>7 TAMMY CITARAMANIS: Okay. And --</p> <p>8 BRIAN PASHKOFF: And I was told that that was an</p> <p>9 issue, so I wanted to make sure that we rectified it.</p> <p>10 TAMMY CITARAMANIS: There you are. So that was 77?</p> <p>11 Exhibit 77? I'm going to mark it Exhibit 77(a). And yes,</p> <p>12 you can give -- did you give a copy to everybody? Yes, so</p> <p>13 why don't you --</p> <p>14 BRIAN PASHKOFF: I have electronic -- you need one for</p> <p>15 -- I have an electronic copy. Sorry, I only printed three.</p> <p>16 TAMMY CITARAMANIS: Okay. Go ahead Mr. Pashkoff.</p> <p>17 BRIAN PASHKOFF: So my testimony today is to express</p> <p>18 my opposition to the proposed cell phone tower at the East</p> <p>19 Gate Swim Club. My family recently moved to Snug Hill Lane</p> <p>20 in August 2016. We are the infamous last purchase before</p> <p>21 the announcement of the cell tower. And as I wrote in my</p> <p>22 letter, which I believe, was dated November 18, 2016;</p> <p>23 understanding that the tower would have been in the</p> <p>24 vicinity of this particular home, would have disqualified</p> <p>25 our home when searching for a new neighborhoods for various</p>
<p>693</p> <p>1 John office, submit a letter. They are the closest -- I</p> <p>2 think it's the closest. It's 1.9 miles away, excuse me, 2</p> <p>3 miles. Pardon me -- away from the location. They're one of</p> <p>4 the closest residential real estate offices to our</p> <p>5 neighborhood. They were kind enough to submit a letter on</p> <p>6 behalf of the entire office discussing what they thought</p> <p>7 the proposed tower would do with respect to home values in</p> <p>8 the vicinity. And one of the issues was, was that there was</p> <p>9 no signatures and no printed names. I went back. They have</p> <p>10 now printed their names next to the signature. So I would</p> <p>11 like to hand that out to people if that is necessary; or</p> <p>12 send it to you. However you want to handle it.</p> <p>13 TAMMY CITARAMANIS: Yes. I need to mark it first. And</p> <p>14 --</p> <p>15 BRIAN PASHKOFF: Would you guys like a copy?</p> <p>16 BILL CHEN: Madam Examiner.</p> <p>17 TAMMY CITARAMANIS: Wait. Okay. So just so that I'm</p> <p>18 clear --</p> <p>19 BRIAN PASHKOFF: Yes.</p> <p>20 TAMMY CITARAMANIS: This is the same letter that you</p> <p>21 previously submitted --</p> <p>22 BRIAN PASHKOFF: Yes.</p> <p>23 TAMMY CITARAMANIS: But now it's -- what's the</p> <p>24 difference?</p> <p>25 BRIAN PASHKOFF: The name -- one of the issues that I</p>	<p>695</p> <p>1 reasons, which I will get into in moment. But most</p> <p>2 specifically, the purchase price. Candidly, I'm now</p> <p>3 concerned if I need to go and sell my home, I will not</p> <p>4 receive what I paid for the house. It's my understanding</p> <p>5 that the purpose of this zoning hearing is to decide if the</p> <p>6 tower will be the best usage for the land. Am I correct in</p> <p>7 that (inaudible)?</p> <p>8 TAMMY CITARAMANIS: There is a Staff Report that has</p> <p>9 the criteria.</p> <p>10 BRIAN PASHKOFF: Okay. And so right now, hopefully, I</p> <p>11 will detail why I firmly believe it's not the best use of</p> <p>12 land and explain the process by which this lease was agreed</p> <p>13 to and signed was just not -- well, the term I use is, an</p> <p>14 egregious use of power by the EGR board.</p> <p>15 TAMMY CITARAMANIS: Can I ask a quick question?</p> <p>16 THOMAS BARNARD: I'm going to object to that.</p> <p>17 (Crosstalk)</p> <p>18 TAMMY CITARAMANIS: I'm going to -- quick questions;</p> <p>19 is that the letter that you've already submitted?</p> <p>20 BRIAN PASHKOFF: Yes.</p> <p>21 TAMMY CITARAMANIS: Okay. And you don't need to reread</p> <p>22 it. Just give us your testimony as to --</p> <p>23 BRIAN PASHKOFF: Fair enough.</p> <p>24 TAMMY CITARAMANIS: And they have objected to the</p> <p>25 information on the lease, but you've already submitted the</p>

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5 (696 to 699)

<p>696</p> <p>1 letter.</p> <p>2 BRIAN PASHKOFF: Okay.</p> <p>3 TAMMY CITARAMANIS: So if you want to do summarize</p> <p>4 your -- the highlights.</p> <p>5 BRIAN PASHKOFF: Yeah, I was going to do that.</p> <p>6 TAMMY CITARAMANIS: Okay.</p> <p>7 BRIAN PASHKOFF: So sorry about that.</p> <p>8 TAMMY CITARAMANIS: And the objection is --</p> <p>9 THOMAS BARNARD: The objection is, it's (inaudible)</p> <p>10 the objection is that the issue he is talking about is not</p> <p>11 relevant to the issues to be decided at this hearing. That</p> <p>12 is something about a prior -- a different litigation.</p> <p>13 TAMMY CITARAMANIS: And which is true.</p> <p>14 BRIAN PASHKOFF: Okay.</p> <p>15 TAMMY CITARAMANIS: Which is true with regards to --</p> <p>16 BRIAN PASHKOFF: Yes, I'm talking about --</p> <p>17 TAMMY CITARAMANIS: You have an opinion as --</p> <p>18 BRIAN PASHKOFF: I'm not intimately involved with all</p> <p>19 the different --</p> <p>20 TAMMY CITARAMANIS: Right.</p> <p>21 BRIAN PASHKOFF: So --</p> <p>22 TAMMY CITARAMANIS: And I'm --</p> <p>23 BRIAN PASHKOFF: So I apologize.</p> <p>24 TAMMY CITARAMANIS: Where you are is a difficult</p> <p>25 position. And the lawyers, they are doing their job, but</p>	<p>698</p> <p>1 detractions. And again, as part of my job, how I make a</p> <p>2 living to be able to afford a certain home, is doing</p> <p>3 exactly that. But I don't think there is any better use of</p> <p>4 our time today than to actually hear words from the actual</p> <p>5 agents in Potomac, Maryland, that are close to this</p> <p>6 particular vicinity. And so I'm just going to read their</p> <p>7 letter. It is three paragraphs. We are licensed real estate</p> <p>8 agents with the Long and Foster office at 7719 Tuckerman</p> <p>9 Lane, Potomac, Maryland, 20854. We are writing this letter</p> <p>10 to present our opinion as it pertains to property value and</p> <p>11 the impact of the cell phone tower within close proximity</p> <p>12 of a home. Being located at Cabin John shopping center,</p> <p>13 less than 2 miles from East Gate pool, we have a keen</p> <p>14 understanding of this particular neighborhood, the</p> <p>15 neighborhoods surrounding it, and the market as a whole. It</p> <p>16 is our opinion that being in close proximally to a cell</p> <p>17 tower reduces the value of a home. Not only do houses in</p> <p>18 close proximity to a tower stay on the market longer, they</p> <p>19 draw a lower sales price. Unsightliness, noise, dangerous</p> <p>20 equipment, hazardous materials, and the unknown health</p> <p>21 risks are the main reasons given for this. The potential</p> <p>22 group of buyers for house decrease when a house is in</p> <p>23 proximity to a tower. This is simple numbers by the way.</p> <p>24 When there are less people interested in a property, there</p> <p>25 are less offers, competition, which leaves the seller with</p>
<p>697</p> <p>1 that is an issue with regards to how the lease was entered</p> <p>2 into, the authority, and all that. I mean, certainly you</p> <p>3 can express an opinion that you think it's a bad lease, but</p> <p>4 isn't really not relevant to these proceedings in that</p> <p>5 regard.</p> <p>6 BRIAN PASHKOFF: Okay one of the one of the first</p> <p>7 things that I point out my letter is that the value of my</p> <p>8 home -- I think it's important that I do read the letter</p> <p>9 from the -- the office.</p> <p>10 TAMMY CITARAMANIS: Okay.</p> <p>11 BRIAN PASHKOFF: The Long and Foster office. Is that</p> <p>12 okay?</p> <p>13 TAMMY CITARAMANIS: The short one?</p> <p>14 BRIAN PASHKOFF: Yeah, it's short.</p> <p>15 TAMMY CITARAMANIS: That's okay.</p> <p>16 BRIAN PASHKOFF: Let me also start off -- I should</p> <p>17 point out that I am a licensed real estate agent in</p> <p>18 Maryland, DC, and Virginia, okay. I should also point out</p> <p>19 that I have recently been involved in the purchase of two</p> <p>20 personal properties as well as the sale of two family</p> <p>21 properties in the past 36 months. So I am intimately</p> <p>22 involved with the market in Potomac, Rockville, and</p> <p>23 Bethesda with respect to the residential market. I</p> <p>24 understand what people are looking for. I understand what</p> <p>25 the competition is. I understand what things are that are</p>	<p>699</p> <p>1 less leverage to command market price. Furthermore, it is</p> <p>2 important to note that it's not just the houses in the</p> <p>3 immediate vicinity that will be impacted. Along with the</p> <p>4 condition of the home, sales comparisons -- comparables,</p> <p>5 excuse me, are a major factor in valuing the home. So if a</p> <p>6 home in the vicinity right behind the tower gets a lower</p> <p>7 valuation, it will affect other homes in (inaudible), in</p> <p>8 Ridgely, because those are the comparables that will be</p> <p>9 used. Meaning, the sales price of a home in (inaudible)</p> <p>10 could have an impact on the sale price of a home that is</p> <p>11 not (inaudible). In conclusion, being experts in the local</p> <p>12 market, it is our opinion that a cell tower at the East</p> <p>13 Gate pool will lower the value of the homes surrounding it</p> <p>14 and beyond, and it does not serve in the best interest of</p> <p>15 the local community and therefore, is not the best use of</p> <p>16 the land. That's their letter. And again, I don't really</p> <p>17 think we're going to discuss home values here. I really</p> <p>18 would challenge you to find any other people that --</p> <p>19 besides the local, residential real estate company right</p> <p>20 down the street, to ask that question. They are intimately</p> <p>21 involved in the community. They understand it more so, I</p> <p>22 think, than anybody else. In that letter -- I think of the</p> <p>23 cover letter I said nine because I think, as everyone else</p> <p>24 was confused by the signatures, there are 15 or 16 agents</p> <p>25 who signed that. I think that's a pretty powerful statement</p>

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6 (700 to 703)

<p>700</p> <p>1 for what we are discussing here today. You know, I think 2 the other quick factors that I would like to point out is - 3 - and I'm not sure if I'm even supposed to point this out 4 or not -- 5 TAMMY CITARAMANIS: Just say what you need to say and 6 if there is an objection, we will address it then. 7 BRIAN PASHKOFF: Okay. So another factor that I think 8 that you need to understand is how the EGR board 9 unilaterally decided to go under -- 10 TAMMY CITARAMANIS: Yeah, that's -- 11 BRIAN PASHKOFF: To undergo this process and sign a 12 lease. 13 THOMAS BARNARD: (Inaudible) this objection 14 (inaudible). 15 TAMMY CITARAMANIS: Right. I mean, that's the 16 objections -- would you here at the last hearing? 17 BRIAN PASHKOFF: I was here for an hour -- 18 TAMMY CITARAMANIS: Okay. 19 BRIAN PASHKOFF: At the first or second one, I think. 20 TAMMY CITARAMANIS: There was a motion to preclude 21 information with regards to how they entered into the lease 22 as well as the -- whether they duly elected their corporate 23 structure (inaudible). 24 BRIAN PASHKOFF: Yeah, I know. And I think that's not 25 the point that I want to make and I'm not sure if again --</p>	<p>702</p> <p>1 THOMAS BARNARD: No. 2 CATHY BORTEN: No questions. 3 TAMMY CITARAMANIS: Any questions from-- no questions 4 from anybody. All right. Well, thank you very much for 5 coming out. (Inaudible). 6 CATHY BORTEN: (Inaudible). 7 TAMMY CITARAMANIS: And I -- yes. 8 CATHY BORTEN: I'm sorry. And I know that we wanted to 9 get Mr. Pashkoff on the stand because he had to leave, but 10 we do have a preliminary matter based on something Mr. Chen 11 filed this week. So I didn't know if you wanted to get that 12 out of the way. 13 TAMMY CITARAMANIS: We're going to address that after 14 we do the individuals. 15 CATHY BORTEN: Okay. Fine. Thank you. 16 TAMMY CITARAMANIS: They been waiting patiently and 17 I've told them they could go and I'm not going to push them 18 off anymore. So -- but I have that on my list. And you were 19 going to mention something. I cut you off. You just -- 20 yeah. 21 BRIAN PASHKOFF: Am I okay to go? 22 TAMMY CITARAMANIS: Yes, you can leave. Thank you. 23 Before he started, you indicated something or did -- 24 BILL CHEN: You -- I was -- you did exactly what I was 25 going to do. I was going to suggest that it was Exhibit 77</p>
<p>701</p> <p>1 so the point that I wanted to bring up was, in our initial 2 meeting, the question was posed to the three gentlemen -- 3 and I'm blanking on their names; the EGR board members. 4 You know, why did they not ask or seek input from the 5 surrounding community, you know, when they were going 6 through this process? Why did they not seek input from the 7 surrounding community? And the answer that we received was, 8 we don't have to -- and this is -- I'm sorry, I believe 9 this is a quote. We don't have to ask -- 10 THOMAS BARNARD: Objection. (Inaudible). 11 TAMMY CITARAMANIS: This is beyond the scope of these 12 proceedings. 13 BRIAN PASHKOFF: Okay. Fair enough. Well, then I guess 14 I don't really have anything else to say other than the -- 15 I have submitted this letter. You've seen the letter. And 16 so other than that, I believe that the -- we're talking 17 about the value of the property and that's the main concern 18 of everybody in here. Again, I will just sum up by saying 19 that I don't think there is any better people to go to than 20 the local real estate agents who deal with his market on a 21 daily basis. 22 TAMMY CITARAMANIS: Okay. Well, thank you. (Inaudible) 23 questions. 24 THOMAS BARNARD: No questions. 25 TAMMY CITARAMANIS: No questions from (inaudible)?</p>	<p>703</p> <p>1 and make this one 77(a), but you were ahead of me. So 2 (inaudible). 3 TAMMY CITARAMANIS: Okay. All right. Okay. So at this 4 point, I can just take the next person who wants to come or 5 I can start calling names or -- okay. I've got three hands 6 now. 7 MALE VOICE: Madam Examiner, this gentleman needs to 8 leave by 10:30. 9 TAMMY CITARAMANIS: Okay. And your name is? 10 ALAN PRIVOT: Alan Privot (inaudible). 11 TAMMY CITARAMANIS: Okay. Does anybody -- do you have 12 a problem with Mr. Privot going before you all? Okay. 13 Because I'm happy to accommodate whatever needs be 14 accommodated. So that's not a problem, the, not Mr. Privot 15 and we will do this again in a few moments. 16 ALAN PRIVOT: Thank you. 17 TAMMY CITARAMANIS: Let's move that (inaudible). Thank 18 you. Good morning. 19 ALAN PRIVOT: Good morning. 20 TAMMY CITARAMANIS: (inaudible). Do you promise to 21 tell the truth, the whole truth, and nothing but the truth 22 in your testimony under the penalty of perjury? 23 ALAN PRIVOT: Yes. 24 TAMMY CITARAMANIS: Okay, great. State your name and 25 address and give us --</p>

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7 (704 to 707)

<p>704</p> <p>1 ALAN PRIVOT: My name is Alan Privot. That's A-L-A-N. 2 The last name is, P-R-I-V-O-T. My address is 8310 Snow Hill 3 Lane, Potomac, Maryland. 4 TAMMY CITARAMANIS: Okay. You can go ahead and give 5 your testimony. 6 ALAN PRIVOT: I'll try to make it brief and try to be 7 non-repetitive. 8 TAMMY CITARAMANIS: Thank you. 9 ALAN PRIVOT: My wife and I have lived at this 10 address, this month, 44 years. I have raised two daughters 11 and I have two additional grandchildren that are living 12 with me in this house. The third generation. We were 13 bondholders of the original pool; \$1000.00. That has 14 disappeared and I never expect to see it again. However, I 15 believe that this neighborhood is a very valuable entity. 16 If you look at records, there are at least five original 17 members of this community who have transferred or sold 18 their houses to their children and that's fine. I think 19 it's great to see people that wanted to stay in there. I'm 20 heavily invested in this. Not only financially, but 21 emotionally. And I know that doesn't mean much to anyone 22 today. I believe that this -- I won't say monstrosity, 23 because it's probably -- whatever -- does not conform to 24 the neighborhood as people have stated previous. We've had 25 expert testimony; people that say that it's not harmonious.</p>	<p>706</p> <p>1 been any studies to allow that to happen. I don't know if 2 it violates, you know, any covenants for the County, for 3 the property usage or anything else, but it's traffic. It's 4 more traffic. Every morning you see people park there and 5 try to get in and out of the place. Has there been a 6 traffic study? I don't know. That said, I know -- whatever. 7 I really hope that you deny the application, request, or 8 waiver. There is no place to put this cell tower no matter 9 what the height is going to be. No matter how many slats 10 they put around it, no matter what they do, it's is going 11 to be there and then there is no control. (inaudible). 12 TAMMY CITARAMANIS: Okay. Does anybody have any 13 questions for Mr. Privot? 14 THOMAS BARNARD: No questions. 15 CATHY BORTEN: No questions. 16 TAMMY CITARAMANIS: Ms. Wetter. 17 CHERYL WETTER: Are you aware that the special 18 exception for bids parking by -- by nonmembers, it 19 specifically says it can only be members parking there? 20 ALAN PRIVOT: No, I'm not aware of that. 21 CHERYL WETTER: Oh, that's what the special exception 22 says. So East Gate is in violation of the special exception 23 at the moment. 24 GREG DIAMOND: Objections to the conclusion. 25 TAMMY CITARAMANIS: Sustained. That would be certainly</p>
<p>705</p> <p>1 But what really bothers me, is that I don't think there has 2 ever been shown properly, that there is a need for this 3 cell tower. My cell service is fine. The residents' cell 4 service is fine. We've had experts say that, oh, this is 5 covered and that is covered and everything else. It's like, 6 who do I believe? This side or that side? No matter what 7 somebody says, somebody else says something different. I 8 don't know who you are to believe. I don't know how you are 9 going to make a decision. I just feel that if we put this, 10 or if you allow this to be put in -- they've talked about 11 various heights; 80 feet, 84 feet, 89 feet, 155 feet, 190 12 feet. No matter what's put in, once you approve, or once 13 this is approved -- if it is approved, there are no 14 controls over what Verizon can do. It's there. They can add 15 as many or as high -- as much as they want to go. Everybody 16 has talked about real estate values. There has been expert 17 testimony just this moment. You know, one side says, oh, 18 it's not going to be impacted. It's going to be just fine. 19 Other people will tell you that their houses are going to 20 be worthless. That's not going to happen, but it will be 21 worth less than what it is now. There's been expert 22 testimony on so many issues that are in dispute. I just 23 find it mind-boggling. Recently, we found out that the East 24 Gate Recreation Association has rented out the whole 25 parking lot to a school. I don't know that there's ever</p>	<p>707</p> <p>1 something you could file, but it's not part of these 2 proceedings. I think she was just trying to point it out to 3 Mr. Privot. Mr. Chen, did you have any questions? Ms. Lee? 4 Does anybody in the audience have a question? Okay. All 5 right. Thank you Mr. Privot for your time and coming out. 6 Okay. 7 ALAN PRIVOT: I thank you very, very much for allowing 8 me to testify. 9 TAMMY CITARAMANIS: Absolutely. 10 ALAN PRIVOT: Thank you. 11 TAMMY CITARAMANIS: Okay. So Ms. Wetter, did you want 12 to -- did you want to do your statement now? 13 CHERYL WETTER: If I could. 14 TAMMY CITARAMANIS: Okay. 15 CHERYL WETTER: Is there -- let me just ask real 16 quick; is there anybody else in the audience as a time 17 constraint that would like to ask Ms. Wetter if you could 18 go in front of her? 19 CHERYL WETTER: I'm sorry, what? 20 TAMMY CITARAMANIS: I was just asking the audience if 21 there was anybody else who had a time constraint and 22 nobody's raising their hand so it looks like you're good to 23 go. 24 CHERYL WETTER: Okay. Is this on? Okay. 25 TAMMY CITARAMANIS: Let me just mark this in, because</p>



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8 (708 to 711)

708	710
<p>1 --</p> <p>2 CHERYL WETTER: I did not (inaudible) numbers because</p> <p>3 I did not know where I would be in the order.</p> <p>4 TAMMY CITARAMANIS: Okay.</p> <p>5 CHERYL WETTER: (Inaudible).</p> <p>6 TAMMY CITARAMANIS: Okay. So mark the hearing</p> <p>7 testimony 233, and the attachment you just gave me, that's</p> <p>8 233(a). And then I'm going to swear you in and then I'm</p> <p>9 going to ask you a question about this. Do promise to tell</p> <p>10 the truth, the whole truth, and nothing but the truth in</p> <p>11 your testimony under the penalty of perjury?</p> <p>12 CHERYL WETTER: I do.</p> <p>13 TAMMY CITARAMANIS: Please state your name and your</p> <p>14 address.</p> <p>15 CHERYL WETTER: Cheryl Wetter; 6 Snug Hill Court,</p> <p>16 Potomac, Maryland 20854. And that's C-H-E-R-Y-L, W-E-T-T-E-</p> <p>17 R.</p> <p>18 TAMMY CITARAMANIS: Okay. So you have handed me a</p> <p>19 really long statement. Was it your intent to read every</p> <p>20 page of this?</p> <p>21 CHERYL WETTER: No. The 20 pages which are double</p> <p>22 spaced.</p> <p>23 TAMMY CITARAMANIS: Is there -- did you need to read</p> <p>24 all of this?</p> <p>25 THOMAS BARNARD: (Inaudible) object (inaudible) a</p>	<p>1 testimony about the landscaping and it's from (inaudible).</p> <p>2 TAMMY CITARAMANIS: Inaudible.</p> <p>3 CHERYL WETTER: Okay.</p> <p>4 TAMMY CITARAMANIS: So go ahead with your testimony.</p> <p>5 CHERYL WETTER: Okay. Applicant Verizon seeks a</p> <p>6 conditional use with setback waiver exception to install an</p> <p>7 89 foot tower on the East Gate Recreation Association</p> <p>8 property at 10200 Gainsborough Road, Potomac, Maryland.</p> <p>9 Applicant must prove need for the conditional use. Even</p> <p>10 though this petition has been recommended by the TFCG the</p> <p>11 board must make -- and this is in quotes; the board must</p> <p>12 make a separate and independent finding as to need a</p> <p>13 location of the facility. The applicant must submit</p> <p>14 evidence sufficient to demonstrate the need for the</p> <p>15 proposed facility, 59-G.2.58 telecommunications facility</p> <p>16 and that was the case (inaudible) 01 page 34E, which is in</p> <p>17 the back of this. Further, applicant must prove compliance</p> <p>18 with section 59-G.1.21 of the zoning ordinance, which</p> <p>19 states in pertinent part that, "a special exception may be</p> <p>20 granted when the board or the hearing examiner finds from a</p> <p>21 preponderance of the evidence, that the proposed use</p> <p>22 complies with the standard and requirements set forth in</p> <p>23 division 59-G.2" and that's cited from OZHA case number</p> <p>24 1201, page 26, also attached. Further, the fact that a</p> <p>25 proposed use complies with all specific standards and</p>
709	711
<p>1 written and oral testimony. You can't put submit written</p> <p>2 and oral of the same material twice, but I'm just</p> <p>3 (inaudible) objection (inaudible).</p> <p>4 TAMMY CITARAMANIS: Your objection is noted, but we do</p> <p>5 have a number of duplicate letters. And at this point, this</p> <p>6 is her opportunity and we're going to be patient. Okay?</p> <p>7 THOMAS BARNARD: Okay.</p> <p>8 TAMMY CITARAMANIS: Your objection is noted. Ms.</p> <p>9 Borten.</p> <p>10 CATHY BORTEN: (Inaudible) 233(a). I'm just wondering</p> <p>11 what that is.</p> <p>12 TAMMY CITARAMANIS: Oh, okay. Okay. Well, this is --</p> <p>13 CHERYL WETTER: 233(a), okay. Is that what you meant?</p> <p>14 A?</p> <p>15 TAMMY CITARAMANIS: Yes.</p> <p>16 CHERYL WETTER: Okay.</p> <p>17 TAMMY CITARAMANIS: So this part and then there is --</p> <p>18 CHERYL WETTER: Did you put them -- no, I didn't give</p> <p>19 them A.</p> <p>20 TAMMY CITARAMANIS: Okay.</p> <p>21 CHERYL WETTER: I didn't get copies of them</p> <p>22 TAMMY CITARAMANIS: Here. Why don't you give that to</p> <p>23 them and we will just make copies. They need to have it and</p> <p>24 I will look at it after your testimony, but --</p> <p>25 CHERYL WETTER: (Inaudible). What it is, is the</p>	<p>1 requirements to grant a special exception, does not create</p> <p>2 a presumption that the use is compatible with nearby</p> <p>3 properties and in itself is sufficient to require a special</p> <p>4 exception to be granted; 59-G.1.21.a.2. As precedent for</p> <p>5 this case, I cite the November 21, 2011, OZHA case number</p> <p>6 1201, Twin Farms Club Inc. and T-Mobile North East LLC. In</p> <p>7 that case, Hearing Examiner Ms. CitaraManis, stated that</p> <p>8 the applicant was charging -- was charged with proving the</p> <p>9 tower installation, "will not be detrimental to the use,</p> <p>10 peaceful enjoyment, economic value, or development of</p> <p>11 surrounding properties or the general neighborhood of the</p> <p>12 subject site, irrespective of any adverse effects the use</p> <p>13 might have if established elsewhere in the zone; 59-</p> <p>14 G.1.2.1.a.5."</p> <p>15 GREG DIAMOND: Just a brief objection. Just a</p> <p>16 continuing objection to the reference to pre-2014 zoning</p> <p>17 ordinance, which is not relevant to this case. (Inaudible)</p> <p>18 she wants to read --</p> <p>19 TAMMY CITARAMANIS: So noted. Do you understand what</p> <p>20 he just said?</p> <p>21 CHERYL WETTER: Yes.</p> <p>22 TAMMY CITARAMANIS: Okay.</p> <p>23 CHERYL WETTER: To first address need. The need, the</p> <p>24 very reason to grant the request of conditional use must be</p> <p>25 the need of EGRA; otherwise, non-owner tower installation</p>

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9 (712 to 715)

<p>712</p> <p>1 request could be requested by a non-owner for any private 2 property. Public easements are provided to address the 3 needs of utilities for public use. Verizon is a utility 4 company. EGRA is a private corporation established to meet 5 the need and the intent only of the special exception S596, 6 and the intent of the Montgomery County (inaudible) and 7 agencies to better the lives of 384 residents buying homes 8 within the four East Gate communities, by providing them 9 with both the passive green space to enjoy at will, and the 10 potential of a swim/tennis club, which was built out and 11 has drawn the community together since opening its doors in 12 1979. Why would EGRA, the swim tennis corporation need a 13 tower? Presumably, landowners lease and become co- 14 applicants in the tower request for the monetary gains 15 generated by the land lease to the cell company. As has 16 been stated by this OZHA office, EGRA's financial needs and 17 source of income are not for OZHA to address or consider in 18 this conditional use request (inaudible) under the topic of 19 need. Applicant Verizon has never submitted written 20 complaints from EGRA or residents or customers about poor 21 coverage in the area. In fact, co-applicant EGRA is not a 22 cellular service provider and would not be in a position to 23 receive or address written complaints about cell coverage, 24 nor was EGRA established or granted a special exception to 25 provide a utility service or an upgrade to a utility</p>	<p>714</p> <p>1 hearing, the internal business of EGRA is not a 2 consideration for OZHA conditional use consideration. 3 Further, the director of EGRA who signed the lease with 4 Verizon stated at a public meeting at the Potomac library 5 on October 24 -- 6 GREG DIAMOND: I'm going to object (inaudible). 7 CHERYL WETTER: Okay. I will go on to the next 8 paragraph. 9 TAMMY CITARAMANIS: Sustained. 10 BILL CHEN: Excuse me. I object to the objection. 11 TAMMY CITARAMANIS: What is it? 12 BILL CHEN: There is nothing improper with where this 13 is going. The representation is made -- 14 CHERYL WETTER: (Inaudible) where they want to object. 15 TAMMY CITARAMANIS: What page are you on? 16 CHERYL WETTER: Four. 17 TAMMY CITARAMANIS: What paragraph (inaudible)? 18 CHERYL WETTER: One, two, three; third one down. 19 Further, the director -- 20 GREG DIAMOND: (Inaudible) she is saying what other 21 people said in places that -- 22 BILL CHEN: No, she is saying that Verizon said that - 23 - 24 TAMMY CITARAMANIS: No, everybody. Everybody wait. 25 Okay. Go ahead and read it and you can object. So noted</p>
<p>713</p> <p>1 service to the community where it is located. In fact, co- 2 applicant is a corporation with a special exception granted 3 only to allow it to do business as a community swim and 4 tennis club. EGRA could not submit a need for conditional 5 use approval to enhance itself or the community with better 6 cell coverage. EGRA's sole purpose, is to provide a swim 7 and tennis facility to the neighborhood, is not in any way 8 harmed or stifled by Verizon's claim that Verizon cannot 9 provide adequate service in the area. Certainly if the 10 single spokesman for EGRA who signed the lease with Verizon 11 complained that he as an individual did not receive 12 satisfactory Verizon service at the site, that would not be 13 reason to grant a conditional use which would alter the 14 neighborhood for everyone else. The reason for granting a 15 conditional use and to so alter the site, must meet the 16 requirement of providing a need, an enhancement, or 17 correcting a problem at the site which harms the ability of 18 EGRA to provide its intended purpose. EGRA, the corporation 19 and swim and tennis facility, has demonstrated no need for 20 better service from Verizon to enhance its ability to carry 21 out its intended purpose; to be a community swim and tennis 22 club. If EGRA had not demonstrated a need for better 23 Verizon service and it cannot do that, what would EGRA's 24 need be to have become a co-applicant this request? As had 25 been clearly stated in writing the in the beginning of this</p>	<p>715</p> <p>1 that we've got hearsay everywhere and I will give it the 2 weight that it deserves and it's her rendition of, I guess, 3 history that she has -- with regard to this case. 4 CHERYL WETTER: Further, the director of EGRA, who 5 signed a lease with Verizon, stated in a public meeting at 6 the Potomac library on October 24, 2016, that the 7 \$26,500.00 annual income from Verizon would not be enough 8 to make EGRA financially healthy. As has been made clear 9 throughout this case, the internal issues of EGRA are not 10 an issue for OZHA to address or base its decision on this 11 conditional use request. I submit that applicant Verizon 12 has never submitted evidence of complaints and that EGRA, 13 as co-applicant, as a corporate entity unable to complain 14 about cell needs, and in fact, the EGRA, the Corporation, 15 does not have a cell number associated with the facility. 16 EGRA operates with a traditional landline. Applicant and 17 co-applicant have not demonstrated a need for EGRA to meet 18 OZHA's requirements to seek this conditional use request. 19 B, (inaudible). To address the speed test that Mr. Paul 20 Dugan from Verizon cited at this hearing, Mr. Dugan said 21 that the cell phone users in the neighborhoods around EGRA 22 were only getting one or less megabytes per second and they 23 should be getting 22 to 25. He said he tested this by 24 driving around and downloading speeds on all of our streets 25 with a cell phone. I am a Verizon customer and since Mr.</p>

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10 (716 to 719)

<p>716</p> <p>1 Dugan's claim on September 26, 2017, I performed speed 2 tests using Ookla speed test and I generally got around 18 3 on the download and three on an upload. Ookla is the FCC 4 speed test app for iPhone and android phones. Going to the 5 FCC speed test app will deliver the Ookla or Ookla; I'm 6 not sure how it's pronounced, app. Also going to the 7 Verizon Wireless homepage to request a speed test will take 8 you to the same Ookla supported app. Verizon Wireless's 9 homepage states that Verizon Wireless should experience the 10 following -- this is in quotes -- should experience the 11 following speeds unless such speeds are otherwise managed 12 to video optimization practices. 4G LTE network, typical 13 download speeds of 5 to 12 MB per second and upload speeds 14 of 2 to 5 Mbps. Verizon pages two of five and three of five 15 are attached to the back of this testimony. In a break on 16 our Wednesday, September 22, 2015 hearing, I did ask Mr. 17 Duggan, with permission from Mr. Diamond, to verify that I 18 had heard correctly in his testimony that we were getting 19 one or even less and should be in the range of 22 to 26. 20 Mr. Dugan said, yes, I had heard correctly. I asked him if 21 the number one -- if the one number referred to uploads 22 which would typically be much lower than download. Mr. 23 Dugan said uploads and downloads should be the same. 24 Neither Verizon nor the industry claim download speeds and 25 upload speeds will be the same. Uploads will generally be</p>	<p>718</p> <p>1 month, if data usage on my phone is very high, my carrier 2 could slow my speed to more equally direct the local 3 traffic in all that area. So the carriers do legally 4 control the ability to dial down speed. It is possible that 5 Mr. Dugan's tests were performed while he was downloading 6 other data and performing the test simultaneously, 7 something the test sites tell you not to do. Or his test 8 could have been performed at a time when Verizon was 9 intentionally providing throttled speeds. Verizon refers to 10 throttling as optimization. I believe speed is only 11 supposed to be used too -- I believe speed is only supposed 12 to be throttled to achieve the best coverage for most 13 customers, but could in theory; produce results to 14 demonstrate need to install a tower for increased speeds in 15 an area. E, another alternative to eliminate decreased 16 speed due to throttling is for Verizon customer to 17 downgrade from a Verizon unlimited data plan to a plan of 18 lesser total data usage. Verizon targets the unlimited data 19 plan owners to throttle. Again, Verizon has acknowledged 20 they do this and it is not illegal or a secret. Page 3 of 5 21 of the attached Verizon website explanation of 22 optimization. Downgrading one's plan would decrease the 23 customers plan bill and might actually increase the speed 24 on the average for that customer. Downgrading from a 25 Verizon unlimited plan is something the industry reviewers</p>
<p>717</p> <p>1 much slower because we are not sending out massive data 2 from our cell phones, but do often receive it and so need 3 that speed in downloading. Mr. Diamond then said Mr. Dugan 4 would not be answering any more of my questions and that he 5 would not be available for any further testimony at this 6 hearing. I submit the attached Verizon Wireless pages 2 to 7 5, and 3 of 5, on expectations of speed. C under need. I 8 continued to test and I really have not had and do not 9 currently have complaints about the speeds and service I 10 currently experience as a Verizon customer. I asked 11 neighbors who have Sprint and AT&amp;T as carriers to test 12 their phones. They live on the same street I live on -- I 13 do and performed their tests in their yards at 14 approximately the same time I did. Their speeds were better 15 than Verizon's. So switching from Verizon to Sprint or AT&amp;T 16 is an alternative available to us if someone is not happy 17 with Verizon speeds. That would solve the need issue for 18 anyone not happy with Verizon's speed without having to 19 look at an 89 foot tower. D; another alternative and issue 20 about speed data is the throttling of data speed, which the 21 carriers can perform. To meet FCC requirements of providing 22 the best coverage to the most, carriers can slow speeds, A, 23 at times of heaviest usage and/or two in certain places, 24 and/or three to an individual whose data usage is very high 25 for that billing cycle. For example, at the end of the</p>	<p>719</p> <p>1 recommend. Checking one's data usage to determine if one 2 ever comes close to using the data allowable will allow one 3 to determine if dropping to a lesser plan would actually 4 provide better speed through Verizon. Again, if there was a 5 speed problem, this solution would not necessitate building 6 a tower. Special exception -- special exception S596 was 7 granted to address the need to build EGRA the swim/tennis 8 club always envisioned for the enjoyment of the 384 9 residents to whom the land was dedicated. Special exception 10 S596 was never granted to Verizon. Verizon's request now 11 does not meet the requirement of need for any service 12 envisioned or promised with the original land use covenants 13 or special exception, S596. The conditional use to be 14 placed over the special exception cannot deny or reduce the 15 intent or harm the quality of intent provided by the 16 original exception. Verizon proposed tower could minimize 17 and severely limit, if not negate entirely, the purpose and 18 intent of the special exception S596 to provide a swim and 19 tennis club to enhance the lives of the neighborhood and to 20 fulfill the promised intent of the Montgomery County land 21 planners and agencies who made that use the dedication, a 22 requirement of the building permits for the developers in 23 the four East Gate communities. Anyone without Verizon's 24 sole interest would see that Verizon's tower would negate 25 the intent of these special exception S596, specifically to</p>

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11 (720 to 723)

<p style="text-align: right;">720</p> <p>1 provide the 384 homeowners with the ability to enjoy the 2 envisioned swim and tennis club in their midst and to 3 enhance their lives and to enhance the value of their 4 properties. 50-9.j.1.2.1 (inaudible). Public sentiment 5 provided to OZHA in this case clearly, dynamically, and 6 very emotionally demonstrates how opposed the community the 7 EFRA serves, feels about this requested conditional use of 8 this dedicated property. Number two; now to address the 9 issue of whether the proposed tower will be detrimental to 10 the use, peaceful enjoyment, economic value, or development 11 of surrounding properties or the general neighborhood at 12 the subject site irrespective of any adverse affect the use 13 might have if established elsewhere in the zone. 59- 14 G.1.2.1.a.5. The most significant issue regarding a 15 telecommunications facility in a residential zone is their 16 potential visual impact upon the neighbors. OZHA case 17 number 1201, November 21, 2011, page 27C attached. Impact 18 of the proposed facility on the neighborhood hearing, 19 examiner Tammy Sataramanis. As hearing examiner Sataramanis 20 cited on page 34E, attached, need for the proposed facility 21 of the above OZHA 1201 case, even though this petition has 22 been recommended by TOCG, the Board of Appeals must make a 23 separate, independent finding as to need and location of 24 the facility; 59-G.2.5.8.a.5, telecommunications facility. 25 In OZHA case number 1201, page 66, conclusion, the hearing</p>	<p style="text-align: right;">722</p> <p>1 TAMMY CITARAMANIS: Noted. Go ahead. 2 CHERYL WETTER: To ask Montgomery County to continue 3 to fulfill that promise that has been so integral in the 4 decision to buy a home in the East Gate communities and so 5 integral in bettering the community. We ask that Verizon's 6 request for a conditional use, which would so severely 7 alter the appearance, affect the safety of the 8 neighborhood, and degrade the visual effects of EGRA and 9 quite likely affect the economic values of our homes, be 10 denied. E; safety concerns. In the above OZHA case, number 11 1201, the hearing examiner also questioned the, quote, 12 fall, quote, information regarding towers. OZHA number 13 1201, pages 56 and 57 attached. Technical Staff found in 14 that case (inaudible) "while most telecommunication towers 15 are constructed to fall inwards if collapsing, the 16 potential hazard could exist if the adjacent tennis courts 17 were in use as the tower is within 10 feet of the existing 18 courts". An even worse situation exists in the case we are 19 now addressing at East Gate Recreation Association. The 20 tower in the East Gate -- in the EGRA case is located in 21 the parking lot across from a guard -- lifeguarding 22 treehouse. It will be within less than 10 feet of someone 23 walking to or from any parked cars to the pool house 24 entrance. Worse yet, it is within 10 feet of a child 25 getting on or off his bike at the bike rack situated within</p>
<p style="text-align: right;">721</p> <p>1 examiner concluded that the proposed use will not be in 2 harmony with the general character of the neighborhood. 3 Further, she found that the proposed facility will be 4 detrimental to the use, peaceful enjoyment, economic value, 5 or development of surrounding properties with a general 6 neighborhood of the subject site. The request for a tower 7 in OZHA case 1201 was denied on November 21, 2011, and Twin 8 Farm Swim and Tennis Club still exists. The request for a 9 cell tower at Oakview Swim and Tennis Club in Silver Spring 10 was granted to another examiner in OZHA in 2006. Oakview is 11 now an abandoned swim/tennis facility and presents ongoing 12 hazard to the community with its half-filled pool and 13 abandoned property. A; community reaction to the tower. We 14 have seen in the voluminous CU-T-17-01 file and three days 15 of hearings, how strongly opposed the neighborhood is to 16 the proposed tower. Testimony in writing and here in the 17 hearing show the emotional and overwhelming number of 18 neighborhood objections to the granting of permission for 19 Verizon's tower. For 44 years, neighbors have relied on the 20 granted promise of their land records and their expectation 21 of the concept and then the reality of EGRA as they saw it 22 was a promise to be protected by Montgomery County's land- 23 use and permitting departments and agencies. 24 CATHY BORTEN: Objection. 25 CHERYL WETTER: That is why we are here today --</p>	<p style="text-align: right;">723</p> <p>1 less than 10 feet of where the tower is proposed. Not only 2 could the tower fall on members playing in the tennis 3 courts, but our members or employees entering and exiting 4 their parked cars. It could fall on children parking their 5 bikes. Bike racks are intentionally located in the parking 6 lot across from the entry lifeguard house for the safety of 7 the young, short in stature bikes. The location is 8 necessary to keep children from having to get off their 9 bikes and walk through the parking lot where cars back up. 10 It is not an option to relocate the bike racks elsewhere. 11 Verizon's own site plan exhibit, 11AC1 signed off on 12 6/5/2017, show the bike racks 10 feet or less from the 13 tower base. The tower, or parts of it, could follow on 14 anyone, youth or adult, walking past the tower to enter or 15 exit the facility since the tower is proposed to go just 16 opposite the entry lifeguard house in the middle, 17 east/west, of the parking lot. Virtually everyone entering 18 EGRA's pool or tennis court will have to pass very close to 19 the proposed tower. The alternative site, which would not 20 necessitate a setback waiver, would necessitate everyone 21 entering the pool or tennis courts to pass within 10 feet 22 or less of the tower base. Number two; nine months of the 23 year, the EGRA property is not manned and it is tucked down 24 low into the neighborhood. There's no one there if a 25 pedestrian, adult, or child were to be injured by any tower</p>

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12 (724 to 727)

<p>724</p> <p>1 accident. It would only be when someone happened to go to 2 the facility that an accident would be discovered. Verizon 3 states that it monitors remotely, any problem. Can you tell 4 remotely that a child who has been hit by a piece of broken 5 debris that has fallen off the tower or would Verizon only 6 know that when it went out at some point to repair that 7 piece of fallen equipment? Does Verizon monitor and notify 8 emergency units if a child injures himself climbing 9 (inaudible) while climbing intention -- whoops. I have two 10 page 12's. Climbing into the equipment area to retrieve the 11 ball or hide or just to be an inquisitive child? Why add a 12 potentially very dangerous risk to an area that attracts 13 children if there is no good reason to add that risk to an 14 area not manned year-round? Number three some of the 15 landscaping that Verizon has proposed, specifically the red 16 -- the Asian red cedar and the willow will grow vertically 17 down into the ground of the public utility easement 18 (inaudible) potentially causing a utility line damage or if 19 the easement needs access, the screening would be 20 sacrificed and no longer provide the screening proposed in 21 this conditional use request; Exhibit 11(a), site plan. 22 Further, Cornell University, Clemson University 23 agricultural extension, and US Forestry sites state the 24 years to maturity for the proposed landscape plants. Easter 25 red cedar takes 20 to 30 years to reach 18 to 26 feet tall.</p>	<p>726</p> <p>1 the same path in very close proximity, probably within 10 2 feet or less to the tower. In a tower fall accident, the 3 bikers only alternative will be to veer into a road with a 4 45 mph speed limit. The Master Plan has further delineated 5 in a second bike lane; one with barriers to prevent auto 6 traffic from veering into the bike lane. The barriers would 7 also limit a biker trying to avoid a tower fall. The 8 further accident of course, is the potential tower strike 9 potential into traffic on Democracy Boulevard; attach 10 master bike plan (inaudible) for Democracy is attached to 11 the back of this. Number five; on the topic of the falls 12 zone safety. Verizon testified at this hearing that no one 13 has conducted any ground core studies to see if the land is 14 stable enough or as stable as it might have once been to 15 safely support the proposed 89 foot structure. The original 16 site was 20 feet higher with a very gentle slope from Snug 17 Hill lane to the area of today's Democracy Boulevard. To 18 lessen the visual impact and noise impact on the 19 neighborhood, the facility was dug down 20 to 30 feet and 20 then the excavated dirt was placed to create the berm 21 surrounding EGRA on Snug Hill Lane and on Gainsborough 22 Road. The excavation revealed a buried construction truck 23 and other construction equipment which had to be hauled 24 away. I have not seen any evidence that the ground has been 25 tested to support an 89 foot structure. In testimony</p>
<p>725</p> <p>1 They grow about 12 inches a year. Miss Helen American 2 Holly, 12 to 24 inches per year. So at best, 10 years to 3 grow to 20 feet tall and it is pyramidal, so narrow at the 4 top and providing little screening help. The Willow Oak 13 5 to 24 inches per year. So 25 feet in 12 years and deciduous 6 so it only offers coverage from May till September. The 7 green (inaudible) sugar maple, 12 inches per year. So 30 8 years to reach 30 feet, and again, deciduous, so only 9 offers coverage from May to September. Unlike the Verizon 10 evergreen tree pole, which is already 89 feet at planting, 11 half of the live tree landscape -- half of the live tree 12 landscaping that Verizon offers is deciduous, providing 13 coverage only during the summer months. And all the 14 proposed landscaping will take minimal, 20 to 30 is to 15 provide individual coverage. Number four, the Master Plan 16 issue. Further, to cite another potential safety hazard, 17 the Montgomery County Master Plan has a proposed two-way 18 separate (inaudible) lane, see the attached; along the 19 north side of the Democracy Boulevard from Seven Locks Road 20 to Falls Road. This would carry it adjacent to the south 21 border property line of East Gate Recreation Association, 22 carrying a public safe bike path right next to and under 23 the tower. It is a two way bike path to conserve road 24 space. By definition, a two-way bike path means that there 25 will be bikers traveling both eastbound and westbound on</p>	<p>727</p> <p>1 provided by Verizon's Mr. Siverling, he stated in this 2 hearing that no technical ground studies have been 3 conducted and that would come further down the road. 4 Surely, safety should be uppermost in everyone's mind when 5 requesting or contemplating approving such a large tower 6 structure on ground use by children as well as adults. C; 7 infringement of an individual homeowner's enjoyment. 8 Setback measurements provided have always been from the 9 base of the tower structure to the nearest dwelling. 10 Dwellings are defined in the zoning code as buildings, not 11 as lot lines. If the proposed tower does not meet the 12 required setback now, let us consider the scenario; what if 13 the nearest homeowners to the south decide to build 14 additions to the rear of their homes? The infringement on 15 their setback protection enjoyment would be even greater as 16 the setback requirement is diminished by the addition of 17 bringing the dwelling even closer to the tower. My 18 conclusion; the requirement and the need of this tower on 19 the property has not been met. Verizon may have need for a 20 tower (inaudible), but the co-applicant, EGRA, does not 21 have any. Co-applicant EGRA has not demonstrated a need for 22 better service to enhance the needs for which special 23 exception S596 was granted. In fact, residents seem to find 24 service adequate. If better service is desired, it can 25 easily be met with another carrier or another Verizon plan.</p>

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13 (728 to 731)

<p style="text-align: right;">728</p> <p>1 If such a need existed, it does not require tower for a 2 solution. The special exception S596 for EGRA was based on 3 a recreational use promised to the homeowners to whom this 4 land was dedicated, not the needs of Verizon. Without the 5 owner, EGRA, demonstrating a need for this tower, there is 6 no reason for EGRA to join Verizon as a co-applicant. EGRA 7 has not demonstrated the need for tower and without need 8 has no clear or obvious reason to join Verizon as co- 9 applicant. And without co-applicant EGRA, Verizon cannot 10 see this conditional use. Co-applicant verbalized at one 11 point that EGRA at a need for income. That is not an issue 12 for OZHA. There are avenues outside of OZHA to address that 13 need without erecting a tower. Further, co-applicant's 14 representative stated that that meeting that the \$26,500.00 15 annual income from Verizon would not be enough to keep EGRA 16 fiscally sound. So preservation of EGRA is not a need 17 sought by EGRA, and in fact, if members left because of the 18 tower, that revenue would be diminished by the amount of 19 dues lost. The proposed 25 year Verizon lease would bind 20 and prevent any attempts to save or to restart EGRA. And 21 again, this has been stated (inaudible). 22 THOMAS BARNARD: Objection. I'm going to object. It's 23 speculative. 24 TAMMY CITARAMANIS: I'm going to allow it. Your 25 objection is noted. Go ahead Ms. Wetter.</p>	<p style="text-align: right;">730</p> <p>1 file so that the intent was met. Neighbors have relied on 2 the swim and tennis club for enjoyment and for bringing 3 them together with other neighbors and for enhancing the 4 value of their homes. Neighborhoods are better when people 5 know each other, work together, shares many common goals as 6 possible. EGRA is a site that drew people together one that 7 might otherwise not have come together. It has brought us 8 together (inaudible) safe little cul-de-sacs to join other 9 neighbors. It has also provided passive enjoyment and a 10 sense of economic value in terms of enhancement when 11 homeowners moved and sold their homes. There was good 12 reason to grant special exception S596. The intent of that 13 land is dedication was fulfilled by that special exception. 14 EGRA's swim and tennis club was built and it brought 15 neighbors together. The club has enhanced the community and 16 the lives of the individuals. Verizon's conditional use 17 request has made us realize voice just what our community 18 means to us. There is no good need to grant the conditional 19 use exception being sought today by Verizon. It is purely a 20 business deal for Verizon. It does not enhance or 21 complement the S596 special exception and it certainly does 22 not enhance EGRA or the lives of the neighbors to whom the 23 land -- the EGRA land was dedicated. EGRA, the necessary 24 co-applicant as Verizon does not own the land, has not 25 demonstrated a need for the proposed Verizon tower or that</p>
<p style="text-align: right;">729</p> <p>1 CHERYL WETTER: May I continue? 2 TAMMY CITARAMANIS: Yes, please. 3 CHERYL WETTER: Okay. The proposed 25 year Verizon 4 lease would bind and prevent any attempts to save or to 5 restart EGRA. And again, as has been stated, any financial 6 need of EGRA is an internal, private issue not to be 7 addressed by OZHA and not to be used to approve or deny 8 this request. Co-applicant EGRA has no need for the tower 9 and this request for tower could negatively impact the 10 purpose and future existence of EGRA. Would approval of 11 Verizon's request severely impact on the intent of the S596 12 special exception? Yes. The intent of granting the special 13 exception, S596, was to provide the promised recreation 14 center that so many homeowners desired when they purchased 15 their homes in East Gate homeowners divisions, whether it 16 was before the facility was built out or whether it has 17 been with the facility stands today, it is an integral part 18 of the community as it was intended to be. Emotional 19 testimonies have been made in this hearing in support of 20 the EGRA by residents of the communities. The intent by 21 land planners in the '70s was to draw residents together to 22 provide a venue and physical space to make community 23 stronger. That need, to strengthen and enhance our 24 communities, is just as important today as it was 45 years 25 ago and testimony provided in this hearing and in the OZHA</p>	<p style="text-align: right;">731</p> <p>1 it would in any way enhance the intended use of the 2 original S596 special exception. To the contrary, approval 3 of Verizon's conditional use request could destroy the 4 intent and purpose of S596. The tower would not in any way 5 enhance the visual effect of the site nor enhance the 6 purpose for which EGRA was created. To the contrary, a 7 Franken-pole, as Verizon wants, dubbed the suggested tower, 8 would produce a negative visual impact on the community. In 9 size, height, and visual appearance, it does not blend in 10 with the neighborhood. Approval of this tower could well 11 bring about the demise of EGRA. It could undo what the 12 Montgomery County land planners and agencies sought to 13 accomplish in one of Montgomery County's neighborhoods; to 14 make Montgomery County a balanced, resident friendly, 15 strong County, neighborhood by neighborhood. The tower 16 would produce a negative visual effect, a very negative 17 safety potential, and a negative effect on the peaceful 18 enjoyment of this land by surrounding neighbors. That 19 negative impact has been demonstrated by signs in the 20 neighborhood, by the large crowd of opponents attended this 21 meeting for three days, and by the scale of opposition 22 submitted in writing as to the OZHA office. Further, 23 approval of this conditional use request poses a potential 24 safety hazard to the community at large. It poses a 25 potential safety hazard to bikers using the future Master</p>

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14 (732 to 735)

<p style="text-align: right;">732</p> <p>1 Plan bike path. Verizon's request does not meet the 2 requirements of zoning code 59-G.1.2.1 and 59-G.2.5.8. A, 3 this conditional use request does not pass the test of 4 need. B, the request does not pass the test that it does 5 not negatively impact on the neighborhood. C, this request 6 does not pass the test that it not negatively impact on the 7 special exception S596. And D, this request does not pass 8 the test of not negatively impacting on the Montgomery 9 County proposed safe bike way. For lack of need, for 10 negatively impacting on the neighborhood, and for creating 11 an unnecessary potential safety hazard to members, 12 residents, and bikers, Verizon's conditional use request, 13 CU-T-17-01, for a tower on the East Gate Recreation 14 Association property should be denied. Respectfully 15 submitted, Cheryl Wetter, 61104 Potomac. I also have, and I 16 have not been able to print it out, but I could do it by 17 email, on cell phone, all those speed tests. I can send to 18 you or to anyone, and I have them from (inaudible) AT&amp;T 19 (inaudible) speed tests that were done too and I can submit 20 them that way. I can't really print them out. 21 TAMMY CITARAMANIS: I was going to say, is it 22 something you can print out or put it on a CD? 23 CHERYL WETTER: Okay. Let me -- when I go home, can I 24 do that? I think -- I could transfer it right now if you 25 want, but when I get home I could try to do that and print</p>	<p style="text-align: right;">734</p> <p>1 they have some questions. 2 CHERYL WETTER: Okay. 3 TAMMY CITARAMANIS: And we can circle back to that. 4 THOMAS BARNARD: I would object is (inaudible). 5 TAMMY CITARAMANIS: You object to -- 6 THOMAS BARNARD: Cumulative. 7 TAMMY CITARAMANIS: Cumulative, sorry. (inaudible). 8 THOMAS BARNARD: (inaudible). 9 TAMMY CITARAMANIS: Okay. Questions? Cross exam? Is 10 that the end of your -- 11 CHERYL WETTER: Mm-hm (affirmative). 12 TAMMY CITARAMANIS: Okay. So now they're going to ask 13 you questions. 14 CHERYL WETTER: Okay. 15 GREG DIAMOND: So I think I will start. Greg Diamond 16 on behalf of the applicant Cellco Partnership. You have 17 referred, in your written testimony and oral testimony, to 18 Verizon, the public utility. Is that correct? 19 CHERYL WETTER: Yes. 20 GREG DIAMOND: And is it your position today that the 21 applicant is a public utility? 22 CHERYL WETTER: I believe Verizon is. I could be wrong 23 on that. I believe Verizon is a public utility. 24 GREG DIAMOND: Okay. So is it fair to say that there 25 is a landline company that does business as Verizon that</p>
<p style="text-align: right;">733</p> <p>1 it out. 2 TAMMY CITARAMANIS: Well, I don't know where you would 3 transfer it to? 4 CHERYL WETTER: Do you have an OZHA email? 5 TAMMY CITARAMANIS: It would be -- it needs to be 6 something that can go into the record; written. 7 CHERYL WETTER: Written; oh, yeah. Well, let me see if 8 I can download it at home and then send it. Then I will 9 send it to the OZHA office later today. 10 TAMMY CITARAMANIS: Okay. 11 CHERYL WETTER: Okay. I also have downloads from other 12 people from AT&amp;T and from T-Mobile and from Sprint for the 13 area. 14 TAMMY CITARAMANIS: From other people? 15 CHERYL WETTER: Right. Other people in the area, but 16 we just wanted to see if Verizon was different from the 17 others. What the -- 18 TAMMY CITARAMANIS: Any objections to -- I mean, I'm 19 not sure -- 20 CHERYL WETTER: Okay. (Inaudible). 21 GREG DIAMOND: Since the witness already testified to 22 what she did in her test, maybe it would be clear on cross 23 examination that it -- maybe it doesn't become necessary. I 24 don't know. 25 TAMMY CITARAMANIS: All right. Well, let's see after</p>	<p style="text-align: right;">735</p> <p>1 provides wired telephone service to people's homes; that's 2 right, isn't it? 3 CHERYL WETTER: Yes. 4 GREG DIAMOND: And that's a public utility regulated 5 by the State of Maryland. 6 CHERYL WETTER: Mm-hm (affirmative). 7 GREG DIAMOND: And the applicant in this case is 8 Cellco Partnership, which is an FCC license company that is 9 not a public utility. Isn't that correct? 10 CHERYL WETTER: I don't think it is because you say 11 DBA, doing business as, Verizon. 12 GREG DIAMOND: Doing business as Verizon Wireless. 13 CHERYL WETTER: Okay. 14 GREG DIAMOND: That's just the DBA name. The name of 15 the legal entity that is an applicant in this case is 16 Cellco Partnership. Isn't that correct? 17 CHERYL WETTER: I don't know. I would have to look at 18 the original filing to see who filed it. 19 GREG DIAMOND: Is it fair to say that you are not a 20 professional engineer? 21 CHERYL WETTER: Correct. 22 GREG DIAMOND: And can you describe for the Hearing 23 Examiner what training you've had in radio engineering? 24 CHERYL WETTER: I don't have any and I don't profess 25 to be an expert. That's why I went to the Verizon homepage</p>

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15 (736 to 739)

<p>736</p> <p>1 and to the FCC homepage to get my information. 2 GREG DIAMOND: Have you ever designed a radio 3 communications network for any of the -- 4 CHERYL WETTER: No. 5 GREG DIAMOND: Please let me answer the question -- 6 ask -- 7 CHERYL WETTER: Okay. 8 GREG DIAMOND: Have you ever designed a radio 9 communications network for any of the major wireless 10 carriers doing business in the United States of America? 11 CHERYL WETTER: No. 12 TAMMY CITARAMANIS: Please. 13 GREG DIAMOND: No further questions. 14 TAMMY CITARAMANIS: Okay. 15 THOMAS BARNARD: A few questions. Tom Barnard. What 16 are the things -- am I correct that one of the points you 17 made in your presentation was that EGRA did not show a need 18 for cell phone covers because it only had a landline at its 19 facility? 20 CHERYL WETTER: No, it didn't show a need because it 21 showed no complaints or anything. It does only have a 22 landline. 23 THOMAS BARNARD: And the point of mentioning that is 24 because they don't have a need for cell phone coverage if 25 they have a landline.</p>	<p>738</p> <p>1 CHERYL WETTER: Yes, and they have not issued any 2 complaints. 3 THOMAS BARNARD: Would you agree that -- would you 4 agree that the individual members may use their cell phones 5 at the facilities? 6 CHERYL WETTER: Yes. They also have not issued any 7 complaints. 8 THOMAS BARNARD: Would you agree that an individual 9 walking by the facility may want to use their cell phone? 10 CHERYL WETTER: Sure. I do all the time and I have no 11 complaints. 12 THOMAS BARNARD: Would you agree that if someone fell 13 on the facility riding their bike during the nine months 14 it's unmanned, they may need to use their cell phone to 15 call for help? 16 MALE VOICE: (Inaudible) no cell phone service. 17 TAMMY CITARAMANIS: Please. No statements from the 18 audience. Can you answer that question? 19 CHERYL WETTER: I guess it depends whether if it's a 20 young child who wouldn't have a cell phone or whether it's 21 an adult who happened to have a cell phone. 22 THOMAS BARNARD: You would agree that most -- that of 23 someone -- would you agree that if an ambulance came to the 24 facility they may need to use a cell phone? 25 CHERYL WETTER: I don't know what they (inaudible).</p>
<p>737</p> <p>1 CHERYL WETTER: No, they just didn't -- I mean, it 2 wasn't like the members asked for it or the neighbors asked 3 for. That's why we all tested and we asked each other, do 4 you have problems. So no, nobody from there ever asked the 5 question or made complaints about it. 6 THOMAS BARNARD: So is it -- am I (inaudible). 7 CHERYL WETTER: It's not -- not the -- 8 THOMAS BARNARD: Hold on. I'm going to ask you a 9 question (inaudible). Is it your understanding that EGRA 10 only uses a landline at the facility? 11 CHERYL WETTER: It may transfer that landline, but it 12 doesn't have -- in fact, actually if you go to their 13 website, there's no telephone number to call. But the 301- 14 983-0808 associated with East Gate Recreation Association, 15 is a landline. 16 THOMAS BARNARD: Would you -- would you agree that the 17 lifeguards may use cell phones have the facility? 18 CHERYL WETTER: They may use their personal cell 19 phones. 20 THOMAS BARNARD: Would you agree that the management 21 company may use cell phones at the facility? 22 CHERYL WETTER: Sure. 23 THOMAS BARNARD: And you would agree that it's the 24 management company who runs the day-to-day operations of 25 the facility.</p>	<p>739</p> <p>1 THOMAS BARNARD: Would you agree that police officers 2 may need to use a cell phone at the facility if they 3 respond -- 4 CHERYL WETTER: I assume. 5 THOMAS BARNARD: Do you agree that the EGRA has an 6 interest in making sure cell phone access is available to 7 members, emergency personnel and people who use the 8 facility? 9 CHERYL WETTER: Yes, and that's why tested it down 10 there and I have all those results. 11 THOMAS BARNARD: (Inaudible) no questions. Go ahead. 12 TAMMY CITARAMANIS: (Inaudible) 13 BILL CHEN: Just one. Ms. Wetter, you, I believe, 14 referred to four subparts of the East Gate of Potomac 15 subdivision. 16 CHERYL WETTER: That's correct. 17 BILL CHEN: What are they? Can you identify them? 18 CHERYL WETTER: East Gate 1, East Gate 2, East Gate 3, 19 and East Gate 4. They're also known as Potomac (inaudible), 20 Ridgely, Woland, and we are kind of East Gate 3. We've 21 always called ourselves just East Gate 3. We don't have 22 another name. We are Snug Hill. 23 BILL CHEN: Okay. Thank you. 24 TAMMY CITARAMANIS: Ms. Lee. You have a question? 25 JOE PACE: Yes.</p>



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16 (740 to 743)

<p>740</p> <p>1 TAMMY CITARAMANIS: Well, you need to identify who you 2 are and you need to be near a mic. 3 JOE PACE: Sorry. I'm not near a mic. My name is Joe 4 Pace. 5 TAMMY CITARAMANIS: (Inaudible). 6 JOE PACE: Sure. 7 TAMMY CITARAMANIS: You have a question? 8 JOE PACE: Yeah, I just have -- 9 TAMMY CITARAMANIS: This is not an opportunity to make 10 a statement. 11 CHERYL WETTER: I can hear him. 12 TAMMY CITARAMANIS: No. Okay. Everybody, I need you to 13 come near mic if you want to ask a question. We didn't 14 volunteer Mr. Chen yet, but we will see if we need to do 15 that. 16 JOE PACE: Sorry, I just had a -- 17 TAMMY CITARAMANIS: State your name. 18 JOE PACE: My name is Joe Pace. I live on Snug Hill 19 Lane. And I had a specific question. Cheryl, have you ever 20 walked on the East Gate site with your cell phone? 21 CHERYL WETTER: Yes. 22 JOE PACE: And have you been able to have a clear 23 conversation? 24 CHERYL WETTER: Yes. 25 JOE PACE: If something were to happen to you, do you</p>	<p>742</p> <p>1 HOWARD FINKEL: Ask her if she remembers the testimony 2 of the architect. The original or that (inaudible) for the 3 special exception. 4 BILL CHEN: Ms. Wetter, did you attend the proceedings 5 by which the special exception for the community swimming 6 pool was granted by the Board of Appeals? 7 CHERYL WETTER: Yes. 8 BILL CHEN: Do you recall the testimony of the 9 architect about the nature of the site and the condition of 10 the site? 11 CHERYL WETTER: There was always some concern about 12 two issues. One was -- 13 BILL CHEN: Is this from the architect now? The first 14 is, yes, you remember it and then I'll -- 15 CHERYL WETTER: Yes, (inaudible). 16 BILL CHEN: Okay. Can you please relate that testimony 17 as you recollect it? 18 CHERYL WETTER: As I recollect it, there was two 19 issues. One was underground streams and how that issue 20 would be addressed for drainage and that's why we have to 21 go from a 50-year rear wall to a 100-year real wall storm 22 drain at a \$50,000.00 additional expense, it was at the 23 time, which was huge. The second issue was because the land 24 had been -- the whole thing had been scooped out. It was a 25 level field originally. It was scooped out and we had a</p>
<p>741</p> <p>1 think that you could call for help? 2 CHERYL WETTER: Yes. I can submit the speeds that I 3 was getting down there. 4 TAMMY CITARAMANIS: Just answer his question. 5 JOE PACE: Okay. I just wanted to make sure that you 6 got clear reception just like I did. 7 CHERYL WETTER: Yes. 8 JOE PACE: Thank you. 9 TAMMY CITARAMANIS: Anybody else? (Inaudible) state 10 your name and (inaudible). 11 HOWARD FINKEL: All right. I'm Howard Finkel. Ms. 12 Wetter, you talked about the condition of the land and with 13 respect to being able to support the tall tower. 14 FEMALE VOICE: Is he one of your clients? 15 HOWARD FINKEL: Can you recall -- 16 GREG DIAMOND: Ms. -- objection. 17 CATHY BORTEN: Objection. 18 GREG DIAMOND: This witness is represented by Mr. 19 Chen. 20 TAMMY CITARAMANIS: That's true. Why is he asking 21 questions and you're not? 22 GREG DIAMOND: And why isn't Mr. Chen controlling his 23 witness? 24 TAMMY CITARAMANIS: Why don't you ask -- ask Mr. -- 25 Mr. Chen to ask the questions because he is your lawyer.</p>	<p>743</p> <p>1 difficult time putting in the tennis courts because we 2 couldn't get the ground to be stable enough there because 3 that's where they found the construction truck and most of 4 the construction equipment. It's where the tennis courts 5 are today, which is also where the easement arrives. They 6 did -- they had to do that area twice. They had to compact 7 it twice because they couldn't get it to be stable enough 8 and they were afraid that it would just crack up the tennis 9 courts. So there were two issues. One was the stability of 10 the ground after it was dug down, which was not 11 particularly an issue with the pool, because the pool was, 12 once again, dug down and that met certain specifications. 13 The rest of the land was not touched and the green space 14 where we were not allowed to put parking spaces was not 15 touched after it was dug down. It was just grassed over 16 with seed. And where the parking lot was, we did not have 17 to compact that particularly also because it was just going 18 to be -- and now I don't remember; 4, 6, 8 inches apart lot 19 pavement put in there so that was not a real issue. But 20 those were the two issues of having unstable ground because 21 it had been dug out and not necessarily compacted for 22 construction on everyplace, but we were not concerned about 23 the areas we were not allowed to build because of setbacks. 24 BILL CHEN: Thank you. 25 TAMMY CITARAMANIS: Your name? You're not Mr. --</p>

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17 (744 to 747)

<p>744</p> <p>1 you're not a client?</p> <p>2 NORMA COLLEDANI: No.</p> <p>3 TAMMY CITARAMANIS: Now, okay.</p> <p>4 NORMA COLLEDANI: I have a question (inaudible).</p> <p>5 TAMMY CITARAMANIS: Your name.</p> <p>6 NORMA COLLEDANI: My name is Norma Colledani</p> <p>7 (inaudible).</p> <p>8 TAMMY CITARAMANIS: Okay. Spell that.</p> <p>9 NORMA COLLEDANI: Okay. Norma Colledani.</p> <p>10 TAMMY CITARAMANIS: How do you spell your last name</p> <p>11 for the record?</p> <p>12 NORMA COLLEDANI: C-O-L-L-E-D-A-N-I; Norma Colledani.</p> <p>13 My question is for the (inaudible) questions. If you have</p> <p>14 information regarding the recreation center, you say that</p> <p>15 they have a landline, but do you have information at the</p> <p>16 people working there (inaudible) or in the administration</p> <p>17 of people in the recreation center like use the recreation</p> <p>18 center, are using cell phones only for Verizon or they can</p> <p>19 be using another carrier like AT&amp;T or Sprint? Do you have</p> <p>20 the information? Or --</p> <p>21 CHERYL WETTER: No, I --</p> <p>22 TAMMY CITARAMANIS: You don't have the information?</p> <p>23 CHERYL WETTER: I don't have the information, no.</p> <p>24 NORMA COLLEDANI: So they can be using any carriers.</p> <p>25 Not just Verizon, right.</p>	<p>746</p> <p>1 CHERYL WETTER: Correct. I said that it -- we too had</p> <p>2 said that no tests had been done yet, but they will be done</p> <p>3 at a later time is my testimony.</p> <p>4 GREG DIAMOND: But you don't know whether it can be</p> <p>5 built safely or not.</p> <p>6 CHERYL WETTER: Correct.</p> <p>7 GREG DIAMOND: No further questions.</p> <p>8 TAMMY CITARAMANIS: Did you have --</p> <p>9 BILL CHEN: Following up on Mr. Diamond's questions</p> <p>10 that went to the special exception proceeding, who was the</p> <p>11 applicant in that proceeding?</p> <p>12 CHERYL WETTER: In the special condition?</p> <p>13 BILL CHEN: Special exception, yes.</p> <p>14 CHERYL WETTER: Verizon.</p> <p>15 BILL CHEN: No, no, no. I'm talking about the special</p> <p>16 exception. Who was the applicant?</p> <p>17 CHERYL WETTER: Oh, the applicant was EGRA.</p> <p>18 BILL CHEN: The same applicant who is one of the co-</p> <p>19 applicants today.</p> <p>20 CHERYL WETTER: Correct.</p> <p>21 BILL CHEN: And who's witness was the architect? Was</p> <p>22 it for the applicant?</p> <p>23 THOMAS BARNARD: I object on relevancy grounds.</p> <p>24 TAMMY CITARAMANIS: Right.</p> <p>25 BILL CHEN: Oh, excuse me. Yeah.</p>
<p>745</p> <p>1 CHERYL WETTER: Correct.</p> <p>2 NORMA COLLEDANI: Thanks.</p> <p>3 TAMMY CITARAMANIS: Thank you. Anybody else? Okay. You</p> <p>4 want to ask a follow-up?</p> <p>5 GREG DIAMOND: Very briefly.</p> <p>6 TAMMY CITARAMANIS: (Inaudible)</p> <p>7 GREG DIAMOND: Ms. Wetter, you would concede that</p> <p>8 you're not a civil engineer.</p> <p>9 CHERYL WETTER: Correct.</p> <p>10 GREG DIAMOND: Okay. And would you concede that if</p> <p>11 this case is granted, that Verizon Wireless would be</p> <p>12 required to apply for a building permit to Montgomery</p> <p>13 County? Isn't that correct?</p> <p>14 TAMMY CITARAMANIS: It may be. I'm not an expert on</p> <p>15 that either.</p> <p>16 GREG DIAMOND: And that would be the time at which the</p> <p>17 engineers would establish with the County, the soil</p> <p>18 conditions and what would be necessary to build a safe</p> <p>19 foundation and the County would be the arbiter of whether</p> <p>20 it's safe. Isn't that correct?</p> <p>21 CHERYL WETTER: That may be. I'm not -- as I said, I</p> <p>22 don't know the process that well.</p> <p>23 GREG DIAMOND: Okay. So although you've expressed</p> <p>24 concerns, you admit that you really don't know whether it</p> <p>25 can be built safely or not.</p>	<p>747</p> <p>1 TAMMY CITARAMANIS: What argument --</p> <p>2 BILL CHEN: I will be glad to proffer the relevancy on</p> <p>3 it. Mr. Diamond is attempting to show that this issue of --</p> <p>4 involving stability of the ground, can be deferred to the</p> <p>5 building permit stage. The issue is that however, that</p> <p>6 comes up during this type of a proceeding. And ERG knew of</p> <p>7 this problem. They knew it because they were the applicant</p> <p>8 during the special exception proceedings so that this is an</p> <p>9 issue that was recognized. And it's in your file. The</p> <p>10 special exception file is as much a part of your record</p> <p>11 before you today, as is the conditional use file. I don't</p> <p>12 know whether you are aware of it, but it's in your office.</p> <p>13 TAMMY CITARAMANIS: Yeah, I've read the file.</p> <p>14 BILL CHEN: Okay. That issue came up. So that when Mr.</p> <p>15 Diamond talks to this lady or asks questions about building</p> <p>16 permit stage, the problem with that is that is an issue</p> <p>17 that is properly before the Board of Appeals at the time of</p> <p>18 the special exception because it was addressed during that</p> <p>19 proceeding. Similarly, it is properly before the Office of</p> <p>20 Zoning and Administrative Hearings at this point as well.</p> <p>21 And that -- all I'm try to get to --</p> <p>22 TAMMY CITARAMANIS: Stability of the ground, that what</p> <p>23 you're saying?</p> <p>24 BILL CHEN: Yes. And all I'm trying to get to is Mr.</p> <p>25 Diamond, very artfully, is trying to pigeonhole this issue.</p>

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18 (748 to 751)

<p>748</p> <p>1 But the problem with that pigeonholing is that the 2 applicant in both proceedings was aware of that issue and 3 indeed, in fact the applicant, the witness for the 4 applicant in that proceeding with the architect. So to try 5 to pigeonhole the issue, if you will, is really 6 disingenuous because ERGA knew about this issue and has 7 known about it since day one. 8 TAMMY CITARAMANIS: Okay. 9 BILL CHEN: That's why asked the questions are: who 10 was the applicant? Who was the -- 11 TAMMY CITARAMANIS: Now, I -- right. I know what 12 you're saying. 13 GREG DIAMOND: On behalf of applicant Cellco 14 Partnership, who is proposing to actually build the 15 communications tower, I'm prepared to concede that Verizon 16 will not build this tower unless Montgomery County issues 17 it a building permit. 18 TAMMY CITARAMANIS: Right. 19 GREG DIAMOND: And that the decisions as to the safety 20 of the ground and the design of the foundation, is between 21 the civil engineers who prepare the plans and the county 22 who reviews them. And that -- those issues are not before 23 this Hearing Examiner. 24 TAMMY CITARAMANIS: Okay. (Inaudible). 25 BILL CHEN: We have a disagreement on that.</p>	<p>750</p> <p>1 CHERYL WETTER: Could you repeat the question? 2 BILL CHEN: Well -- 3 TAMMY CITARAMANIS: Wait a minute. Wait a minute. 4 Okay. So you have objected. I have overruled your objection 5 and he -- I think that it is clear and the answer stands. 6 She has already answered previously and I think it's clear. 7 BILL CHEN: Okay. 8 TAMMY CITARAMANIS: So you are -- thank you, very much 9 for your time and your testimony. Okay. So the next 10 individual is -- so your client is testifying as an 11 individual? 12 BILL CHEN: Yeah. That's -- everything we filed, they 13 want to testify. 14 TAMMY CITARAMANIS: They want to -- okay. 15 BILL CHEN: Is that all right? 16 TAMMY CITARAMANIS: Sure. I'm just making sure. So 17 you're Mr. Finkel, correct? 18 HOWARD FINKEL: Yes. And Madam Examiner, I've got all 19 kinds of stuff that (inaudible) documents. 20 TAMMY CITARAMANIS: Okay. We're going to go off the 21 record for a minute. 22 (Off the record.) 23 (On the record.) 24 TAMMY CITARAMANIS: We are back on the record at 25 11:07. Mr. Finkel, need you to raise your right hand.</p>
<p>749</p> <p>1 TAMMY CITARAMANIS: Right. 2 BILL CHEN: That I think is reserved. 3 TAMMY CITARAMANIS: And it's noted and it's overruled. 4 And any more questions? Okay. All right. Thank you, Ms. 5 Wetter. 6 CHERYL WETTER: Thank you. 7 BILL CHEN: Just (inaudible). 8 TAMMY CITARAMANIS: You all have 233(a). I need to 9 give an extra copy that because she only had one. I'm going 10 to be sure everybody has a copy. I just want to make sure 11 it's part of -- stays with my record. So I will make a note 12 that you need copies. 13 BILL CHEN: Madam Examiner, I apologize. Did we get 14 that last question answered because we got into the issue? 15 There was no objection. I don't know whether Ms. Wetter 16 answer the question. 17 THOMAS BARNARD: I think you answered it for her 18 already, Bill. 19 BILL CHEN: Oh, okay. 20 TAMMY CITARAMANIS: Yeah, I -- it sound like it was 21 complete. 22 BILL CHEN: Well, but I'm not sworn so I don't want to 23 -- 24 TAMMY CITARAMANIS: That's true. And leading. 25 Definitely leading.</p>	<p>751</p> <p>1 HOWARD FINKEL: Yes, ma'am. 2 TAMMY CITARAMANIS: Do you promise to tell the truth, 3 the whole truth, nothing but the truth in your testimony 4 under the penalty of perjury? 5 HOWARD FINKEL: Yes, I do. 6 TAMMY CITARAMANIS: Okay. I would like you to state 7 your name and your address and then give your narrative. 8 HOWARD FINKEL: Okay. 9 TAMMY CITARAMANIS: I understand you've got your 10 exhibits. 11 HOWARD FINKEL: Yeah, I've got it written down. 12 TAMMY CITARAMANIS: You need to refer to the exhibit 13 and when there is an objection, obviously, I will deal with 14 that and then they can ask you questions. 15 HOWARD FINKEL: Okay. 16 TAMMY CITARAMANIS: Okay. 17 HOWARD FINKEL: My name is Howard Finkel. I live at 18 8318 Snug Hill Lane, Potomac, Maryland. And before I launch 19 into my narrative, just following up on what Mr. Chen asked 20 Ms. Wetter -- and I think, Madam Examiner, you probably 21 have seen this because it's in the file, but the -- really 22 what the question was getting at was the testimony of Mr. 23 Marshall, the architect who designed the swimming pool, who 24 designed the facility, he testified and it's -- I think 25 it's mentioned in the opinion of the Board of Appeals for</p>

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19 (752 to 755)

<p>752</p> <p>1 the special exception in 1978, that Mr. Marshall testified 2 that because of the dumping of spoilage in that area, in 3 the rec area, that -- and that was obviously a factor that 4 he had to consider when designing the facility; that it 5 couldn't support any substantial structures. So I don't 6 know, whatever. Obviously, Verizon has to check that out of 7 if they're going to build a tower, but we haven't heard 8 anything about it up till now. So that's why asked it. 9 TAMMY CITARAMANIS: Okay. Go ahead. 10 HOWARD FINKEL: Okay. 11 GREG DIAMOND: If I might be heard. 12 TAMMY CITARAMANIS: Yes. 13 GREG DIAMOND: So I thought I might raise this now 14 before and not interrupt Mr. Finkel in the middle. So Mr. 15 Finkel has handed out a packet of documents and the -- most 16 of the documents appear to be like legal documents. And Mr. 17 Finkel is represented by counsel. So I under -- I sort of 18 understand Mr. Finkel testifying on his own without 19 counsel, as to his personal experiences, his home. But as 20 to, in essence, acting as a separate, legal presenter, 21 while being represent by counsel, has me thoroughly 22 confused and I object. 23 TAMMY CITARAMANIS: And I share your confusion to a 24 certain degree. Go ahead Mr. -- 25 BILL CHEN: May I?</p>	<p>754</p> <p>1 is what they're doing. 2 TAMMY CITARAMANIS: Right, but I guess I thought you 3 were going to be presenting them as part of your case 4 because they wanted to testify. 5 BILL CHEN: We could have done it that way I guess, 6 but as I say, they all want -- these three at least wanted 7 to make their own statements to the hearing examiner. 8 TAMMY CITARAMANIS: No, and they are entitled to make 9 their statements, but just procedurally, it seems a little 10 odd when they are represented by counsel. 11 BILL CHEN: Okay. I think it's -- I don't think it's 12 in violation of any rules or anything like that. 13 TAMMY CITARAMANIS: No. 14 BILL CHEN: All I can say -- 15 TAMMY CITARAMANIS: I'm going to let it proceed, but I 16 think he makes -- 17 BILL CHEN: For what it's worth, as I just said to Mr. 18 Finkel and relative to my two other clients, they wanted to 19 testify. I did not prep them for their testimony. I did not 20 help them in preparing for their testimony. I understood 21 they wanted to make statements on their own and that's what 22 they've done. Now, given your comments, I guess I could 23 have presented them after my last expert witness. Would you 24 say, by the way, I have -- three of my clients wish to make 25 statements and called them then.</p>
<p>753</p> <p>1 TAMMY CITARAMANIS: Yes. 2 BILL CHEN: I just want to respond to that. I can tell 3 you with one exception, these documents I'm seeing -- this 4 morning is the first time I've seen them. Mr. Finkel asked 5 me for a copy of the zoning ordinance provision a couple 6 days ago and I sent it to him, but I've not prepped him on 7 any testimony or anything like that. And as I say, he asked 8 for a copy of the zoning ordinance provision, I gave it to 9 him. And these others, they are new to me. 10 TAMMY CITARAMANIS: Right. I understand that, but he's 11 your client and that -- and I am a little perplexed as to 12 why he wasn't presented under your case or offered as a 13 witness under your case to ask him questions. I know the 14 individuals are entitled to make the statement and I don't 15 have any problem with that, but I -- you know, I know with 16 the other two women that testified, Ms. Delafiora and Ms. 17 Resnick -- I didn't realize until after the hearing. I was 18 like, wait a minute, they were his clients. And so just -- 19 I think that he has a valid question and I share some of 20 the confusion. So maybe you can enlighten us. 21 BILL CHEN: Well, since entering my appearance, I've 22 reported in our submissions, that the individuals I 23 represent also wanted to testify and would be testifying. 24 TAMMY CITARAMANIS: Correct, but that -- 25 BILL CHEN: So it lengthened their capacities and that</p>	<p>755</p> <p>1 TAMMY CITARAMANIS: Okay. 2 BILL CHEN: But as I said -- 3 TAMMY CITARAMANIS: Anything -- 4 BILL CHEN: And these are their own statements. 5 TAMMY CITARAMANIS: No, that's fine. Anything you want 6 to follow up on question 7 GREG DIAMOND: Nothing further. 8 TAMMY CITARAMANIS: Okay. All right. 9 BILL CHEN: And they are subject to cross-examination 10 as they have been. 11 TAMMY CITARAMANIS: Correct. It was just a 12 clarification. Okay. So we'll let Mr. Finkel go ahead and 13 make your statement. 14 HOWARD FINKEL: Madam Examiner, am I allowed to -- I 15 quote from all of this. That's why I handed it out. So -- 16 TAMMY CITARAMANIS: You're giving a narrative and if 17 this is what you use to -- 18 HOWARD FINKEL: It's part of the story. 19 TAMMY CITARAMANIS: Right. 20 HOWARD FINKEL: Okay. 21 TAMMY CITARAMANIS: And I will give it the weight I 22 think it deserves. They are just noting the objection 23 because you're represented by counsel and probably not 24 truly understanding the foundation for those documents that 25 you're asking to be presented.</p>

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20 (756 to 759)

<p>756</p> <p>1 HOWARD FINKEL: Okay.</p> <p>2 TAMMY CITARAMANIS: But just go ahead and make your</p> <p>3 statement and we will go from there.</p> <p>4 HOWARD FINKEL: Okay. Thank you. Madam Examiner, when</p> <p>5 I think about my neighborhood, there are certain words that</p> <p>6 come to mind. Some of them we've heard in these</p> <p>7 proceedings. Words like, bucolic, idyllic, serene, or</p> <p>8 simply beautiful. Words that do not come to mind are ones</p> <p>9 like vast or expensive. You can never say East Gate 3 with</p> <p>10 its 31 homes nestled in the rolling terrain is vast. Any</p> <p>11 word suggesting bigness would be out of place. You might</p> <p>12 call it close or cozy. Maybe even snug. In fact, that's</p> <p>13 what we call it, Snug Hill. A fitting name indeed. Now, the</p> <p>14 same goes for our recreation area. It mirrors the character</p> <p>15 of the neighborhood it serves. It is not big; 4½ acres,</p> <p>16 about the size of two standard residential lots in non-</p> <p>17 cluster of Potomac. And a chunk of that 4½ acres extends up</p> <p>18 behind the houses on Snug Hill Lane and makes up part of</p> <p>19 the green space that the developer promised all our</p> <p>20 properties would abut. The lion's share of it is covered by</p> <p>21 the pool deck, the pool, and the tennis courts. And then</p> <p>22 there is the narrow parking lot built to hold 79 cars. The</p> <p>23 only real usable green space left on the site is the big</p> <p>24 hill with a flat run out at its base west of the tennis</p> <p>25 courts where the kids go sledding or play soccer. And we</p>	<p>758</p> <p>1 setback from the property line is 89 feet. So if you</p> <p>2 increase the setback from the south property line to 89</p> <p>3 feet, well, then the sliver disappears. It's only 8½ feet</p> <p>4 wide at its widest point. Take away nine and it's gone.</p> <p>5 There is nowhere on that site where they can comply with</p> <p>6 all the required setbacks. Nowhere. Now, Verizon will say,</p> <p>7 oh, those extra nine feet, they don't count. They are just</p> <p>8 decoration. Well, Madam Examiner, I think that if the tower</p> <p>9 falls down and those extra nine feet hit my house or my car</p> <p>10 or my head or my kid playing at the swimming pool, then</p> <p>11 those extra nine feet are part of the height of the</p> <p>12 structure. Christmas lights, that's decoration. Faux</p> <p>13 branches or whatever the heck you call it that stick up</p> <p>14 nine feet, that's part of the tower. And while we're on the</p> <p>15 subject of size and shape, I would like to state for the</p> <p>16 record, that we, through our attorney Mr. Chen, asked</p> <p>17 Verizon for detailed specifications of the proposed tower.</p> <p>18 They refused. Now, this worries me because we, the</p> <p>19 opposition, need all the information we can get in order to</p> <p>20 accurately evaluate the proposal. And there does seem to be</p> <p>21 some confusion about things like size of the equipment</p> <p>22 compound, the diameter of the tower. You know, important</p> <p>23 stuff. So I'm worried. But thankfully, there is relief from</p> <p>24 my anxiety and that relief takes many forms. First, there</p> <p>25 is the zoning ordinance. One of those legal documents. The</p>
<p>757</p> <p>1 know what Verizon wants to do with that. The point is,</p> <p>2 there is not a lot of room. And 89 foot tower with a 1280</p> <p>3 square foot equipment compound, no matter how you dress it</p> <p>4 up, will stick out like a sore thumb. It will dominate the</p> <p>5 site and severely alter its character. And 89 foot tower</p> <p>6 with a 1280 square foot equipment compound is not cozy. It</p> <p>7 is not snug. It is a commercial, industrial installation</p> <p>8 and it doesn't fit in Snug Hill. But it doesn't just not</p> <p>9 fit the character of Snug Hill. It doesn't fit period.</p> <p>10 Verizon has given us a sliver of land. And that's what it</p> <p>11 is. It's a sliver 8½ feet wide at its widest point, 4½ at</p> <p>12 its narrowest. They've given us this sliver of land where</p> <p>13 they say the required setbacks can be met because this is a</p> <p>14 requirement for the waiver they've requested. Now, they</p> <p>15 need the waiver in order to squeeze the tower into the</p> <p>16 parking lot. They can't get the waiver unless there is</p> <p>17 somewhere on the site where all the setbacks can be met.</p> <p>18 Now, that sliver is defined by four critical distances. The</p> <p>19 300 foot setback from the 3 closest houses to the north,</p> <p>20 the east, and the west, and the 80 foot setback from the</p> <p>21 closest property line to the south. But wait a minute.</p> <p>22 That's not right. The 80 foot setback from the south</p> <p>23 property line is based on the old application that has</p> <p>24 since been amended. In the new, amended application, the</p> <p>25 tower is 89 feet tall. That means the required minimum</p>	<p>759</p> <p>1 zoning ordinance says that a telecommunications tower</p> <p>2 support structure and I quote, must be constructed to hold</p> <p>3 a minimum of three wireless communications carriers. And it</p> <p>4 goes on in the next subsection to say, "the equipment</p> <p>5 compound must have sufficient area to accommodate the</p> <p>6 equipment sheds or cabinets associated with all the</p> <p>7 carriers." Well, we already know there are plans to co-</p> <p>8 locate two more carriers. Now we also know that the zoning</p> <p>9 ordinance requires that the equipment compound be built to</p> <p>10 accommodate them. So I was correct when I said earlier that</p> <p>11 the tower would have a 1280 square foot equipment compound.</p> <p>12 Not 700 square feet, 1280 square feet. Well, that's a</p> <p>13 relief, but I'm still worried. So next we have the federal</p> <p>14 government. And I should give you the exhibit numbers.</p> <p>15 TAMMY CITARAMANIS: (Inaudible) the exhibit numbers.</p> <p>16 HOWARD FINKEL: The first exhibit number was 234. And</p> <p>17 the federal government is 234(a), Exhibit 234(a). I'm sorry</p> <p>18 about that. So next we have the federal government in the</p> <p>19 form of HR 3630, The Middle Class Tax Relief and Job</p> <p>20 Creation Act of 2012, with a nod to George Orwell.</p> <p>21 Otherwise known as the Spectrum Act. Now, section 6409A of</p> <p>22 the Spectrum Act says, and I quote, a state or local</p> <p>23 government may not deny and shall approve any eligible</p> <p>24 facilities request for modification of an existing wireless</p> <p>25 tower or base station that does not substantially change</p>

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21 (760 to 763)

<p style="text-align: right;">760</p> <p>1 the physical dimensions of such tower or base station. Now, 2 co-location is considered eligible, but what do they need 3 by a substantial change? Well, it turns out the FCC has the 4 answer in Exhibit 234(b). The FCC has the answer. Their 5 public notice of January 25th, 2013, conveniently offers 6 guidance on interpretation of section 6409A of the Spectrum 7 Act. It is a substantial increase in the size of the tower 8 occurs if, and I quote, "the mounting of the proposed 9 antenna on the tower would increase the existing height of 10 the tower by more than 10 percent or by the height of one 11 additional antenna array with separation from the nearest 12 existing antenna not to exceed 20 feet, whichever is 13 greater. Except that the mounting of the proposed antenna 14 may exceed the size limit set forth in this paragraph if 15 necessary, to avoid interference with existing antennas." 16 Now, I'm not even going to think about that last part 17 because that's too scary. But it sounds to me like Verizon 18 has a right to increase the height of the tower by 20 feet. 19 And as it turns out, Montgomery County agrees with me. This 20 past March, Montgomery County joined with the Smart 21 Communities Citing Coalition, in providing comments to the 22 FCC on the deployment of wireless telecommunication 23 facilities. And there is an Exhibit 234(d), which shows 24 that Montgomery County is on the list of counties and 25 municipalities that took part in that. The Smart</p>	<p style="text-align: right;">762</p> <p>1 at 109 feet. Now, we know Verizon has latitude in their 2 land lease to go to a height of 155 feet, but I find that 3 troubling enough, but at least they have to come back to 4 you for permission to go that high. They don't need your 5 permission or our input to go up 20 feet. Now the co- 6 location or two more carries may necessitate a height 7 increase, but even absent the immediate plans for co- 8 location, the fact that they have a right to those extra 20 9 feet means they must be included in the current evaluation. 10 So according to the zoning ordinance and section 6409 of 11 the Spectrum Act, the telecommunications facility must be 12 evaluated at full build. That includes the full height of 13 the tower, the full size of the equipment compound as 14 allowed by right. In our case, it also includes the greater 15 amount of replacement parking to be constructed in our 16 sledding and soccer space. An 89 foot tower doesn't fit. A 17 109 foot tower doesn't fit either and it's even more 18 intrusive. I think the situation is clear. The law gives 19 Verizon room to extend the tower to 109 feet. The land does 20 not. Now, I would like to say little something about 21 property values because it turns out Mr. Burgoyne, Exhibit 22 234(c), has something to say about that too. I will quote 23 from his report. "There has been significant research 24 regarding the question of impact on residential property 25 values from the construction of cell phone towers in</p>
<p style="text-align: right;">761</p> <p>1 Communities Citing Coalition is made up of local 2 governments, government agencies, and associations that 3 represent about 1854 communities in 10 states across the 4 country. They concern themselves with a safe, aesthetically 5 responsible deployment of telecommunications facilities. 6 The Smart Communities Citing Coalition hired experts to 7 support their positions before the FCC. One of those 8 experts is Mr. David Burgoyne. And his report is report is 9 Exhibit 234(c). He states in his report, that's the one I 10 just held up, 234(c) and I quote -- Mr. David Burgoyne, he 11 is an appraiser by the way. And he says in his report, 12 "from the point of view of sound appraisal practice, it is 13 necessary to presume and consider full utilization of 14 rights granted by virtue of a particular authorization. 15 That is, one must consider the impact of a 120 foot pole if 16 a 120 foot pole is allowed as of right, even if owning a 17 100 foot pole is installed in the instant case at this 18 time." He goes on to say, "likewise, in assessing the 19 impact of the authorization of an antenna system in a 20 residential neighborhood, one would consider the additions 21 and expansions that would be permitted as of right under 22 the commission section 6409 rules." So it seems to me that 23 if Verizon had the right to increase the height of the 24 tower by 20 feet, then respectfully, Madam Examiner, I 25 think you need to evaluate the tower, not at 89 feet, but</p>	<p style="text-align: right;">763</p> <p>1 neighborhoods. The results of these studies vary, but they 2 commonly indicate that there is a significant impact. While 3 the magnitude of the impact varies, the studies uniformly 4 indicate that there is a significant impact on residential 5 property values from the installation of cell phone towers. 6 Not surprisingly, the studies that show little or no impact 7 are universally commissioned by and paid for by the 8 telecommunications industry." Now reading Mr. Burgoyne's 9 report, it's clear to me that he thinks cell towers have a 10 negative effect on property values. This is Montgomery 11 County's guy. He was hired by Montgomery County as part of 12 the Smart Communities Citing Coalition, to submit his 13 report to the FCC. He is their expert. Just like Bud 14 McPherson is ours. I think we can safely assume that 15 Montgomery County agrees with him. Montgomery County, I 16 guess they are a smart community. But it's not just 17 Montgomery County. It looks like the FHA is also concerned 18 with the negative affect the cell towers on residential 19 property values. And I have Exhibit 234(e) for that, which 20 is from HUD. So they classified -- the FHA, HUD, classifies 21 cell phone towers under the heading, hazards and nuisances. 22 Hazards and nuisances are considered a negative factor in 23 obtaining FHA financing. Now, in conclusion, I would like 24 to say that I concur wholeheartedly with the former 25 testimony of my two good neighbors and dear friends Janine</p>

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22 (764 to 767)

<p style="text-align: right;">764</p> <p>1 Resnick and Greer Delafiora. I share their love for our 2 neighborhood and their passion for keeping the blight of 3 the cell tower at bay. Madam Examiner, I respectfully 4 request, following your review of the evidence, that you 5 come to a decision to deny this application. Thank you. 6 TAMMY CITARAMANIS: Do you have (inaudible) cross? 7 GREG DIAMOND: No questions. 8 TAMMY CITARAMANIS: Okay. Anybody here want to follow 9 up? Okay. All right. You want to give me the -- 10 HOWARD FINKEL: Yes, ma'am. 11 TAMMY CITARAMANIS: Thank you, Mr. Finkel. 12 HOWARD FINKEL: It's not in order anymore. 13 TAMMY CITARAMANIS: That's fine. 14 HOWARD FINKEL: I'm sorry. 15 TAMMY CITARAMANIS: But it's marked. 16 HOWARD FINKEL: Yes, ma'am. 17 TAMMY CITARAMANIS: Okay. Thank you. Okay. Who was 18 next? 19 DAWN PACE: Can I please be next? 20 TAMMY CITARAMANIS: Please. (Inaudible) raise your 21 right hand. Do you promised to tell the truth, the whole 22 truth, and nothing but the truth in your testimony under 23 the penalty of perjury? 24 DAWN PACE: I do. 25 TAMMY CITARAMANIS: Great. State your name and your</p>	<p style="text-align: right;">766</p> <p>1 estate clients to be aware that buying a home that backs to 2 power lines, major roads, and of course a huge cell tower, 3 usually impacts the resell value. Homes that back to those 4 things have a negative impact on value due to the real and 5 perceived problem due to noise, health, and being an 6 eyesore. In the surrounding neighborhoods of Worland, East 7 Gate, Windsor Hills, and Ridgley, most have a third of an 8 acre or less. So that isn't a land barrier and a cell tower 9 would not be hidden as it is in other Potomac neighborhoods 10 with treed lots of over an acre. The homes in these 11 neighborhoods sell for somewhere between the 700s, being 12 the Worland townhomes, to \$1.2 million with the medium 13 price being \$870,000.00. Buyers with this budget have the 14 luxury to choose where they want to live, and most are 15 discerning. Currently, there are 233 active homes in the 16 Churchill school district. They don't want to live in a 17 neighborhood with a cell tower in their backyard and they 18 can choose a different neighborhood. Unfortunately, 19 realtors have to disclose the cell towers to clients 20 because this could be considered a material fact about a 21 property. Material facts are things which could impact a 22 buyer's decision about purchasing your property. Realtors 23 have an obligation to disclose material fact that they know 24 or should know. So even though the cell tower has not been 25 built, it is currently damaging our property values. I</p>
<p style="text-align: right;">765</p> <p>1 address and give your statement. And your mic is on. 2 DAWN PACE: Okay. My name is Dawn Pace; P-A-C-E. I 3 live at 8232 Windsor View Terrace, Potomac, Maryland. 4 TAMMY CITARAMANIS: Okay. You can go ahead and give 5 your statement. 6 DAWN PACE: Great. I currently reside in the Windsor 7 Hills. I purchased in 2004 so I've lived there for a little 8 over 13 years. I love my neighborhood, but I'm not in favor 9 of having a cell tower built here. I wrote to -- an email 10 this morning and I just kind of want to read a little bit 11 from my email to support why I'm not in favor of the cell 12 tower. I'm not only a resident of Windsor Hills, but I'm 13 also the number one ranked real estate agent on Yelp for 14 Potomac. And I don't want the cell tower at East Gate for a 15 number of reasons. The first one goes to me being a 16 resident. We plan to join a pool next summer because my six 17 month old son will then be old enough. And we have a choice 18 of three pools within walking distance of our house. East 19 Gate pool is 0.18 miles. Tally Ho is 0.63 miles. And 20 Inverness is 0.7 miles from my house. So East Gate would be 21 the closest and easiest for us to get to, but needless to 22 say, that we won't be joining the East Gate pool because 23 who wants their child to swim underneath the beautiful view 24 of a cell tower. And that being facetious. The second 25 reason is, in my real estate practice I advise my real</p>	<p style="text-align: right;">767</p> <p>1 received an email from a potential client who was 2 considering Worland until they found out about the cell 3 tower. I have an email. I would like to read it to you. My 4 clients will be signing it and submitting it as evidence. 5 So to summarize the email, once they found out about this 6 proposed cell tower, they do not want to consider moving to 7 Worland anymore. And as you know, when there is limited 8 demand, prices go down. May I read the email? 9 TAMMY CITARAMANIS: If you're going to submit it, why 10 don't you just say who -- 11 DAWN PACE: I will submit it. 12 TAMMY CITARAMANIS: Just say who is going to be coming 13 from. 14 DAWN PACE: Okay. This is from Gui (phone) Boone and 15 Rafael Andriatta (phonetic). 16 TAMMY CITARAMANIS: These are your clients? 17 DAWN PACE: Potential clients. I met with them a few 18 weeks ago. To whom it may concern; my name is that Gui 19 Boone and my husband Rafael Andriatta and I are actively 20 searching for a house to purchase in the Rockville, Potomac 21 area. We have volunteered to provide the statement offer 22 support to the residents who live in this neighborhood who 23 have the same concerns we do about the proposed cell tower. 24 We have attended several open houses in the Worland 25 neighborhood that is directly across from the perspective</p>

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23 (768 to 771)

<p>768</p> <p>1 Verizon cell tower. However, after we learned about the 2 possibility of a Verizon cell tower going up in the 3 neighborhood, we will no longer be considering this 4 neighborhood in our housing search. We are concerned that 5 constant exposure to emissions from a cell tower positioned 6 so closely to our home could negatively impact our health. 7 We are also concerned about the cell towers potentially -- 8 potential to negatively affect the property value. While 9 it's unclear that the actual impact is on health or 10 property value, it's not a risk we want to take and one 11 that we do not need to take as there are other areas for us 12 to look at for a house. Thanks for your time, Gui Boone and 13 Rafael Andriatta. My third point is that as a resident who 14 lives 0.81 miles from the proposed cell tower, I don't want 15 it. I'm afraid of the consequences this tower can bring. 16 TAMMY CITARAMANIS: Mr. Diamond Ms. -- 17 GREG DIAMOND: No further questions. 18 TAMMY CITARAMANIS: Okay. 19 GREG DIAMOND: No questions. 20 TAMMY CITARAMANIS: Any questions? Okay. Thank you, 21 Ms. Pace. Okay. We need to keep this going so could you 22 please hold your applause and any comments. And who is 23 coming -- who is next? 24 GREG DIAMOND: (Inaudible). They sent her. 25 TAMMY CITARAMANIS: Okay. And what do you have?</p>	<p>770</p> <p>1 family in this beautiful residential community near my 2 dearest friends, the godmother to one of my three children, 3 the best friend of my oldest daughter, and where -- in a 4 community where I've gained the sincerest of friends, in a 5 community where homes are out of a storybook surrounded by 6 a beautiful, natural background with a recreation center 7 that is not dominated by an industrial and dangerous 8 structure. The feeling of pride, gratitude, and 9 accomplishment is truly overwhelming. By way of background, 10 my family had been searching for a single family home for 11 years. We absolutely loved (inaudible) Snug Hill, but there 12 was nothing available at the time. I would often request 13 the residents of the community, you know who you are, 14 please let me know when a home is coming on the market. 15 Please, I love this community. I want to raise my family in 16 this community. Sadly, they were not opportunities during 17 our home search period. We then found ourselves very close 18 to purchasing a home in Potomac Crest. It was an incredibly 19 beautiful home straight out of a designer home magazine. 20 Had all the upgrades and just beautiful structures. But 21 with intense deliberation, and I mean intense, keep in mind 22 that we've been looking for years, we passed on this home 23 due to the location of the power lines and the potential 24 impact it can have on the health of my family. And so here 25 we are. I sit before you heartbroken at what has happened.</p>
<p>769</p> <p>1 JESSICA BEJARANO: (Inaudible). 2 TAMMY CITARAMANIS: Okay. You have copies of these 3 pictures? 4 JESSICA BEJARANO: I can get you copies. 5 TAMMY CITARAMANIS: Do you have copies with you? 6 JESSICA BEJARANO: No, but I can (inaudible). 7 TAMMY CITARAMANIS: Oh, okay. I don't need -- 8 JESSICA BEJARANO: Okay. 9 TAMMY CITARAMANIS: Okay. So let's raise your right 10 hand. Do you promise to tell the truth, the whole truth, 11 and nothing but the truth in your testimony under the 12 penalty of perjury? 13 JESSICA BEJARANO: I do. 14 TAMMY CITARAMANIS: Okay. I need you to state your 15 name and address and give us your statement. 16 JESSICA BEJARANO: Okay. My name is Jessica Bejarano; 17 B-E-J-R-A-N-O. I live at 8306 Snug Hill Lane. I bought the 18 third to the last home on Snug Hill Lane. I would like to 19 thank you for this opportunity and I would like to publicly 20 thank the many families that are here in this room. Those I 21 know who have contributed a significant amount of time, 22 financial contributions. I know some have dug into 23 retirement funds, to children's savings funds. And just 24 thank you for the courage to help save our community. I 25 bought this home with the hopes and dreams of raising my</p>	<p>771</p> <p>1 Neighbors who were once friends no longer say hello to each 2 other. My closest friends are now considering selling their 3 homes and leaving our community. My hopes and dreams to 4 continue to raise my family and Snug Hill are now in 5 question. Not only for the consideration of the value for 6 my home, but the health of my family. All for what? For 7 service that is not needed. I have perfect cell phone 8 coverage on my cell phone. There has been -- never been an 9 issue. For an agreement that was put in place without input 10 from the community, but instead by three members who did 11 not have the wherewithal to raise the concerns to the 12 greater communities for solutions. They did not seek my 13 opinion. They did not ask for my input and they do not 14 speak for me. They do not speak for her, for him, for many 15 of the families in this room. Okay. And they don't speak 16 for our children. I leave you showing three faces, okay. 17 Sophia, Miko, and Bianca; these are just three of the many 18 young children who live in the East Gate community. I share 19 this with you because I'm not only speaking for myself, I'm 20 speaking for those who did not have a say in entering into 21 this unjust and perhaps unlawful agreement. I respectfully 22 ask you Madam Hearing Examiner, not only as the adjudicator 23 of these proceedings, but as a parent, as a mother, to 24 please carefully consider the impact this agreement will 25 have on the many families of this naturally beautiful</p>



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24 (772 to 775)

<p style="text-align: right;">772</p> <p>1 residential, not industrial community.</p> <p>2 TAMMY CITARAMANIS: (Inaudible). Don't go anywhere.</p> <p>3 They have an opportunity to ask you questions. Did you have</p> <p>4 any questions Mr. Diamond?</p> <p>5 GREG DIAMOND: No questions.</p> <p>6 TAMMY CITARAMANIS: Anybody? How do you say your last</p> <p>7 name again?</p> <p>8 JESSICA BEJARANO: Bejarano.</p> <p>9 TAMMY CITARAMANIS: Thank you.</p> <p>10 JESSICA BEJARANO: Thank you.</p> <p>11 TAMMY CITARAMANIS: Okay. Whoever is -- are you next?</p> <p>12 Could you bring me the sign in sheet, because I think what</p> <p>13 I have, there are -- people have signed in on that one. So,</p> <p>14 yeah, that would be great if you could bring that up with</p> <p>15 you. I appreciate it. Thank you. Okay. Take a seat.</p> <p>16 CAROLYN TEBO: My --</p> <p>17 TAMMY CITARAMANIS: I need to swear you in first. You</p> <p>18 promise to tell the truth, the whole truth, and nothing but</p> <p>19 the truth in your testimony under the penalty of perjury?</p> <p>20 CAROLYN TEBO: Yes, I do.</p> <p>21 TAMMY CITARAMANIS: Okay. State your name and your</p> <p>22 address. Remember, your speaking into a mic so everybody</p> <p>23 can hear you.</p> <p>24 CAROLYN TEBO: Right.</p> <p>25 TAMMY CITARAMANIS: And start with your statement.</p>	<p style="text-align: right;">774</p> <p>1 Park Lane West. That was the last street to be built in</p> <p>2 Ridgely. The builder had me wait eight months before I</p> <p>3 could even give a deposit. That's when he was ready to</p> <p>4 start selling that street. Then I had to wait another nine</p> <p>5 months until it was built. We moved into Ridgely 43 years</p> <p>6 ago this month and I have never regretted that decision.</p> <p>7 Ridgely has always been a development that has taken pride</p> <p>8 in its appearance. If Verizon's cell tower is allowed to be</p> <p>9 built, Ridgely, along with the other surrounding homes,</p> <p>10 will no longer look or be the quiet residential community</p> <p>11 that it is now. There will be utility trucks coming and</p> <p>12 going to the cell tower. They would have to change the</p> <p>13 access area to allow for additional use of pool property.</p> <p>14 How many trees will be taken down to accommodate this</p> <p>15 construction? There will be an unsightly fence and</p> <p>16 generator surrounding the tower that I assume will have to</p> <p>17 have a warning sign stating, hazard. I also understand that</p> <p>18 the towers emit sounds. Now I look at every tower I pass on</p> <p>19 the road. The equipment at the base of the cell towers</p> <p>20 where the generators are located appeared to have much</p> <p>21 machinery and always look messy. I worked hard along with</p> <p>22 others to fight to have the pool built many years ago and</p> <p>23 was the first swim team manager. It was and is a wonderful</p> <p>24 addition to our neighborhood. However, I do not think that</p> <p>25 people will want to continue or have their children exposed</p>
<p style="text-align: right;">773</p> <p>1 CAROLYN TEBO: Okay. My name is Carolyn Tebo; T-E-B as</p> <p>2 in boy, O. And I live at -- do you want the address?</p> <p>3 TAMMY CITARAMANIS: Yes, please.</p> <p>4 CAROLYN TEBO: 8209 Bucks Park Lane West, Potomac,</p> <p>5 Maryland, 20854. And I want to thank you for giving us the</p> <p>6 opportunity to appear before you. I reside in Ridgely and I</p> <p>7 -- basically this is more of an emotional kind of</p> <p>8 testimony. And -- which I have written ahead of time, but I</p> <p>9 was born and raised in the area in Washington, D.C. Later,</p> <p>10 as a young adult, I moved here to Montgomery County</p> <p>11 Maryland. I married and had three children here. I had</p> <p>12 lived in apartments my whole life and when it came time to</p> <p>13 looking for a house, I had a definite idea as to which --</p> <p>14 what the idea of the house I wanted to live. I wanted a</p> <p>15 quiet neighborhood surrounded by beauty and nature, with</p> <p>16 trees and parkland. And yet, I wanted to be close to stores</p> <p>17 and activities when I left this area. As soon as I drove</p> <p>18 into Ridgely and went through the model homes, I was</p> <p>19 hooked. I loved the five cul-de-sac development with one</p> <p>20 entrance and one entrance out. I knew there was a chance</p> <p>21 that Democracy Boulevard would be extended and it would be</p> <p>22 behind my house. I was told upfront what was the County</p> <p>23 Master Plan. I was able to make that decision based on all</p> <p>24 the facts. Everything about the house was perfect. I was</p> <p>25 the first one to put a deposit down on a house on Bucks</p>	<p style="text-align: right;">775</p> <p>1 to the presence of the proximity of a cell tower no matter</p> <p>2 how much it's dressed up as a tree. Those cell towers</p> <p>3 disguised as trees are an eyesore. There were other</p> <p>4 alternatives for the pool to take without dealing with</p> <p>5 Verizon. They may receive money from Verizon, but I do not</p> <p>6 think they will build a membership. There are too many good</p> <p>7 pools in our area such as Regency, Seven Locks, Inverness,</p> <p>8 et cetera, and some others have mentioned that fact here</p> <p>9 today. We spend, my family and I, spend many wonderful days</p> <p>10 and nights on our decks and in our backyard enjoying the</p> <p>11 view. That view is towards Democracy Boulevard that is</p> <p>12 blocked by trees. However, the tower will stand out and be</p> <p>13 an eyesore. My bedrooms facing the rear of my home are on</p> <p>14 the third-floor level on a hill. The side of the tower will</p> <p>15 directly affect me and many of the surrounding houses in</p> <p>16 the neighborhood. Also, every time a resident of Ridgely</p> <p>17 enters or exits, they will see the unsightly cell tower.</p> <p>18 Now to address another point presented by Verizon on a</p> <p>19 diagram that included my lot. It showed that from cell</p> <p>20 tower to my house, it is about 300 feet. Supposedly within</p> <p>21 the allowed distance met by Montgomery County. However,</p> <p>22 that management was not up to my lot line, but up to my</p> <p>23 deck. And are they assuming that I'm not going to extend my</p> <p>24 house or that we do not have use of our -- should not have</p> <p>25 use of our property? Why the distinction of 300 feet? How</p>

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25 (776 to 779)

<p>776</p> <p>1 accurate are these measurements and why the need for such 2 measurements if there is no negatives to homeowners to put 3 these cell tower so close to residential areas? Are they 4 assuming that the homeowners will never build beyond that 5 measurement? A few years ago, I had an architect draw up 6 plans to extend my house in the rear, and the length of my 7 deck. And therefore, I would extend my deck further out. 8 This would make me much closer to the tower. What am I to 9 think? The cell tower -- this cell tower, if allowed to be 10 built, will lower house values because many people would be 11 hesitant to purchase a home so close to a cell tower. 12 Therefore, a seller has lessened the number of people who 13 would be interested. Homeowners would have to lower their 14 prices to try to get people to buy their home. Right now, 15 as has been in the past, Ridgely homes and other homes in 16 the area sell very well and Ridgely has even had some sold 17 for over the list price. I received a letter with a photo, 18 and this was just ironic, on -- dated -- this is the 19 envelope sent to, dear neighbor. And I'm sure everyone, 20 especially in Ridgely, got one. And it's in title; our 21 family is looking for a house in your neighborhood. And it 22 -- I will just read the first part of your dear neighbor; 23 we are a family of three children who are searching for a 24 home to buy in your neighborhood. We sold our home in 25 Bethesda back in July and are staying in a temporary</p>	<p>778</p> <p>1 TAMMY CITARAMANIS: I need to swear you in first. 2 JERRY GARSON: Okay. 3 TAMMY CITARAMANIS: Do you promise to tell the truth, 4 the whole truth, nothing but the truth in your testimony 5 under penalty of perjury? 6 JERRY GARSON: Yes. 7 TAMMY CITARAMANIS: State your name and your address 8 and the giver statement. 9 JERRY GARSON: My name is Jerry Garson; J-E-R-R-Y. 10 Garson; G-A--R-S-O-N. I'm president of the Seven Locks 11 Civic Association Inc. And my home address is 8308 Raymond 12 Lane, Potomac Maryland 20854. I am Jerry Garson, president 13 of Seven Locks Civic Association Inc. and I'm speaking 14 today on CU-217-01, Celco Partnership, Verizon Wireless, 15 and East Gate Association Inc. for a telecommunication 16 tower conditional use and request for administrative 17 modification. I should indicate that I do have some stock 18 in Verizon as part of my ownership of the Dow Jones 30 19 stocks. We have to question the accuracy of the propagation 20 maps that have been presented. The witness indicated that 21 they were measuring the cell towers located on Falls Road 22 and the Petco right-of-way just south of Montrose Road 23 located on 300 foot high towers. And the cell tower on 24 Gainsborough Road and the Petco right-of-way also located 25 on 300 foot high towers near (inaudible) Drive. We have to</p>
<p>777</p> <p>1 apartment in North Bethesda until we find a home. We love 2 your neighborhood for the excellent community schools and 3 proximity. And by the way, it's a beautiful family with 4 three children. Though the years -- and through the years, 5 we have been sent many letters like that within Ridgely. 6 What if this family with three young children was given all 7 the facts about the proposed cell tower? Would that change 8 their mind? Even though Montgomery County states that they 9 can't consider health hazards in this case, that will not 10 stop parents from taking a cautious stand against the 11 unknown. People's perceptions are their reality. Cigarettes 12 were considered safe at one time. Look at the facts today. 13 In conclusion, I hope that Montgomery County will reject 14 the construction of the proposed Verizon cell tower and 15 keep our residential community residential. Thank you for 16 your consideration. 17 TAMMY CITARAMANIS: Mr. Diamond. 18 GREG DIAMOND: No questions. 19 THOMAS BARNARD: No questions. 20 TAMMY CITARAMANIS: No questions? Okay. Thank you Ms. 21 Tebo. 22 CAROLYN TEBO: Thank you. 23 TAMMY CITARAMANIS: Okay. I'm assuming standing by the 24 pole is -- you're next. Come on up please. 25 JERRY GARSON: Good morning, Hearing Examiner.</p>	<p>779</p> <p>1 ask, why did they not measure the signal strength on some 2 of the closer towers such as the tower located near 3 Tuckerman Lane and the Petco right-of-way, also on a 300 4 foot tower near Devereaux Drive, which would provide a 5 stronger radiofrequency signal since they are closer to the 6 East Gate community. We don't understand why the Bullis 7 tower does not provide adequate signal strength on 8 Democracy Boulevard. Is it possibly because Verizon is not 9 competent enough to place it in the correct angle for 10 service along Democracy Boulevard? There are other 300 foot 11 towers along the Petco right-of-way near Seven Locks Road, 12 some south of Tuckerman Lane. We are not sure if there are 13 any cell phone towers located on the antenna for the 14 Verizon property located on Seven Locks Road and Gravity 15 Boulevard. You might question my qualifications to discuss 16 RF frequency propagation standards. When I was one of less 17 than 40 people to vote on bringing cable TV to New York 18 City, the borough of Brooklyn specifically, one of the 19 reasons that we studied, very carefully, was the RF radio 20 frequency propagation maps from the signals for TV on top 21 of what was then the World Trade Center. I spent numerous 22 hours studying these frequency maps and if it wasn't for 23 me, Verizon probably would not have cable TV in Brooklyn 24 New York and some of the other people on the board. We also 25 have to question the witness who was, Mr. Paul Dugan, who</p>

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26 (780 to 783)

<p>780</p> <p>1 was measuring the signal on his cell phone located in his 2 automobile. For us, there is a danger of looking at a 3 signal if the vehicle is moving. The (inaudible) in an 4 automobile is a partial faraday cage which limits the 5 amount of radio frequency signal, RF, passing through the 6 roof of the vehicle. All RF tests should be performed in 7 the open without any metal interfering with the RF signal. 8 A complete faraday cage would block all signals. I'm 9 speaking to this based on my knowledge of radio frequencies 10 that I needed to pass the FCC exam to be an amateur radio 11 license. I'm not an expert on building cell phone towers, 12 but I've studied this long enough to know what I should be 13 doing in there. If the area of the weak RF signal is on 14 Democracy Boulevard west of Gainsborough Road, we question 15 the need for strong RF signal in that area unless Verizon 16 wireless is interested in vehicles using high-speed, 17 streaming video when driving at high speeds, often 18 exceeding 50 miles per hour even though the speed limit is 19 45, on the two-lane road in the area. We also would like to 20 question the basic why are we needing all the signal 21 strengths? Has Verizon retested all the signal strength 22 since the recent changes that have been made on I495 and I- 23 270? I will go into that one. The new traffic patterns have 24 increased the pass-through traffic on Seven Locks Road near 25 Democracy Boulevard and Democracy Boulevard westbound.</p>	<p>782</p> <p>1 impacted by the location of the tower and the required 2 setback. All transportations in the area must be 3 considered. I don't know if you guys have looked at the 4 Master Plan of highways; and you will discover that 5 Democracy Boulevard between I-270 and Seven Locks Road is 6 considered a major highway. Seven Locks Road is considered 7 an arterial highway. Democracy Boulevard, which is one lane 8 in each direction after Gainsborough Road, is considered an 9 arterial road. And with all the additional building and 10 construction in the area, we expect that all the traffic 11 patterns will change. By helping fix I-270 and I-495, 12 adding additional lanes such as the additional lanes across 13 the American Legion bridge, we will change the traffic 14 patterns. Traffic is an important thing and that's what 15 drives how many people are using their cell phones. The 16 whole idea of traffic planning is to try to get them away 17 from local roads and onto the interstate roads were there 18 no pedestrians or children. I've been working with 19 transportation in this area. I am currently the 20 transportation chair of the Montgomery County Civic 21 Federation. I've been on the Citizens Advisory Committee to 22 the Transportation Planning Board for the Metropolitan 23 Washington Council of Governments. I have also, currently 24 working with the Citizens Advisory Committee for proposals 25 on Route 355, bus rapid transit. So I've testified numerous</p>
<p>781</p> <p>1 Since the change in traffic patterns on southbound I-270 2 and at the intersection of I-495 heading towards the 3 American Legion bridge, we now, as of about last week, have 4 three lanes into southbound I-495 from I--270 and two lanes 5 from westbound I495. Additional improvements are underway 6 in this area of the interstate roads as a result of the 7 \$100 million that was given to the State Highway 8 Administration earlier this year. As a result of all this 9 need for cell phone service in the area, we should be 10 rechecking to reflect current needs, not needs from two or 11 three years ago. All the needs have changed. We also 12 concerned about the impact of the proposed 89 foot cell 13 tower that will have the -- on the continuance of special 14 exception for the swim club. Many parents will not like to 15 have the young children being exposed to RF frequencies 16 without lead shielding bathing attire, which probably isn't 17 too good in a swimming pool because you would probably fall 18 to the bottom and drown. There has also been a concern that 19 if birds are nesting on the pretend branches, that the 20 birds will drop waste into the swimming pool located near 21 the tower or on to other places where the people are 22 sitting. Therefore, this tower does not appear to be 23 compatible use near a swimming pool in accordance with the 24 original variance grant or original special exception S596. 25 The future plans for widening Democracy Boulevard, will be</p>	<p>783</p> <p>1 times on transportation and have worked on many 2 transportation improvements. And in my past life, when I 3 was in a community board in Brooklyn, I voted to approve -- 4 even though I'm not a civil engineer, I voted to approve 5 most of the plans for rebuilding numerous roads in the 6 area. I had -- they needed my signature on them. I've also 7 approved the largest public works project in the history of 8 the world, the third water tower for the city of New York. 9 I signed off on it; help my public hearings on it, and 10 that. I'm not a civil engineer, but I am familiar with 11 public works projects. Thank you for your time. 12 TAMMY CITARAMANIS: Thank you. Mr. Diamond. 13 GREG DIAMOND: No questions. 14 TAMMY CITARAMANIS: Mr. Barnard. 15 THOMAS BARNARD: No questions. 16 TAMMY CITARAMANIS: Any questions here. Thank you, 17 very much for -- Mr. Garson, for your testimony. Next. 18 Raise your right hand. You promise to tell the truth, the 19 whole truth, and nothing but the truth in your testimony 20 under the penalty of perjury? 21 FATMA SABRI: I do. 22 TAMMY CITARAMANIS: Okay. State your name and your 23 address. Make sure you speak. It sounds like you have a 24 quiet voice already. So everybody can hear you and you are 25 picked up by the mic.</p>

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27 (784 to 787)

<p>784</p> <p>1 FATMA SABRI: Okay. My name is Fatma Sabri Ahmad; A-H- 2 M-A-D. I live at 10203 Gainsborough Road, Potomac, Maryland 3 20854. I'm -- what I've written is that I do know that 4 change always happens to communities. It's the norm. 5 Sometimes the change is good. Sometimes it's not good. In 6 my opinion, the cell tower, the change of having a cell 7 tower coming to our community, is a change and it's fair to 8 ask what added value will this tower bring to the community 9 and whether it's pros will justify the cons it will cause. 10 My testimony here is to express my opposition for this 11 change, which is having the cell tower, as it will impact 12 me and my family's financial well-being and will put us at 13 a disadvantage. I don't want this cell tower in my 14 community, at my backyard, and in my face. I want to 15 acknowledge that there is -- there has been hard work done 16 by the Verizon representatives. They have done a great job 17 trying to address all the concerns and this is great. 18 You're doing a great job. At the end of the day, you will 19 be heading home after your hard work, which is most likely 20 not going to be near or in my neighborhood. Your home is 21 not in my neighborhood. You will not be greeted by the 89 22 foot artificial tree which can potentially go to 155 feet 23 with this huge, concrete, non-camouflaged base, every time 24 you are entering or exiting your neighborhood and every 25 time you get to your backyard or look from your bedroom</p>	<p>786</p> <p>1 myself into a property with question marks and unresolved 2 issues? I know if it was me that was buying the house, I 3 wouldn't do that. What does this mean? It means it's a 4 short -- it's a smaller buyer base, smaller people who are 5 willing to buy. This would at least hurt me being able to 6 sell my -- the house price and it wouldn't be presented at 7 a fair market price that I paid. I want to make clear that 8 I have no interest in interfering with EGRA's business nor 9 Verizon's. They can set their budgets and go ahead with 10 their plans, do whatever to sustain their business. But 11 they shouldn't also impact me while conducting their 12 business. I don't have an issue with EGRA adding an 89 feet 13 -- I do have an issue with the EGRA adding an 89 feet 14 structure in their parking lot that have unresolved, unsure 15 evaluation and health issues that will hurt my property and 16 affect my own business. I've seen multiple homes a few feet 17 from me sitting on market for many months now. They are not 18 selling or some of them have been sold for lower price. I'm 19 thankful for the County for provide me an opportunity to 20 express my concerns and for taking me into consideration 21 when making such an important decision. I come from a Third 22 World country and I'm familiar with situations where 23 structures much taller and less needed are erected 24 overnight because it makes economic sense and that's it. No 25 environmental, no residential concerns are given priority.</p>
<p>785</p> <p>1 windows on a daily basis for the coming 30 years. Now let's 2 assume that for the sake of the general community lives 3 improvement, which is not a certain fact. There is an 4 (inaudible) need for the presence of the structure. And 5 then I put curtains to hide my view and pretend that the 6 camouflaged cell tower doesn't exist. How would I block the 7 effect of emitted waves that we are still not sure of their 8 harmful effect from affecting me and my family 24/7? How 9 would I block this effect? This is not a workplace where 10 you report a third of your day. This is an ongoing, 11 continuous life going on there. This is not a school or 12 library or club where we spent some portion of the day and 13 leave to go home because this is home. My 11-year-old 14 daughter gets so worried every time we pass the sign, the 15 corner, the conditional use sign. The corner of 16 Gainsborough Road and Democracy Boulevard, which is our way 17 in and out to our place, she asked me the same thing over 18 and over. Are they going to build the cell tower here? Can 19 we move if they build the cell tower? Now, let me ask you 20 that. I am a selfish person who puts her own sake first and 21 overlooks the benefits of the group and I decided that I 22 want to leave, sell my house, and leave. I'm faced with a 23 deteriorating value for my property. I feel trapped. I feel 24 I don't like it. If I don't like it, I will sell at a loss 25 and leave. Putting myself in the buyer's shoes, why get</p>	<p>787</p> <p>1 I have to say I was shocked to come across this cell tower 2 case here in America, specifically in Montgomery County. 3 Yet I am thankful for the US judiciary system and trust the 4 decisions made will factor in all the parties at stake and 5 will be for the best of the overall well-being of the 6 community. Thank you, Madam Examiner. Thank you, everybody. 7 TAMMY CITARAMANIS: Okay. Let's see if they have any 8 questions for you. Any questions? 9 GREG DIAMOND: No questions. 10 TAMMY CITARAMANIS: Questions? 11 THOMAS BARNARD: Thank you. No questions. 12 TAMMY CITARAMANIS: I do have a question. I didn't get 13 the spelling of your name so -- because I didn't see you 14 signed in on the sign in sheet. Did you sign in? 15 FATMA SABRI AHMAD: I did. 16 TAMMY CITARAMANIS: You did? 17 FATMA SABRI AHMAD: Yeah. 18 TAMMY CITARAMANIS: Is it -- maybe it's over there. 19 FATMA SABRI AHMAD: It's F-A-T-M-A. 20 TAMMY CITARAMANIS: Oh, F-A-T-M-A, S-A-B-R-I. 21 FATIMA SABRI AHMAD: Yes. 22 TAMMY CITARAMANIS: Oh, my mistake. Thank you. Thank 23 you for your time. Okay. 24 FEMALE VOICE: Can I make a formal comment? 25 TAMMY CITARAMANIS: Okay. So --</p>

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28 (788 to 791)

<p>788</p> <p>1 FEMALE VOICE: A brief statement? (Inaudible) comment?</p> <p>2 TAMMY CITARAMANIS: No, she is -- she is going to --</p> <p>3 FEMALE VOICE: I just want to add a comment to --</p> <p>4 TAMMY CITARAMANIS: If you want to make a statement,</p> <p>5 when it's your turn you can come up and make a statement,</p> <p>6 but we have somebody who else is speaking. They must speak</p> <p>7 right now. Can I get you to raise your right hand? Do</p> <p>8 promise to tell the truth, the whole truth, nothing but the</p> <p>9 truth in your testimony under the penalty of perjury?</p> <p>10 NORMA COLLEDANI: (Inaudible).</p> <p>11 TAMMY CITARAMANIS: Okay. State your name and your</p> <p>12 address and then give us your statement.</p> <p>13 NORMA COLLEDANI: Okay.</p> <p>14 TAMMY CITARAMANIS: Okay.</p> <p>15 NORMA COLLEDANI: Hello. Good morning to everybody and</p> <p>16 to the (inaudible). My name is Norma Colledani. I live in</p> <p>17 8307 (inaudible) Hill Lane, Potomac, Maryland.</p> <p>18 TAMMY CITARAMANIS: Can you spell your last name?</p> <p>19 NORMA COLLEDANI: Yes, my last name is Colledani; C-O-</p> <p>20 L-L-E-D-A--N-I.</p> <p>21 TAMMY CITARAMANIS: Thank you.</p> <p>22 NORMA COLLEDANI: So hello. Good morning to everybody.</p> <p>23 Especially my neighbors, as they say. My name is Norma</p> <p>24 Colledani again. I am a human rights lawyer and I</p> <p>25 specialize in business and human rights. I will speak you</p>	<p>790</p> <p>1 But even though the camouflage is no going to work, they</p> <p>2 have been -- we have a lot of information with that and how</p> <p>3 this camouflage is not going to be enough to cover the</p> <p>4 tower. I would like to stress that it's not possible to</p> <p>5 camouflage the kids leaving the pool. It is not possible to</p> <p>6 camouflage that pole and the tennis court, there are always</p> <p>7 people playing tennis today. And I saw the people.</p> <p>8 Everybody want to leave when they had this tower in front</p> <p>9 of them. It is not possible to camouflage that in reality.</p> <p>10 It is not possible to camouflage the (inaudible) of the</p> <p>11 homes. You know, we are touching now -- what happens if the</p> <p>12 tower (inaudible) is built? I just bought a house. I'm just</p> <p>13 working with my husband and my family to sell the home. How</p> <p>14 are we going to do -- what is going to be our strategy?</p> <p>15 It's not possible to camouflage that conversation. That's</p> <p>16 the situation for us in the neighbors right now. It is not</p> <p>17 possible to camouflage the (inaudible) in the neighborhood,</p> <p>18 the tension. It is not possible to camouflage that. It is</p> <p>19 not possible to camouflage the risk that we have for the</p> <p>20 people leaving our neighborhood or passing through the</p> <p>21 neighborhood if the tower is built. It is not possible to</p> <p>22 camouflage the radiations and the (inaudible) who haven't</p> <p>23 heard (inaudible) status here and in Europe and a lot of</p> <p>24 places that said it could not (inaudible) of people living</p> <p>25 these structures. It is not possible to camouflage the</p>
<p>789</p> <p>1 today as a neighbor as part of the opposition to this</p> <p>2 (inaudible) for the exception and for this application. I'm</p> <p>3 a working mom that built a family with a working man and we</p> <p>4 have two beautiful kids. One is eight and that my daughter</p> <p>5 is four. We just moved to a beautiful, a beautiful house in</p> <p>6 a beautiful neighborhood in Snug Hill, this July. With a</p> <p>7 lot of happiness, with a lot of hopes, with all the</p> <p>8 (inaudible) to build a beautiful life. But as soon as we</p> <p>9 move, we received the letter and we received information</p> <p>10 regarding the new application, the second application for</p> <p>11 Verizon to build the tower. I know (inaudible) happiness</p> <p>12 get with the shades of the fear. Of the fear of the tower.</p> <p>13 Of the fear with the future. We feel the fear of all the</p> <p>14 neighbors. We feel the tension in the neighborhood. We feel</p> <p>15 the tension (inaudible). We feel the tension in the</p> <p>16 ambience. So we cannot enjoy the fully our neighborhood</p> <p>17 right now. And it's a very, very difficult situation. In</p> <p>18 that sense, I would like to stress that I stand in</p> <p>19 opposition. I support all the information and the evidence</p> <p>20 that have been present here. I think it's very important,</p> <p>21 but I just would like to ask a little more time and opinion</p> <p>22 from my part. In all the information that have been</p> <p>23 presented to the opposition, I would like to say that</p> <p>24 Verizon is proposing to camouflage a part of the tower and</p> <p>25 try to camouflage as a part of the structure of the tower.</p>	<p>791</p> <p>1 noise. I know it's not. If you go (inaudible) because in</p> <p>2 the last hearings we have a lot of questions around if you</p> <p>3 see or not see the tower. If you go and visit the tower, we</p> <p>4 can talk a different kind of tower, but in every kind of</p> <p>5 tower, there is a sign that says, caution, danger. No get</p> <p>6 near. Radiation. (Inaudible). There is a (inaudible) point</p> <p>7 in every tower has the side of risk. So the question is,</p> <p>8 how are we going to put, in the middle of recreation area</p> <p>9 with kids, with people, with life? Such a structure that in</p> <p>10 itself is inherent, the risk, the dangers is (inaudible) to</p> <p>11 that structure. In essence, we are here to ask the</p> <p>12 authorities, the state authorities, in the application of</p> <p>13 the law say no to the building of the tower. And the</p> <p>14 (inaudible) this relation and all the (inaudible) it's</p> <p>15 important to stress out for me three points. That Verizon</p> <p>16 did not prove, with the maps that they present, the need</p> <p>17 for the tower. The maps and information regarding all these</p> <p>18 technical situations with the (inaudible) are not precise,</p> <p>19 are not confirmed, are not consistent. Even though we can</p> <p>20 also challenge the technical presentations for -- to check</p> <p>21 the (inaudible). And also, it's very important to point out</p> <p>22 that the exception for the waiver cannot be applied in this</p> <p>23 case, in this particular case, because the condition of the</p> <p>24 regulation is not met in the present case. There is no</p> <p>25 possibility to install the tower in a place that complies</p>

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29 (792 to 795)

<p>792</p> <p>1 with all the setbacks. So there is no way to apply the 2 exception. In that sense, also we have to take in account 3 that the purpose of the land is for recreational purpose 4 and not for another purpose. In that sense, they cannot 5 prove the need and they cannot prove they had the condition 6 to ask for the exception. In that sense, we are here as 7 (inaudible). We are here as a neighborhood. And we are in 8 front of the company. The tension and the relation of the 9 power we know is not the same, but we had the state. We are 10 very lucky that we have the state, the state authorities. 11 And the state can (inaudible) to apply the rules and 12 regulations taking into account all this evidence. In that 13 sense, we are here to ask the state to apply the law on the 14 regulations so we can -- so we can have our rights 15 protected. We can have our human rights and our 16 constitutional right protected in this situation. So we 17 respectfully ask the administration to say no to build the 18 tower in the neighborhood. In that sense, my last question 19 is; why would -- we are going to build a dangerous 20 structure in the middle of the recreational area? The big 21 issue and it issue (inaudible) then this present case, with 22 all the evidence, with all the information, it's not legal, 23 it's not reasonable, and the conditions are not met to 24 build the tower. So we are asking, please, for our good and 25 for the good of our children, and the future (inaudible)</p>	<p>794</p> <p>1 MATHEW PHILLIPS: I don't know if it's been marked. I 2 emailed it to -- back in January, to your system. I don't 3 know. I originally went to Mr. Berliner. He suggested we 4 send it to you. 5 TAMMY CITARAMANIS: Give me a moment. 6 MATHEW PHILLIPS: Sure. 7 TAMMY CITARAMANIS: There is no sense in remarking 8 something that's already been marked. I have exhibit number 9 87. As an email to Ms. Benhana from Matt Phillips dated 10 January 3, 2017. 11 MATHEW PHILLIPS: Yeah. Sounds about right. Yeah. 12 GREG DIAMOND: Eighty-seven? 13 TAMMY CITARAMANIS: Eighty-seven is the email. 87(a), 14 it's a Change.org recipient, Roger Berliner, and then -- 15 MATHEW PHILLIPS: Yeah, and then all that. Yeah, it's 16 the same thing. 17 TAMMY CITARAMANIS: So you already have it. 18 MATHEW PHILLIPS: Okay. 19 TAMMY CITARAMANIS: So it 87 and 87(a). Everybody got 20 that? Okay. Go ahead Mr. Phillips. 21 MATHEW PHILLIPS: We good? Okay. So -- 22 BILL CHEN: Excuse me, Madam I apologize. 23 TAMMY CITARAMANIS: I'm sorry. 24 BILL CHEN: My 87 says email submitting petition of 25 persons opposing the cell tower to be presented at the</p>
<p>793</p> <p>1 say no to the tower. Thank you so much for your attention 2 and (inaudible). 3 TAMMY CITARAMANIS: Okay. Do you have any questions? 4 Anybody have any questions? 5 THOMAS BARNARD: No questions. 6 GREG DIAMOND: No questions. 7 TAMMY CITARAMANIS: Okay. No questions. No questions. 8 Thank you, very much. Okay. 9 MATHEW PHILLIPS: Ma'am 10 TAMMY CITARAMANIS: Ready? Are you -- we signed -- 11 MATHEW PHILLIPS: I'm signed up, yes. 12 TAMMY CITARAMANIS: Okay. 13 MATHEW PHILLIPS: I'm Matt Phillips. 14 TAMMY CITARAMANIS: Okay. Do you promise to tell the 15 truth, the whole truth, and nothing but the truth in your 16 testimony under the penalty of perjury. 17 MATHEW PHILLIPS: I do. 18 TAMMY CITARAMANIS: State your name and your address 19 and give a statement. 20 MATHEW PHILLIPS: My name is Matthew Phillips; P-H-I- 21 L-L-I-P-S. My address is 10401 Windsor View Drive, Potomac, 22 Maryland 20854. First, I'd like to give you a copy -- this 23 was an email to you before the addition from Change.org. 24 TAMMY CITARAMANIS: It's already something that's been 25 marked?</p>	<p>795</p> <p>1 hearing. Email 1/3/17, sub A, names of petition signers. 2 TAMMY CITARAMANIS: Correct. 3 BILL CHEN: That is the one we're talking about? 4 TAMMY CITARAMANIS: Yeah. 5 BILL CHEN: Thank you. 6 TAMMY CITARAMANIS: Yeah. 7 MATHEW PHILLIPS: So the community doesn't want the 8 tower. I think you probably got that. So the petition 9 contains 414 names, I think. Currently, it's still open. I 10 don't know how to make it stop, but 362 of the things are 11 from the Potomac or Rockville area. The -- it's very clear 12 that we don't want this tower. I'd like to say a little bit 13 about myself. I'm an active-duty naval officer. Twenty-- 14 three years of active service and continuing. I have three 15 children. My oldest one is six. He's lived in six houses in 16 six years. We bought a house about a year and a half house 17 ago in Potomac on Windsor View Drive, as our forever house, 18 my wife and I call it. We are finally getting to the end of 19 my career, looking for a place to settle down. We loved the 20 neighborhood and after a couple of years of renting in 21 Bethesda and looking at areas, we settled down here. About 22 six months later, that big sign went up from your office to 23 said there is a conditional use application and we're going 24 to have a hearing in 30 days and here's the information. So 25 we began to get involved and to meet my neighbors over and</p>

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30 (796 to 799)

<p>796</p> <p>1 Snug Hill, I didn't know before. And so it's gone from our 2 forever house, to our, what are we going to do next house. 3 And that's thanks to none of our control, but to EGRA and I 4 think people have spoken very articulately already about 5 the problems with the cell phone tower over a pool and the 6 many, many other options that we have. The relationship in 7 the community -- between the community and the pool is 8 terrible. All right. And is not going to get better by 9 putting up the tower. It will end the pool, I think. Ms. 10 Wetter talked about another pool that's abandoned and half- 11 full and an eyesore. I think that's the direction that 12 we're going if we put the tower. It's not just about the 13 pool itself or the value of the houses, it's about the -- 14 with the tower there it's about the value of the houses 15 with an abandoned pool there brought to you by Verizon or 16 Celco or EGRA or whoever. The relations can get better, 17 slowly, over time, but they won't get better if the tower's 18 built. I think that's pretty obvious. It's been a long time 19 that that sign went up that said there is a conditional use 20 application pending. Like I think over a year now since the 21 original application. That's because Verizon didn't do any 22 due diligence in the beginning, right. They found it in, 23 wanted to put up a tower. The drawings were wrong. The 24 measurements were wrong. Now it's gone from a monopoly to a 25 fake tree. Who knows what it will be next. It 89 feet, it's</p>	<p>798</p> <p>1 THOMAS BARNARD: No questions. 2 TAMMY CITARAMANIS: No questions? Thank you, Mr. 3 Phillips. 4 MATHEW PHILLIPS: Thank you. 5 TAMMY CITARAMANIS: Before I take the next person, 6 tell me how many people are interested in testifying? One, 7 two, three. Oh, I know Ms. Lee. Sorry. I thought about you. 8 Poor thing. 9 SUSANNE LEE: No, no. That's fine. I'm (inaudible). 10 TAMMY CITARAMANIS: One, two, three, four. Okay. All 11 right. Great. You promise to tell the truth, the whole 12 truth, nothing but the truth in your testimony under the 13 penalty of perjury? 14 BETH LILIENSTEIN: I do. 15 TAMMY CITARAMANIS: Okay. Great. State your name and 16 your address and speak up. 17 BETH LILIENSTEIN: Okay. My name is Beth Lilienstein. 18 And that spelled L-I-L-I-E-N-S-T-E-I-N. I live it 8319 Snug 19 Hill Lane. 20 TAMMY CITARAMANIS: Okay. Now you can give a 21 statement. 22 BETH LILIENSTEIN: All right. Thank you. Thank you so 23 much for the opportunity. I know other people here have 24 also expressed appreciation that we have this opportunity 25 to talk with you. Many of us have emotional appeals to</p>
<p>797</p> <p>1 80, it's 109 feet. It's whatever it will be. They put no 2 effort into protecting our community, protecting our 3 property, even protecting our pool and I think that's been 4 very clear. It's about convenience. There are other options 5 for the tower. I'm not anti-cell phone. I like my cell 6 phone. There is the Bolger Center about a mile to the west. 7 There is the mall about a mile to the east. In between both 8 of those, there is county owned land. There is a parkland 9 to the west and then there is the tennis center, nature 10 center, stuff like that to the east. Right. There is other 11 options if Verizon wants to put a tower needs to cover a 12 zone that doesn't put it directly above a pool. But those 13 options are more expensive. They're less convenient. They 14 are just -- they're just not as easy to do as a willing 15 victim with a pool with electricity already there. The 16 roads already paved. It's an easy day. They've changed the 17 application only when this community pushed them to change 18 the application to put up some kind of screening to make it 19 into a tree. All of that was not a Verizon, voluntary 20 thing. That was because we protested, because we 21 complained, and because we've voiced our objection. That's 22 all I want to say. I would like to just be on record with 23 this petition and happy to answer any questions. 24 TAMMY CITARAMANIS: Okay. 25 GREG DIAMOND: No questions.</p>	<p>799</p> <p>1 make. Many of us have expertise to offer. But it's just 2 terrific to be able to put it in front of you. 3 TAMMY CITARAMANIS: Good. 4 BETH LILIENSTEIN: Today, I'm not -- I'm not going to 5 talk emotionally or based on any of my expertise, but just 6 based on other testimony that we've heard here. Just some 7 comments about it. First of all, I think that the point 8 that Howard made was really terrific and right at the heart 9 of this issue. And that is the size of the lot. The size of 10 the lot is simply too small and a lot of the issues that we 11 been grappling with are really because of this mismatching. 12 And it brought me back to Mr. Landfair's testimony about 13 the criteria for evaluating whether a conditional use 14 application is in fact compatible with the original zone. 15 And one of the chief things that you mentioned were size 16 and scope. The size matters. If we have -- if we place 17 something of great size within an existing zone, that has 18 more of an impact on the existing purpose of the -- of the 19 zone than if it's a small thing. Similarly, you -- I'm 20 sorry, I shouldn't say you. Mr. Landfair agreed that it is 21 most desirable to place a special -- a conditional use 22 exception on the periphery of the property because the more 23 on the periphery it is, the less interference there would 24 be with the main use. And the problem is, that the space is 25 so small that this place on the periphery is actually right</p>

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31 (800 to 803)

<p>800</p> <p>1 smack in the middle. I think to say that the -- we're 2 talking always about setbacks from other residences, but to 3 have 25 feet between the pole and the entrance, is simply 4 too small from the main use of this lot. So it's not just 5 the 300 feet setbacks that we are talking about. We are 6 also talking about the adjacent of this to the core purpose 7 of it. So in a place like Bullis, you can place the pole at 8 a distance from the entrance door to the -- to the center. 9 In a place even like Avenel, you can place it at a distance 10 so that people walking in and using the facility for its 11 primary reason, are not in conflict with this other 12 purpose. And I think a lot of the other aspects of this 13 amended application, assume that there is space. The whole 14 idea of the camouflaging of the tree is to fit in the tree 15 line, but that assumes that you are looking at the tree 16 line from a distance. When we are talking about 23 feet 17 away, it doesn't matter about the tree line. What we're 18 talking about is this is a -- you know, this is a massive 19 diameter pole in our eye line, in our sight line, that's 20 not at all -- and painting it brown, it does no good for 21 the short, close term. So I think that a lot of the 22 modifications and the -- that have been done to this 23 application here, really miss the point that in this tiny 24 space, it doesn't help. And so the fact that the pole is 25 passive as opposed to the activity of the pool isn't really</p>	<p>802</p> <p>1 me? 2 TAMMY CITARAMANIS: No, turn -- that needs to be -- 3 there you go. 4 GERALYNN FRANCESCHINI: All right. My name is GERALYNN 5 Franceschini. And I will spell that for you. G-E-R-A-L-Y-N- 6 N. last name is F-R-A-N-C-E-S-C-H-I-N-I. And I live at 8313 7 Snug Hill Lane in Potomac, Maryland, since 2003. 8 TAMMY CITARAMANIS: (Inaudible). 9 GERALYNN FRANCESCHINI: I'm here to speak on behalf of 10 my husband Dan, my daughter Sophia who is 13, and my 11 daughter Christina who is 12. We have been active members 12 of the East Gate Pool for at least 12 years with our 13 daughters participating in the East Gate swim and dive 14 teams and since they were about four years old. We were 15 part of the pool community, participating in cookouts, swim 16 night movies, and barbecues. For years, my daughter 17 Christina had her birthday party at East Gate pool. In 18 fact, many of the children of my neighbors, some of who are 19 in the room, would come to that pool party at East Gate. 20 During all these years as pool members, we never received 21 any East Gate financial statements or were notified of any 22 changes in the EGRA bylaws. During all of those years, our 23 cell phone use at the pool and throughout the neighborhood 24 has been excellent. In fact, I would often be doing my 25 work, my normal work; they were, at the pool watching my</p>
<p>801</p> <p>1 the point. The point is, they are really co-located. They 2 really are right smack in the same spot and to the extent 3 that we have a recreational area with lots of little 4 children running around, it is a conflict. Even though the 5 pole is static and passive, it is a conflict. If we could 6 have put it on the periphery, wonderful. We wouldn't get 7 this emotional response that you are getting now. It's 8 because it's right smack dab in the middle and I think 9 that's a very important point. So when we consider this 10 conditional use variance, this exception to the zoning 11 rule, are we really talk about something that is just kind 12 of hidden off in the corner or something right smack dab at 13 the front door? And that's only point that I want to make. 14 TAMMY CITARAMANIS: Okay. Any questions? 15 GREG DIAMOND: No questions. 16 THOMAS BARNARD: No questions. 17 TAMMY CITARAMANIS: Thank you, very much. (Inaudible). 18 GERALYNN FRANCESCHINI: I am. 19 TAMMY CITARAMANIS: Okay. All right. Do you promise to 20 tell the truth, the whole truth, and nothing but the truth 21 in your testimony under penalty of perjury? 22 GERALYNN FRANCESCHINI: I do. 23 TAMMY CITARAMANIS: Okay please state your name and 24 your address and let's hear your testimony. 25 GERALYNN FRANCESCHINI: Okay. My name -- can you hear</p>	<p>803</p> <p>1 kids. I had no problems. I had no complaints from my bosses 2 that I was not in contact with them. We are adamantly 3 opposed to the cell tower. We will never join the pool 4 again if there is a cell tower. And quite frankly, we do 5 not see any fundamental need for the cell tower in our 6 community. It has not been made clear to me what the 7 business case is and the need for the consumers for the 8 cell phone tower. Years ago, when my husband and I were 9 looking at homes, we were drawn to Snug Hill. A quiet 10 neighborhood of two cul-de-sacs surrounded by beautiful 11 green space; Buck Branch Park, East Gate common area 12 directly by my and others' homes, and the East Gate swim 13 and tennis club. We were told that East Gate was set aside 14 as a recreational component of our neighborhood. My husband 15 and I envisioned long-term use of the East Gate pool and 16 how our kids could safely walk there alone as teenagers. 17 And in fact, my kids are very disappointed as a 12 and 13- 18 year-old would be, that they will never go to the pool 19 again with the tower. Their freedom of walking to the pool 20 as teenagers has been squashed. I was five months pregnant 21 with our first daughter when we moved into 8313 Snug Hill. 22 The neighborhood was filling up with young families and 23 children who would spend all day outside running and 24 exploring to the neighborhood. The common area behind my 25 home, pitching their tents and camping overnight. Running</p>



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32 (804 to 807)

<p style="text-align: right;">804</p> <p>1 down to the streams of Buck Brunch Park behind the Pace's 2 home and in the East Gate. Our children use East Gate green 3 space all year round. Not just in the summertime. Please 4 take a look at this photo. 5 TAMMY CITARAMANIS: Is this -- is this a photo that 6 you want to put into the record? 7 GERALYNN FRANCESCHINI: Sure. 8 TAMMY CITARAMANIS: Or are you just -- I need to mark 9 it first then. 10 GERALYNN FRANCESCHINI: Okay. 11 TAMMY CITARAMANIS: Don't talk until I've marked it. 12 Okay. So how many photos are you -- you're just doing one? 13 GERALYNN FRANCESCHINI: Just one. Just one. 14 TAMMY CITARAMANIS: Okay. 15 GERALYNN FRANCESCHINI: (Inaudible). 16 TAMMY CITARAMANIS: Okay. I've marked it as Exhibit 17 235. 18 GERALYNN FRANCESCHINI: May I proceed? 19 TAMMY CITARAMANIS: Yes, please. 20 GERALYNN FRANCESCHINI: Thank you. These are just a 21 few of our kids sledding at the East Gate Hill. Take a look 22 just behind these kids. Do you see all the sledding and 23 foot print marks? Do you feel the sense of fun and 24 camaraderie of these kids? Look into their faces. Well, 25 this sledding area will be filled with new parking spaces</p>	<p style="text-align: right;">806</p> <p>1 TAMMY CITARAMANIS: Okay. So noted. 2 GERALYNN FRANCESCHINI: How with a cell phone tower 3 fit into what we were told by our real estate agent, of how 4 the East Gate Swim and Tennis Club would be used for the 5 sole purpose of recreational uses? A cell tower that is 6 approximately 18 feet from the pool entrance walkway. We've 7 been members of the pool for over 12 years and you don't 8 just show up at the door. You walk through the walkway, 9 which is about 18 feet from a large base. Why would we, as 10 potential homebuyers, read anything about EGRA and think a 11 cell tower could ever become part of East Gate? Why would 12 we ever risk potential health hazards for our families? 13 Why? There are many studies that highlight potential risks. 14 There may not be definitive, but as someone mentioned 15 earlier, tobacco use wasn't considered risky years ago. 16 Talcum powder that Johnson &amp; Johnson had out on the market 17 for many years. Well, we know the results after many years 18 on the risk of health. Why would we wait 10 to 20 years for 19 our families to be used as guinea pigs to confirm the 20 harmful effects? The sole purpose is for recreation, not a 21 cell tower. Once again, we would have never purchased our 22 home. Some common sense questions I have, and I think many 23 people would have; why would anyone work or lifeguard at a 24 pool three months a year, right, within 20 feet or so of a 25 huge cell tower? Why would I have my family at the pool all</p>
<p style="text-align: right;">805</p> <p>1 due to the cell tower. These kids will not be able to sled 2 safely here anymore. Nor in the warmer months, will they be 3 able to play soccer, wiffleball, or tag. This is wrong and 4 violates the EGRA purpose. Why would we ever want our kids 5 playing near a cell phone tower at East Gate? We had a 6 choice where to buy our family home. We heard people this 7 morning and in the previous two days of testimony. We have 8 the opportunity and the income to have choices of where to 9 live. We chose to live in Snug Hill Lane for location and 10 green space. Not for a cell tower. We never would have 11 purchased our home if we knew there would be a cell tower 12 in the neighborhood. We reviewed the EGRA purpose prior to 13 purchasing our home in Snug Hill Lane. We felt comfortable 14 that EGRA, East Gate Recreation Association, would always 15 be used for recreation. How could we not when we read the 16 purpose of this association is to foster the health and 17 general welfare of its members through the ownership and 18 operation in a nonprofit basis of a swimming pool and other 19 recreational facilities, end quote, period. How does a cell 20 tower fit into this purpose statement? 21 THOMAS BARNARD: I object, Madam Examiner. 22 TAMMY CITARAMANIS: Grounds? 23 THOMAS BARNARD: Outside the scope, purpose statement 24 analysis outside of the -- same objection. Obviously she's 25 going to proceed. I'm just noting my objection.</p>	<p style="text-align: right;">807</p> <p>1 day long in such close proximity to a tower? Never mind the 2 potential health issues, why would anyone want to relax in 3 the pool looking at this tower? Okay. No longer will the 4 East Gate pool be a draw to future homeowners. Actually, it 5 would have quite the opposite effect. Likely, a vacant, 6 defunct community pool and the ensuing problems that would 7 bring. In closing, we've heard two days of expert testimony 8 related to the negative impact of home values; lack a 9 verifiable data to prove the need for a cell tower 10 incongruence with recreational purpose of EGRA, Master 11 Plan, zoning, lack of rationale to change the setback and 12 so on. I thoroughly don't want to repeat all that great 13 testimony. I appreciate the opportunity to provide my input 14 at this hearing as a key stakeholder, a Snug Hill 15 homeowner, a long-term East Gate pool member, and a 16 community member at large, into a decision that has very 17 serious consequences to individuals, families, 18 neighborhoods, and the broader Maryland community. Quite 19 frankly, I'm disappointed with Verizon not having a 20 relationship and seeking out the community stakeholders 21 when they are making a business decision such as this. I've 22 worked in business for over 25 years and you always engage 23 with the community. We are supposed to be partnerships in 24 this and we have certainly not had any indication of any 25 partnership on behalf of Verizon, Celco, whomever from</p>

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33 (808 to 811)

<p style="text-align: right;">808</p> <p>1 your side. So going on statement; no cell tower should be</p> <p>2 allowed on East Gate. Thank you.</p> <p>3 TAMMY CITARAMANIS: Let's see if we have any questions</p> <p>4 for you. Questions?</p> <p>5 GREG DIAMOND: No questions.</p> <p>6 THOMAS BARNARD: No questions.</p> <p>7 TAMMY CITARAMANIS: Mr. Chen? Thank you. Oh, the</p> <p>8 picture? Do you want to -- I'll just give it to you so you</p> <p>9 have it (inaudible).</p> <p>10 GERALYNN FRANCESCHINI: Yeah. Thank you.</p> <p>11 TAMMY CITARAMANIS: Okay. So we have you and then Ms.</p> <p>12 Lee? Okay. Because then after that, we will break and we</p> <p>13 will go to rebuttal. All right. Okay. Why don't you take</p> <p>14 this? Take that with you and I will just get you sworn in</p> <p>15 first.</p> <p>16 ANNETTE PERLIN: Okay.</p> <p>17 TAMMY CITARAMANIS: All right. Do you promise to tell</p> <p>18 the truth, the whole truth, and nothing but the truth in</p> <p>19 your testimony under penalty of perjury?</p> <p>20 ANNETTE PERLIN: Yes, I do.</p> <p>21 TAMMY CITARAMANIS: Please state your name and your</p> <p>22 address and then we can talk about the documents you have.</p> <p>23 ANNETTE PERLIN: Okay. My name is Annette Perlin; P-E-</p> <p>24 R-L-I-N. And I live at 5 Snug Hill Court, Potomac, Maryland</p> <p>25 20854.</p>	<p style="text-align: right;">810</p> <p>1 purchased my home, in the East Gate subdivision of Potomac,</p> <p>2 one major incentive and personal requirement for writing a</p> <p>3 purchase contract was that the property conveniently housed</p> <p>4 a neighborhood recreational facility within a few feet of</p> <p>5 my home. This facility consisted of a swimming pool, three</p> <p>6 tennis courts, green recreational space, and adequate, off-</p> <p>7 street parking. The membership fees for joining the pool</p> <p>8 are not included in the East Gate 3 HOA dues. So it is a</p> <p>9 personal choice to join the pool, not a requirement like</p> <p>10 other HOA associations. East Gate memberships historically</p> <p>11 have been, and remain, readily available and still remain</p> <p>12 available as there is no waiting list to join, as is the</p> <p>13 case with other pools in the area. Additionally, fees to</p> <p>14 join EGRA are somewhat less costly in contrast with some</p> <p>15 other similar swim clubs in the area. The benefit of having</p> <p>16 a swim and recreational facility within the East Gate</p> <p>17 community with open memberships is an asset and adds</p> <p>18 significant value to my property compared to if there were</p> <p>19 none. Since my daughter at that time was only five years</p> <p>20 old, this was one of my priority purchase incentives. When</p> <p>21 I bought my home, I was specifically informed that the</p> <p>22 recreational component of the subdivision was designated</p> <p>23 for exclusive use of a community swimming pool, tennis</p> <p>24 courts, and green space for the residents of the</p> <p>25 subdivision and members from the surrounding communities. I</p>
<p style="text-align: right;">809</p> <p>1 TAMMY CITARAMANIS: Ms. Perlin, can you hold on one</p> <p>2 second? Your voices are carrying. So if you don't mind, if</p> <p>3 you want to take your conversations outside, I would</p> <p>4 appreciate that. Thank you. Okay. So you have your</p> <p>5 statement. You had mentioned you have some documents there.</p> <p>6 I wasn't sure whether you --</p> <p>7 ANNETTE PERLIN: They are just backups for some of the</p> <p>8 -- some of --</p> <p>9 TAMMY CITARAMANIS: It means it's something you want</p> <p>10 to enter into the record or you just have it --</p> <p>11 ANNETTE PERLIN: No.</p> <p>12 TAMMY CITARAMANIS: Okay. Then proceed.</p> <p>13 ANNETTE PERLIN: My name is Annette Perlin. I'm a</p> <p>14 retired Montgomery County public school art therapist and</p> <p>15 secondary art teacher. I taught at Walter Johnson High</p> <p>16 School, within both the level V Learning Center and</p> <p>17 mainstream art department, for 17 years of my career with</p> <p>18 MCPS. I very gratefully reside at 5 Snug Hill Court,</p> <p>19 Potomac, Maryland 20854, within the East Gate 3</p> <p>20 subdivision. I have owned my house from August 2001, to</p> <p>21 present. My position regarding the erection of a cell tower</p> <p>22 on the current site of the East Gate Swim and Tennis Club</p> <p>23 parking lot is one of fervent opposition. My testimony is</p> <p>24 based on what I know and how people, places, and things got</p> <p>25 me to testify at this closing hearing today. Where I</p>	<p style="text-align: right;">811</p> <p>1 bought my house with this understanding that EGRA swim club</p> <p>2 would remain a recreational area. There was never going to</p> <p>3 be a cell tower. So based on the understanding that the</p> <p>4 community and pool property was protected by its bylaws and</p> <p>5 would not be altered, I proceeded to buy my home for the</p> <p>6 asking price of \$550,000.00, back in 2001. I ventured into</p> <p>7 a major, whole house renovation, which cost in the many</p> <p>8 tens of thousands of dollars, including a \$50,000.00 land</p> <p>9 and hardscape renovation. Had I not been informed that the</p> <p>10 recreational land was protected from any changes in</p> <p>11 development, I can testify with certainty today, that I</p> <p>12 would have never purchased my house in East Gate. I</p> <p>13 certainly would have -- I certainly would have made an easy</p> <p>14 decision to move and renovate elsewhere. We do not need yet</p> <p>15 another cell tower in our area. There is already very good</p> <p>16 cell phone reception and service. Furthermore, an</p> <p>17 industrial use of this land is not compatible with the EGRA</p> <p>18 land use as deeded and designated as a recreational area.</p> <p>19 THOMAS BARNARD: Just note my objection for the record</p> <p>20 for that.</p> <p>21 TAMMY CITARAMANIS: So noted.</p> <p>22 ANNETTE PERLIN: The environment is bucolic. There are</p> <p>23 roaming and raising families of deer, rabbits, chipmunks,</p> <p>24 and beautiful songbirds abound. It is a peaceful</p> <p>25 neighborhood that experiences only occasional delivery</p>

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34 (812 to 815)

<p>812</p> <p>1 service trucks and light local traffic. Neighbors watch out 2 for each other. On at least five occasions, my little dog 3 has managed to get out under the fence and each of those 4 times, a caring and alert neighbor has either called or 5 brought him back to my front door having saved him from 6 harm. We look out for each other, our children, pets, and 7 homes. Winter snows bring neighborhood children and adults 8 to sled down the slopes of the green space. As part of our 9 neighborhood tradition, offering a year-round recreational 10 facility for everyone. The proposed alteration to the 11 recreational green space will forever change this usage as 12 we know it. The designated recreational land will be cut 13 into and filled in for parking, which will also be more 14 remote than what is currently available. Any potential of 15 maintaining the green space as a safe and usable land area 16 as we have come to enjoy it, will be destroyed. The pool 17 will be forever altered and the future of our pool growing 18 and membership will dwindle. Future membership will be 19 adversely affected and eventually cease to exist. Who will 20 want to swim, dive, hold meets, daily practice, and frolic 21 with their families in the presence and shadow of a 22 looming, 89 plus foot monopole and its companion service 23 area on the sliver of land that is now the pool parking 24 lot? I for one, certainly will not renew my membership 25 under these circumstances. Another area of great concern</p>	<p>814</p> <p>1 facility, there needs to be a clearly submitted design that 2 creates accessibility and where and how that can be 3 achieved given the specifications of the tower needed to 4 meet zoning compliance regulations. The testimony of Mr. 5 Joe Davis on September 27, 2017, indicates that this may 6 not be possible given the restrictions of the actual space 7 available. It has not been made clear to me whether the 8 plan submitted by Verizon and its representatives show how 9 attention was paid to conforming with the required ADA 10 parking regulations. Nowhere have I been privy to any plans 11 by Verizon to indicate that they are working on 12 accessibility, nor have they reached out to pool members to 13 ensure that alteration of the pool parking will meet the 14 specified regulations as outlined by the ADA. The 15 department of ADA's compliance team in Montgomery, 16 Maryland, ensures that facilities are maintained in 17 compliance with parking requirements. In addition, and of 18 paramount importance, is the fact that my nonverbal, 19 autistic, adult son requires swimming in water activities 20 as an integral component of his recreational therapy 21 program. This is a medical necessity, a stated part of his 22 individual program plan, which is overseen by DDA, 23 Developmental Disability Administration, and his day and 24 residential components. Since the time of my autistic son's 25 diagnosis at age 3, I have always lived where a swimming</p>
<p>813</p> <p>1 that I have not yet as heard addressed, is the matter of 2 handicap parking spaces. I personally require a handicap 3 parking space for both myself and those times when my 4 adult, autistic son attends the pool. The relocation of 5 parking from the current prime handicap spaces to a more 6 remote area with a steeper slope will be American 7 Disabilities Act noncompliant. The essentials for parking 8 space ADA guidelines location are as follows; number one, 9 based on a practical approach, ADA stipulates that parking 10 spaces leading to a particular building should be built on 11 the shortest accessible route of travel from the point of 12 parking to the entrance. Number two, parking facilities 13 that do not serve any particular buildings, assures 14 accessible entrance of the parking facility, should be 15 devised from the location of accessible parking. And number 16 three; accessible parking spaces shall be disbursed and 17 located closest to accessible entrances along with the 18 adjacent parking. Placing handicap parking on a greater 19 than 2 percent slope and in the remote area of the parking 20 lot away from accessibility to pool entrance, does not 21 comply with ADA parking requirements. In accordance with 22 ADA and administrators of the County's Title II grievance 23 procedure, beginning in 1992, all new construction and 24 renovations are to be constructed in compliance with the 25 ADA accessibility guidelines. As East Gate pool is an older</p>	<p>815</p> <p>1 pool was available within the proximity or within close 2 proximity. I have been a member of East Gate pool since 3 2005. My daughter participated on the swim and dive team 4 every summer for a period of eight years during my 12 year 5 period of membership. I came to rely upon the pool even 6 more greatly when in 2004 I was diagnosed with stage IV 7 non-(inaudible) lung cancer. Knowing that my family had a 8 place to recreate the steps away from the front door was 9 extremely important since I was recovering at home from 10 three major surgeries and six months of chemotherapy. The 11 pool became an even greater necessity for my recovery. It 12 provided all the summer needs of my family with a swim, 13 dive, team practice daily, meets every weekend throughout 14 the month of July, and a lively social life for my daughter 15 for many years. And the pool provided the necessary ongoing 16 venue required for my son's adjunct water therapy. I'm here 17 today to tell you that I am entering my 13th year as a 18 cancer survivor. I have included scientific published 19 research, both nationally and internationally, which 20 supports the growing body of evidence that electromagnetic 21 radiation the cell towers emit, even at low levels, is 22 dangerous to human health. Studies have shown that even at 23 low levels of this radiation, there is evidence of damage 24 to cell tissue in DNA and it has been linked to brain 25 tumors, cancer, suppressed immune function, depression,</p>

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35 (816 to 819)

<p style="text-align: right;">816</p> <p>1 miscarriage, Alzheimer's disease, and numerous other 2 serious illnesses. And those at the greatest risk are the 3 children, the elderly, the frail, and pregnant women. Over 4 100 physicians and scientists at Harvard and Boston 5 University School of Public Health have called cell towers 6 a radiation hazard. And 33 delegate physicians from seven 7 countries have declared cell phone towers a public health 8 emergency. I am now living in my house as a single parent 9 having been divorced for the past two years. I was forced 10 to buy out my ex-husband for a large amount of money in 11 order to remain in my home. I have worked hard to keep 12 living in my house because it provides me a safe zone from 13 environmental harm. It is my and my children's comfort 14 zone. I did not become aware plans to erect a Verizon cell 15 tower until a large zoning ordinance hearing sign appeared 16 adjacent to the pool at the Gainsborough Road entrance in 17 October 2015. At no time was I notified by any parties of 18 plans to erect a cell tower on the parking lot of the pool 19 prior to the appearance of the zoning sign in October 2015. 20 In my 11 years of pool membership, I was never invited or 21 made aware of any meetings held for members with the 22 purpose of voting and electing members to the board. The 23 nature of the board has been one of an invited voluntary 24 position in all the years I have been a pool member. I have 25 never received any US mail, email notification, or other</p>	<p style="text-align: right;">818</p> <p>1 recreational facility will no longer serve the needs of my 2 family as a safe place designated for rest, swimming and 3 recreation. On November 28, 2016 over one year from the 4 signing of the lease to erect the tower the EGRA formally 5 sent notification of a meeting to be held at Seven Locks 6 Elementary School in the evening. The meeting was led by 7 the EGR board members. It was heated and contentious. There 8 was even a mutual physical encroachment between a board 9 member with an older pool member only adding to the tension 10 in the room; it was revealed at this meeting that a 11 decision to erect the cell tower was carried out as a way 12 of financially saving the pool. I knew absolutely nothing 13 about this. It was all unreported and exclusive 14 information, not having been revealed until after the 15 zoning sign was erected. A cell tower within feet of my 16 property and in plain sight will forever alter my view, 17 environment, health, peace of mind, quality of life, and 18 financial investment. This is an egregious problem for me. 19 To be sure, the value of my property will decrease. The 20 number of interested buyers will also decrease as people 21 will go elsewhere to purchase a comparable house for \$1 22 million, where there is no hideous 89 foot cell tower 23 camouflaged or not. This cell tower and land (inaudible) 24 will threaten and impact my ability to sell my house as 25 evidenced by the enormous price reduction of recent</p>
<p style="text-align: right;">817</p> <p>1 communication indicating any past or present changes to the 2 bylaws by -- of EGRA. I have never received any 3 notification in writing regarding a lease to be entered 4 into with Verizon for the purpose of erecting -- 5 THOMAS BARNARD: I'm just going to object. I under-- 6 ANNETTE PERLIN: --erecting an 89-- 7 THOMAS BARNARD: Hold on. I'm going to object. 8 ANNETTE PERLIN: Oh. 9 THOMAS BARNARD: I understand that we're going to let 10 the testimony go, but I just want it clear that this line 11 of questioning is objected to. 12 TAMMY CITARAMANIS: Well, I agree, but we are going to 13 let it go. Your objection is noted. So you can continue. 14 ANNETTE PERLIN: I have never received any 15 notification in writing regarding a lease to be entered 16 into with Verizon for the purpose of erecting an 89 foot, 17 potential 155 foot, cell tower on the parking lot of the 18 East Gate property. I have never been invited by EGRA to 19 any open meetings of discussion regarding the finances of 20 the pool and tennis courts prior to November 28, 2016. I 21 have never been included on any membership discussion 22 regarding asking for financial suggestions, strategies, and 23 other options for sustaining the recreational facility. I 24 will not rejoin the recreation facility if the cell tower 25 is erected on the parking lot of the pool as the</p>	<p style="text-align: right;">819</p> <p>1 surrounding comparables. I know that I would never even 2 consider purchasing a house that was next to a cell tower, 3 much less one with an asking price range of \$1 million. I 4 would go several miles away to avoid this tower, no matter 5 how beautifully the house presented. My major personal 6 investment, the future of public desirability, and future 7 salability of my property is greatly affected by this 8 closed-door decision to acquire the zoning variance to 9 erect the cell tower. And the financial future for my son 10 and my daughter will result in severely negative impacts 11 for the rest of their lives. In closing, please give very 12 serious weight to the testimony of Mr. Joe Davis that took 13 place on September 27, 2017 on the second day of the OZHA 14 hearing in making your decision regarding the actual 15 feasibility of this land use. Thank you for this 16 opportunity to speak on these issues. Sincerely 17 (inaudible). 18 THOMAS BARNARD: No questions. 19 TAMMY CITARAMANIS: Thank you very much. 20 ANNETTE PERLIN: Thank you. 21 TAMMY CITARAMANIS: Okay. So last two is that what I'm 22 seeing? Because once we're done with you were going to go 23 to lunch and then we will go to rebuttals. I just want to 24 make sure everybody -- because I know everybody is hungry, 25 but I also want to make sure that we are at the end of the</p>

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36 (820 to 823)

<p>820</p> <p>1 line. Okay. So were going to do this lady and then, Ms. 2 Lee, you get to close up the individuals. Okay. Come on up. 3 Have a seat. Okay. Well why don't you -- I have to put you 4 under oath. Whatever it is, it's your words. Do you promise 5 to tell the truth, the whole truth, and nothing but the 6 truth under the penalty of perjury in your testimony? 7 MARILYNN LEON: (No audible response.) 8 TAMMY CITARAMANIS: Okay. Why don't you state your 9 name and your address and whatever -- no, it's already on. 10 MARILYNN LEON: Okay. 11 TAMMY CITARAMANIS: Whatever you want to say and then 12 if they want to ask you questions they will, and if they 13 don't they won't. 14 MARILYNN LEON: This is my testimony -- 15 TAMMY CITARAMANIS: Well, no, no. I need your name and 16 your address first. 17 MARILYNN LEON: Thank you. Marilynn Leon, Marilynn 18 with two Ns, Leon, L-E-O-N. I live in Worland, 1029 19 Gainsborough Road in Potomac. And this is not my testimony; 20 it is just a postscript to the testimony given by Fatima 21 Sabri a little while ago. And it's a very vivid memory and 22 it occurred on the first day of this project, process. It 23 was in October, the day we received our letters from the 24 County telling us about the proposed cell tower, and 25 Fatima's beautiful 10-year-old girl, at that time, was</p>	<p>822</p> <p>1 nothing but the truth in your testimony under the penalty 2 of perjury? 3 SUSANNA LEE: I do. 4 TAMMY CITARAMANIS: Okay. State your name and your 5 address. I know you said it earlier, but at this point -- 6 and then make your statement. 7 SUSANNE LEE: My name is Susanne Lee, S-U-S-A-N-N-E; 8 L-E-E. I live at 12900 Circle Drive, Rockville Maryland. 9 I'm the current vice president of the West Montgomery 10 County Citizens Association. West Montgomery is an umbrella 11 civic organization founded in 1947 and made up of residents 12 from throughout the Potomac subregion. The organization 13 seeks to preserve the areas rich environmental resources 14 and the character of our neighborhoods by ensuring that 15 development throughout the subregion is consistent with 16 zoning and County and state land use policies. A critical 17 document that guides our activities is the Potomac 18 Subregion Master Plan, adopted by the County in 2002. West 19 Montgomery was actively involved in the development of the 20 Master Plan. Four members of our board served on the Master 21 Plan Advisory Group including the chair of the group, and a 22 member who is currently the president of West Montgomery. 23 West Montgomery strongly objects to the approval of this 24 new conditional use and expansion of the existing 25 conditional use to allow construction of a massive</p>
<p>821</p> <p>1 crying, and she took my hand and said am I going to die. A 2 very vivid memory. That's all. Thank you. 3 TAMMY CITARAMANIS: Okay. Wait a second. Do you have 4 any questions, anybody? 5 THOMAS BARNARD: No questions. 6 GREG DIAMOND: No questions. 7 TAMMY CITARAMANIS: Thank you Ms. Leon for coming up. 8 Okay. Ms. Lee, oh, you just for something in your mouth. 9 SUSANNA LEE: I know. I feel like I should (inaudible) 10 chocolate. But that's all right. 11 TAMMY CITARAMANIS: Come on up. 12 SUSANNA LEE: Give her -- I'll try to be as brief as 13 possible. 14 TAMMY CITARAMANIS: Okay. Okay. What is -- 15 SUSANNA LEE: That's my testimony and (inaudible) 16 exhibits. 17 TAMMY CITARAMANIS: Okay. Go ahead and have a seat and 18 I will -- don't start until I -- I'm going to add it to 19 your existing, which is Exhibit 190. This will be 190(a), 20 and I guess the attachment which looks like the Master 21 Plan, I'll make that 190(b). Do you need to see so you know 22 what number you're -- 23 SUSANNA LEE: One ninety and 190(b)? 24 TAMMY CITARAMANIS: Okay. So -- raise your right hand. 25 Do you promise to tell the truth, the whole truth, and</p>	<p>823</p> <p>1 telecommunications tower on land zoned residential 2 dedicated for local recreational use, and located deep 3 within the middle of the Potomac subregion's residential 4 green wedge. The proposed tower is in direct conflict with 5 the requirements of the Potomac Subregion Master Plan 6 regarding the location of large-scale commercial industrial 7 uses as well as the requirements necessary for the approval 8 of conditional uses. Furthermore, and perhaps most 9 importantly, even if a need for increased telecommunication 10 coverage had been established, the undisputed testimony by 11 Verizon's real estate location expert, Mr. Posilkin, 12 documented that there is an alternative location at the 13 site of Montgomery County's Cabin John Tennis Center at 14 7801 Democracy Boulevard that meets all necessary 15 requirements to meet the alleged gaps in service. That 16 location would not, in our view, violate the requirements 17 of the Master Plan. The Master Plan is an extensive 18 document that at its core establishes and protects the area 19 as a green, residential wedge and guides land use decisions 20 in a way that ensures orderly growth. It provides 21 protection for the watersheds, the CNO canal, a buffer for 22 the agricultural reserve, and most importantly, residential 23 areas; while providing for more intense uses in certain 24 concentrated, designated areas and under certain 25 conditions. Those areas are carefully delineated. The</p>

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37 (824 to 827)

<p>824</p> <p>1 Master Plan, consistent with the countywide plan, mandates 2 that more intensive development with a limited exception 3 for the Potomac Village and Cabin John Shopping Center 4 should take place along the major transportation corridors 5 on the outer edges of the Subregion. These areas are close 6 to more intensive commercial development near the Beltway 7 and I-270 corridor including areas such as those near 8 Montgomery Mall, Fortune Park, and the quarries along River 9 Road. It also contains requirements for conditional uses. 10 It is settled law that when a development regulation 11 incorporates Master Plan compliance the Master Plan itself 12 becomes a regulatory device, rather than a mere guide and 13 recommendations. Master Plans are advisory in nature and 14 have no force of law absent statutes or local ordinances 15 linking planning and zoning. Where the latter exists, 16 however, they serve to elevate the status of comprehensive 17 plans, such as the Potomac Master Plan to the level of true 18 regulatory devices. The recently enacted new Montgomery 19 County Zoning Code, at Section 7.3.1.e.1.c states, to 20 approve a conditional use application the hearing examiner 21 must find that the proposed development substantially 22 conforms with the recommendations of the applicable Master 23 Plan because the zoning code incorporates and links to 24 master plan compliance the provisions of the Master Plan 25 and its recommendation constitute a regulatory device under</p>	<p>826</p> <p>1 conditional uses within residential zones. And that's the 2 second -- the pages that I've attached here which is 3 190(a). Those are pages 35 and 36 of the Master Plan. They 4 set forth the requirements applicable to all conditional 5 use requests including this one, acknowledging -- and 6 acknowledging the heightened concerns surrounding cell tower 7 -- cell tower construction, specifically heights in its -- 8 highlights in its first sentence the need for "a re- 9 examination of the approval process for telecommunications 10 facilities, particularly monopolies." A conditional use 11 policy further states that it seeks to protect residential 12 areas while also attempting to meet important policy goals. 13 Certainly an important policy goal is the provision of 14 telecommunications services. However, not only would 15 granting this conditional use fail to protect the 16 residential area, most importantly the policy goal can be 17 met entirely by placing the pole at an alternate locations 18 and particularly the site at Cabin John. Turning to the 19 specific requirements on Page 34-35, upon which the Hearing 20 Examiner must make specific findings, the first two of 21 particular importance are, one, and I quote, "a special 22 exception may be denied if the concentration of such uses 23 is deemed to be excessive or is inconsistent with the 24 Master Plan recommendations." It goes on further; "must 25 limit the impacts of existing special conditions in</p>
<p>825</p> <p>1 this (inaudible) on the Hearing Examiner. The proposed East 2 Gate monopole site is in the middle of the green 3 residential wedge, R200, established and protected under 4 the Subregion Master Plan. Remember that in exchange for 5 more intense clustered development than was allowed under 6 R200 at the time, the developer was required to dedicate a 7 portion of the subdivision for a local recreation area. The 8 amount was very carefully noted. A special exception, now 9 conditional use, was approved to implement the conditions 10 imposed on the subdivision and the site was entirely 11 developed as a recreation area; pool, tennis courts, 12 clubhouse, open grassy area for walking including dogs, 13 ballgames and sled riding. The installation of this 14 enormous monopole with this size base and height is totally 15 inconsistent with the Master Plan that calls for placement 16 of such intense nonresidential uses at site specifically 17 identified in the Master Plan or on the periphery of the 18 subregion. In this instance, as I have indicated, the 19 (inaudible) and the site identified by the Verizon expert 20 would be the Cabin John Tennis Center near Montgomery Mall 21 in the I-270 corridor. In order to designate areas for low 22 density -- in addition to designating areas for low density 23 residential versus more intensive residential and 24 commercial uses the Master Plan also establishes the 25 specific requirements that must be met for the approval of</p>	<p>827</p> <p>1 established neighborhoods." The approval of the East Gate 2 residential subdivision required that the developer forego 3 this land for housing construction and instead required 4 that the entire parcel of land be used for recreational 5 purposes for the residents. The current conditional use was 6 first approved in 1978, allowing this parcel of land to be 7 completely developed for such recreational purposes, and it 8 was. It's packed with a swimming pool, tennis courts and 9 clubhouse, parking lots and once -- and an open space 10 playing field. The proposal is to allow construction of 11 this enormous 89 foot tower and supporting base not on some 12 isolated, unused space on the periphery as there is not. 13 There's none available. This site is so constrained by the 14 existing use that they are requesting a variance. In 15 addition, it cannot, as in the case with other monopolies, 16 be tucked away somewhere where it will not be seen. Instead 17 even with the variance it will be constructed right in the 18 middle, literally on top of the current conditional uses. 19 Not only will it have a massive negative visual impact 20 along Democracy Boulevard and on the lot and its 21 recreational users, consider the impacts of an enormous 22 buffoon, fake tree shading the tennis courts and/or kiddie 23 pool. It will also mean the destruction of part of the 24 other recreational use, part of the playing field. Because 25 the monopole will be right in the middle of the current</p>

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38 (828 to 831)

<p>828</p> <p>1 parking lot, the parking spaces destroyed will have to be 2 rebuilt on top of part of the playing field. This appears 3 to belay -- violate the requirements of the original 4 subdivision that this piece of property was to be used for 5 recreational purposes. The existing conditional use is an 6 extremely intense conditional use occupying the entire site 7 and adding this new, unrelated use with its negative 8 impacts will diminish the existing use thus should be 9 denied because the concentration of conditional uses at the 10 site will clearly be excessive. In fact, it is so intense 11 that it requires the elimination of a portion of the 12 recreational use. Rather than limiting the impacts of the 13 existing special condition, it increases negative impacts 14 on the surrounding neighborhoods and should be not -- 15 denied. Second -- the second series of findings that the 16 Hearing Examiner has to examine that the special condition, 17 the special condition conditional use must protect 18 residents of communities from incompatible designed by 19 special exception uses. In addition, it has to end hereto 20 zoning ordinance requirements to examine compatibility with 21 the architecture of the surrounding neighborhood; and 22 enormous fake tree surrounded by generators, fences and 23 barbed wire, that's what's proposed here, this is clearly 24 not a design that is compatible with the design and 25 architecture of the adjoining neighborhood as required for</p>	<p>830</p> <p>1 MacArthur Boulevard going to the Great Falls National Park 2 is immediately adjacent to houses and none of the poles 3 that can be readily seen from off the property; and trust 4 me on this, we've been sending people out to Avenel for 5 days and nobody can find it. The Bullis pole is located at 6 the far end of the property in the woods be on the football 7 field. The Avenel pole, likewise is far into the property 8 surrounded by the golf course. The VFW pole is in the woods 9 surrounded by parkland and it's hard to locate from the 10 road. The proposed monopole at East Gate is not tucked away 11 from site in the woods but would be a glaring, ridiculous, 12 unnecessary visual assault on those using the recreational 13 facility, the surrounding residential neighborhood and 14 anyone who travels along Democracy Boulevard. It fails to 15 meet the Master Plan requirements for conditional use and 16 should be denied by the Hearing Examiner. It should, 17 instead, consistent with the Master Plan, be tucked away in 18 the woods on a property such as the Cabin John Tennis site. 19 TAMMY CITARAMANIS: Thank you. Any questions? 20 GREG DIAMOND: No questions. 21 THOMAS BARNARD: No questions. 22 TAMMY CITARAMANIS: Any questions? 23 BILL CHEN: No questions. 24 TAMMY CITARAMANIS: Thank you, Ms. Lee, and thank you 25 for being patient.</p>
<p>829</p> <p>1 approval of the conditional use. The third series of 2 findings that the Hearing Officer has to make, they have to 3 determine whether -- they have to be able to increase the 4 scrutiny in reviewing special exception applications for 5 highly visible sites and again, in quotes; "effort should 6 be made to enhance or augment screening and buffering as 7 viewed from a budgeting residential areas and major 8 roadways." The proposal is for an enormous, buffoon, fake 9 tree; a massive structure that will be seen as soon as you 10 come over the slight crest of the hill on Democracy 11 Boulevard traveling west. This is a highly visible site 12 demanding increased scrutiny, yet the applicant failed to 13 provide, as far as I can see, from all of the pictures any 14 balloon picture that even demonstrated the view from 15 Democracy going west. In fact, given the constraints of the 16 site, it's size, location right on Democracy and existing 17 extensive use of the site there is absolutely no way it can 18 be screened or buffered in any meaningful way from the 19 abutting residential uses, or the view from Democracy going 20 west. It is not tucked away from site in the trees but will 21 be a glaring route, ridiculous eyesore. This is in sharp 22 contrast to the three existing large monopole sites in the 23 Potomac Subregion that the applicant's site is similar to 24 this site. None of the three, the Bullis School, the WSSC 25 adjacent to the Avenel Golf Course, or the VFW post on</p>	<p>831</p> <p>1 SUSANNE LEE: That's all right. Thank you. Thank you 2 all. 3 TAMMY CITARAMANIS: Okay. So with that. I don't see 4 anyone standing at the (inaudible) so I'm assuming 5 everybody has heard enough and doesn't want to make any 6 more statements. So at this point what we are going to do, 7 it is about 10 after 1:00. We will take a lunch break, come 8 back, at -- yeah. I like to shorten it a little bit because 9 we are at -- we're going to end at 5:00 today. So it will 10 be a 45 minute lunch break so the cafeteria is on the 11 second floor at the very end. So when we come back we will 12 -- it will be applicants' rebuttal. So we will see you guys 13 back here at 2:00. Okay. Thank you. We're off -- 14 (Whereupon, a lunch break was taken.) 15 TAMMY CITARAMANIS: And it's, at this point, we have 16 completed all of the individual testimony and thank you 17 everybody for your part. Now it is applicants' rebuttal. 18 BILL CHEN: If I could, just one last thing. While 19 we're on this side, I apologize. At the last hearing 20 Counsel asked for copies of the data and information that 21 Mr. MacPhearson relied upon. They were given copies. I've 22 got copies for the record. 23 TAMMY CITARAMANIS: Right. I was -- 24 BILL CHEN: You've got all this stuff. 25 GREG DIAMOND: Right. You gave us --</p>

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39 (832 to 835)

<p>832</p> <p>1 BILL CHEN: Yeah. And he's -- and the reason why I'm - 2 - I'm not trying to (inaudible) your case, but he's here if 3 you want to cross examine him on any of this stuff. That's 4 why we -- 5 GREG DIAMOND: Okay. 6 TAMMY CITARAMANIS: I'm glad you brought that -- 7 that's actually on one of my lists somewhere is to remind, 8 because I knew you were going to provide that, but I don't 9 have a copy of that. And we'll just -- it's Mr. 10 MacPhearson. What's his -- just bear with me a bit. Do you 11 know the number right off the top of your head? 12 BILL CHEN: I think our last number was two -- 13 TAMMY CITARAMANIS: No, I'm going to add it to his 14 testimony. 15 BILL CHEN: Oh. Then you got me. 16 TAMMY CITARAMANIS: Okay. Give me a moment. He was 17 191. Okay. Mr. MacPhearson -- 18 BILL CHEN: Was 191(g). 19 TAMMY CITARAMANIS: 191(g). I'll make it 191(g)(i). 20 BILL CHEN: Small i? 21 TAMMY CITARAMANIS: Small i, yeah. So that will be 22 191(g)-- 23 BILL CHEN: Then i in parenthesis? 24 TAMMY CITARAMANIS: Correct. 25 THOMAS BARNARD: (Inaudible)</p>	<p>834</p> <p>1 TAMMY CITARAMANIS: Let's do that at the end. I'd like 2 to -- for you to get your rebuttal case done and we'll 3 address it at the end. 4 CATHY BORTEN: All right. 5 GREG DIAMOND: Okay. 6 CATHY BORTEN: No problem. 7 TAMMY CITARAMANIS: Because it's a memo and -- 8 CATHY BORTEN: Okay. 9 TAMMY CITARAMANIS: And it's a response from you and 10 I'm not going to rule on anything right now. I want to get 11 through the case. 12 CATHY BORTEN: Sure. So in opening our rebuttal we 13 have several documents that we would like to enter into the 14 record that are just going to come in as documents. 15 TAMMY CITARAMANIS: Okay. 16 CATHY BORTEN: We're going to start with that if we 17 can. 18 GREG DIAMOND: So if I might start with that. 19 TAMMY CITARAMANIS: Okay. Does Mr. Chen have -- 20 CATHY BORTEN: Well, we have copies to provide. 21 GREG DIAMOND: We have copies for everybody. 22 TAMMY CITARAMANIS: Okay. 23 GREG DIAMOND: How about I come around. 24 TAMMY CITARAMANIS: And will they be additions to 25 people who have already testified so we'll use the same</p>
<p>833</p> <p>1 BILL CHEN: Sure. I'm sorry. 2 THOMAS BARNARD: That's all right. 3 TAMMY CITARAMANIS: And do you, off the top of your 4 head, know how many pages this is? 5 BILL CHEN: No. 6 TAMMY CITARAMANIS: Because we're just going to keep 7 it as one document. 8 BILL CHEN: Yeah. 9 TAMMY CITARAMANIS: But I -- it hasn't been numbered 10 but I will go ahead and number it just -- yeah. Is that 11 acceptable to everybody that we'll keep it 191(g)(i) and 12 then I'll internally number each page so that we know that 13 it's one document. Otherwise we're going to be going 14 through the alphabet. Let's not. Okay. Is that -- 15 GREG DIAMOND: Yeah, I was just checking with counsel 16 on something. 17 TAMMY CITARAMANIS: Okay. Do you need to go off the 18 record? Could we go off the record for a moment? 19 (Off the record.) 20 (On the record.) 21 TAMMY CITARAMANIS: Thank you Ms. Borten. 22 CATHY BORTEN: Yes. Madam Hearing Examiner, I wanted 23 to ask if now is the time to address Mr. Chen's Memorandum 24 because we just like to be heard on that, or did you want 25 to do that later?</p>	<p>835</p> <p>1 number? 2 GREG DIAMOND: No. 3 CATHY BORTEN: No. 4 TAMMY CITARAMANIS: We just do new numbers. Okay. You 5 can hear everybody? 6 GREG DIAMOND: So this is -- the first exhibit is from 7 a Montgomery County government webpage. It is the 8 Transmission Facilities Coordination Group as well as the 9 Tower Coordinator and Engineering staff. 10 TAMMY CITARAMANIS: So this will be -- 11 GREG DIAMOND: This is the government record. 12 TAMMY CITARAMANIS: Okay, 236. 13 GREG DIAMOND: Two thirty-six. 14 TAMMY CITARAMANIS: Is the exhibit number. Okay. 15 GREG DIAMOND: The next exhibit, again, a government 16 record; minutes of the TFCG meeting, which is the Tower 17 Committee held on June 22, 2016. I would note at Page 8 -- 18 get a number. 19 TAMMY CITARAMANIS: Okay. Oh, the numbers are at the 20 top of the page. 21 GREG DIAMOND: So the exhibit number is? 22 TAMMY CITARAMANIS: Oh. I'm sorry, 237. 23 GREG DIAMOND: And this is being submitted -- this was 24 the minutes of the meetings at which this case, the tower, 25 was presented to the Tower Committee and there are minutes</p>



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40 (836 to 839)

<p style="text-align: right;">836</p> <p>1 of what happened at that meeting. And finally, a rebuttal 2 document which will be Exhibit number? 3 TAMMY CITARAMANIS: Two thirty-eight. 4 GREG DIAMOND: Two thirty-eight; and we're submitting 5 to -- for the record an article from Probate Property, 6 (inaudible) 2016 article. This is a publication of the Real 7 Property Trust in the state law section of the American Bar 8 Association. The title of the article is; Cell Phone Towers 9 Do Not Affect Property Values. The exhibit submitted by Mr. 10 Chen just a few minutes ago contains an article that was 11 published with an opposite title. 12 TAMMY CITARAMANIS: Okay. 13 GREG DIAMOND: And so it is submitted in rebuttal to 14 that. 15 CATHY BORTEN: A few more yet. 16 TAMMY CITARAMANIS: Okay. 17 BILL CHEN: We're going to deal with all of these 18 (inaudible) get them all identified? 19 TAMMY CITARAMANIS: Yes. 20 CATHY BORTEN: So the next would be 239 I think? 21 TAMMY CITARAMANIS: Correct. 22 CATHY BORTEN: This is just a copy of the prior zoning 23 ordinance (inaudible) -- 24 TAMMY CITARAMANIS: You need to speak louder, Ms. -- 25 CATHY BORTEN: I'm sorry. It's a copy of the, again, a</p>	<p style="text-align: right;">838</p> <p>1 front of me. 2 TAMMY CITARAMANIS: Your voice was trailing. So wait a 3 minute. 4 CATHY BORTEN: Yes, okay. 5 TAMMY CITARAMANIS: Let's just make sure. This is 240. 6 CATHY BORTEN: The Hill and Dale, the Board of Appeals 7 case Decision, which was upheld in the Court of Special 8 Appeals. 9 TAMMY CITARAMANIS: Okay, 241. 10 CATHY BORTEN: All right, 241 is an affidavit of Mr. 11 Steve Mister (phonetic) who is the president of the board 12 of East Gate Recreation Association and there are some 13 supporting documents with that as well. Do you want to 14 explain what this is? 15 THOMAS BARNARD: Oh I'll just -- this is a rebuttal 16 document because there was a microphone. But there was an 17 assertion at the last meeting that representation by 18 counsel of the position by East Gate with regard to the 19 various conditions required a piece of evidence. So we -- I 20 had those positions outlined in the form of an affidavit so 21 that there would be no issue about not having admissible 22 evidence to those points. 23 BILL CHEN: What? We're going to deal with all of 24 these? 25 TAMMY CITARAMANIS: Yes. Yes. I just -- it makes for a</p>
<p style="text-align: right;">837</p> <p>1 government document, the prior zoning ordinance, Section 2 59-G-2.58 this is referencing the standards for setbacks. 3 TAMMY CITARAMANIS: I just don't want these 4 (inaudible) 5 CATHY BORTEN: I (inaudible) and okay. So that's the 6 old (inaudible). And then the next (inaudible) I imagine 7 would be 240; and with Mr. Chen's Memo he submitted an 8 interim report and recommendation by the Hearing Examiner 9 in the Hill and Dale Swim Club case, which was a report and 10 recommendation on remand, but that was not the final 11 decision in the case and this is actually the final Court 12 of Appeals decision which was held up (inaudible) Appeals. 13 I would just like the record to be full on that. 14 TAMMY CITARAMANIS: I'm having a hard time hearing 15 you, so -- 16 CATHY BORTEN: Still? 17 TAMMY CITARAMANIS: Yeah. 18 CATHY BORTEN: Okay. How is that? 19 TAMMY CITARAMANIS: Too many -- there you go. 20 CATHY BORTEN: All right. 21 TAMMY CITARAMANIS: I heard you say there wasn't a mic 22 you didn't like so -- 23 CATHY BORTEN: But I -- yeah, but you -- 24 TAMMY CITARAMANIS: Your voice was trailing. 25 CATHY BORTEN: -- I like having it right there in</p>	<p style="text-align: right;">839</p> <p>1 much clearer record if we're going back and forth that were 2 arguing on the same document number. So let's just get them 3 numbered and then we can go through them. Is that it? 4 CATHY BORTEN: Yes. That is -- 5 TAMMY CITARAMANIS: Okay. 6 CATHY BORTEN: That is it on the documents. 7 TAMMY CITARAMANIS: Okay. 8 CATHY BORTEN: All right. Then for rebuttal testimony 9 I would call Mr. Brian Siverling. 10 TAMMY CITARAMANIS: Okay. Let's -- I'm going to let 11 him make his -- any notifications. I mean you can still sit 12 there. You can still sit there but you're not going to -- 13 all right. 14 MALE VOICE: It's a more comfortable chair. 15 TAMMY CITARAMANIS: There you go. But don't say 16 anything. You want to note objections? 17 BILL CHEN: Well I -- you said, I think, the first 18 day, even the second day, at some point we're going to go 19 through the exhibits. Now, I'm only -- I know you want to 20 get done today, and I'm with you 100 percent. So if it 21 expedites it by, here are our exhibits and we deal with him 22 later on and I -- if I -- 23 TAMMY CITARAMANIS: Okay. 24 BILL CHEN: -- have a problem with an affidavit for 25 somebody is not subject to cross, but I think from what I'm</p>

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41 (840 to 843)

<p>840</p> <p>1 hearing you say, probably, the most expeditious way to 2 handle this is let's get anybody that's got to testify, 3 let's get them on -- 4 TAMMY CITARAMANIS: I -- I'm -- if that's fine with 5 you I'm fine with that. I think that might be more 6 expeditious because we'll have the whole exhibit list and 7 hopefully you just have some that you want to point out. 8 There's an awful lot of exhibits. So thank you Mr. Chen. 9 Then we will proceed forward with Mr. Siverling. 10 BRIAN SIVERLING: Mm-hm 11 TAMMY CITARAMANIS: Okay. All right. So I'm going to 12 make sure he's -- I know you know you're still under oath, 13 but I'm going to do it anyway. Do you promise to tell the 14 truth, the whole truth, and nothing but the truth under the 15 penalties of perjury -- 16 BRIAN SIVERLING: I do. 17 TAMMY CITARAMANIS: -- today when you're giving your 18 testimony? 19 BRIAN SIVERLING: I do. 20 TAMMY CITARAMANIS: If you would state your name and 21 your address and (inaudible) 22 BRIAN SIVERLING: My name is Brian Siverling. It's B- 23 R-I-A-N; S-I-V, as in Victor, E-R-L-I-N-G. I'm with Morris 24 &amp; Ritchie Associates; our business address is 1220 East 25 Joppa Road, Suite 505, Townson, Maryland 21286.</p>	<p>842</p> <p>1 battery allows that. And that's why they use this 2 particular type of battery? 3 CATHY BORTEN: What else uses this type of battery? 4 BRIAN SIVERLING: Well, the technology has been used 5 in a lot of (inaudible) things. Rechargeable batteries for 6 cameras, power tools, those types of things. 7 CATHY BORTEN: So if I had a cordless drill in my home 8 would it be that type of a battery? 9 BRIAN SIVERLING: It could be. 10 CATHY BORTEN: Okay. Is there any acid in these 11 batteries? 12 BRIAN SIVERLING: No, there is not. 13 CATHY BORTEN: Okay. Are the batteries that Verizon 14 Wireless would be using at this site compliant with all 15 building codes applicable safety standards and 16 environmental standards? 17 BRIAN SIVERLING: To my knowledge, yes. 18 CATHY BORTEN: Okay. And this is the type of battery 19 that Verizon Wireless uses at all of its cell sites? 20 BRIAN SIVERLING: Yes, it is. 21 CATHY BORTEN: So this is nothing unusual? 22 BRIAN SIVERLING: That's correct. 23 CATHY BORTEN: Okay. There was also a little bit of 24 discussion of the generator to be used, and I just wanted 25 to know if you could describe again just the conditions</p>
<p>841</p> <p>1 TAMMY CITARAMANIS: Okay. 2 CATHY BORTEN: Madam Hearing Examiner, I would just 3 request that Mr. Siverling's previous qualification as an 4 expert be extended to his rebuttal testimony. 5 TAMMY CITARAMANIS: Yes. 6 CATHY BORTEN: Thank you. Mr. Siverling, you 7 previously testified regarding batteries to be used at the 8 site. Is that -- 9 BRIAN SIVERLING: I did. 10 CATHY BORTEN: -- correct? Okay. Since your previous 11 testimony did you have an opportunity to do some further 12 investigation on what sort of batteries Verizon Wireless 13 would use here? 14 BRIAN SIVERLING: Yes, I did. 15 CATHY BORTEN: What did you learn about that type of 16 battery that might be used? 17 BRIAN SIVERLING: I contacted one of the equipment 18 engineers for Verizon Wireless and he sent me a document 19 stating the type of battery that is used. It's a nickel 20 cadmium battery that's rechargeable. 21 CATHY BORTEN: And when you say rechargeable, why is 22 that significant? 23 BRIAN SIVERLING: Well, they want to have 24 instantaneous power if there's any type of break in the 25 electrical feed to the site and this particular type of</p>	<p>843</p> <p>1 under which a generator would actually go into service? 2 BRIAN SIVERLING: Well, other than routine running of 3 it just to make it -- make sure it's working properly, the 4 only time that that a generator would go into service is if 5 the direct power feed to the site was lost. So a power 6 failure, essentially, to the site in the generator would 7 kick on to basically regenerate, or recharge the batteries 8 that are in the equipment cabinet. 9 CATHY BORTEN: And would that be the sort of power 10 failure that would affect an entire community, an entire 11 neighborhood? 12 BRIAN SIVERLING: Potentially. It typically would have 13 to be coming from the transformer; (inaudible) high-voltage 14 modification for the site. It's just like it would feed a 15 residential property. 16 CATHY BORTEN: Okay. I'm showing you, in just a 17 second, what, Madam Hearing Examiner, I believe this would 18 be Exhibit 242. 19 TAMMY CITARAMANIS: Does Mr. Chen have one? 20 CATHY BORTEN: Yes. 21 GREG DIAMOND: Yes. 22 CATHY BORTEN: Can you identify that? 23 BRIAN SIVERLING: Yes. This is a letter from Sabre 24 Industries who we've been working with two developed the 25 tree pole, and I asked them to give me their professional</p>

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42 (844 to 847)

<p>844</p> <p>1 opinion on how this tower will be designed; the codes that 2 would be used to design it, as well as their opinion on the 3 (inaudible). 4 CATHY BORTEN: Okay. And is Sabre the manufacturer 5 that created the model that was used in the photo 6 simulations? 7 BRIAN SIVERLING: That's correct. 8 CATHY BORTEN: All right. And I believe you testified 9 previously that that's the model that Verizon Wireless 10 would be looking to use here. 11 BRIAN SIVERLING: That's correct. 12 BILL CHEN: Objection. There is no model identified in 13 this document. 14 TAMMY CITARAMANIS: Repeat the question. 15 BILL CHEN: She asked which model -- is that the -- 16 CATHY BORTEN: We -- 17 BILL CHEN: -- model that will be used. 18 CATHY BORTEN: All right. I'll rephrase it. 19 TAMMY CITARAMANIS: Okay. Thank you. 20 CATHY BORTEN: Would Verizon Wireless -- yeah. Would 21 Verizon Wireless be looking to use a Sabre design similar 22 to that shown in the photo sims? 23 BRIAN SIVERLING: Yes, they would. 24 CATHY BORTEN: Okay. Can you explain what the letter 25 says regarding the design of the support structure?</p>	<p>846</p> <p>1 TAMMY CITARAMANIS: And -- 2 CATHY BORTEN: Can you just -- 3 BRIAN SIVERLING: Could you repeat the question? 4 CATHY BORTEN: Can you summarize what's in the letter 5 from Sabre. 6 BILL CHEN: Okay. Object for the record. Objection. 7 TAMMY CITARAMANIS: Noted. 8 BRIAN SIVERLING: Basically the summary is Sabre 9 listed the design's wind speeds and with ice and no ice 10 conditions and the classification and the exposure. The 11 topographic category, these are all elements that are part 12 of the TIA 222G standard that is used to design and test 13 support structures and is also -- that is also referenced 14 in the IBC 2015 which is the governing building code here 15 for Montgomery County. 16 CATHY BORTEN: And anything on the design? 17 BRIAN SIVERLING: Well, what they summarize here is -- 18 BILL CHEN: Objection. The document itself says wind 19 design. 20 THOMAS BARNARD: What's the basis? 21 TAMMY CITARAMANIS: What is your question? I -- 22 CATHY BORTEN: I withdraw it. 23 TAMMY CITARAMANIS: Just to clarify. 24 CATHY BORTEN: We can rely on the letter. That's fine. 25 TAMMY CITARAMANIS: Anything else for Mr. Siverling?</p>
<p>845</p> <p>1 BILL CHEN: Objection. This document's in -- well -- 2 I'm going to object to the exhibit when the time comes. 3 TAMMY CITARAMANIS: Okay. 4 BILL CHEN: It was prepared after the last hearing. 5 TAMMY CITARAMANIS: It's a rebuttal document. 6 CATHY BORTEN: It's rebuttal. 7 BILL CHEN: I -- 8 CATHY BORTEN: There was -- 9 TAMMY CITARAMANIS: But you can still object -- 10 BILL CHEN: How do I cross-examine? 11 TAMMY CITARAMANIS: That's true. Well, that, you'll be 12 able to cross examine him and certainly do it then. And -- 13 BILL CHEN: Well, respect to just for the record, 14 cross-examining this witness on a letter that is a post 15 hearing letter from Cyber (sic) Industries does not give 16 you cross-examination of Cyber Industries. 17 TAMMY CITARAMANIS: True. 18 BILL CHEN: But I'll abide by the Examiner's ruling 19 about his testimony right now. If he's just going to repeat 20 what's in the letter I don't know what the efficacy of that 21 is. 22 TAMMY CITARAMANIS: Okay. Well I'm going to -- your 23 objection is noted. I'm going to overrule it. You can 24 answer the question. 25 CATHY BORTEN: Thank you.</p>	<p>847</p> <p>1 CATHY BORTEN: No. That's it. 2 TAMMY CITARAMANIS: That's it. Mr. Chen. 3 GREG DIAMOND: He's pondering whether to cross-examine 4 the letter that he objected to one -- 5 BILL CHEN: No questions. 6 TAMMY CITARAMANIS: Ms. Wetter? 7 CHERYL WETTER: Well, two questions. Could you explain 8 what it means in the second paragraph where he said 9 resulting in an overall minimum safety factor of 25? What 10 exactly does that mean? 11 BRIAN SIVERLING: Well, the code provisions -- there 12 are factors of safety in the design as part of the code 13 provisions. That's what he's just referencing there. 14 CHERYL WETTER: Then these 25 percent of the time what 15 happens? 16 BRIAN SIVERLING: No. There's a 25 percent increase in 17 the allow -- we assume 25 percent over what the design 18 speeds are. So there's a safety factor of that. 19 CHERYL WETTER: Got it. And then in the paragraph down 20 -- 21 TAMMY CITARAMANIS: Is your mic on, Ms. Wetter? 22 MS. WETTER: Oh, sorry. In the last paragraph, it says 23 the most likely location of the failure would be within the 24 monopole shaft above the -- what's the percentage of what 25 you mean by the most likely --</p>

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43 (848 to 851)

<p style="text-align: right;">848</p> <p>1 BRIAN SIVERLING: Well, that's where it's going to be 2 designed -- it's all based on the strengths and -- there's 3 a structure so what they're saying is the weakest part of 4 the structure will be above the slip joint. So if, as the 5 stress it creates is going to be a weak point it's just 6 going to bend over. That's the idea. 7 CHERYL WETTER: But I'm concerned about when you said 8 the most likely location of the failure would be within the 9 monopole. It could be elsewhere then too, right? It could 10 be -- it could snap off at another point or part as is 11 coming down into the shaft particles could snap off and go 12 around. Is that possible? 13 BRIAN SIVERLING: I really can't -- it's not my design 14 so I don't know. 15 CHERYL WETTER: Do you -- are you -- 16 BRIAN SIVERLING: What do you mean? 17 CHERYL WETTER: Can you comfortably say that if the 18 shaft -- if this tower fails it will all come down neatly 19 within itself? 20 BRIAN SIVERLING: Well, it's not a telescopic 21 structure. Is not going to go straight down. It's going to 22 bend over. 23 CHERYL WETTER: Okay. 24 BRIAN SIVERLING: So that's why they're clarifying by 25 a 40 foot fall radius. So --</p>	<p style="text-align: right;">850</p> <p>1 the truth in your testimony under penalty of perjury today? 2 BILL LANDFAIR: I do. 3 TAMMY CITARAMANIS: And state your name and your 4 address and -- 5 BILL LANDFAIR: My name is Bill Landfair. I'm a land 6 planner -- 7 TAMMY CITARAMANIS: Oh. There -- it should be red, the 8 little switch. 9 BILL LANDFAIR: Oh. Sorry. 10 TAMMY CITARAMANIS: No the other way. Thank you. 11 Sorry. 12 BILL LANDFAIR: Thank you. My name is Bill Landfair, 13 land planner with VIKA Maryland. Our address is 20251 14 Century Boulevard, Suite 200, Germantown, Maryland 20874. 15 CATHY BORTEN: Again, also with Mr. Landfair, we 16 request that his previous qualification as an expert be 17 extended to his rebuttal testimony. 18 TAMMY CITARAMANIS: That's fine. Yes. 19 CATHY BORTEN: Okay. Mr. Landfair, I'm showing you 20 what's been previously marked and is in the record as 21 Exhibit 4. Can you identify that? 22 BILL LANDFAIR: Yes. This is my original Land Use 23 Report. 24 CATHY BORTEN: And what's the date on that? 25 BILL LANDFAIR: The date is July 6, 2016.</p>
<p style="text-align: right;">849</p> <p>1 CHERYL WETTER: Okay, so a 40 foot fall would -- 2 BRIAN SIVERLING: Right. If this thing bends over the 3 limbs and things are going to be (inaudible) just like a 4 regular tree when it collapses there's going to be some, 5 probably, debris that's going to be within the 40 foot 6 radius. 7 CHERYL WETTER: Okay. So it could -- would you -- do 8 you think according to the site plan authored by -- it says 9 Verizon on the site plan, could that fall then into the 10 10 foot area right next to it, the bike racks and the cars? 11 BRIAN SIVERLING: Well that would be within 40 feet of 12 it, yes. 13 CHERYL WETTER: Okay. 14 TAMMY CITARAMANIS: Ms. Lee? Were you done Ms. 15 Wetter? 16 CHERYL WETTER: I'm done. Sorry. 17 TAMMY CITARAMANIS: Okay. And pull your mic closer. 18 CHERYL WETTER: Okay. 19 TAMMY CITARAMANIS: Put it down closer to you because 20 -- Ms. Lee, do you have any questions? Does anybody have 21 any questions that -- okay. Any follow-up? Okay. Thank 22 you. 23 CATHY BORTEN: Calling Mr. Landfair. 24 TAMMY CITARAMANIS: All right, Mr. Landfair. Do you 25 promise to tell the truth, the whole truth and nothing but</p>	<p style="text-align: right;">851</p> <p>1 CATHY BORTEN: And was that report included with the 2 applicants' original filing for the conditional use? 3 BILL LANDFAIR: Yes, it was. 4 CATHY BORTEN: Do you know whether a report and 5 recommendation was issued by Technical Staff from Parking 6 Planning after the filing of the original conditional use 7 application? 8 BILL LANDFAIR: Yes, there was. There was a report 9 issued with a recommendation of approval. The report was 10 issued December 9, 2016 and I believe it's Exhibit 75(a). 11 CATHY BORTEN: And let the record reflect I just 12 handed that report to Mr. Landfair and he has identified 13 that. Do you know whether that original report 14 recommendation of approval ever mentioned the need for a 15 setback waiver? 16 BILL LANDFAIR: It did not. 17 CATHY BORTEN: And was a setback waiver requested in 18 the original application? 19 BILL LANDFAIR: No, it was not. 20 CATHY BORTEN: Do you know why not? 21 BILL LANDFAIR: We believed that we were in 22 conformance with the current zoning ordinance requirement 23 regarding setbacks. That requirement is a distance of one 24 foot for every foot height, or, 300 feet from an existing 25 dwelling whichever provides the greater setback.</p>

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44 (852 to 855)

<p style="text-align: right;">852</p> <p>1 CATHY BORTEN: Did there come a time when the setback 2 waiver did become an issue? 3 BILL LANDFAIR: Yes. We learned of the need to request 4 a waiver from the Staff in May 2017, this year. 5 CATHY BORTEN: Did you meet with the applicant the 6 Staff Parking Planning to talk about that need for a 7 waiver? 8 BILL LANDFAIR: Yes, we did. So I and legal counsel 9 for the applicant, we met with Staff on May 22nd. Present 10 on behalf of Staff was Pam Dunn, Christina Sorrento, Fred 11 Boyd and Phillip Estes. 12 CATHY BORTEN: Okay. And can you explain what went on 13 during that meeting? 14 BILL LANDFAIR: Yes. We defended our position with 15 respect to the waiver and they in turn shared with their 16 position, their new position, with respect to the waiver. 17 They made it clear that they supported the waiver presuming 18 that we would provide the necessary supporting 19 documentation. This would include an exhibit that would 20 show that the support structure could conceivably meet in 21 the required setback and our impression is we left the 22 meeting with Staff again was that they would support the 23 waiver. 24 CATHY BORTEN: Okay. Do you recall if the plan that 25 was discussed with staff, at that meeting, was for the 80</p>	<p style="text-align: right;">854</p> <p>1 pole. They are attachments. They are elements that make up 2 the function of the facility but they are not a support 3 structure, They're not the structure that's supporting 4 these elements. 5 CATHY BORTEN: Okay. Just one moment please. That's 6 all I have at this time. 7 TAMMY CITARAMANIS: Mr. Chen. 8 BILL CHEN: You just said that the -- 9 TAMMY CITARAMANIS: Your mic? Okay. I was just making 10 sure your mic is on. 11 BILL CHEN: You just said, Mr. Landfair, in your 12 opinion -- 13 BILL LANDFAIR: Right. 14 BILL CHEN: -- They are not part of the support 15 structure. Because they are attachments. 16 BILL LANDFAIR: Correct. 17 BILL CHEN: Okay. How many occasions have you 18 testified in support of a telecommunications tower 19 conditional use? 20 BILL LANDFAIR: In the private sector? 21 BILL CHEN: Yeah. 22 BILL LANDFAIR: With my current firm? 23 BILL CHEN: Yeah. Yes. 24 BILL LANDFAIR: Twice. 25 BILL CHEN: And of those two occasions how many times</p>
<p style="text-align: right;">853</p> <p>1 foot tree pole with the -- 2 BILL LANDFAIR: Yes it was. 3 CATHY BORTEN: -- branches extending to 89? 4 BILL LANDFAIR: It was. 5 CATHY BORTEN: In your experience, having reviewed 6 special exceptions for this type of use while you were at 7 Park and Planning are antennas or tree branches considered 8 a part of the support structure? 9 BILL LANDFAIR: My position is -- 10 BILL CHEN: Objection. No. There's no foundation. It's 11 -- 12 CATHY BORTEN: Sure there is. He was qualified as an 13 expert in part based on his experience working and 14 reviewing applications -- 15 BILL CHEN: Okay. 16 CATHY BORTEN: -- at Park and Planning. 17 BILL CHEN: I'll deal with it on cross. 18 TAMMY CITARAMANIS: Okay. Perfect. 19 CATHY BORTEN: The question was, are antennas or tree 20 branches considered as a part of the support structure? 21 BILL LANDFAIR: Correct. In my position no. 22 CATHY BORTEN: And why not? 23 BILL LANDFAIR: Because they are elements of the 24 facility itself, but they are appended to the support 25 structure which is a monopole or in this case, the tree</p>	<p style="text-align: right;">855</p> <p>1 of those two occasions were they, I guess, to quote, 2 camouflaged support structures? How many of those were 3 camouflaged? 4 BILL LANDFAIR: This would be the first one. 5 BILL CHEN: And when you answered your question a 6 moment ago you kind of indicated that maybe you had 7 testified income junction with a telecommunications tower, 8 either conditional use or a special exception in the past. 9 BILL LANDFAIR: Yes. 10 BILL CHEN: You've testified. 11 BILL LANDFAIR: Yes. 12 BILL CHEN: Okay. And so that would be in addition to 13 these two that you just mentioned? 14 BILL LANDFAIR: No, no. I'm sorry. That would be one 15 of the two. 16 BILL CHEN: Oh, I'm sorry. 17 BILL LANDFAIR: Right. Sorry. 18 BILL CHEN: Okay. So that, in your career, the total 19 number of occasions in which you've testified relative to a 20 telecommunications conditional use is twice? 21 BILL LANDFAIR: Correct. 22 BILL CHEN: And neither of those two occasions were 23 the Agency dealing with a camouflaged support structure? 24 BILL LANDFAIR: Only this case. 25 BILL CHEN: This case.</p>

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45 (856 to 859)

<p>856</p> <p>1 BILL LANDFAIR: Correct.</p> <p>2 BILL CHEN: Okay. So this is -- this case is the first</p> <p>3 time you've ever had occasion to express your opinion that</p> <p>4 the faux leaves are attachments, and not part of the</p> <p>5 support structure?</p> <p>6 BILL LANDFAIR: Correct.</p> <p>7 BILL CHEN: Are you aware of any decisions of the</p> <p>8 Office of Zoning and Administrative Hearings relative to</p> <p>9 the consideration of the relationship between faux branches</p> <p>10 and the support structure?</p> <p>11 BILL LANDFAIR: No.</p> <p>12 BILL CHEN: When you met with the Staff in May of this</p> <p>13 year, did you show them a design for a telecommunications</p> <p>14 facility conditional use?</p> <p>15 BILL LANDFAIR: Did we show them a design? They had</p> <p>16 the benefit of the previous design, which was the monopole.</p> <p>17 BILL CHEN: Okay.</p> <p>18 BILL LANDFAIR: And in fact I think at this meeting,</p> <p>19 if I remember correctly, we actually brought a plan that</p> <p>20 showed the proposed tree pole, and we talked briefly about</p> <p>21 its location, in part to justify our rationale as to why a</p> <p>22 waiver was not necessary.</p> <p>23 BILL CHEN: So when you say you showed them a proposed</p> <p>24 pole, that you're -- so you showed them a camouflaged</p> <p>25 support structure?</p>	<p>858</p> <p>1 BILL CHEN: Okay. So they had no information about the</p> <p>2 area on the site that would be considered to be the area</p> <p>3 where the conditional use could be constructed.</p> <p>4 BILL LANDFAIR: Not at that time. No. We</p> <p>5 discussed the need for such an exhibit and they understood</p> <p>6 we were going to provide it. But we didn't have that</p> <p>7 exhibit with us.</p> <p>8 BILL CHEN: Did you have subsequent meetings with them</p> <p>9 then?</p> <p>10 BILL LANDFAIR: No.</p> <p>11 BILL CHEN: Have you ever submitted to them a document</p> <p>12 showing the hatched area?</p> <p>13 BILL LANDFAIR: Yes. They subsequently received an</p> <p>14 exhibit which I believe is in the record which shows that</p> <p>15 alternative location.</p> <p>16 BILL CHEN: Okay. And that's that hatched area? We're</p> <p>17 talking about that same thing?</p> <p>18 BILL LANDFAIR: Correct. Right. Yeah.</p> <p>19 BILL CHEN: And have they ever issued any supplement</p> <p>20 to their Staff Report relative to that?</p> <p>21 BILL LANDFAIR: Yes. Yes it did. They -- I mean they</p> <p>22 submitted a subsequent revised Staff Report.</p> <p>23 BILL CHEN: Okay.</p> <p>24 BILL LANDFAIR: Which I actually have --</p> <p>25 BILL CHEN: That's in the record already.</p>
<p>857</p> <p>1 BILL LANDFAIR: Correct, right.</p> <p>2 BILL CHEN: Okay. Is that a document this in evidence</p> <p>3 in this proceeding?</p> <p>4 BILL LANDFAIR: I believe it was the plan that was</p> <p>5 submitted as part of our revised package.</p> <p>6 BILL CHEN: So we don't -- we don't have a proposed</p> <p>7 design for the support structure?</p> <p>8 BILL LANDFAIR: It was -- essentially it was a plan</p> <p>9 view. It was the site plan that showed the location of the</p> <p>10 pole.</p> <p>11 BILL CHEN: Okay.</p> <p>12 BILL LANDFAIR: So we described it. So we didn't have</p> <p>13 cut sheets or elevations or photographs such as those that</p> <p>14 have been entered into the record. We didn't speak at</p> <p>15 length with Staff about it. We just wanted them to</p> <p>16 understand that it's now a tree pole. This is the location.</p> <p>17 And this is the height so that they could understand all</p> <p>18 these elements.</p> <p>19 BILL CHEN: So you didn't show them any illustration</p> <p>20 of a proposed camo support structure?</p> <p>21 BILL LANDFAIR: I don't remember. I don't think so.</p> <p>22 BILL CHEN: Did you provide the Staff with the</p> <p>23 information that Mr. Siverling has provided relative to the</p> <p>24 hatched area on the site?</p> <p>25 BILL LANDFAIR: Not at that meeting.</p>	<p>859</p> <p>1 BILL LANDFAIR: It's in the record, yeah.</p> <p>2 BILL CHEN: Why would the staff support a waiver on</p> <p>3 the setback?</p> <p>4 BILL LANDFAIR: Well, I think they were in agreement</p> <p>5 with our contention that -- with the tree pole and its</p> <p>6 location within the existing tree line that it was a better</p> <p>7 location to mitigate the effect, or the view of the pole</p> <p>8 from the surrounding area. They seemed accepting of that.</p> <p>9 BILL CHEN: Okay. So their position was that you</p> <p>10 needed a waiver --</p> <p>11 GREG DIAMOND: Objection. The -- withdrawn.</p> <p>12 BILL LANDFAIR: They understood that if the pole was</p> <p>13 to be located in an area, that hatched area, or in the</p> <p>14 interior of the site that it would be more visible to</p> <p>15 surrounding area.</p> <p>16 BILL CHEN: Okay. So they did not know where the</p> <p>17 hatched area was at that point?</p> <p>18 BILL LANDFAIR: No because they didn't have the</p> <p>19 benefit of the exhibit.</p> <p>20 BILL CHEN: Okay. But their position was you need a</p> <p>21 setback waiver?</p> <p>22 BILL LANDFAIR: Correct.</p> <p>23 BILL CHEN: And I take it at that meeting you, in</p> <p>24 turn, or someone, with whom the applicant's it to the</p> <p>25 meeting, said well, we can put it off here on the site. Is</p>

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46 (860 to 863)

<p>860</p> <p>1 that a fair statement?</p> <p>2 BILL LANDFAIR: We said this is the location where</p> <p>3 we're going to hold to the current location of the pole --</p> <p>4 BILL CHEN: Ah, okay. Okay.</p> <p>5 BILL LANDFAIR: We're not shifting that location at</p> <p>6 all. It will remain where it is. It will be a tree pole.</p> <p>7 BILL CHEN: Okay.</p> <p>8 BILL LANDFAIR: And we will provide you with this</p> <p>9 alternative exhibit which shows that to justify the waiver</p> <p>10 and that we could conceivably meet the setback, but because</p> <p>11 of its location it would be more visible to the surrounding</p> <p>12 area.</p> <p>13 BILL CHEN: Okay. So then -- as I understand your</p> <p>14 testimony subsequently you provided them with the</p> <p>15 information with that hatchback area?</p> <p>16 BILL LANDFAIR: That's right. Yeah. Yeah.</p> <p>17 BILL CHEN: Okay. I have no further questions.</p> <p>18 TAMMY CITARAMANIS: Ms. Wetter?</p> <p>19 CHERYL WETTER: Did Technical Staff visit either with</p> <p>20 you or are without you the site to see the hatched area?</p> <p>21 BILL LANDFAIR: I can't answer that. They didn't -- I</p> <p>22 did not go to the site with them to visit that hatched</p> <p>23 area. So I don't know if they did or they did not.</p> <p>24 CHERYL WETTER: Okay. Have you visited the site to see</p> <p>25 where the hatched area is?</p>	<p>862</p> <p>1 TAMMY CITARAMANIS: And if you've already asked that</p> <p>2 they'll object --</p> <p>3 CHERYL WETTER: Okay.</p> <p>4 TAMMY CITARAMANIS: If it's -- he needs to clarify</p> <p>5 then --</p> <p>6 BILL LANDFAIR: I --</p> <p>7 TAMMY CITARAMANIS: Let her just ask her full</p> <p>8 question.</p> <p>9 BILL LANDFAIR: Okay. Sure, okay.</p> <p>10 CHERYL WETTER: Okay I guess I'm best -- I basically</p> <p>11 was asking if you visited the site --</p> <p>12 BILL LANDFAIR: Right.</p> <p>13 CHERYL WETTER: -- but Technical Staff did not, where</p> <p>14 the current entrance to the gate is, is that that hatched</p> <p>15 area and</p> <p>16 TAMMY CITARAMANIS: You mean the pool deck?</p> <p>17 CHERYL WETTER: No. Not the pool deck, the tennis</p> <p>18 court.</p> <p>19 TAMMY CITARAMANIS: Okay.</p> <p>20 CHERYL WETTER: Um --</p> <p>21 CATHY BORTEN: I need to object to part of her</p> <p>22 question. She said that Technical Staff did not. Mr.</p> <p>23 Landfair testified he does not know if Technical Staff</p> <p>24 went. He didn't go with them, but he can't speak to what</p> <p>25 they did.</p>
<p>861</p> <p>1 BILL LANDFAIR: Yes. Yes, I have.</p> <p>2 CHERYL WETTER: Do you believe that it is a</p> <p>3 conceivable place to -- as an alternative site?</p> <p>4 BILL LANDFAIR: Yes, I do. It no doubt would -- it's</p> <p>5 obviously closer to the pool facilities and that could have</p> <p>6 some implications in terms of the operation of those pool</p> <p>7 facilities. I --</p> <p>8 CHERYL WETTER: Could you explain what the --</p> <p>9 BILL LANDFAIR: Well, just by its closer proximity to</p> <p>10 the entrance. Is so it's more in view. Would it inhibit</p> <p>11 people coming into and leaving the facility, no. But it</p> <p>12 would be right there at the entrance so conceivably it</p> <p>13 would -- obviously is more in view which is the chief</p> <p>14 concern I think that we all would have.</p> <p>15 CHERYL WETTER: Would it inhibit people getting on to</p> <p>16 the tennis courts?</p> <p>17 BILL LANDFAIR: No. I don't think so.</p> <p>18 CHERYL WETTER: With the current gate getting on to</p> <p>19 the tennis courts --</p> <p>20 CATHY BORTEN: Asked and answered.</p> <p>21 CHERYL WETTER: I had made clear that I was talking</p> <p>22 about --</p> <p>23 TAMMY CITARAMANIS: Okay. Why don't you finish your</p> <p>24 question --</p> <p>25 CHERYL WETTER: Okay.</p>	<p>863</p> <p>1 TAMMY CITARAMANIS: No, I agree. That's --</p> <p>2 CHERYL WETTER: Okay. That's fine. That's fine.</p> <p>3 TAMMY CITARAMANIS: That's a good clarification.</p> <p>4 CHERYL WETTER: But you feel that people could still</p> <p>5 access the tennis courts using that hatched area that the</p> <p>6 current -- do you feel they could use the tennis courts</p> <p>7 using the entrance to the tennis courts?</p> <p>8 BILL LANDFAIR: There might be a need for some slight</p> <p>9 modification. Obviously there is a sidewalk in that area.</p> <p>10 So you would have to reconfigure the sidewalk so there</p> <p>11 would have to be some minor changes or modifications to the</p> <p>12 physical plant that corner. But it wouldn't be impossible</p> <p>13 to locate it there without -- it wouldn't require major, in</p> <p>14 my opinion, structural changes.</p> <p>15 TAMMY CITARAMANIS: I can't decide. Are you thinking?</p> <p>16 CHERYL WETTER: Composing. Composing.</p> <p>17 TAMMY CITARAMANIS: You looked like you were done.</p> <p>18 CHERYL WETTER: I almost was.</p> <p>19 TAMMY CITARAMANIS: You have a --</p> <p>20 CHERYL WETTER: I have one more question.</p> <p>21 TAMMY CITARAMANIS: Oh, one more question. Yeah. Go</p> <p>22 ahead.</p> <p>23 CHERYL WETTER: Ms. (inaudible) can you just use the -</p> <p>24 - I'm going to call it the Verizon site plan because --</p> <p>25 BILL CHEN: What is the exhibit number for the their</p>

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47 (864 to 867)

<p>864</p> <p>1 showing the setback --</p> <p>2 GREG DIAMOND: It's not an exhibit number.</p> <p>3 BILL CHEN: They're showing the setback area, the</p> <p>4 hatched area?</p> <p>5 CHERYL WETTER: C -- no it's not C.</p> <p>6 TAMMY CITARAMANIS: It's not marked on there?</p> <p>7 CATHY BORTEN: It's on the big boards.</p> <p>8 TAMMY CITARAMANIS: Where's the big board? Hold on a</p> <p>9 second.</p> <p>10 GREG DIAMOND: Let me get the official exhibits.</p> <p>11 TAMMY CITARAMANIS: Yeah. Thank you. I was going to</p> <p>12 ask you about returning those.</p> <p>13 GREG DIAMOND: We have them to give to you.</p> <p>14 CHERYL WETTER: I can ask my second question which</p> <p>15 doesn't --</p> <p>16 TAMMY CITARAMANIS: Let's --</p> <p>17 CHERYL WETTER: Okay.</p> <p>18 TAMMY CITARAMANIS: Wait, to keep it all together.</p> <p>19 Once I get it all [inaudible: 1 second] somebody keeps</p> <p>20 breaking it up so let's stop for just a second until Ms.</p> <p>21 Borten pulls out the exhibit. Okay. Before you start, make</p> <p>22 sure you're near your mic.</p> <p>23 BILL CHEN: I'll turn mine over.</p> <p>24 TAMMY CITARAMANIS: Can you turn that?</p> <p>25 BILL CHEN: Yes.</p>	<p>866</p> <p>1 needed ramps. We couldn't have steps or anything.</p> <p>2 BILL CHEN: You're speaking of the special exception</p> <p>3 for the pool?</p> <p>4 CHERYL WETTER: The pool and the tennis courts, right.</p> <p>5 And they both have to be handicapped accessible. And how</p> <p>6 would that be accommodated if you had to put a tower there?</p> <p>7 BILL LANDFAIR: Well --</p> <p>8 CHERYL WETTER: The reason we don't have real</p> <p>9 sidewalks I guess is --</p> <p>10 BILL LANDFAIR: Sure.</p> <p>11 CHERYL WETTER: -- is --</p> <p>12 GREG DIAMOND: Is this a question or testimony?</p> <p>13 CHERYL WETTER: I'm just trying to help him. I mean --</p> <p>14 TAMMY CITARAMANIS: Well, I think that he -- if you</p> <p>15 just give him a question he can help himself or they will</p> <p>16 help him clarify it. So --</p> <p>17 BILL LANDFAIR: To locate a pole in the equipment area</p> <p>18 within that defined, hatched area would necessitate some</p> <p>19 Changes. And if you're trying to also accommodate</p> <p>20 handicapped access in that immediate area and it could</p> <p>21 conceivably also require some regrading. We didn't</p> <p>22 specifically examine that. The purpose of this exhibit was</p> <p>23 to see if the pole could located in that area. We didn't</p> <p>24 fully assess what the impacts might be to the pool. But I</p> <p>25 don't even know, for example, if those existing spaces meet</p>
<p>865</p> <p>1 TAMMY CITARAMANIS: Woops, can you do that? Okay. Go</p> <p>2 ahead. What was it? Ask your question now that he has,</p> <p>3 what's the exhibit number?</p> <p>4 BILL LANDFAIR: The exhibit number is 145(f).</p> <p>5 TAMMY CITARAMANIS: Okay. So what's your question Ms.</p> <p>6 Wetter on 145(f)?</p> <p>7 CHERYL WETTER: Well, I guess at this point, we're</p> <p>8 still answering [inaudible: 1 second] that exhibit, the</p> <p>9 hatched area, whether that would inhibit people from</p> <p>10 getting on the tennis courts. And you said it might.</p> <p>11 BILL LANDFAIR: The -- first of all the hatched area</p> <p>12 is meant to represent where the pole would be located. It's</p> <p>13 not meant to represent the equipment compound.</p> <p>14 CHERYL WETTER: Right, right. Right.</p> <p>15 BILL LANDFAIR: Okay. So it's an area that's defining</p> <p>16 the possible locations for where that pole could be located</p> <p>17 and yet still meet the described setbacks. So anywhere</p> <p>18 within that hatched area would probably necessitate some</p> <p>19 Changes to the physical plant either removal of some</p> <p>20 plantings, perhaps the addition of a gate. Certainly adding</p> <p>21 some sidewalk because it's located perfectly on top of the</p> <p>22 existing sidewalk that's (inaudible) to the parking area.</p> <p>23 CHERYL WETTER: Okay. And part of the special</p> <p>24 exception was that we had to allow for handicapped access</p> <p>25 to the tennis courts and the swimming pool, so we always</p>	<p>867</p> <p>1 current ADA standards, for example. They might not</p> <p>2 depending on the age of those spaces. So again, if you were</p> <p>3 to look at the pole there and the equipment compound there</p> <p>4 would have to be some Changes. It would certainly be</p> <p>5 inconvenient to this particular side of the pool, just by</p> <p>6 virtue of the fact that those Changes are being made. And</p> <p>7 that could also result in some regrading, et cetera.</p> <p>8 CHERYL WETTER: Do you know what the grading</p> <p>9 difference is where the tennis court sit above the parking</p> <p>10 lot?</p> <p>11 BILL LANDFAIR: Just based on these contours here I</p> <p>12 see that they are, yeah. There is a grading change. Between</p> <p>13 the --</p> <p>14 CHERYL WETTER: Can you tell from that how much of a</p> <p>15 grading change and there is from the tennis courts to the</p> <p>16 parking lot?</p> <p>17 BILL LANDFAIR: Well, let's see here. It's a difficult</p> <p>18 to tell because these are five foot contours, but there is</p> <p>19 a contour line between the tennis courts and the parking</p> <p>20 lot so it could be conceivably as much is five feet.</p> <p>21 CHERYL WETTER: It's not just -- I'm sorry, how much?</p> <p>22 BILL LANDFAIR: Five feet, based on the contours on</p> <p>23 the exhibit.</p> <p>24 CHERYL WETTER: Okay. So that would -- to accommodate</p> <p>25 that for handicapped or would that -- which means getting a</p>



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48 (868 to 871)

<p style="text-align: right;">868</p> <p>1 ramp, how many parking spaces do you think would be taken 2 out again? 3 BILL LANDFAIR: It's difficult to say because it 4 really depends on how close to current ADA standards they 5 are. The ADA standards require a 2 percent cross slope 6 which is pretty minimal. I mean it's hard to even see that 7 with the eye. My guess is, given the contours that I'm 8 seeing here and the difference between the tennis court 9 grade and the parking is you probably would have to put in 10 a small retaining wall, is my guess. 11 CHERYL WETTER: And if -- and -- put in a small 12 retaining wall. Are you saying that's in place of the -- 13 BILL LANDFAIR: That would be -- 14 CHERYL WETTER: -- parking spots that you -- 15 BILL LANDFAIR: -- parallel to -- 16 CHERYL WETTER: -- would take out? 17 BILL LANDFAIR: Right. Exactly. To either accommodate 18 those parking spaces that are being affected or to 19 accommodate the sidewalk that would have to be rerouted 20 around the facility itself. Or even to accommodate the 21 replacement of the plantings. Because you're affecting 22 grades between the fence line and the parking spaces. 23 CHERYL WETTER: All right. Okay. No further questions. 24 Thank you. 25 TAMMY CITARAMANIS: Ms. Lee. Okay. Do you have any</p>	<p style="text-align: right;">870</p> <p>1 BILL CHEN: So you're not aware of whether or not 2 branches were considered for either monopole? 3 BILL LANDFAIR: No, I'm afraid not. 4 TAMMY CITARAMANIS: Okay. You have -- oh, you have 5 another one. 6 BILL CHEN: Well the construction of, or 7 reconstruction of the parking area require the parking lot 8 to be brought up to ADA standards? 9 BILL LANDFAIR: I -- 10 CATHY BORTEN: Objection. I don't believe that was 11 covered in Ms. Wetter's questions. I think that's asked and 12 answered. 13 BILL LANDFAIR: In the immediate area -- 14 TAMMY CITARAMANIS: I think so too. 15 BILL LANDFAIR: -- those parking spaces that would be 16 affected -- 17 CATHY BORTEN: No, no. We objected. 18 TAMMY CITARAMANIS: Yeah. I mean that was asked, and 19 that has been answered. Okay. No. You read it. I thank you. 20 It happens. 21 BILL CHEN: Just in light of this exchange -- 22 CATHY BORTEN: Wait. (inaudible) I'm sorry. Mr. Chen 23 is supposed to be reading these questions. He's not 24 supposed to be providing additional assistance. 25 TAMMY CITARAMANIS: I know.</p>
<p style="text-align: right;">869</p> <p>1 questions from the audience that -- I'm going to ask if you 2 would, if you don't mind Mr. Chen. 3 BILL CHEN: Was the meeting with the Staff, Boyd, 4 Dunn, Estes, one that actually supported a waiver or 5 hypothetically supported a waiver, if the setbacks could 6 all be met? 7 BILL LANDFAIR: I would classify it more as 8 hypothetical because they didn't have the benefit of the 9 exhibit from us but in concept they seem to be very 10 supportive of a waiver. But it was contingent upon 11 providing an exhibit such as this one here. 12 TAMMY CITARAMANIS: Okay. 13 BILL CHEN: The exhibit you just indicated is 145(f)? 14 BILL LANDFAIR: One forty-five F, correct. 15 BILL CHEN: Is that, in fact, the exhibit that was 16 supplied to the Staff? 17 BILL LANDFAIR: Yes, it was. 18 BILL CHEN: Okay. Are you familiar with Park and 19 Planning's Trolley Museum monopole? 20 BILL LANDFAIR: I'm not. I'm familiar with the Trolley 21 Museum, but I can't picture the monopole. 22 TAMMY CITARAMANIS: Is that -- 23 BILL CHEN: Are you aware of or familiar with the 24 review of the monopole for the IMF? 25 BILL LANDFAIR: No.</p>	<p style="text-align: right;">871</p> <p>1 BILL CHEN: No, I'm not. But I -- 2 CATHY BORTEN: Okay. 3 BILL CHEN: -- In light of what has come out on this - 4 - 5 TAMMY CITARAMANIS: Okay. I think he's wants to ask 6 another question, but we're going to stop it there and go 7 back because I've given everybody the opportunity. 8 BILL CHEN: Okay. Well, in light of his testimony I 9 have some follow-up questions. 10 TAMMY CITARAMANIS: Okay. Well -- 11 BILL CHEN: And I'll handle it anyway you want -- 12 TAMMY CITARAMANIS: Okay. 13 BILL CHEN: It's just -- 14 TAMMY CITARAMANIS: I mean -- 15 CATHY BORTEN: I do have a question but I think I'm 16 entitled to -- 17 TAMMY CITARAMANIS: Okay. 18 CATHY BORTEN: -- have the last question. 19 TAMMY CITARAMANIS: Okay. Well, it's up to you. You 20 didn't -- I can let him do it now and then you -- 21 CATHY BORTEN: That's fine. 22 TAMMY CITARAMANIS: Are you satisfied with that? Okay. 23 So -- 24 BILL CHEN: It's rebuttal. 25 TAMMY CITARAMANIS: I mean I may --</p>

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49 (872 to 875)

<p style="text-align: right;">872</p> <p>1 CATHY BORTEN: (inaudible) more questions after I hear 2 what he says. 3 TAMMY CITARAMANIS: Okay. Just ask your question. 4 BILL CHEN: Okay. I'm a little bit confused. In your 5 testimony in responding to Ms. Wetter, you said at one 6 point that the hatched area was for the superstructure -- 7 or the structure itself, the monopole. 8 BILL LANDFAIR: That's correct. 9 BILL CHEN: The -- is it also supposed -- are you also 10 -- is it also your testimony that it also could include the 11 equipment area? 12 BILL LANDFAIR: No. 13 BILL CHEN: Okay. That's the clarification. I was a 14 little bit confused by what -- and that was your fault in 15 the way you answered it. 16 BILL LANDFAIR: I sense that. And I was hoping to 17 clarify that but I clearly didn't. 18 BILL CHEN: Thank you very much. 19 MALE VOICE: Madam Hearing Examiner, his light's not 20 on. 21 TAMMY CITARAMANIS: No, actually he's -- the mic and 22 that he's holding is for the court reporter which is really 23 important that she hears everything and I understand. Maybe 24 we can just get you to turn yours up so that it -- oh no, 25 that when you can't lift up. But just talk a little louder.</p>	<p style="text-align: right;">874</p> <p>1 TAMMY CITARAMANIS: Okay. 2 BILL CHEN: Only because it's not an accurate 3 statement of the testimony. With all respect he said -- he 4 didn't say height. 5 TAMMY CITARAMANIS: Okay. 6 BILL CHEN: That -- 7 TAMMY CITARAMANIS: Your objection is noted. So tell 8 me how -- what is that based on that the branches don't 9 count? 10 BILL LANDFAIR: I consider the -- 11 TAMMY CITARAMANIS: Because we're talking about the -- 12 setting and the height. 13 BILL LANDFAIR: Sure. The height, as we had described, 14 as is in the record, of the support structure, the tree 15 pull itself, is 80 feet. And then we've stated also that we 16 have attached to that support structure branches which will 17 rise above the top of the support structure up a maximum of 18 nine more feet. So in my opinion, I consider those 19 branches, as well as the antennas themselves, to be 20 attachments to be appended to the pole structure, but they 21 are not a part of the physical structure itself. They are 22 what is attached to that physical structure, along with the 23 cables and the other equipment that is necessary to make 24 this facility function. 25 TAMMY CITARAMANIS: And is that based on any language</p>
<p style="text-align: right;">873</p> <p>1 BILL LANDFAIR: I'll try. 2 TAMMY CITARAMANIS: Thanks. Sorry. Okay. So did that? 3 BILL CHEN: He answered the question. 4 TAMMY CITARAMANIS: Thank you. 5 CATHY BORTEN: Mr. Landfair, just to be very clear, is 6 Verizon Wireless actually proposing to place the tower in 7 the hatched area? 8 BILL LANDFAIR: No. 9 CATHY BORTEN: And what was the purpose of the exhibit 10 showing the hatched area? 11 BILL LANDFAIR: The purpose was to show that 12 conceivably we could meet the prescribed setback for the 13 support structure. 14 CATHY BORTEN: Was that in order to support the waiver 15 request? 16 BILL LANDFAIR: That's correct. 17 CATHY BORTEN: Thank you. That's all I have. 18 TAMMY CITARAMANIS: Okay. All right. I did have a 19 question with regards to the branches. You said that, in 20 your opinion, they aren't -- they shouldn't be considered a 21 part of the height. What is that -- 22 BILL CHEN: Objection. That's not what he said. Pardon 23 me if I'm -- 24 TAMMY CITARAMANIS: You're objecting to my question? 25 BILL CHEN: Yes, absolutely.</p>	<p style="text-align: right;">875</p> <p>1 in the zoning ordinance in determining what maximum height 2 is or -- 3 BILL LANDFAIR: It's based on my interpretation. 4 TAMMY CITARAMANIS: Okay. 5 BILL LANDFAIR: There is no clear definitive statement 6 in the zoning ordinance that I'm aware of. 7 TAMMY CITARAMANIS: Okay. That's it. I just wanted 8 that clarification. Did my questions generate any questions 9 for you? Anybody out there? Mr. Chen? 10 BILL CHEN: Am I correct in understanding that your 11 testimony right now is the first time that you've ever been 12 asked to give the interpretation that you just gave to the 13 Hearing Examiner? 14 BILL LANDFAIR: Correct. 15 BILL CHEN: I have no further questions. 16 TAMMY CITARAMANIS: Okay. If you have no more 17 questions. Do you? 18 CATHY BORTEN: One second. 19 GREG DIAMOND: Yes, my mic is on. Greg Diamond on 20 behalf of the applicant. Would I be correct that in the 21 Park and Planning Staff's second report, and I don't have 22 the Exhibit number in front of me but the one that 23 specifically addresses the tree monopole that Staff agrees 24 with your interpretation that the setback is based on the 25 height of the monopole base, the 80 foot base and not on</p>

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50 (876 to 879)

<p style="text-align: right;">876</p> <p>1 the tree appendages?</p> <p>2 BILL LANDFAIR: Yes. I would say that's clear.</p> <p>3 BILL CHEN: Objection. Excused me. The document speaks</p> <p>4 for itself.</p> <p>5 TAMMY CITARAMANIS: He can --</p> <p>6 BILL CHEN: And --</p> <p>7 TAMMY CITARAMANIS: Okay. It speaks for itself but he</p> <p>8 can -- if that's what he believes then if it turns out to</p> <p>9 be wrong then it's wrong. But --</p> <p>10 BILL CHEN: Fine. I'm with you. I appreciate that and</p> <p>11 as long as I have a follow-up questions on this.</p> <p>12 TAMMY CITARAMANIS: Yeah. Okay. So --</p> <p>13 GREG DIAMOND: It was asked and answered.</p> <p>14 TAMMY CITARAMANIS: I don't recall the answer at this</p> <p>15 point.</p> <p>16 CATHY BORTEN: Then please answer.</p> <p>17 BILL LANDFAIR: The answer is yes. I believe it is</p> <p>18 clear from a read of their Staff Report that they would</p> <p>19 agree with our position.</p> <p>20 TAMMY CITARAMANIS: Okay.</p> <p>21 BILL CHEN: Agree with what?</p> <p>22 BILL LANDFAIR: Our position which is that the setback</p> <p>23 is based upon the support structure and that the support</p> <p>24 structure height is 80 feet and does not count the branches</p> <p>25 that are extending above that height.</p>	<p style="text-align: right;">878</p> <p>1 BILL CHEN: Verizon didn't put 89 feet in, did that?</p> <p>2 CATHY BORTEN: Objection.</p> <p>3 GREG DIAMOND: Objection.</p> <p>4 TAMMY CITARAMANIS: Sustained. Anybody have a</p> <p>5 question? Do you all have anything you would like to add?</p> <p>6 I don't have any more questions. All right. Thank you.</p> <p>7 BILL LANDFAIR: Okay. Thank you.</p> <p>8 TAMMY CITARAMANIS: You need to take that mic back.</p> <p>9 Okay do you have any other witnesses?</p> <p>10 CATHY BORTEN: No.</p> <p>11 TAMMY CITARAMANIS: Okay.</p> <p>12 BILL CHEN: Can we take a two minute break?</p> <p>13 TAMMY CITARAMANIS: You can have five.</p> <p>14 BILL CHEN: Thank you.</p> <p>15 TAMMY CITARAMANIS: That's what you get for reading</p> <p>16 those things. So we'll -- five minutes. We'll go off the</p> <p>17 record for five minutes.</p> <p>18 (Off the record.)</p> <p>19 (On the record.)</p> <p>20 TAMMY CITARAMANIS: With the exception of a</p> <p>21 preliminary matter, but you're done with --</p> <p>22 CATHY BORTEN: Right. And I think we wanted to go</p> <p>23 through exhibits and --</p> <p>24 TAMMY CITARAMANIS: Right. Right.</p> <p>25 CATHY BORTEN: And then closing whenever you're ready.</p>
<p style="text-align: right;">877</p> <p>1 BILL CHEN: Is there any language in that Staff Report</p> <p>2 that talks about comparing 80 foot to 89 feet?</p> <p>3 BILL LANDFAIR: No, I don't believe so.</p> <p>4 BILL CHEN: Well, what is the discussion in this</p> <p>5 report that says that they haven't considered the height of</p> <p>6 the support structure at 89 feet and have reached a</p> <p>7 conclusion that, in their opinion, 80 feet is the</p> <p>8 appropriate measurement?</p> <p>9 BILL LANDFAIR: I think the clearest part of the</p> <p>10 report is what I think they're referring to as Table 3 in</p> <p>11 the report which has the development standards which lists</p> <p>12 what they are considering to be the height of the support</p> <p>13 structure, 80 feet and then that's the height that the</p> <p>14 waiver is in based on.</p> <p>15 BILL CHEN: I understand that. I'm just saying where</p> <p>16 in the report do they have a discussion about choosing to</p> <p>17 utilize 80 feet instead of 89 feet?</p> <p>18 BILL LANDFAIR: I don't think there's any extensive</p> <p>19 discussion about, aside from what is found in that table.</p> <p>20 BILL CHEN: Okay. And the Table is based upon the</p> <p>21 information that Verizon has supplied?</p> <p>22 BILL LANDFAIR: Correct.</p> <p>23 BILL CHEN: So Verizon said we're using 80 feet and so</p> <p>24 they put 80 feet in the tables.</p> <p>25 BILL LANDFAIR: One could say that, yes.</p>	<p style="text-align: right;">879</p> <p>1 TAMMY CITARAMANIS: Right. I just wanted to make sure.</p> <p>2 Okay.</p> <p>3 BILL CHEN: It is clarification I think that I think</p> <p>4 that Mr. Barnard is going to give us.</p> <p>5 TAMMY CITARAMANIS: Oh. Okay.</p> <p>6 THOMAS BARNARD: I'll just share that question was</p> <p>7 asked about the identity of the president of the EGRA board</p> <p>8 in the affidavit. Mr. Steve Mister is the current president</p> <p>9 of the board, and the previous president is no -- I'm going</p> <p>10 to say he stepped down.</p> <p>11 TAMMY CITARAMANIS: All right.</p> <p>12 THOMAS BARNARD: So he is --</p> <p>13 the standard procedures are under the board for when</p> <p>14 someone steps down that a new president is appointed that</p> <p>15 that -- he is the president. So I think there was some</p> <p>16 question as to what is this an accurate affidavit. I'm just</p> <p>17 representing that it is an accurate affidavit.</p> <p>18 TAMMY CITARAMANIS: Okay. All right. Okay. So we are</p> <p>19 at the stage we can deal with your preliminary -- the</p> <p>20 memorandum that Mr. Chen submitted. You have something</p> <p>21 written to respond?</p> <p>22 CATHY BORTEN: No, I don't. I have an oral response.</p> <p>23 TAMMY CITARAMANIS: Okay.</p> <p>24 CATHY BORTEN: Ready?</p> <p>25 TAMMY CITARAMANIS: An oral memo? I mean this was</p>

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51 (880 to 883)

<p style="text-align: right;">880</p> <p>1 (crosstalk)</p> <p>2 CATHY BORTEN: No, it's not a memo. It's actually a</p> <p>3 motion to strike the entire memo.</p> <p>4 TAMMY CITARAMANIS: Okay.</p> <p>5 CATHY BORTEN: And I just like to argue on that point.</p> <p>6 TAMMY CITARAMANIS: Does he have the motion?</p> <p>7 CATHY BORTEN: No.</p> <p>8 TAMMY CITARAMANIS: Okay. Okay. All right. Go ahead.</p> <p>9 CATHY BORTEN: Okay. This was received late Wednesday</p> <p>10 afternoon. As I indicated, we are asking that the Memo be</p> <p>11 stricken from the record. Madam Hearing Examiner, you have</p> <p>12 ruled previously in this case that you would not be</p> <p>13 touching the Circuit Court case issues. Paragraph 1 of this</p> <p>14 Memo sets out that there is a designated recreation area.</p> <p>15 We assert that that is a fundamental basis of the case in</p> <p>16 this Circuit Court. And I know you've heard testimony from</p> <p>17 people today talking again about what they were promised</p> <p>18 and this dedication. That is the -- a huge part of the</p> <p>19 Circuit Court case and it is not appropriately before you.</p> <p>20 I think that's not appropriate to be heard here. The entire</p> <p>21 Memo is predicated on that first paragraph. If you are</p> <p>22 changing your ruling in that regard we would certainly want</p> <p>23 time to respond to this. It was provided very last minute</p> <p>24 and, again, it is our position that this is not a question</p> <p>25 properly before you based on your prior ruling. So we would</p>	<p style="text-align: right;">882</p> <p>1 Memo really is is a discussion of law and jurisdiction and</p> <p>2 is not intended to be a factual submission at all. It's</p> <p>3 not, and in fact, Madam Examiner, there is a part of the</p> <p>4 transcript where you even invited briefing on one of those</p> <p>5 issues, and that's why you have it. And I -- Mr. Barnard is</p> <p>6 correct that I am raising a legal issue on this and not a</p> <p>7 factual. He is correct that it does go to preservation of</p> <p>8 my clients' rights in part. But it also is that these</p> <p>9 issues that we have raised are properly before you and they</p> <p>10 are not lawsuit issues. That's essentially where we are on</p> <p>11 that.</p> <p>12 TAMMY CITARAMANIS: Okay.</p> <p>13 THOMAS BARNARD: Well, I'll just disagree in part.</p> <p>14 That I -- that was not my point.</p> <p>15 TAMMY CITARAMANIS: Okay.</p> <p>16 THOMAS BARNARD: My point was I understood I</p> <p>17 understood he was preserving it for the record, not that</p> <p>18 he's asking the hearing examiner to make a ruling on those</p> <p>19 issues.</p> <p>20 TAMMY CITARAMANIS: Right. I did not take it that he</p> <p>21 was asking me to make a ruling, but he was asking me how I</p> <p>22 interpret, he broke it down to there's a regulatory</p> <p>23 approval which probably falls under my purview versus a</p> <p>24 private covenant issue and how I interpret this was that</p> <p>25 the subdivision, at the subdivision plan is there a</p>
<p style="text-align: right;">881</p> <p>1 ask that it be stricken and if not, and if you are</p> <p>2 interested in entertaining it that we be given some extra</p> <p>3 time to respond.</p> <p>4 TAMMY CITARAMANIS: Okay. Did you want to (inaudible)</p> <p>5 THOMAS BARNARD: Can I -- a chance to --</p> <p>6 TAMMY CITARAMANIS: Oh, I'm sorry.</p> <p>7 THOMAS BARNARD: My objection is that I do believe the</p> <p>8 issue has been resolved on several occasions throughout the</p> <p>9 course of this, but the hearing itself and before. And I</p> <p>10 took this Memo, if it's being offered simply as a proffer</p> <p>11 to preserve the issue for any subsequent appeal to the</p> <p>12 Circuit Court and argued at the Circuit Court, I understood</p> <p>13 this Memo potentially just to serve that purpose, not</p> <p>14 asking this hearing to rule on those particular issues. And</p> <p>15 I think for that reason to preserve that issue for them to</p> <p>16 argue at the Circuit Court it could be part of the record,</p> <p>17 that makes sense. But as far as having a factual inquiry</p> <p>18 and an actual evidentiary inquiry about this question seems</p> <p>19 beyond the scope.</p> <p>20 TAMMY CITARAMANIS: Okay.</p> <p>21 BILL CHEN: Yeah it's not a, I think Mr. Barnard and I</p> <p>22 are pretty much of the same view. It's not a factual report</p> <p>23 at all. It is illegal. And it was precipitated by Mr.</p> <p>24 Barnard's position that the issue that we are raising is a</p> <p>25 part of the existing lawsuit and it's not. And what this</p>	<p style="text-align: right;">883</p> <p>1 condition on that at the subdivision plan. And one of my</p> <p>2 questions was going to be, well, where does that say that</p> <p>3 specifically on the plan, versus the lawsuit that you all</p> <p>4 have with regards to do the private covenants create the</p> <p>5 condition versus a regulatory approval condition. That's</p> <p>6 how I saw it being separated. So I'm not inclined to grant</p> <p>7 your motion to strike. I actually would like your response</p> <p>8 because the way that he explained the legal issue I want to</p> <p>9 know what you all think. And because of the regulatory</p> <p>10 approval versus the private covenant I think there might be</p> <p>11 some merit to that, but I can't make that decision without</p> <p>12 your response.</p> <p>13 GREG DIAMOND: So I think on that issue we would need</p> <p>14 a couple of weeks to respond, right.</p> <p>15 TAMMY CITARAMANIS: Oh, there's no question. Yeah. No,</p> <p>16 I mean that was a guarantee. I wasn't --</p> <p>17 GREG DIAMOND: Yeah, right.</p> <p>18 TAMMY CITARAMANIS: Yeah, you're certainly entitled</p> <p>19 to, and I will want it to be, you know, I want you to have</p> <p>20 the time to do that. And we were going to talk about the</p> <p>21 timing of all of this so that I know when the record will</p> <p>22 close and then my 30 days to write the report begins. So --</p> <p>23 GREG DIAMOND: Without delving into the details, you</p> <p>24 are suggesting that without further evidentiary -- I mean</p> <p>25 our understanding was that we weren't reaching the cases</p>

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<p>884</p> <p>1 that are pending in the Circuit Court.</p> <p>2 TAMMY CITARAMANIS: And I don't think that is what he</p> <p>3 suggesting that we do.</p> <p>4 GREG DIAMOND: And -- all right. So you think just as</p> <p>5 a matter of law we can address this without the need for</p> <p>6 our own witness on the subdivision? I mean we did not bring</p> <p>7 an expert on subdivision because that issue is pending in</p> <p>8 the Circuit Court. I have -- you know I objected at the</p> <p>9 very beginning to Mr. Davis's testimony, the extent that he</p> <p>10 was going to talk about subdivision because that was not</p> <p>11 before you. And so, you know, I'm sitting here going hmm,</p> <p>12 you know, are we at, now a disadvantage because we</p> <p>13 understood subdivision wasn't before you and we don't have</p> <p>14 -- we didn't prepare witnesses.</p> <p>15 BILL CHEN: Well, if I may be heard on that. They have</p> <p>16 known our position from day one. I mean we -- since early</p> <p>17 on in this process we have taken the position that there is</p> <p>18 a subdivision restriction on the development of this</p> <p>19 property. Now, you know, I don't recall any objection to</p> <p>20 Mr. Davis on his testimony as a subdivision expert, and he</p> <p>21 testified clearly about that and he was not even -- there</p> <p>22 was not even an objection to the line of inquiry.</p> <p>23 TAMMY CITARAMANIS: No, they did a general --</p> <p>24 CATHY BORTEN: (crosstalk) lot of objections.</p> <p>25 TAMMY CITARAMANIS: They definitely did object.</p>	<p>886</p> <p>1 what they did and what the significance of the plants and</p> <p>2 the preliminary plan, and there was no objection to that</p> <p>3 line of inquiry.</p> <p>4 TAMMY CITARAMANIS: (inaudible)</p> <p>5 BILL CHEN: And I agree with the Hearing Examiner, and</p> <p>6 she is reading my absolutely correct; I am not saying that</p> <p>7 any of the -- that there is a lawsuit issue before you,</p> <p>8 except to the extent that I've identified in that Memo,</p> <p>9 which is on the subdivision issue we are not raising that.</p> <p>10 There is an issue on the covenant in the Circuit Court</p> <p>11 proceedings and that is not before you.</p> <p>12 THOMAS BARNARD: Madam --</p> <p>13 BILL CHEN: We made that very clear. It's not before</p> <p>14 you. On the on the issue about -- excuse me. On the issue</p> <p>15 involving the special exception that is subject to primary</p> <p>16 jurisdiction, I've given you information on that and we</p> <p>17 contend that that issue is also properly before you.</p> <p>18 THOMAS BARNARD: If I can be heard just briefly on</p> <p>19 that and then Cathy is -- I think there's a distinction</p> <p>20 trying to be drawn here that can't really be sustained, and</p> <p>21 I'll explain what I mean by that. But what -- this could be</p> <p>22 a purely legal issue with no factual inquiry is not</p> <p>23 possible because at the fundamental scope of the memo</p> <p>24 submitted by Mr. Chen goes to what constitutes recreational</p> <p>25 purpose and whether or not recreational purpose can be</p>
<p>885</p> <p>1 BILL CHEN: Well, I would stand on the record.</p> <p>2 TAMMY CITARAMANIS: Okay.</p> <p>3 BILL CHEN: Okay I'll stand on the record on that.</p> <p>4 TAMMY CITARAMANIS: I won't --</p> <p>5 GREG DIAMOND: As will I.</p> <p>6 BILL CHEN: I'm trying --</p> <p>7 TAMMY CITARAMANIS: No, no, I'm not --</p> <p>8 BILL CHEN: Please I'm not saying you're a liar.</p> <p>9 TAMMY CITARAMANIS: No, no, no. Don't, there's no need</p> <p>10 for that. I was here. So --</p> <p>11 BILL CHEN: Yeah. I'll stand on the record, Your</p> <p>12 Honor.</p> <p>13 TAMMY CITARAMANIS: I do recall that there was an</p> <p>14 objection and what's the objection was decided he moved on</p> <p>15 to another topic.</p> <p>16 BILL CHEN: Okay.</p> <p>17 TAMMY CITARAMANIS: That was my recollection and --</p> <p>18 BILL CHEN: Oh, that's correct, but the earlier -- my</p> <p>19 -- well, look --</p> <p>20 TAMMY CITARAMANIS: Okay.</p> <p>21 BILL CHEN: -- we've got to stand on the record. My --</p> <p>22 when I -- my recollection of the record, and I apologize,</p> <p>23 I've not read it in the last -- I have not read that part</p> <p>24 at all in the transcript. But my understanding is that he</p> <p>25 did testify about the subdivision itself and the plants and</p>	<p>887</p> <p>1 substituted with recreational activity, which the kind of</p> <p>2 meshing of those concepts have been done. That is the core</p> <p>3 factual question as to whether or not if a property used</p> <p>4 for factual purpose, does that mean other activities</p> <p>5 supporting that factual purpose can be appropriate on the</p> <p>6 property if it's to make money and raise funds to support</p> <p>7 that recreational purpose, or does it fundamentally change</p> <p>8 the purpose of the property. That is the essence, whether</p> <p>9 it's under the covenant for the subdivision. My suggestion</p> <p>10 on how to solve this problem so we kind of don't have this</p> <p>11 case in perpetuity, if this legal Memo isn't going -- this</p> <p>12 legal issue will be decided by the Circuit Court whether</p> <p>13 it's in the covenant are under this theory that Mr. Chen is</p> <p>14 talking about. So if he's preserved it for the record that</p> <p>15 issue is going to be decided, is not going to lose the</p> <p>16 chance to review that. And it's not going to force a</p> <p>17 separate factual inquiry because I do not think it's a</p> <p>18 purely legal question because, it might be a legal question</p> <p>19 as to what the rule is but whether or not those things are</p> <p>20 satisfied is going to require witnesses and evidence. And I</p> <p>21 think that that is going to -- and then we'll end up doing</p> <p>22 the same evidentiary proof here and in the Circuit Court</p> <p>23 twice. And I think that's exactly the ruling that you made</p> <p>24 at the outset on the motion was designed to prevent.</p> <p>25 BILL CHEN: We are not proposing to present the causes</p>

<p style="text-align: right;">888</p> <p>1 of action that are pending before the Circuit Court in this 2 proceeding. Now, what Counsel for the applicants, both sets 3 of counsel, are missing is that there are different claims. 4 Some claims, and I thought you had picked up on this; some 5 claims are properly before you. Those claims are not 6 factually isolated from the facts involved in the lawsuit. 7 They can't be. There is an overlap to a large extent of the 8 facts but, the claims that are made before you in this 9 proceeding them by my clients are proper administrative 10 proceeding claims. Now, Mr. Barnard had said that when we 11 got into the subdivision issue and I -- I think I was very 12 clear on this. He said it was the same as the covenant 13 claim, and I've identified the covenant claim in the 14 lawsuit. That is not being asserted before you. Okay. It is 15 a regulatory claim on a subdivision. I think you got that 16 clear. On the other issue involving the special exception 17 that is a matter that requires you to make a determination 18 under the primary jurisdiction that is before you, and I've 19 explained that as well. So that I have to admit that there 20 is a commonality of a lot of facts, but we are in different 21 forums asserting different claims, properly, in different 22 forums and we are not trying to put you in a box as the 23 location is about these rulings because, quite bluntly, 24 yes, I am putting these in the record and that Memo 25 reflects our position on that. But we are saying that, you</p>	<p style="text-align: right;">890</p> <p>1 and it all was coming very close to discussing that and we 2 objected and you indicated you would give him a little bit 3 of latitude, but that you did not want to open the door to 4 the Circuit Court. And what we are suggesting is that that 5 issue cannot be separated out and it is supposed to be 6 heard whether -- I don't think whether or not there's a 7 covenant to that use is properly before you. And that's 8 what they are trying to get at. That's how we see this and 9 we objected repeatedly to Mr. Davis's testimony in that 10 regard. And we've objected during other people's testimony 11 when they have suggested that they were promised this and 12 they were promised that and this is what the plat says. The 13 reason that we're not addressing it is because it's not 14 properly here. You said at the very outset that your job 15 was to go through the standards for meeting the conditional 16 use. And, in fact, the standards mentioned subdivision only 17 in relation to adequate public facilities. And that's where 18 it may be relevant, and in fact, the Staff Report and our 19 testimony addressed that and how those conditions were met. 20 Beyond that -- 21 TAMMY CITARAMANIS: You don't think under the 22 necessary findings that prior approvals, compliance with 23 the private approvals that a regulatory approval wouldn't 24 be part of that? 25 CATHY BORTEN: Well, I know that one of the things</p>
<p style="text-align: right;">889</p> <p>1 know, this one were not trying to put before you, it's an 2 equitable judicial action claim that you are not being 3 asked to rule upon. But you are asked to rule upon the fact 4 that there is a regulatory aspect of it, which is properly 5 before you. The other one, is the same type of thing. 6 That's properly before you. Now, quite frankly, this was 7 made very clear in our prehearing statement and before 8 that. The applicants have not put on facts to address them. 9 They've known that this -- Madam Examiner, they've known 10 this since December. Since December. The exhibits that Joe 11 Davis used were pre-filed in December. Now for them to sit 12 here and say we did not know (inaudible) we're being 13 blindsided and we need time to deal with this factually, 14 quite frankly that's being disingenuous. This has been, and 15 I specifically went through -- my letter is like 3 ½ pages 16 long that December -- the initial, I think actually it was 17 the second prehearing because we had already had one 18 postponement, went into this and identified it. And they 19 have not put on evidence because they, for whatever reason, 20 but there is evidence on that regulatory claim before you, 21 I submit. And it is properly before you for ruling. 22 CATHY BORTEN: The documents that Mr. Chen is talking 23 about are -- have been in evidence to establish that there 24 is a covenant on this property and Mr. Davis started 25 talking about the cluster development and what's prohibited</p>	<p style="text-align: right;">891</p> <p>1 that was discussed when we were talking about that, you did 2 indicate that you weren't sure that you agreed with that 3 reading. I've never -- there is no authority for saying 4 that that language is supposed to be read that way. And in 5 fact, the report of the Staff took that language and talked 6 about other special exception uses. And then when it came 7 to talk about subdivision they talk about subdivision. 8 Where that's appropriate in those standards. They saw no 9 reason to talk about subdivision anywhere else. Or it would 10 have been included of all approvals. And I think we're on a 11 very slippery slope of getting answers to questions that 12 are not properly here. 13 TAMMY CITARAMANIS: Okay. Well, the -- all of those 14 objections are valid, but I also think that there -- based 15 on his Memo I would like your response and addressing some 16 of the things that you just said. I'm not looking to go 17 into the merits of the covenants but the regulatory 18 approval issue, I think that it was laid out with regards 19 to the separation, and when I granted the motion in limine 20 and talked about not opening the door to the Circuit Court 21 it was private covenants and dealing with the corporate 22 structure because there was issues raised regarding, you 23 know, we want to know how they voted, when they voted, if 24 the Board was properly empaneled and I -- that was part of 25 it. But with the motion in limine, I mean I think that he</p>

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<p style="text-align: right;">892</p> <p>1 has raised a point worth your response with regards to the 2 regulatory approval. It did the regulatory approval have a 3 condition on it? Not do the covenants create a condition. 4 Did the regulatory -- in the subdivision process, which I 5 think would be properly before me. So while I hear what 6 you're saying I do want -- I would like to have your 7 response to his points into his case law and Ms. Borten 8 just made a good point with regards to whether the prior 9 approvals includes the subdivision part? Do we go all the 10 way back? You might find that there is case law that says 11 no, you don't go all the way back or prior cases or you 12 might find that it does include that, not just what special 13 exceptions are on the property. Because frankly, up until 14 now, I've not had this issue. That's why I'm -- I really 15 would like your response budvase before Staff just did what 16 special exceptions were on the case and that was it. It's 17 never been raised, but I think that he has raised a valid 18 point, whether I agree with him or not I'm not going to do 19 that until I hear how you all can put that down and 20 certainly having it on Wednesday and I'm glad you're not 21 going to try and, you know, do it all orally because I 22 really would like the time and the response. 23 GREG DIAMOND: If I might then, just I understand the 24 applicant will be doing a response Memo, just for the 25 record? I then, since now this has become an issue I want</p>	<p style="text-align: right;">894</p> <p>1 TAMMY CITARAMANIS: This is just a memorandum so how 2 much time do you need to do it? I mean I was going to say 3 10 days, but if you want less -- 4 CATHY BORTEN: No, I don't want less. 5 TAMMY CITARAMANIS: -- you want more? Well -- 6 CATHY BORTEN: I want two weeks, so whatever, however 7 that shakes out. 8 TAMMY CITARAMANIS: That's fine. 9 CATHY BORTEN: Okay. 10 TAMMY CITARAMANIS: You know I'm certainly give you 11 the time because you are just receiving it and it is your 12 case and so if you want two weeks you have at least two 13 weeks. 14 BILL CHEN: When do I have to respond? 15 TAMMY CITARAMANIS: A response -- 16 CATHY BORTEN: It's a memo and our -- I mean is there 17 a response? 18 BILL CHEN: Yeah. It's not a motion. 19 CATHY BORTEN: This could go on and on. It's not a 20 motion. 21 TAMMY CITARAMANIS: Yeah. We're not -- yeah. 22 CATHY BORTEN: It's your brief, and that's our brief. 23 BILL CHEN: Well, except that -- 24 CATHY BORTEN: That's what you called it. 25 BILL CHEN: And don't give me -- well, look -- the</p>
<p style="text-align: right;">893</p> <p>1 to object to the timing of the Memorandum. Mr. Chen has 2 stated today this has been here all along from the very 3 first day I filed, but two days before the final hearing 4 after he closed his case in chief, or his -- the opposition 5 case, suddenly there's a 10-page Memo of Law. And so I 6 think that the timing is an issue and whether this issue, 7 you know, would pass, I mean that -- 8 BILL CHEN: I want to be heard on that. The examiner 9 herself said that she would accept briefing on it and 10 that's the reason why you got it. Okay. So there's no 11 impropriety in filing that memo as Counsel is trying to 12 imply. 13 TAMMY CITARAMANIS: Right. I understand and like you, 14 he's making his record clear as well that his objection as 15 to the timing is on the record and we've had a number of 16 those things happen in this, on both sides, so -- but we 17 can cure to a certain degree. I still have the right to ask 18 you to brief things and so I want that. So we will have you 19 do a response and it will either -- it will go in and I'll 20 address it in my decision. 21 CATHY BORTEN: And when would you like the response 22 filed by? 23 TAMMY CITARAMANIS: Well, I mean generally responses; 24 I mean this is not really not a motion. This is just a -- 25 CATHY BORTEN: Right.</p>	<p style="text-align: right;">895</p> <p>1 problem with Counsel citing cases is, and I'm sorry, I see 2 this all the time, Counsel make representations about the 3 holdings of cases are not supported by a proper reading or 4 a full reading of the cases. And that is my concern. If you 5 notice, in my Memo that I gave you, I gave you jump sites 6 on everything. 7 TAMMY CITARAMANIS: You gave me what? 8 BILL CHEN: I gave the sites to the internal portions 9 of the decisions. I mean when I cite a case for a 10 proposition, my obligation, I believe, as a lawyer is to 11 not just say here is the case, is to give you the internal 12 discussion -- 13 TAMMY CITARAMANIS: So what is it that you're looking 14 for? I mean you're -- 15 BILL CHEN: Well, I'm concerned about what you're 16 going to get, and what's going to be represented. 17 TAMMY CITARAMANIS: Okay. Well I -- 18 BILL CHEN: And if I read those types of Memos, which 19 I -- you seem to get all the time -- 20 TAMMY CITARAMANIS: So what are you asking for? 21 BILL CHEN: I want an opportunity to point that out. 22 TAMMY CITARAMANIS: You want an opportunity to file a 23 response? 24 BILL CHEN: If they're not accurately reporting the 25 holdings on cases, yes.</p>

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<p style="text-align: right;">896</p> <p>1 TAMMY CITARAMANIS: Okay. Well, you file the original. 2 I'll give you five days. 3 BILL CHEN: Fine. 4 TAMMY CITARAMANIS: Just, I mean -- 5 BILL CHEN: I'll read it right away and if they're -- 6 if I don't have a problem with what they are representing 7 as to the law I will be filing anything. 8 TAMMY CITARAMANIS: Okay. 9 BILL CHEN: And I hope that -- I sincerely hope that 10 is the case. 11 TAMMY CITARAMANIS: Well, I can't even imagine that 12 they would have any reason not to because I can read and 13 look it up myself. So it's just -- anyway. You have five 14 days. 15 BILL CHEN: Well, yeah that is -- please, 16 respectfully, that is one of the thoughts of that did occur 17 to me. If the Hearing Examiner was sensitive to what you 18 just said and it sounds like you are so that will influence 19 me. 20 TAMMY CITARAMANIS: That I'm sensitive to? 21 BILL CHEN: You can read the case -- you said I read 22 the cases, and I appreciate that. That's what I understood 23 you to be saying. 24 TAMMY CITARAMANIS: Well, yeah. Okay. All right. With 25 regards to -- I don't know if it would be appropriate at</p>	<p style="text-align: right;">898</p> <p>1 because it's really not -- I mean you have a motion to 2 strike and at this point I've denied that -- 3 CATHY BORTEN: Denied that, mm-hm. 4 TAMMY CITARAMANIS: So no. I'm -- it will go part of 5 the decision. It will be a section in the decision. 6 GREG DIAMOND: Okay. So can -- we'll consult? 7 TAMMY CITARAMANIS: Okay. 8 (Off the record.) 9 (On the record.) 10 TAMMY CITARAMANIS: We're back on the record. 11 CATHY BORTEN: Sorry. I thought we were. We will be. 12 GREG DIAMOND: Yes. 13 CATHY BORTEN: Okay. Yes, we are. 14 TAMMY CITARAMANIS: Okay. So everybody turn your mics 15 back on. All right. 16 CATHY BORTEN: We're prepared to go ahead and do an 17 oral closing today -- 18 TAMMY CITARAMANIS: Okay. 19 CATHY BORTEN: -- if that's acceptable? 20 TAMMY CITARAMANIS: That -- oh yeah, that's 21 acceptable. I just threw it out there. 22 CATHY BORTEN: I appreciate it. 23 TAMMY CITARAMANIS: And then that will be over and you 24 will just do your memo. Okay. Are you ready to go with it? 25 Okay. So before we do that, why don't we -- you want to</p>
<p style="text-align: right;">897</p> <p>1 this point to do written closing arguments that -- and then 2 BILL CHEN: I prefer oral myself. 3 CATHY BORTEN: I just would like an opportunity to 4 confer briefly (inaudible) 5 TAMMY CITARAMANIS: Okay. All right. We'll go off the 6 record for five minutes. 7 (Off the record.) 8 (On the record.) 9 TAMMY CITARAMANIS: She's the most important person in 10 the room. 11 GREG DIAMOND: Agree. As I understand it in two weeks 12 Verizon Wireless will submit its Memorandum, the 13 petitioners. And then Mr. Chen that may have a few days -- 14 TAMMY CITARAMANIS: Right. 15 GREG DIAMOND: -- unless he concedes that everything 16 is fine. And then are we waiting for a ruling from you, or 17 is, at that point -- 18 TAMMY CITARAMANIS: I'm going to -- 19 GREG DIAMOND: Or does it just go into the final 20 opinion. 21 TAMMY CITARAMANIS: It's just going to go into the 22 final opinion. These aren't -- this is -- I guess this 23 would be part of your closing. I don't know. I mean I don't 24 see any reason to write an opinion and then write a 25 separate order. I mean it can be incorporated in there,</p>	<p style="text-align: right;">899</p> <p>1 deal with the exhibits? 2 CATHY BORTEN: Mm-hm. 3 TAMMY CITARAMANIS: And I mean at this point we have 4 200 and -- 5 CATHY BORTEN: Forty-one. 6 TAMMY CITARAMANIS: I think it's 42. 7 CATHY BORTEN: Forty -- oh, you're right. 8 TAMMY CITARAMANIS: It is 42. 9 CATHY BORTEN: Forty-two. 10 TAMMY CITARAMANIS: Two hundred and forty-two 11 exhibits. A lot of exhibits and we've certainly -- things 12 have already been on the record, like Mr. Noonan. I mean 13 certainly -- 14 CATHY BORTEN: Right. 15 TAMMY CITARAMANIS: I mean we're not going -- 16 BILL CHEN: Those are exhibits 76(q) and 76(r). 17 TAMMY CITARAMANIS: Right. Correct. So at this point I 18 mean I definitely do not want to go line by line. No, no, 19 no. 20 CATHY BORTEN: We would say, on behalf of the 21 applicant, we would move into evidence all -- request that 22 all the documents that we've submitted through witnesses 23 and in rebuttal the admitted into evidence. 24 TAMMY CITARAMANIS: Right. And on the same vein with 25 Mr. Chen?</p>



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56 (900 to 903)

<p>900</p> <p>1 BILL CHEN: No.</p> <p>2 TAMMY CITARAMANIS: No?</p> <p>3 BILL CHEN: No.</p> <p>4 THOMAS BARNARD: He doesn't want to move his in?</p> <p>5 TAMMY CITARAMANIS: You -- wait a minute. Wait a</p> <p>6 minute. So do you have specific ones that you want to</p> <p>7 object to? I mean --</p> <p>8 BILL CHEN: Yeah, yeah.</p> <p>9 TAMMY CITARAMANIS: -- to not move into evidence and</p> <p>10 the basis for that, even though from my perspective I give</p> <p>11 the documents the weight I think they deserve.</p> <p>12 BILL CHEN: I'm with you. I just want clarity on</p> <p>13 something.</p> <p>14 TAMMY CITARAMANIS: Okay.</p> <p>15 BILL CHEN: And I know the practice is that normally</p> <p>16 everything comes in and I --</p> <p>17 TAMMY CITARAMANIS: You sat here, Mr. Chen. You know.</p> <p>18 BILL CHEN: Yeah. A long, long time ago.</p> <p>19 TAMMY CITARAMANIS: Sure.</p> <p>20 BILL CHEN: You have, in this record, multiple</p> <p>21 instances where the application has been revised.</p> <p>22 TAMMY CITARAMANIS: Correct.</p> <p>23 BILL CHEN: I asked that the Examiner, I guess is the</p> <p>24 easiest way to handle it, recognize that if a document has</p> <p>25 been superseded by a later filing or an amended filing that</p>	<p>902</p> <p>1 CATHY BORTEN: Sorry.</p> <p>2 TAMMY CITARAMANIS: I want him to finish.</p> <p>3 BILL CHEN: Yeah.</p> <p>4 CATHY BORTEN: I apologize.</p> <p>5 TAMMY CITARAMANIS: Thank you.</p> <p>6 BILL CHEN: So where I am on this is, again, as to the</p> <p>7 applicant's case if there's documents and I think we're</p> <p>8 okay on it that have not been submitted by witness subject</p> <p>9 to cross-examination their not properly before the</p> <p>10 Examiner, and that's where I am their application and their</p> <p>11 supporting documents. And I trust and quite -- and when I</p> <p>12 say trust, I mean I know the Examiner is inexperienced and</p> <p>13 knows the distinction. And that's where I am on exhibits.</p> <p>14 TAMMY CITARAMANIS: Okay. Response?</p> <p>15 CATHY BORTEN: I object to the characterization that</p> <p>16 all of Mr. Chen's witnesses' documents were provided in</p> <p>17 advance. They were not. And I guess, you know, I think</p> <p>18 that's a crafty way of trying to get a decision without</p> <p>19 specifics.</p> <p>20 BILL CHEN: I --</p> <p>21 CATHY BORTEN: I mean if he has specific exhibits that</p> <p>22 he's taking issue with I think we should have the</p> <p>23 opportunity to be heard on those. I'm not prepared to just</p> <p>24 say okay, blanket if there was something that -- I mean he</p> <p>25 submitted articles on his own that didn't necessarily come</p>
<p>901</p> <p>1 the previous exhibit should not be considered because it's</p> <p>2 been superseded or supplanted.</p> <p>3 TAMMY CITARAMANIS: I definitely would not rely on a</p> <p>4 document that has been superseded. I mean it doesn't do me</p> <p>5 any good because -- or it doesn't hold any value.</p> <p>6 BILL CHEN: Right.</p> <p>7 TAMMY CITARAMANIS: Except for I know that in some of</p> <p>8 your exhibits you said these are my --</p> <p>9 BILL CHEN: Where if they adopt --</p> <p>10 TAMMY CITARAMANIS: You've documented --</p> <p>11 BILL CHEN: -- if you've done adoption of a document -</p> <p>12 -</p> <p>13 TAMMY CITARAMANIS: Right.</p> <p>14 BILL CHEN: That is accepted.</p> <p>15 TAMMY CITARAMANIS: Correct.</p> <p>16 BILL CHEN: Okay. Now, to the extent all of my</p> <p>17 witnesses had submissions. They were pre-filed and they</p> <p>18 were available to be cross-examined on their submissions so</p> <p>19 that my rule is that if a witness has been submitted a</p> <p>20 statement, a report, whatever and was subject to cross</p> <p>21 examination, it's in. Whether or not they were crossed. Now</p> <p>22 in --</p> <p>23 CATHY BORTEN: I would object to that characterization</p> <p>24 --</p> <p>25 TAMMY CITARAMANIS: Let him, I want to --</p>	<p>903</p> <p>1 in originally from a witness. You know, I just think that's</p> <p>2 a very global statement. I think as you said, you are</p> <p>3 prepared to give a documents the weight that they deserve.</p> <p>4 If he has a specific objection to something I would like to</p> <p>5 hear it.</p> <p>6 BILL CHEN: I did not submit any articles on my own.</p> <p>7 Anything --</p> <p>8 TAMMY CITARAMANIS: There's a number --</p> <p>9 BILL CHEN: They were -- please, Mr. Monroe had stuff.</p> <p>10 They were part of his package.</p> <p>11 TAMMY CITARAMANIS: And all of these documents --</p> <p>12 BILL CHEN: And the same --</p> <p>13 TAMMY CITARAMANIS: -- I've received pictures and</p> <p>14 other things that I know the value of them and so --</p> <p>15 BILL CHEN: Okay.</p> <p>16 TAMMY CITARAMANIS: Um --</p> <p>17 BILL CHEN: Okay.</p> <p>18 TAMMY CITARAMANIS: I think your point is well taken</p> <p>19 and I understand what you're saying but at the same time I</p> <p>20 don't necessarily agree with you that were going to exclude</p> <p>21 documents that (inaudible) identified but other than to</p> <p>22 say, unless a witness actually talked about it.</p> <p>23 THOMAS BARNARD: Madam Examiner --</p> <p>24 BILL CHEN: Requiring that. All I'm saying is, and</p> <p>25 contrary to what Counsel said, legal counsel for the</p>

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57 (904 to 907)

<p>904</p> <p>1 opposition has not submitted articles on his own. Yes, 2 there have been articles. You got one today because they 3 asked for it from what the witness said. And they -- I 4 haven't even read it. I mean, you know, we've got the 5 documents, here they are. And that type of document, you 6 know, frankly I have no problems with it. And Frank can be, 7 I think I gave I gave Counsel a major courtesy not 8 objecting to the ABA article because that was counsel 9 submitting the ABA article. I haven't submitted any 10 articles. So all I'm saying is, and I think I made it 11 clear, that I think the examiner is appreciative of the 12 point and that is, you know, on these exhibits that are 13 coming in, and we're not going to go through everyone. I 14 know that's crazy. But I hope the Examiner is appreciative 15 of the fact that some of these, if they are coming in 16 through a witness, that's fine. They're in. 17 TAMMY CITARAMANIS: All right. I (inaudible) 18 BILL CHEN: That's where I am on it. 19 TAMMY CITARAMANIS: I hear you and I -- 20 BILL CHEN: And I'm concerned about the supplanted, 21 or, you know, superseded -- 22 TAMMY CITARAMANIS: Right. 23 THOMAS BARNARD: Madame Examiner I have to speak out 24 (inaudible) that Rule 4.4 should guide the decision and you 25 know --</p>	<p>906</p> <p>1 go up a little bit more based on your response to the Memo 2 and then if Mr. Chen has one and then of course we get the 3 transcript in but that's not marked as an exhibit. So with 4 that all of the exhibits are in the record now. Okay. So, 5 everybody has opted for oral argument. We are at 3:40, 6 almost 3:45. I would like -- how long do each of you think 7 you need because we are leaving at 5:00. With all of our 8 trash, remember. 9 BILL CHEN: Before we start, if I may, this may be 10 outside the area of oral argument (inaudible) 11 TAMMY CITARAMANIS: Okay. Do you want me to turn this 12 off? Do you want to go off the record? 13 BILL CHEN: No. No, no, no. 14 TAMMY CITARAMANIS: Okay. 15 BILL CHEN: Pursuant to Rule 4.2.9, of the OZHA Rules, 16 you may conduct a site visit. We would like you to conduct 17 a site visit. If the Examiner has a -- part of that rule 18 means I have to identify property that I would like you to 19 -- 20 TAMMY CITARAMANIS: Well, you can request that but I 21 think before closing argument, way before closing argument 22 should have been -- the request should have been made. I 23 mean were getting ready to close the hearing and going out 24 there would require -- I mean it's not just me showing up. 25 I mean I believe the rules are pretty --</p>
<p>905</p> <p>1 TAMMY CITARAMANIS: Why don't you read it. 2 THOMAS BARNARD: And it's the, you know, the Hearing 3 Examiner may admit and give appropriate weight to evidence 4 which possesses probative value, commonly accepted by 5 reasonable and prudent persons in the conduct of their 6 affairs including hearsay evidence that appears to be 7 reliable in nature. 8 BILL CHEN: Yeah. 9 CATHY BORTEN: And I'd also like to add that the 10 articles that we're talking about nobody that testified 11 here wrote the article from 2005 and New Zealand. So 12 there's functionally no difference. 13 TAMMY CITARAMANIS: And both sides are -- but I'm 14 going to accept all the documents into the record. A lot of 15 people came forward and again, I will give it the weight 16 that I think it deserves and I can distinguish between -- 17 BILL CHEN: Okay. 18 TAMMY CITARAMANIS: -- the value of them based on 19 where they came from -- 20 BILL CHEN: Thank you. 21 TAMMY CITARAMANIS: --and I'm sure if I refer to them 22 it will just be another point of an appeal because -- sure. 23 But in that I'm going to accept into evidence all the 24 evidence documents that were marked and right now it's up 25 to 242. Of course, it will include your response so it will</p>	<p>907</p> <p>1 BILL CHEN: Okay. 2 TAMMY CITARAMANIS: -- clear as to the process and 3 then -- 4 BILL CHEN: But it doesn't say when in the process. 5 TAMMY CITARAMANIS: I mean -- no, it doesn't say when 6 in the process but I think at this point I've received a 7 number of photos from the individuals, residents, 8 applicant, opposition. I don't feel that there's a need for 9 me to go to -- 10 BILL CHEN: Well, it's your call. Though Rule -- 11 TAMMY CITARAMANIS: No, I know. 12 BILL CHEN: Okay. 13 TAMMY CITARAMANIS: Right. So at this stage I'm not 14 going to go to visit the site. I'm going to do it based on 15 the documents and the photos that I have on the record. 16 BILL CHEN: Okay. 17 TAMMY CITARAMANIS: With that, how long do you think 18 you need? 19 CATHY BORTEN: I would be at least a half hour, could 20 be longer depending on how fast I talk. 21 TAMMY CITARAMANIS: Okay. 22 CATHY BORTEN: Trying to just give us the -- 23 TAMMY CITARAMANIS: No, no I that's why I'm asking 24 because -- 25 CATHY BORTEN: Sure.</p>

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58 (908 to 911)

<p>908</p> <p>1 TAMMY CITARAMANIS: I really do not want to carry this 2 over. None of us want to come back here on Monday. Because 3 that's what we would do. 4 THOMAS BARNARD: Five to 10 minutes, tops. 5 TAMMY CITARAMANIS: Okay. All right. So how much, so 6 Mr. Chen, it looks like it's just you. 7 BILL CHEN: Oh. 8 TAMMY CITARAMANIS: The ladies have -- 9 MS. WETTERS: I don't plan on doing closing. 10 TAMMY CITARAMANIS: No, they don't want to do closing. 11 BILL CHEN: Oh, okay. 12 TAMMY CITARAMANIS: Actually your statements were 13 pretty close to a closing. 14 BILL CHEN: I think I'm at least a half an hour, at 15 least. 16 TAMMY CITARAMANIS: Okay so that. Right now I have 17 representations from all of you, that comes out to about 18 five minutes to 5:00. I didn't bring my hook. 19 BILL CHEN: And I said at least because I've not timed 20 it but I've got -- 21 TAMMY CITARAMANIS: You got what? 22 BILL CHEN: I've got a stack here just on oral 23 argument. I'm going to try to run through it to get within 24 that time. 25 TAMMY CITARAMANIS: You have a stack of what?</p>	<p>910</p> <p>1 just ask the Examiner to do is focus -- there's a technical 2 decision about what's before this hearing on the various 3 applications and then there's a lot of whether this is a 4 good idea. I'm just asking the Hearing Examiner that 5 whether or not this is a good idea and we've heard lots of 6 views about that over the course of these few days that 7 it's not the real focus of this hearing and as you know it 8 is the course of a separate hearing whether or not, even 9 then, whether or not it's a good idea is reserved to the 10 people who run EGRA, not people who are not members; not 11 people who didn't choose to be on the board, and so we just 12 want to make sure that at least from EGRA's point of view 13 that we don't allow folks to substitute their judgment for 14 the duly appointed members of the board; and that the 15 technical aspects of the application of this hearing is 16 limited too. I will comment on a few substantive things. 17 The question of impact of this -- the only evidence you've 18 heard is -- you've heard no evidence of the impact of a 19 tower on the value of property or of this community because 20 a tower doesn't exist yet. What you've heard is evidence 21 about people reacting to the thought of a tower being there 22 and the protests and the signs and the door to door and the 23 fear and the spreading of rumors about this. And how some 24 people's houses have decreased in value who are in fact 25 some of the people who testified. I would just ask that</p>
<p>909</p> <p>1 BILL CHEN: Evidence that's in the record. 2 TAMMY CITARAMANIS: Oh. Okay. I thought you were -- 3 BILL CHEN: No. No. No. 4 TAMMY CITARAMANIS: Mr. Chen, okay. All right. That's 5 fine. All right, well, you know it's a quarter of. We will 6 start Ms. Borten or who's giving the closing? 7 GREG DIAMOND: I will go first. 8 TAMMY CITARAMANIS: Okay. All right. 9 THOMAS BARNARD: Madam Examiner, thank you. And thank 10 you for conducting this hearing on behalf of co-applicant 11 EGRA (inaudible) for all the technical discussion of the 12 merits of the application and the conditional use waivers, 13 thanks to co-applicant to argue to avoid duplicating the 14 commentary, I wanted to make a few points just so the 15 record's, a sense of who EGRA is and why -- what's going 16 on. EGRA, as you heard from some of the individuals who 17 testified is a group of volunteers who are members of the 18 community who simply are residents, much like the people 19 who you've heard testify. They volunteer their time to work 20 for this organization. They don't get paid. It's a no 21 compensation. They care about the pool and they're trying 22 to keep it open. What you've seen before you is the 23 resolution of the Board choosing to move forward with this 24 and you can -- and they've had to make a tough decision as 25 to what to do in their role as leaders of the board. What I</p>	<p>911</p> <p>1 that not be considered evidence of what a tower would do. 2 The reaction and the effect of people protesting movement 3 should not be then applied to the people who initiated the 4 decision to host the tower in the first place. And with all 5 these discussions I asked that again, just to focus on what 6 the evidence shows as it pertains to specific variables 7 from the statute that Verizon will address. Thank you. 8 TAMMY CITARAMANIS: Ms. Borten. 9 CATHY BORTEN: Thank you. 10 TAMMY CITARAMANIS: It's your mic. 11 CATHY BORTEN: It's my mic. And can you hear me? 12 TAMMY CITARAMANIS: I can. 13 CATHY BORTEN: Okay. Madam Hearing Examiner, obviously 14 the zoning ordinance sets out many standards that an 15 applicant for a telecommunications tower conditional use is 16 required to meet. The applicant's justification statements 17 and the report, the amended report and recommendation of 18 approval from Park and Planning Technical Staff really do 19 go through each of those elements in detail and how all of 20 those standards are met. And rather than go through each of 21 those and how the evidence has met each of them, we're 22 going to rely on the report and recommendation of Staff, 23 the justification statement, the physical testimony that 24 you've heard here. We want to focus on the issues that we 25 think are the most critical to the case and wrap those up</p>

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59 (912 to 915)

<p>912</p> <p>1 for your consideration first of all there has been some 2 varying emphasis on the definition of the proposed use, and 3 we do want to be very clear that 59-3.5.2.C of the zoning 4 ordinance states that a telecommunications tower is defined 5 to mean any structure other than a building providing 6 wireless voice data or image transmission. It does go on to 7 say that a tower consists of one or more antennas attached 8 to a support structure and related equipment. But again, 9 this is setting out the elements that can be included in 10 the use, but when -- at the end of the day the 11 telecommunications tower use is the structure as defined. 12 In terms of the standard specifically for the conditional 13 use again, a review of all of the evidence indicates that 14 the standards have been met. Again a review of all of the 15 evidenced indicates that the standards had been met. 16 Focusing on what we perceived to be the most critical 17 issues that were raised I do want to first highlight that 18 the validity of the recommendation of the transmission 19 facility coordinating group, known as the Tower Committee 20 should no longer be a question. You found that that 21 recommendation of approval was valid when the application 22 was filed, it continued to be valid and thus we met the 23 requirement. Obviously there's been a lot of discussion on 24 setbacks and I'm going to devote a good portion of this 25 closing to that issue. First off, and it was discussed here</p>	<p>914</p> <p>1 it met and exceeded the setback of 300 feet from an 2 existing dwelling by actually being more than 300 feet from 3 all existing dwellings no waiver was originally sought. And 4 this is a logical reading. If the structure is located more 5 than 300 feet from existing dwellings the fact that it may 6 be less than the height of the structure from a property 7 line is not relevant. It sits currently at a distance of 8 more than three times the height of the structure from all 9 dwellings; which would seem to be the greater concern just 10 based on the way the current code language is written. Park 11 and Planning Staff appear to agree with that reading as it 12 originally issued a report and recommendation of approval 13 even though no waiver was requested. And the applicant 14 represents to you, Madam Hearing Examiner, that you could 15 find that a waiver is not required under the language of 16 the current code, where that language includes the or and 17 whichever is the greater, and that the applicant's proposed 18 use, in fact, meets the greater of those two setbacks. If a 19 waiver is required the applicant has met that standard for 20 the setback waiver as proposed. As you're aware, at some 21 point the applicant was revising its plans to disguise the 22 support structure as a tree. And Staff changed its mind on 23 how it read the code in May, and inform the applicant that 24 a waiver of the one-to-one setback would now also be 25 required. At that point as you've heard, members of the</p>
<p>913</p> <p>1 today, applicants have taken the position that the waiver 2 is in fact not required and it is important to remember 3 that this is a very early case in the framework of the new 4 zoning ordinance. Prior cases that have addressed the set 5 back issue that have been submitted to you for review have 6 all been based on the prior language. And the applicants 7 today in rebuttal introduced that prior language of the old 8 code and when you look at that language 59-G.2.58 and there 9 is no question that both setbacks are required to be met. 10 The language says a support structure must be set back from 11 the property line as follows, and then there's a waiver 12 provision. And then it says a support structure must be set 13 back from an off-site dwelling as follows and then, again, 14 there is the possibility of a waiver. So you have a must, 15 and separate waivers for each. However, the language in the 16 new code is extremely different and that should inform your 17 decision on the waiver. Critically, the current language of 18 the code does not use must and there is in fact, no 19 indication that there was an intent that both setbacks be 20 met. In contrast to that old code language the current 21 language requires a distance of one foot for every foot of 22 height or 300 feet from an existing dwelling which ever 23 provides the greater setback. Based on the or and the 24 whichever the applicant read this to mean that it was 25 required to satisfy which ever was the greater setback. As</p>	<p>915</p> <p>1 applicant's team met with Parking and Planning Staff and as 2 Mr. Landfair detailed the applicants reading that only the 3 greater setback must be met was reiterated at length for 4 staff. Ultimately, Staff required that the waiver be 5 requested and so we requested it in order to comply. The 6 fact that we requested it is not determinative of whether 7 it's in fact required. We were asked to do it so we did. 8 The Staff's amended report and recommendation is very clear 9 that an 80 foot setback was required for the 80 foot 10 support structure, at the same time acknowledging that the 11 project consisted of an 80 foot support structure with 12 concealing tree branches extending to 89 feet, and it 13 recommended granting the waiver. The recommendation states 14 that, "the setback waiver conforms to section 59- 15 3.5.2.C.2(ii)(d) of the Montgomery County Zoning Ordinance, 16 and that's in a summary on the first page. If we assume 17 arguendo that a waiver is required we again need to look at 18 what the zoning ordinance actually says. Specifically with 19 regard to the setback the ordinance states that the setback 20 applies to, "a telecommunications tower" which, as I 21 mentioned in the outset is defined as, "any structure other 22 than a building" and the setback is measured from the base 23 of the support structure. This only refers to the support 24 structure, not to antennas and not to extensions such as 25 concealment branches. Madam Hearing Examiner, you had a</p>

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60 (916 to 919)

<p>916</p> <p>1 question about the measurement of the branches and the 2 support structure. The zoning ordinance does answer this. 3 With regard to the waiver the ordinance again references 4 the support structure. The Hearing Examiner may reduce the 5 setback requirement to a distance of one foot from an off- 6 site dwelling for every foot of height of the support 7 structure. Thus the only relevant question is the support 8 structure, not the equipment cabinets, not the tree 9 branches, and not the antennas. None of those things 10 support anything. They're attachments to something else. 11 This section does not refer, as I said, to the antennas. 12 They're not relevant for the height of establishing a 13 setbacks or the waivers. The tree branches, there's no 14 operational effect, there simply there for camouflaging. 15 They are attached, they don't support anything and they are 16 similarly not part of the support structure for purposes of 17 calculating height and setbacks. Again as noted, Park and 18 Planning Staff agreed with this in its amended report 19 requiring an 80 foot setback and recommending approval of 20 the waiver on that basis. On Page 8 of the Report Staff 21 clearly states, the project consists of an 80 foot tall 22 monopole with concealment branches extending to 89 feet. In 23 analyzing the standard for the conditional use, Staff 24 states on Page 27, the applicant requests a 51 foot 1 inch 25 waiver or reduction of the 80 foot required tower setback.</p>	<p>918</p> <p>1 the tower and the proposed location is preferable over 2 citing the tower in a location that meets the minimum 3 setbacks because it is less impactful, screened by mature 4 landscape, and farther away from dwellings to the greatest 5 extent reasonably possible." As the setback requirement 6 only refers to the support structure, there is no issue 7 with sighting of the equipment, and there was some 8 testimony about that, but it's not relevant. The expert 9 testimony presented was that the equipment need not be 10 right next to the support structure and that came in from 11 the engineers. But it could remain where it was originally 12 posed and still serve the support structure in a location 13 across the parking lot. Again, at the end of the day where 14 the equipment could fit into that hatched area is a red 15 herring and it's not relevant to the question of the 16 waiver. I also want to reiterate that the applicant is not 17 proposing that the tower be built in that area. It was only 18 required to show under the zoning ordinance that it could 19 fit somewhere else, but that it would be more visibly 20 intrusive. We went through the exercise and we did so to 21 the satisfaction of the Planning Staff that the waiver 22 should be granted. Having said all of that, if the branches 23 to 89 feet create an issue, and I want to be clear that we 24 don't believe that it does but if you feel that it does 25 there is still another alternative. Although, again, the</p>
<p>917</p> <p>1 And as shown in the hatched area on the site plan, the 2 setback requirements can be met. The project adheres to all 3 other applicable zoning ordinance requirements. As such, 4 the impact of the reduced setback is less than significant. 5 The waiver can also be granted based on the standards; the 6 code states if evidence indicates that a reduced setback 7 will allow the support structure again, to be located on 8 the property in a less visually intrusive location than 9 locations on site where all setback requirements can be 10 met. Again, reference to support structure. There is no 11 discussion of equipment. There was evidence and testimony 12 that the support structure could be located in another 13 location that met the setbacks. However, it would lose the 14 benefit of the existing tree cover. It would be closer to 15 the entrance of the property. It would be more visually 16 obtrusive than in the proposed location closer to Democracy 17 than in the proposed location closer to Democracy 18 Boulevard. There is no logic for suggesting that the pole 19 be located closer to the entrance of the property, 20 basically there in the middle of the property where there 21 is no existing screening; where access into and operation 22 of the pool and tennis facilities could be hindered. The 23 Staff Report echoes that there is another location where 24 the setbacks could be met, but that increased visibility is 25 not preferred. Referencing Pages 27 and 28, they; "citing</p>	<p>919</p> <p>1 applicant asserts that the applicable one-to-one setback 2 for the support structure, as proposed, is 80 feet and 3 that's reinforced by Technical Staff, if there's a concern 4 regarding the branches that extend to 89 feet the applicant 5 would accept as a condition of approval of the conditional 6 use a requirement that the entire structure be capped at 80 7 feet, with concealment branches extending only 3 feet for a 8 total of 80 feet. Moving on to some other elements of the 9 required standards. Again, the support structure must be 10 located to minimize its visual impact. I do want to 11 highlight that this, again, refers to the support 12 structure. It has been designed to be less visually 13 obtrusive by use of the tree design and the additional 14 landscape. There is no requirement that the ground space be 15 screened or visually mitigated, but we are providing ways 16 to take care of that. There has been some discussion 17 regarding the equipment compound having sufficient area to 18 accommodate equipment sheds of co-locators, and I just want 19 to reiterate the plans and evidence are showing the 700 20 square foot ground equipment space; we are showing that 21 there is space for other equipment, but that's not 22 something Verizon Wireless controls and that's not part of 23 the instant request. The Hearing Examiner must make a 24 separate and independent finding as to need a location of 25 the facility. The applicant must submit evidence sufficient</p>

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61 (920 to 923)

<p>920</p> <p>1 to demonstrate the need for the proposed facility. Expert 2 testimony and evidence was provided showing that there are 3 gaps in service and reliability in the service area. 4 Although there was some testimony in opposition suggesting 5 that propagation maps could be manipulated, there is no 6 evidence to suggest that the propagation maps submitted in 7 this case were, in fact, manipulated. Considering the 8 expense that comes with constructing this type of use there 9 would be no logic to manipulating propagation maps to show 10 a need that doesn't exist. The Tower Committee which has a 11 support staff of engineers reviewed the evidence provided 12 in support of the application and found that there was, in 13 fact, a need for the site in the location proposed and at 14 the height proposed. The Tower Committee exists to provide 15 the Hearing Examiner with the technical engineer reviewed 16 information necessary to make a decision on the conditional 17 use. The recommendation is a concrete recommendation of 18 approval of need and not a supposition, not a what if. 19 Turning to Section 59-7.3.1(e) which are the necessary 20 findings. Again, I'm not going to go through all of them, 21 we're going to rely on what you've heard and what we've 22 submitted. But I do want to address this one issue that's 23 been raised and in fact was raised today; and again we will 24 reserve to flesh this out a little bit more in detail in 25 our Memorandum. But there is a requirement that it</p>	<p>922</p> <p>1 is still out there and we want to make sure it gets 2 addressed. So there has been some suggestion in testimony 3 by the opposition to say there shouldn't be a minor 4 amendment. I think in large part the fact that we're here 5 and we're having a hearing negates to some extent whether 6 we need to distinguish between a minor and a major. There's 7 very subtle differences between the two. I think a lot of 8 the evidence that your hearing in support of the 9 conditional use goes to the support of the modification. 10 More importantly, the question of the modification is only 11 relevant in the event that the conditional use is granted 12 and I would suggest that it doesn't make much sense to 13 grant my conditional use and then not recommend a grant of 14 the modification. So we see those as going hand-in-hand. 15 Going through the evidence relative to the modification, 16 the evidence presented has shown that the addition of the 17 telecommunications tower will not change the nature, the 18 character or the intensity of the existing community pool 19 special exception. In fact, it will have no actual impact 20 on the existing special exception at all. There is nothing 21 in the zoning ordinance that says you cannot have more than 22 one conditional use or special exception on a piece of 23 property. If there was a prohibition it would have to be 24 stated very specifically. That cannot be inferred. And, 25 it's proven repeatedly in the cases that you've heard; the</p>
<p>921</p> <p>1 satisfies any applicable previous approval on the subject 2 site, or if not that the previous approval must be amended. 3 There's been testimony that there is one existing special 4 exception approval at the subject site, which is the swim 5 and tennis club. And that a modification of the special 6 exception to allow the addition of the proposed 7 telecommunications tower use of the property has been 8 filed. Staff read the code the way we read the code and 9 found that with the information of the existing use in the 10 modification request that this requirement was met. 11 Contrary to the neighbors suggestion, there is no language 12 in the code to support a reading that applicable previous 13 approval is intended to include anything other than 14 conditional use or special exception approvals. We've 15 discussed that we don't believe that subdivision is an 16 issue for this forum, and in looking at the code itself any 17 suggestion that a subdivision is an issue here is negated 18 by the fact that they County Council included specific 19 references to subdivision issues in a separate required 20 finding regarding adequate public facilities. Staff found 21 that those requirements were met. So Staff's reading of the 22 ordinance is clear, and although the opposition would like 23 to read in something that isn't there, we don't find any 24 support for that proposition. I'd like to turn to the 25 modification of the special exception. It's something that</p>	<p>923</p> <p>1 Bullis School has a private educational use and the tower. 2 The VFW has the club and the tower, Avenel has a golf 3 course and a tower. And in fact, the case of Hill and Dale 4 Swim Club that we submitted, although the remand report and 5 recommendation that you received is not the end of the 6 case. In fact, at that case a tower, a 120 foot tall tower, 7 was approved on the grounds of the community swim club. So 8 there's just no support for that proposition. As noted in 9 the Staff Report the proposed use would operate 10 independently of the existing special exception and would 11 not cause any conflict with, or cause an increase in 12 impacts of operation of the recreation club. There would 13 not be an over concentration of special exceptions in the 14 neighborhood. Therefore, there is no impact. And that's in 15 the Staff Report. As shown in the applicants' case and is 16 highlighted in the staff's report the proposed use would 17 cause no adverse effects in terms of inherent or non- 18 inherent characteristics. The use is allowed in this 19 residential R200 zone. There are no adverse effects 20 substantial or otherwise, generated by the proposed use 21 when considered in combination with the underlying special 22 exception use. This is a passive unmanned use that will not 23 generate traffic, noise, odor, dust or elimination. Parking 24 for the existing special exception will actually be 25 increased by one space. Other than the parking area, no</p>

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<p>924</p> <p>1 areas of the existing use are going to be affected. The 2 community pool will continue to operate as a community pool 3 and tennis facility. That particular use will not intensify 4 and it will not be changed. While neighbors have speculated 5 as to how they think the proposed use may affect 6 membership, with all due respect, that is not the standard. 7 The operations of the swim and tennis facility will not be 8 affected in terms of character, nature, or intensity. The 9 neighbors also tried to distract from this reality with a 10 witness who highlighted items and that he would have wanted 11 to see if he was reviewing the application. However, he 12 also testified that he did not review special exception 13 applications when he was actually on the Planning Staff and 14 that he had never worked on a tree pole in Potomac. 15 Moreover, his assessments were incorrect. In addition, if 16 there is an issue with a possible need for a second 17 entrance off of Democracy Boulevard that would be an issue 18 for the building permit review stage and the applicant 19 would agree to any condition of compliance with building 20 permit requirements. Finally, the issue of landscaping has 21 no effect on the recognized uses attendant to the swim and 22 tennis facility under the special exception. And it was a 23 condition of the Technical Staff's recommendation of 24 approval of the conditional use. The applicant asserts that 25 it has demonstrated that the proposed use meets all the</p>	<p>926</p> <p>1 initially when we started this I gave you a list of 2 preliminary objections that are in the record and I 3 reiterate them. The one about my letter, I think dovetails 4 with one thing I think flow through this presentation and 5 that was that you do not have a lot of evidence on critical 6 factors. Do you think Mr. Monroe identified a problem with 7 those propagation maps? I think that even the engineer, and 8 I'm going to give you an excerpt of his testimony was blank 9 on a great deal of information, including how big the pole 10 was going to be. They do not know. Including how big the 11 caisson was going to be, they do not know. But all come to 12 those matters. But I think that part of the problem that 13 runs through this presentation to you is that there are 14 gaps, and I think there are reasons why there are gaps, but 15 nonetheless there are gaps and some of them, I'm going to 16 give you excerpts that I think go to that. A couple of 17 things. There is no presumption of compatibility at all. 18 There is an ordinance section on that but (inaudible) from 19 your head nod, you understand that. In this particular case 20 the Master Plan, and Ms. Lee even noted is in this area 21 there is a heightened scrutiny. This is on a major 22 transportation area. You have heard the gentleman from the 23 Seven Locks Association, you heard from Ms. Lee; that 24 applies. Let's talk about the setback. Counsel was pretty 25 selective in quoting from section 59-3.5.2.C.2.b.ii, yeah.</p>
<p>925</p> <p>1 required standards required for the grant of a conditional 2 use and for the recommendation that the modification of the 3 existing special exception use be granted. Planning Staff 4 agrees with that position. The opposition has not 5 demonstrated that there are any adverse effects at the site 6 over and above those legislatively determined to be 7 inherent to this conditional use. Having met the threshold 8 there should be no question that the conditional use should 9 be granted, that the modification should be recommended for 10 approval and that the -- that the modification should be 11 recommended for approval and that the conditional use 12 should be granted. Thank you. 13 TAMMY CITARAMANIS: Mr. Chen. 14 BILL CHEN: A couple of things preliminarily. 15 TAMMY CITARAMANIS: For your closing? 16 BILL CHEN: Yes. Mr. Barnard opened on you a story 17 about (inaudible) these volunteers were. They don't 18 (inaudible) yet he objected when people who were members 19 tried to testify about the improper process that was 20 utilized. You sustained the objections, yet you listened to 21 this. When he said that three people came to me, three, 22 including people whose testimony was cut off, now I'm going 23 to defer to your judgment on it. Okay. But don't be 24 (inaudible) by that. Okay. Ms. Borten started with a 25 definition and I think I'm going to try to do that too, but</p>	<p>927</p> <p>1 The lead in to the section on setbacks. The lead-in says a 2 telecommunications tower must be set back from the property 3 line as measured from the base of the support structure. 4 What the Counsel has done in this section is more terms of 5 making measurements you use the base of the support 6 structure. You can't use a cabinet and, you know, we've got 7 to pick a point. So you use the base. By the way, you use 8 the surface, and that's when I gave you one of those 9 decisions, you don't use the center of it. All right. You 10 use the face as the measuring point. But the lead-in talks 11 about the setback for a telecommunications tower, and a 12 telecommunications tower is not merely the support 13 structure. Counsel read the first sentence, but when you go 14 on it says -- the first sentence was read. You heard it. 15 The second sentence says telecommunications tower consists 16 of one or more antennas attached to a support structure and 17 related equipment. So, and respectfully, under the law a 18 telecommunications tower conditional use consists of both 19 the support structure and related equipment, and it is not 20 merely the support structure. Under the law also, and this 21 is another subsection, it's -- you know the numbers, but 22 it's lowercase seven. A support structure must be 23 constructed to hold a minimum of three wireless 24 communication carriers. So if you grant this, Verizon says 25 they don't control other carriers. They don't. But part of</p>

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<p>928</p> <p>1 what you're approving is the right to have two additional 2 carriers plus the enclosed area on the ground. It is shown 3 on the plans; now, what would have to happen is if this was 4 approved there would be no need for T- Mobile or Sprint to 5 come back before this body or any other land use and 6 regulatory body to get permission. They may have to cut a 7 deal for a lease, and I know we don't want to talk about 8 that, but that's outside this process. So what is before 9 you is, really not just Verizon. And when you measure the 10 amount of space, and we use their numbers, the space comes 11 to 1280. That 700 for the -- I think Reece used the right 12 term. The principal part, the Verizon part then you add, I 13 think it's another 580 for the two additional carriers on 14 the ground and that comes up to 1280. The application 15 before you is for a setback and the camouflaged tower. That 16 is the application. This is not an alternative process. The 17 application was amended on June 29 and that is what is 18 before you, not something else, and not an alternative. The 19 branches. Let's talk about that for a moment. Mr. Landfair 20 was very candid I thought today when he said, look, you 21 know, to me they are attachments. Honestly, I thought the 22 first time he didn't use the word height and you got to it 23 which is fine, but the gentleman was also candid. He's 24 never testified on this before. We've given you two 25 decisions of your office and it's the Board of Appeals in</p>	<p>930</p> <p>1 talking about telecommunications tower is a setback. You 2 cannot divorce or separate the supporting structure from 3 the equipment. It's all a package. That is the conditional 4 use. And the County Council is talking about a setback for 5 the conditional use. So respectfully, you're going to make 6 a decision; that I understand. But I think that the logical 7 reading of the language in the ordinance is that the 8 ordinance is talking about a telecommunications setback. I 9 tower setback, and that includes the equipment. And that 10 means that they have to include in that setback area, they 11 show it, the equipment as well as the supporting structure. 12 And if I may, this is not new evidence. 13 TAMMY CITARAMANIS: (inaudible) it could. 14 BILL CHEN: But I have got here an excerpt from Mr. 15 Siverling's testimony. It's in the record, and I've got 16 portions of it highlighted. I'm not going to read it all. 17 But, you know, rather than -- and I could read it all, but 18 rather than going through that, this is nothing more than 19 what's already in the record highlighting his testimony 20 including the portions of his testimony that I just 21 described where he says that's how we're going to separate 22 it and he says even at 80 feet, even at 80 feet they can't 23 put the equipment with the tower in that area that they're 24 showing. He's admitted that and it's highlighted in his 25 testimony. And I'm going to give you that. So as far as --</p>
<p>929</p> <p>1 S2706, which is Exhibit 229(b) and S2729 which is Exhibit 2 229(c) where it was recognized by your office that those 3 branches are part of the height. And my understanding is 4 that's part of the rule, so that in this case you go by the 5 branches, and that's what they want, and that was what the 6 Staff approved, branches. The testimony of Mr., I'm going 7 to butcher the gentleman's name, I'm sure he's -- Mr. 8 Siverling, when they presented their case his testimony was 9 that they could not put in this sliver or the hatched area 10 anything but the tower. That's what he said. And his 11 justification was that we will put the tower in that 12 hatched slivered area and then we would put the equipment 13 down here we're showing it and they would have to go 14 underground to make the electrical connections. That's how 15 he was saying. Now, I think we have a fair disagreement 16 with the applicant. It is our position that under the 17 language of the zoning ordinance the conditional use must 18 be set back. If you recall the question that I asked of the 19 gentleman, and he agreed with that, I said, well, you know, 20 we're talking about a setback, but for a house, you go from 21 property line to the exterior wall. He said yes. You don't 22 go from the exterior to the dining room. And that was a 23 discussion about the diameter. So what you're talking about 24 here is a setback for a conditional use. It's -- the 25 introduction relay language that I read to you and they're</p>	<p>931</p> <p>1 please, my clients are concerned, his testimony alone kills 2 this application. Without more, the fact that they cannot 3 satisfy the setback. What is always neatly ignored, when I 4 hear the discussion about the setback is they talk about -- 5 they don't talk about the last sentence, which I think is 6 very important. Let me put this there for a minute. The 7 last sentence says, a reduced setback may be approved only 8 if there is a location on the property where the setback 9 requirements can be met. Now, what Ms. Wetter kept trying 10 to show was, well, even as to the hatched area you're going 11 to have to rip up stuff that's already there. She went 12 through that. My understanding and interpretation of the 13 ordinance that we impressed on you is that's not, even the 14 hatched area doesn't work because there is already 15 something there that, if they have to rip out something to 16 demonstrate this theoretical or academic ability to show 17 setback, that's not good enough. Under the zoning ordinance 18 the obligation is there has to be a site on the property, 19 on the property, where the setback requirements can be met 20 and the conditional use, which is the support structure and 21 the equipment, can fit within it. In this case 22 respectfully, they can't do it on a number of grounds. As 23 Ms. Wetter was pointing out right from the beginning there 24 is something there already. That's number one. Number two, 25 their engineer says even at 80 feet we can't fit it all in</p>



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<p>932</p> <p>1 there. Not only that, if you look at the total square 2 footage that this conditional use is going to occupy on the 3 site, it comes to that 1280 number. Well, that is almost 4 500 feet greater than what is the acknowledged setback area 5 that they could, in theory, but the conditional use if they 6 could put it. So as far as the setback is concerned, they 7 have asked for the setback, they cannot meet it out of 8 there -- the testimony of their own expert. Again, this is 9 in the record already. It's highlighted portions. I've got 10 an extra one. Madam Examiner, I'm shocked. I mean we're 11 talking about a setback, a land use setback. We are talking 12 about a setback for a conditional use. The conditional use 13 has got to include the support structure and the equipment. 14 It doesn't mean we're just talking about part of it. And I 15 know I'm beating a dead horse and I know you understand it. 16 But that's an amazing (inaudible). Mr. Reese gave you a 17 couple of exhibits. The first one was, I think the proper 18 one we're using is 195 with the darker lines which shows -- 19 TAMMY CITARAMANIS: Right. 20 BILL CHEN: -- the survey. It's close to what they're 21 showing. But he also then gave you 204 which shows you the 22 area -- this is off, and remember, his testimony is this is 23 coming off of their plans. That they are showing the 24 additional compound for the two additional carriers. I mean 25 he's not making it up. He gave you 205; 205 if you recall</p>	<p>934</p> <p>1 just now, when I was looking back, I'm shocked at this 2 interpretation, but it's up to you obviously. But it's a 3 conditional use; the setback applies to a conditional use. 4 The lead in language says a telecommunications -- and it's 5 capped. So they are talking technically, they're talking 6 about what is a telecommunications tower. And it's the 7 setback from the property line for the conditional use. I - 8 - that's a dead horse. I can't continue to keep beating it. 9 Visual impact. I'm going to jump around a little bit. 10 Visual impact is not subject to inherent, non-inherent 11 analysis. It's got its own separate section, and it's not 12 subject to the general requirements for conditional uses. 13 The visual impact is under the provisions for a 14 telecommunications tower. We do not know what this thing is 15 going to look like. There's no design for it. The engineer, 16 I think he was very candid, they don't know how big the 17 pole is going to be; as I said, they don't know how big the 18 caisson was going to be. I mean I don't even know how you 19 measure it. But they -- he -- Ms. Wetter, again asked how 20 high off the ground is this thing and he said it's going to 21 be several inches, but we don't know how wide it's going to 22 be. So how the heck do you measure from that base if you 23 don't know how big the circumference is going to be? I 24 mean I don't know how you get there. They are, I guess 25 Verizon does not have enough money to say, okay, we're</p>
<p>933</p> <p>1 is if the tower is measured at 89 feet they're not even 2 close. They just cannot do it. By the way, that's 3 consistent also with their engineer's testimony. Again, 4 this is in the record. Again, you've got a lot to read, 5 I've given you this excerpt with the highlights that I 6 think is things that are important for you to take a look 7 at. Of got to make a point about in adequate information. 8 And it's highlighted in the excerpt of Mr. Siverling's 9 testimony. All of his measurements they gave you go to the 10 center of the support structure. That's improper. It should 11 be from the surface so that virtually all measurements that 12 you've got from the applicant are erroneous because they 13 give themselves an extra foot or two at least because we're 14 not sure how big this structure is going to be. We don't 15 know the diameter, we don't know the circumference. And he 16 admits no, we always use the center. Well, we gave you, and 17 it's Exhibit 229(a) is the decision of your office in case 18 2709. And all that it's there for is there is a discussion 19 in that case about the proper way to measure these things, 20 and it should be from the surface. From the circumference. 21 So our position is the information that they've given you 22 is misleading. It doesn't -- it's not accurate. They are 23 giving themselves more distance, if you will, than they're 24 entitled to because they're measuring to the center of the 25 diameter of the pole. Now, I keep coming back, I still,</p>	<p>935</p> <p>1 going to use the site and this is going to be our design. 2 This is what we're going to put here. This is what the 3 community can see is going to be there. This is what you 4 can see is going to be there. Respectfully, the burden on 5 them, which they have not carried at all, is they have to 6 show you -- when the ordinance says visual impact what are 7 they talking about? And they're not talking about maybe a 8 form that could have been in use at Congressional if 9 Congressional had approved or it did, I don't know. But 10 they have to show you, and they haven't. And that means 11 they haven't complied and I have the section number on 12 that. It's 59-3.5.2.C.2.B.i and it says the support 13 structure must be located to minimize its visual impact. I 14 don't know how you get to visual impact unless you know 15 what it's going to look like. But, again, you know, it's 16 your decision to make but my clients' position is if you 17 don't know what it looks like you can't analyze its visual 18 impact, which gives me to another point. Ms. Borten was 19 talking about how the neighbors (inaudible) the neighbors 20 think. The neighbors talk about the size of the site and 21 where it's going to be located, right at the entrance with 22 their kids, with themselves, with the recreational use, 23 that is legitimate testimony for you to hear. That is 24 indeed, proper testimony because they are working off the 25 best information that they have. And what they've been told</p>

<p>936</p> <p>1 is you're going to have a chain-link fence with slats in 2 it. That's what they're saying and you're going to have a 3 big, big pole. We know it's going to be big. We don't know 4 exactly (inaudible) but it's going to be right there at the 5 entrance. There is one photo that they had, or a sim where 6 you're looking at the view of it coming in. There was some 7 criticism of that. And you heard testimony that Mr. 8 Landfair's testimony about how wide that area is not 9 correct. That people had gone out and measured it. This 10 conditional use is going to be literally at the entranceway 11 to the club. That's where it's going to be. You can't avoid 12 it. It's not going to be down at the end of the parking 13 area or someplace else. It's literally at the front. You 14 heard a great deal of testimony about that today 15 especially. And that testimony demonstrates that there's a 16 non-inherent impact here. Okay. Because -- and that's 17 proper. On this -- this is simply and the setback is part 18 of the problem that this is simply not the right location 19 due to the nature of the site and what's going on on the 20 site, to put this type of conditional use. You can talk 21 about no trucks. You can talk about no personnel all you 22 want. But, there is a visual impact to it. People are going 23 to see it. There is going to be that literally that they 24 cannot miss seeing it. They're going to go by it. I though 25 the testimony you heard today by the one lady that talked</p>	<p>938</p> <p>1 towers, not the general conditions for conditional uses. I 2 say that because someone might say, well gee, you know, a 3 monopole is always going to be not nice, you know. Well, 4 except that in our case the non-inherent, inherent 5 dichotomy is not applicable to visual impact. Part of this, 6 by the way, I go to Mr. Davis' testimony and you've heard 7 it echoed today, he testified -- well part of his testimony 8 was you're talking about all this activity and the 9 relocating of the parking spaces and this activity going on 10 and the landscaping that's needed. Okay. That is, to me, 11 and I submit that is further demonstration that we're 12 talking about a non-inherent circumstance at this site. 13 Yes, we're not at a country club. Yes, we're not at the far 14 corner of Bullis. I think you heard somebody's testimony on 15 each three of those examples that they had. One was on a 16 golf course, I think two were on a golf course and Bullis 17 is apparently, from what I heard, you know, on the other 18 side of the football field or someplace. This is on a small 19 site, at the entrance to the site. And as I say, part of 20 that problem is the fact that they need a setback that 21 shows it's not a proper location. I'm not going to talk 22 about the subdivision condition. We had a lot of debate 23 about that, but our position is, and I thought you picked 24 up on it, and you're going to see their Memo, but it's a 25 regulatory matter. And we believe that it is properly</p>
<p>937</p> <p>1 about the different signs, you know, caution, danger, that 2 type of stuff. What is some 10-year-old going to do seeing 3 that? What's going to happen with the kids walking by or on 4 Wednesday after school when, you know, the pool's not open 5 but the kid wants to walk down and climb over the fence. I 6 mean you cannot discount the concerns that are being 7 articulated to you and what these folk -- and one lady I 8 thought she was really candid. I could have been mistaken, 9 I defer to you on the record, but she said it's where it's 10 located. It's literally right up front that this is going 11 to be in our face. That's my word, in our face. But that 12 demonstrates that this is a non-inherent circumstance on 13 this site that is legitimately before you and that you 14 should take consideration of. By the way, I also will point 15 out that the visual impact concerns that you've heard are 16 from neighbors. And again, that's not subject to the 17 inherent, non-inherent aspect at all. Again, the visual 18 concern is outside of that so that again, where you have 19 the circumstance where you have this monopole and the 20 equipment that is going to be on top of these -- aside from 21 the -- on the site itself, but these other residents are 22 saying it. You heard the testimony of the lady at the end 23 about how close it was. That is not subject to the 24 inherent, non-inherent evaluation because the visual impact 25 is an issue outside the -- its' just for telecommunications</p>	<p>939</p> <p>1 before you. We believe that the language of the ordinance 2 does include subdivision of the land use approvals. It's 3 not limited to just other conditional uses or other special 4 exceptions and, you know, you're interpreting the zoning 5 ordinance, that's a legal question I respect. But I also 6 respectfully submit that you have to take into 7 consideration the subdivision regulations, and my 8 recollection of the testimony from Davis is that there is 9 the subdivision controls. He went to the (inaudible) plan, 10 he went to the plats. The language on those documents say 11 to be conveyed to the Recreation Association and the 12 purpose of the Recreation Association is to run the 13 recreational facilities; the swimming pool and the tennis 14 courts. That's, you know, to me pretty straightforward. But 15 again, that's part of your analysis that you're going to 16 have to take. By the way, just a real quick little note. 17 Ms. Borten said that the County Counsel is aware of 18 subdivision regulations and so that's why we have the 19 adequate public facilities ordinance here. You remember 20 that testimony? That's in the subdivision regulations. 21 We're talking about in the zoning ordinance. Again 22 (inaudible) subdivision ordinance are separate from the 23 subdivision regulations so that her analogy to the APF is 24 really not applicable. What we're talking about is the land 25 use approvals at this stage, and in this regard, and I've</p>

<p>940</p> <p>1 given you the cases, those subdivision conditions and it is 2 a condition. If I call it a covenant or a dedication, I 3 think (inaudible) actually called it a dedication. I think 4 technically in the decision it should be a -- under the 5 decision it should be called a condition. No, that's where 6 I am on it and that's the terminology I try to use and I 7 think it is a cure condition. In that regard by the way, 8 you have not only the preliminary plan, you have the 9 letter, and these are a series of exhibits under 76. You 10 have the preliminary plan; you have the letter from Mr. 11 Broda, from (inaudible) Ervin &amp; Company. You have also the 12 letter to the Board of Appeals to (inaudible) best which is 13 76(i). The letter to the Board of Appeals in the Brauner 14 (phonetic) Construction which is at 76(j). They're already 15 in your record by the way, and all of these communications 16 make it very clear what's going on here. That this is a 17 subdivision that has been approved with this area to be in 18 a recreational use. When I say recreational use I use that 19 in a broad generic term. I'm not trying to offend anybody 20 by it. My understanding is we're talking about recreation; 21 we're not talking about off-street parking. It's recreation 22 and this site has to be devoted to recreation. Goodness, 23 for the last 40 years why are they doing what they are 24 doing? And the testimony was in the course of the land 25 development process or approval process, when you have</p>	<p>942</p> <p>1 because I wasn't anticipate I'd hear this, but the 2 decisions of the Court of Appeals are very clear that an 3 individual property owner you, can testify that a land-use 4 that's proposed near you will have an adverse effect on 5 your property value. You don't even have to be an appraiser 6 or a realtor. Now, in this particular case, you have a 7 gentleman who came and who is a market analyst, I believe 8 he was. And he's talking about real estate trends, factors 9 in the viability of development. Is there enough demand. 10 Again, I'll defer to the record on this. We take the 11 position that on the economic value you have to understand, 12 or come to understand what does that mean, and what we've 13 done is we've tried to give it to you two ways. We tried to 14 give it to you from a realtor's point of view on how a 15 realtor views it and we tried to give it to you from an 16 appraiser. And candidly, the reason why we did it is you 17 know, how do you get information about adverse economic 18 value impact? And all that I could think of and that we 19 used in the past has been take a realtor and you take an 20 appraiser. Those are the two known disciplines out there 21 that could, in theory, address economic value impact, 22 adverse economic value impact. Well, I stand on the 23 testimony of both of these gentlemen. Mr. Diamond really 24 took a shot, I don't mean that being critical of Mr. 25 Diamond, I think he did a real tough cross-examination and</p>
<p>941</p> <p>1 these reservations or conditions you still have to 2 implement them. That's why Ms. Wetter was talking about had 3 they -- they had to go through the special exception 4 process because while subdivision can reserve or condition 5 that area for that particular use, you still have to 6 implement the use and the way you implement it is by 7 getting the special exception. And in this particular case 8 the special exception that was used and commonly was used 9 was a community swimming pool. Mr. Davis also made an 10 interesting observation. When you look at the table, of 11 uses the community swimming pool is -- I want to 12 (inaudible) cultural or civic. The telecommunications 13 facility is under commercial and it's subcategory is 14 something else. This is a different land use, respectfully 15 this is -- Mr. Diamond and I can argue it until we're both 16 hoarse and out of breath about what is meant by recreation 17 or not recreation, but I think -- or Ms. Borten or maybe we 18 could all argue about what is recreation or meant by that. 19 One thing for sure a telecommunications tower ain't a 20 recreation use. Whatever it is it's a different land use. 21 I'm going to come back to that some more. Mr. Barnard, I 22 think, is new to this type of proceeding. He disparaged the 23 testimony of people who have talked about the adverse 24 impact on the economic value of their homes. The decision 25 of the Court of Appeals, and I don't have them with me,</p>	<p>943</p> <p>1 put Mr. MacPhearson through the loops, but I think Mr. 2 MacPhearson upheld and I think his documents are worthy of 3 review and I think that you heard this testimony today and 4 you know it's not just an inherent thing this adverse 5 impact. What they're talking about is where do you look at 6 the surrounding setting of where this is going to be. This 7 is not, oh you're always going to have an adverse impact on 8 economic, this is going to be special because this is in 9 this community's center, the heart it sounded like from 10 some of the testimony of what this community has lived 11 through for the last 40 years and that this is going to be 12 viewed on this side, all the photo sims are coming from 13 other directions. Respectfully and with respect to Mr. 14 Barnard, I think that on the issue of economic value and I 15 think that's why Mr. Barnard talked about it, is this is 16 not even close. This is not even a close call on this that 17 the impact it's going to have on these properties is not 18 the same because you've got -- they're going to be right on 19 top of it and that that's different than Bullis School, 20 that's different than Congressional and it's different than 21 Avenel, wherever the heck that was. By the way, and I'm not 22 going to go through in detail, but you heard issues on 23 compatibility both from Mr. Davis and individuals that 24 talked about and again, that internal operation of what's 25 going on and with the community. Again, I'm not going to go</p>

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<p>944</p> <p>1 through it again and again. So much of it is tied up into 2 one ball of wax and it really comes because it's a site 3 that they're working on. This small site that they're 4 trying to put this big thing on. I guess that's the most 5 common way you could put it. The Master Plan. It is on a 6 major transportation corridor, you heard that from two 7 different people with extensive background in this and 8 where this thing is going to be on it and therefore you 9 have to apply a heightened scrutiny to it. I think that the 10 testimony on that was solid. I think that the Master Plan 11 makes a very good point on this and I think that when you 12 apply a heightened scrutiny to this -- analysis to this 13 proposed conditional use that it does not withstand 14 approval and again, I'm not going to go over that 15 testimony. You heard that from two people. Need. 16 Interesting what I've heard about that today. They defend 17 that maps or those images. Mr. Monroe criticized them. I 18 didn't hear any rebuttal to that. the gentleman who was 19 their field guy, who if you remember, he used the 20 propagation maps to go out and look and he used his cell 21 phone. You heard, I thought, very detail, better detail 22 than his testimony you heard detailed information about 23 that from Ms. Wetter. You heard witness after witness talk 24 about their reception. Quite frankly I -- and by the way as 25 I understand it, and again, I defer to the exhibits, but I</p>	<p>946</p> <p>1 clearly why and I think part of the reason why it is 2 clearly a major is that there is a change of the land use. 3 Now, as my Memo says, that forget modification because that 4 modification process only goes to modifying the type of 5 special exception that you've got. And this ain't that. 6 This is a change in land use and you cannot utilize that 7 section of the zoning ordinance to effectuate a change in 8 land use. And I'm going to go by that on it and my position 9 is that they just can't. By the way, you were given a copy 10 of the 2004 zoning ordinance. Just for the record, I've got 11 copies of the use table that is used in that, the 2004 12 zoning ordinance and just for the record and a 13 telecommunications facility, which is what it was called at 14 the time, is considered to be transport -- under what is 15 known as transportation, communication and utilities. Ms. 16 Wetter got beat up pretty much about public utility. I'm 17 sorry, but you got knocked around about that. But under the 18 2004 zoning ordinance a telecommunications tower facility 19 was under the grouping of transportation, communication and 20 utilities. Further, under the 2004 zoning ordinance a 21 swimming pool, community special exception, these are, at 22 the time special exceptions, was under the category of 23 cultural, entertainment, and recreational. And I'm talking 24 about is section 59-C.1.1 which is the table and then you 25 have subsections (b) is the transportation, communication</p>
<p>945</p> <p>1 think that the tone of the Willoughby reports are talking 2 about improved service. Please check me on that. But as I 3 understand it this is a circumstance where they have 4 service, and that the people who live there and from at 5 least one individual that tried to mimic the same 6 methodology that was used by their witness, said I come up 7 pretty good on this. I don't know what he's talking about 8 and again you heard the testimony. You're going to have the 9 transcripts I defer to that, but I don't think they've 10 proven their case even on need. 11 TAMMY CITARAMANIS: How are we doing on time Mr. Chen? 12 BILL CHEN: Close. 13 TAMMY CITARAMANIS: Good. 14 BILL CHEN: Because we would be at five of. Yeah. 15 TAMMY CITARAMANIS: Well, they have to have an 16 opportunity to be the last word. 17 BILL CHEN: Oh. Okay. Okay. Okay. Okay. Then I'm going 18 to -- I'll try to cut that really tight. We contend that 19 this is the proper forum to address what we contend is a 20 change in land use. And we contend that not only is this a 21 major modification, by the way, Ms. Borten said there's a 22 subtle difference. There ain't. And I think you know it. 23 Because if you're a major you've got to go back to the 24 Planning Board and start all over, so it ain't a subtle 25 difference between the two. And I think Mr. Davis explained</p>	<p>947</p> <p>1 and utilities, sub (e) is the cultural stuff. So this is 2 not the same type of land use whatsoever. And, you know, 3 that's where we are on that. Just a footnote. Ms. Borten 4 tries to avoid the impact of the two additional carriers by 5 saying that, this is her words, Verizon does not control 6 them. This application does control them because as I 7 pointed out you approve this application they'll have the 8 enclosure and they'll have the right. That's a control. One 9 second. I think I got it all. 10 TAMMY CITARAMANIS: You got it all. 11 BILL CHEN: I think so. 12 TAMMY CITARAMANIS: All right. Would you like to -- 13 you said you weren't going to make a closing argument. 14 CHERYL WETTER: Okay. I had two (inaudible) I would 15 like to -- 16 BILL CHEN: Oh, I just want to throw in. There's a 17 place in the transcript under Siverling's testimony where 18 that phone went off and they accused me of it. It's not me. 19 Just so you know that. It wasn't my phone. 20 TAMMY CITARAMANIS: I think I was trying to lighten 21 the mood. So you have two sentences to -- 22 CHERYL WETTER: Yes, just to clarify something that 23 was said about (inaudible) 24 TAMMY CITARAMANIS: Because we are running on fumes. 25 CHERYL WETTER: Right. Okay. May I?</p>

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<p>948</p> <p>1 TAMMY CITARAMANIS: Yes.</p> <p>2 CHERYL WETTER: Thank you. One was that I just wanted</p> <p>3 to clarify that I do not in any way think that they use</p> <p>4 were Verizon's attempt to show the secondary spot as the</p> <p>5 waiver spot in the crosshatch. I know they don't want to</p> <p>6 use that. I don't think that they do. I know that, but I do</p> <p>7 know that they need that in order to ask for the waiver. So</p> <p>8 I just wanted to make that clear.</p> <p>9 TAMMY CITARAMANIS: Okay.</p> <p>10 CHERYL WETTER: That I was not -- that's not my</p> <p>11 mistake. Secondly, I thought it was that we had not used</p> <p>12 statements that were not factual in the closings. And I</p> <p>13 just want to say that both Mr. Barnard making statements</p> <p>14 about the volunteers and no compensation and the board's</p> <p>15 decision to do this and how they decided it, he's not part</p> <p>16 of that board and he's not part of EGRA so he wouldn't know</p> <p>17 what (inaudible) shouldn't be included. And also, Ms.</p> <p>18 Borten just now said that EGRA will continue to survive.</p> <p>19 She has no way of knowing that and I would ask that that be</p> <p>20 struck also.</p> <p>21 BILL CHEN: Can I --</p> <p>22 TAMMY CITARAMANIS: It's closing argument, it's --</p> <p>23 BILL CHEN: Excuse me. I forgot something to tell you.</p> <p>24 THOMAS BARNARD: No, you're all done.</p> <p>25 BILL CHEN: I forgot something.</p>	<p>950</p> <p>1 TAMMY CITARAMANIS: Okay.</p> <p>2 THOMAS BARNARD: So I was not adding any facts not</p> <p>3 already in the record. Thank you.</p> <p>4 TAMMY CITARAMANIS: And you?</p> <p>5 GREG DIAMOND: So in final rebuttal, if I might for</p> <p>6 (inaudible) Celco Partnership. I think Mr. Chen, put into</p> <p>7 the record S2706 and 2729. I think you'll find that, I'm</p> <p>8 pretty sure I was lead counsel on both of those cases. I</p> <p>9 know them fairly intimately. The -- if you go through the</p> <p>10 Zoning Hearing Examiner's reports in those cases I think</p> <p>11 you will find that MRA, Brian Siverling's company was the</p> <p>12 same engineering company and all the measurements were done</p> <p>13 exactly the way they were measured in this case. In both of</p> <p>14 those cases I believe Leslie Grove had actual setbacks from</p> <p>15 the pole of over 200 feet even though it was just an 80</p> <p>16 foot structure with the antenna, with tree branches going</p> <p>17 to 85 or 87. And then the other site is at the Trolley</p> <p>18 Museum had like 900 foot setbacks and there wasn't an</p> <p>19 active opposition. So setbacks weren't an issue in the</p> <p>20 case. You'll find there is, in the zoning hearing summary</p> <p>21 there is no summary of a dispute of setbacks. The applicant</p> <p>22 put something forward that they thought a finding was made</p> <p>23 but the cases were granted. And the setbacks weren't an</p> <p>24 issue in the case. I believe if you went deeper you'd find</p> <p>25 there was staff reports supporting both of those</p>
<p>949</p> <p>1 TAMMY CITARAMANIS: You're pushing the envelope at</p> <p>2 this point. You're -- we're almost an hour in --</p> <p>3 BILL CHEN: Okay.</p> <p>4 TAMMY CITARAMANIS: -- and you've done, and now Ms.</p> <p>5 Wetter has and it's time to go over to here.</p> <p>6 BILL CHEN: I just -- if you'll give me two sentences.</p> <p>7 TAMMY CITARAMANIS: Hers was ten.</p> <p>8 BILL CHEN: I won't even do that.</p> <p>9 THOMAS BARNARD: No.</p> <p>10 BILL CHEN: Anything outside (crosstalk) anything</p> <p>11 outside the sliver is setback area and you can't put the</p> <p>12 equipment into the setback area. There's a provision in the</p> <p>13 zoning ordinance. Mr. Davis mentioned it and it -- there is</p> <p>14 a section in the Zoning that says you can put residential</p> <p>15 equipment in the setback area, but you cannot put non-</p> <p>16 residential.</p> <p>17 TAMMY CITARAMANIS: Okay.</p> <p>18 BILL CHEN: Into the setback area so they're arguing</p> <p>19 that their argument that they could have put it in that</p> <p>20 setback area is erroneous.</p> <p>21 TAMMY CITARAMANIS: Okay. We're done on this side.</p> <p>22 Last word, Ms. Borten, Mr. (inaudible)</p> <p>23 THOMAS BARNARD: Well, I'll just say I only included</p> <p>24 stuff in argument that was allowed over my objection even</p> <p>25 though my objection was noted to reference it.</p>	<p>951</p> <p>1 applications that agreed with the applicant's analysis of</p> <p>2 the setback. I cannot explain why the Zoning Hearing</p> <p>3 Examiner on his own decided to add the tree branches. I --</p> <p>4 you know, but the cases were granted and the setbacks were</p> <p>5 so huge that they weren't relevant. But they were, in both</p> <p>6 cases, they were interpreting the pre-2014 ordinance and in</p> <p>7 this case we are working with the latest version of the</p> <p>8 ordinance, which has new definitions greater detailed</p> <p>9 definitions of what is the structure and the structure, you</p> <p>10 know, is what we believe in this case is the 80 foot</p> <p>11 monopole onto which we are adding these other disguises.</p> <p>12 But the structure doesn't change. It's still an 80 foot</p> <p>13 monopole just with disguises attached to it. With regard</p> <p>14 to, can you evaluate the visual impact; we have a whole</p> <p>15 expert witness on the subject of using a photograph that</p> <p>16 was provided by the manufacturer of the tree monopole, the</p> <p>17 faux branches and that been digitized into photos of the</p> <p>18 site. So the suggestion that you don't have any idea what</p> <p>19 this is going to look like is just fanciful, I think, under</p> <p>20 the circumstances that both -- you have both engineered</p> <p>21 drawings showing schematically what's proposed as well as</p> <p>22 the digital sims based on the manufacturer's photograph.</p> <p>23 Finally, on the issue of a waiver. So I think it's been</p> <p>24 suggested that, you know, geez, if you have to apply for a</p> <p>25 waiver there something wrong with this property. I would</p>

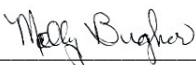
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69 (952 to 955)

<p>952</p> <p>1 suggest that that's not right. That the County Council 2 built into the process a way to do a waiver in order to 3 build poles more intelligently. It doesn't make sense to 4 build telecommunications dead center in properties, 5 especially if what you're trying to do is blend a disguised 6 structure with the available resources on the property 7 where it can actually be blended. In this case, the tree 8 line is along an edge of a property and it moves the pole 9 away from the activity of the property to a point on the 10 property where it both blends and is out of the way. On the 11 final issue of the property owner wants this pole on its 12 property. There has been a suggestion made that visitors to 13 the site might not like the way it looks when they're on 14 the property -- that they're guessing. And I don't believe 15 that's the standard here. The standard is how does this 16 affect off-site people's view. Not -- the owner of the 17 property has decided that this is something they do want on 18 their property. And so on that, if their entire non- 19 inherent cases based on the fact that people are going to 20 walk by it when they are visiting this property well, 21 that's what the owner of the property wants and is willing 22 to have on their property, and so that goes with visiting 23 that property. 24 MALE VOICE: (inaudible) people don't own the site. d 25 TAMMY CITARAMANIS: Please. Unacceptable. No, nothing</p>	<p>954</p> <p>1 TAMMY CITARAMANIS: That's a Monday. 2 CATHY BORTEN: Monday the 30th? Sure. Thank you. 3 GREG DIAMOND: Monday the 30th. 4 CATHY BORTEN: Thank you. 5 TAMMY CITARAMANIS: You're not going to go home 6 tonight and do anything until Monday. 7 CATHY BORTEN: Yes. 8 TAMMY CITARAMANIS: So Monday the 30th you will submit 9 your response and Mr. Chen will have five days from that. 10 So that would be the -- that will follow Saturday so years 11 will be the 6th. You file -- 12 BILL CHEN: Is that November 6th? 13 TAMMY CITARAMANIS: November 6th, I'm sorry. Yes. 14 November 6th. 15 BILL CHEN: Okay. 16 TAMMY CITARAMANIS: It's due. Both are due by -- 17 BILL CHEN: 5:00 p.m.? 18 TAMMY CITARAMANIS: Yeah. By the close of business 19 which is 5:00. They've probably already left me, but so 20 you'll do that and then at that point -- well the 21 transcript should be back by then. Do either of you need 22 the transcript to do your response? No. Okay. So I will 23 just build in a few more days in case there's a delay of 24 something so we'll close the record on the 9th. Okay. 25 THOMAS BARNARD: (inaudible)</p>
<p>953</p> <p>1 from the audience please. Continue, Mr. Diamond. 2 GREG DIAMOND: And that's going to conclude it. Thank 3 you. 4 TAMMY CITARAMANIS: Okay. So we are done with closing 5 arguments. 6 BILL CHEN: May I please -- 7 TAMMY CITARAMANIS: No, I'm not. We're done with 8 closing arguments. 9 BILL CHEN: Okay. 10 TAMMY CITARAMANIS: We're done. 11 BILL CHEN: I'm just going to give you a cite. 12 TAMMY CITARAMANIS: Well you -- 13 CATHY BORTEN: No. No. 14 TAMMY CITARAMANIS: -- can email it to me. At this 15 point, we've done the evidence, the time that you need to, 16 you said you wanted two weeks? 17 CATHY BORTEN: Yes, ma'am. 18 TAMMY CITARAMANIS: That -- 19 GREG DIAMOND: Friday the -- 20 TAMMY CITARAMANIS: Well, so that's -- so that 21 basically falls on, you want until the 30th? 22 CATHY BORTEN: Is that -- I don't have my calendar in 23 front of me. 24 TAMMY CITARAMANIS: That's a Monday. 25 GREG DIAMOND: Yes, sure.</p>	<p>955</p> <p>1 TAMMY CITARAMANIS: Yeah, that just give us a few days 2 in case -- certainly doesn't mean I can't extend the 3 closing but -- and also just so you know, the record will 4 be open but I'm not taking any more letters of opposition. 5 I'm not taking any -- I'm waiting for your Memo response, 6 your response and the transcript. I just want to make that 7 clear. And the record will close on the 9th. 8 MS. LEE: Did you ask me (inaudible) read that? 9 TAMMY CITARAMANIS: No. I don't need that. 10 MS. LEE: Okay. 11 TAMMY CITARAMANIS: Yeah, I don't need that. thank you 12 for reminding me. And then that will start the 30 day 13 period for my report. Of course that puts us close to the 14 holidays and everything, but well -- 15 BILL CHEN: You can get an extension. 16 TAMMY CITARAMANIS: Yeah it will -- hopefully I won't 17 need it but I think we're all good on that. let me just 18 double check my list real quick before I let everybody go. 19 Everybody has their bottles, their trash. Take your trash 20 please, I beg you. Take your trash. And with that -- 21 THOMAS BARNARD: We're going to give you -- 22 CATHY BORTEN: We're going to give these exhibits -- 23 THOMAS BARNARD: -- all the exhibit s from the -- 24 CATHY BORTEN: -- folded up. 25 THOMAS BARNARD: Off of the --</p>

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<p>956</p> <p>1 TAMMY CITARAMANIS: Can I ask you to take them down?</p> <p>2 THOMAS BARNARD: Yes.</p> <p>3 BILL CHEN: That's theirs.</p> <p>4 TAMMY CITARAMANIS: Yeah to the office because I've</p> <p>5 got to -- I'm going to need somebody to help me carry the</p> <p>6 box--</p> <p>7 CATHY BORTEN: Okay.</p> <p>8 THOMAS BARNARD: We can help you carry that.</p> <p>9 CATHY BORTEN: Yeah, we can help you.</p> <p>10 TAMMY CITARAMANIS: That would be great. Okay. So for</p> <p>11 that we are --</p> <p>12 BILL CHEN: (inaudible) I'm going to give you the</p> <p>13 (inaudible) section cite. (inaudible)</p> <p>14 TAMMY CITARAMANIS: Okay.</p> <p>15 BILL CHEN: That's all I want to say.</p> <p>16 TAMMY CITARAMANIS: Okay. So for that we are adjourned</p> <p>17 even though the record will remain open for the purposes</p> <p>18 that I just said that, and it is a little bit after 5:00.</p> <p>19 Thank you everybody for coming.</p> <p>20 (Off the record at 5:01 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p>957</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, MOLLY BUGHER, do hereby certify that the foregoing</p> <p>3 transcript is a true and correct record of the recorded</p> <p>4 proceedings; that said proceedings were transcribed to the</p> <p>5 best of my ability from the audio recording and supporting</p> <p>6 information; and that I am neither counsel for, related to,</p> <p>7 nor employed by any of the parties to this case and have no</p> <p>8 interest, financial or otherwise, in its outcome.</p> <p>9</p> <p>10 </p> <p>11 _____</p> <p>12 Molly Bugher</p> <p>13 DATE: October 24, 2017</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	