

CHILI PLANNING BOARD

May 10, 2005

A meeting of the Chili Planning Board was held on May 10, 2005 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson James Martin.

PRESENT: John Hellaby, Dario Marchioni, Karen Cox, John Nowicki, Ray Bleier, Dennis Schulmerich and Chairperson James Martin.

ALSO PRESENT: Keith O'Toole, Assistant Counsel for the Town; Daniel Kress, Director of Planning, Zoning and Development; David Lindsay, Town Engineer; Dick Schickler, Conservation Board representative; Fred Trott, Traffic Safety Committee representative; Bill Arnold, Fire Department representative.

Chairperson Jim Martin declared this to be a legally constituted meeting of the Chili Planning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

PUBLIC HEARINGS:

1. Application of Citicasters Co., owner; 207 Midtown Plaza, Rochester, New York 14604 for preliminary site plan approval to erect a 199' high auxiliary telecommunications tower at property located at 591 Ballantyne Road in A.C. & FPO zone.
2. Application of Citicasters Co., owner; 207 Midtown Plaza, Rochester, New York 14604 for conditional use permit to erect a 2nd telecommunications tower at property located at 591 Ballantyne Road in A.C. & FPO zone.

Frank Hagelberg was present to represent the application.

MR. HAGELBERG: Two applications, one additional tower. My name is Frank Hagelberg, counsel to the Boylan, Brown Law Office. I appear this evening on behalf of Citicasters Company, which is a wholly-owned subsidiary of Clear Channel Communications and the licensed operator of radio station WHAM, broadcasting at 1180 on the AM dial.

With me this evening is Mr. Craig Kingcaid, the Chief Engineer for Clear Channel, and Mr. Duncan Jackson, our engineer, principal in MRB Group.

The purpose of the application is to secure a conditional use permit and preliminary site plan approval to permit the construction of a 199 foot high auxiliary tower at 591 Ballantyne Road near the intersection of Ballantyne and Brook Roads.

The facility will be supported by guy wires, anchored in three locations and will also include a system of underground wires required to produce the radio signal. The auxiliary tower and adjacent electrical cabinet, as well as three guy wire anchors, will be protected by chain link fencing topped with barbed wire.

The auxiliary tower is to be used in conjunction with the existing WHAM tower which is 420 feet high and was originally constructed in 1947.

The auxiliary tower serves a number of purposes. First, in the event the existing WHAM tower is in need either of repair or maintenance, the main transmitter to that tower can be shut down providing a safe work environment for workers, and the auxiliary tower can then be used in its stead. This will permit the station to more easily comply with Federal Communications Commission guidelines which regulate the distance at which and the time during which workers can be close to a tower that is radiating a signal, and the -- an AM tower like the existing WHAM tower radiates a signal from most of the tower itself. So it is very difficult and cumbersome to be able to do maintenance on a tower like that without shutting the station down. The presence of the auxiliary tower will allow us to do that.

Second, in the event of an unscheduled interruption in the use of the existing tower or if the transmitter associated with the existing tower were to go down, the auxiliary system, the auxiliary tower can then be used. The coverage would be more limited through using the auxiliary tower.

Just as for comparison purposes, the existing WHAM tower is at 50,000 watts. The auxiliary tower would be at 10,000 watts. The lower power combined with the lower height means that it would throw out a signal of more limited range.

However, at 10,000 watts, at 199 feet, the auxiliary tower would provide more than adequate coverage for the Greater Rochester area, and provide the citizens of the area with access to news, weather and emergency broadcasts.

Uninterrupted broadcasting, 24 hours a day, seven days a week is important because WHAM is a -- what is called a clear channel station. It is part of Clear Channel Communications, but lower C, it is a clear channel station. It is one of very few in the country that is authorized to broadcast at 50,000 watts, 24 hours a day.

In fact, it is the only station in the country authorized to broadcast 50,000 watts, 24 hours a day, at that level. There is one other station in Montana, at 1180 -- I'm sorry. Let me restate it. It is the only station permitted to broadcast at 50,000 watts a day at 1180. There are other clear channel stations on other frequencies. There is a station in Montana also at 1180. It can broadcast during the day at 50,000, but at night it has to scale down to 10,000.

At full power at night, WHAM serves an area of about 36 states. It is a major player in the system, and the system, when it was set up, was set up with these clear channel stations in mind so there would be very broad coverage from selected stations.

In addition, WHAM is a primary entry point for Western New York under the FCC's emergency alert system. And as such, WHAM is responsible for broadcasting emergency alert notifications during weather or national security events, and we need to be able to do that 24/7/365 and if the main station, if the main transmitter is down for repairs, maintenance or something unexpected, we want to be able to use that auxiliary tower.

Both systems will not be in use at the same time. We anticipate that 90 percent of the time, 99 percent of the time, hopefully, the existing tower will be used, but when it isn't or can't be used, then the auxiliary system will be used.

We originally proposed locating the facility in the southwest corner of the property. That is shown on the site plan on the left side of the Board.

And that -- that location was very close to the intersection of Ballantyne and Brook Roads.

The Conservation Board met on April 25th, and recommended that -- recommended against that location and recommended that the tower be moved instead of from the southwest corner, to the northeast corner of the property. The alternate location proposed by the Conservation Board in the northeast portion of the property poses a number of difficulties for us, including the following:

First of all, we would need to construct about an 1100 foot access road in order to reach a tower in the northeast corner of the property. We would probably be removing twice as much natural growth. We have a -- an aerial photo, which I will pass up to the Chairman, that will show you the kind of vegetation that we're looking at there.

There would be -- the property lines and the street locations have been noted on that aerial photo.

There would be extra expense for the additional transmission lines to get all of the way back there. And in addition, when you do -- Mr. Kingcaid can probably explain this better than I can, but I will try in lawyer terms. Longer transmission lines, there is power loss along the line. The only way to boost that power would be to add additional equipment, and I'm told at a fairly significant expense to compensate for the power loss for the distance.

We anticipate that without that additional equipment, anywhere from 20 to 40 percent of the power would be lost.

We're cognizant of the fact -- we believe the primary motivation for the Conservation Board's recommendation was they weren't pleased with having it at the corner of Brook and Ballantyne Roads, so we have proposed an alternative, which is shown on the site plan on the right, which I believe you also have in front of you.

The alternate site is 900 feet to the east. It is to the east of the existing tower. It is in the southeast corner of our property. It is 225 feet north of the Brook Road right-of-way. It is about 265 or 270 feet east of the west -- I'm sorry, 270 feet west of the east property line. This location including the ground wire system that goes with it won't interfere with an RG&E easement that runs along our east property line.

And to use the vernacular, the fall zones from both towers, the distance that a tower would fall, if, in fact, it went right over for its full length on its side, those two fall zones don't interfere. They're more than far enough away from each other, and, in fact, fall zones have been created for the alternate location as for the original proposed location, so if -- if it were to fall over for its full length, and they're designed to collapse on themselves because of the guy wires, but worse case, if somehow it were to fall for the full length, it would remain within the boundaries of the property. The alternate site at the southeast corner also addresses some of the concerns mentioned by the

County DRC, the Development Review Committee noted the presence of a federal wetland. That is located on the west side of the property. The alternate site moves the facility further away from that wetland.

The DRC report also notes a stream which runs according to the mapping along the east side -- I'm sorry, along the west side of the property, and the original proposed location would, in fact, have interfered with that stream bed such as it is, and it's apparently subject to changeable conditions in terms of how much water is in it at any given time. In any event, by relocating the tower at 900 feet to the east, the southeast corner, we obviously avoid that stream bed completely.

For these reasons, as well as for the reasons noted by the Conservation Board, the applicant is prepared to proceed with the alternate location.

Just to complete the approval picture, we have -- we have applied to the Zoning Board of Appeals for a height variance. There is a 35 foot limitation in the Town on a tower. We're obviously proposing in excess of that.

We have also applied to the ZBA for permission to have 8 foot high chain link plus barbed wire which also exceeds the Town's requirements.

The site is not located within the Airport Overlay District. It is far enough removed from the airport, so that's not a consideration. Therefore, it is not subject to County review for purposes of the airport. However, it is subject to review by the Federal Aviation Administration. We submitted a notice of proposed construction that essentially says, "Dear FAA, we want to put up a tower, 199 feet at that location. Tell us what you think."

They came back with what is called a determination of no hazard. Which says they do not deem this to be a hazard to air navigation.

In addition, because it is under 200 feet, they -- the FAA indicated that neither what they call marking, which is in a sense -- which is essentially painting -- neither painting nor lighting of the auxiliary tower would be needed. Candidly, that wasn't a surprise. Not only because of the length -- of the height of the tower, but also because there is a 420 foot lighted tower right there, so that, in their parlance, the new tower is shadowed by the existing tower and would add nothing to either mark that or light it. But I think it is important to note that in case there is a -- an interest or concern as to how that is going to look.

What I would like to do, quickly, is run through what I believe are the relevant site plan standards with respect to this application, and then the relevant conditional use permit standards, so that we can position this.

There is a reference to existing planning documents. We're aware of the fact that the Town's comprehensive plan describes the area as rural residential. To the extent this property will remain undeveloped, certainly in the area around the tower, and we have no -- no plans for anything else on the rest of the property, the -- the -- that will be complied with. Um, there is a concern about environmental impact. We have submitted a long form Environmental Assessment Form with a visual EAF addendum. In our view, this will not have a significant adverse impact on the environment.

There is a reference to the location of buffers. We don't believe that buffers are required or proposed -- and we're not proposing any. Some of the existing trees would have provided a partial buffer from the -- for the original location. Moving it 900 feet away, takes it off that corner, and we did not think it is going to be a significant feature from -- from Ballantyne Road as a result.

There is a reference to drainage. There is very little impervious surface that we're creating, it is the concrete base for the tower itself and the concrete bases for the three guy wire anchors. We don't believe that that is going to create any runoff issues.

The County DRC notes that the property may be in the 100-year flood plain boundary. However, none of the existing elevations are going to be disturbed as a result of this project. We're not creating any structures that are below the existing elevations like a basement or anything like that. There is no building. So we did not think the flood plain issue is of concern.

There is a reference to water supply and sewage disposal. There is no additional water supply. There are no additional sewer facilities that are proposed here. There is a reference to soil stability. Standard operating procedure, if we are granted permission, would be to do soil borings to determine how deep the foundations have to go in accordance with our standards and in accordance with the State building code, and we would make sure that that is part of the building permit process.

Circulation and access, existing access from Brook Road is adequate. There is a small parking area that exists now near the existing tower. We would continue to use that.

Under the conditional use permit standards, under the telecommunications ordinance, I think it is necessary to preface that I have done an awful lot of cellular telephone cell site zoning

applications across the State over the years, and I have seen a lot of municipal ordinances that address cellular telephone and telecommunications sites. This ordinance is one of those. And it doesn't quite fit a broadcast tower. Telecommunications usually means back and forth. Obviously we're only one way. We're just broadcasting out. So I have got something of a square peg, round hole situation here, but I think it is worthwhile to look at some of the standards.

The telecommunications ordinance talks about justifying the height of the tower. And the reason we're proposing a 199 foot tower -- positive reasons and negative reasons. Positive, we would like to get as much coverage as we can from the auxiliary tower.

The countervailing factor, however, is we want to keep it under 200 feet so we don't get into the marking and lighting situation with the FAA. So that is the justification.

The ordinance talks about a grid map of existing structures and facilities. We're familiar with this in the cellular telephone situation, that towns say take a look at what else is there, and see if you can't collocate on existing buildings or structures or towers so that we reduce the number of these things. That works terrific for cellular telephone. I'm not sure it works terrific for AM radio broadcasting, and, in fact, we believe that putting the auxiliary tower on this site would be far less disruptive than if we took a site that didn't have a facility like this, and put a tower there for the first time.

Construction materials, the ordinance talks about a preference for a freestanding monopole tower, which is one of these hollow structures that one sees. It is nice, and you can almost do a 200 foot monopole, but the base would be really wide. The only difficulty is, you can't broadcast an AM signal off one of these monopole towers. Other than that, we would be fine, but that is a show-stopper, so that it doesn't -- again, round hole, square peg here.

Government services, there is a stated preference for saying if there is a need for government or emergency service radio communications, then the applicant needs to be prepared to make that available. We are, but I want to be candid about the fact that the two considerations -- and again, this is more the engineering, but I will put it in lay terms, the two engineering considerations are that most the tower radiates signal. You can't put another antenna on the portions of the tower that are radiating signal and if you can find portions on the tower that don't radiate signal, you have to make sure that what you're putting on doesn't interfere with the signal coming out of the tower, and by the same token that the signal coming out of the tower just doesn't obliterate the signal coming out of that additional antenna. So that is a radio engineering question that would have to be looked at. Bottom line, if we can make it happen, we'll make it happen. If there is a need and a desire for it.

There is a limitation in the ordinance on the number of tower facilities. Not towers, but tower facilities.

This appears to be designed to prevent several different operators from using the same property. In this case, both the existing tower and the additional tower we believe are part of the same tower facility. That is the wording of the ordinance. In fact, I think it is worth noting, that if we weren't -- if we weren't in a small C, clear channel situation, most AM situations broadcast with more than one tower, because that permits them to shape the signal that comes out. It can be as few as two towers. I have seen, if you travel to Canada, along the QEW, they have one monster there with 12, probably 400, 500 foot towers. That is a big AM array.

We're non-direct. We're omnidirectional. If we had that kind of an array, obviously taken together, that would constitute a one-tower facility. We think by the same token, that the auxiliary tower combined with the existing tower also constitutes a one-tower facility, within the meaning of the ordinance.

The ordinance talks about shared use. We talked about that in the governmental assistance. We do not think it is a big problem. We don't intend to sell space on the tower to anybody else, because candidly, we think those opportunities will be limited. And we're happy to abide by any conditions you might want to impose with respect to that. There is a reference to setbacks. I think we have provided more than adequate setbacks with respect to the fall zone so-called requirements. There is a reference to visibility. We think we have lessened the visibility by moving it to the east.

I will be the first one to say, however, that a 199 foot tower, guess what, is going to be visible. It is a lattice work structure. It is not a solid structure that reduces visibility. It will be painted galvanized gray. Unfortunately, that matches the sky around here a lot of the time. That reduces the visibility. But I don't -- and it is very hard to screen a 199 foot structure unless you can find 199 foot screens, and I'm not sure anybody wants that either.

Accessory facilities, there will be an aluminum equipment cabinet at the base of the tower

painted off white. Existing vegetation, you can see from the aerial photo that the alternate site has less significant vegetation, i.e., less fewer trees than either the site we originally proposed or the site in the northeast corner that the Conservation Board had suggested.

Screening I have spoken to.

There is a restriction on signs. The only signs we propose to put on there are the signs that we're required to put on, which is an emergency notification sign, and a tower registration sign that is required by the FCC. There is a -- there is a provision that says you have to show the Town that you're in compliance with FCC standards on radio emissions. We'll supply the construction permit that is part of our license that says -- that obligates us to operate within the parameters allowed by the federal government, which means no more than 50,000 watts.

Security for maintenance and removal, we have already submitted a proposed bond that in -- in an amount which will cover not only maintenance, but removal of the tower if that is abandoned, and we're prepared to renew that bond as required.

As far as SEQR is concerned, as I said, we submitted a long form EAF and visual EAF addendum. We believe a negative declaration is appropriate. I'm almost out of breath, but I would be happy to answer questions and ask Mr. Jackson or Mr. Kingcaid to answer any questions that you might have. Thank you very much.

JAMES MARTIN: Clarification, from the standpoint of the FCC, Homeland Security Department, is there any federal directive that really mandates you to install this tower?

MR. HAGELBERG: No. The federal mandate is that we are required to operate this station 24/7/365. The federal mandate is that we have to be prepared to comply with our responsibilities as a -- let me get the language correct. A primary entry point for the Emergency Notification System. But if you're asking me whether the federal government said, "Dear WHAM, put up a second tower," no, that's not the case. The federal government has said that you can't let workmen close to a radiating tower beyond -- so you put that all together, that's what forms the basis for the application.

JAMES MARTIN: I understand that point.

Currently, how much down time do you have on an annual basis related to the maintenance and other unanticipated perhaps failures of your broadcasting capability?

MR. HAGELBERG: Unanticipated is obviously a large variable. The scheduled maintenance happens several times a year, four or five, six times a year depending on what is required. The present practice is to try to do this in the middle of the night, and the only thing worse than exposing people to a radiating tower perhaps is telling them: A, would you mind climbing this tower that we have turned off; B, it happens to be pitch dark so we're doing it in the middle of the night. It is not a sensible situation.

JAMES MARTIN: Okay. At this point I will turn it over to other Board members.

RAY BLEIER: Thanks for the very detailed and informative presentation. It helps clarify some of the major issues.

I -- I guess I had the same impression. When I was reading through some of this, I thought you had to be in a position where you can transmit 24/7 and that that was the reason, one of the major reasons for having the auxiliary tower, to cover those periods of maintenance when you're down for four or more hours at a time.

MR. HAGELBERG: You're precisely right. We're required to transmit 24/7/365. That is the stipulation in our license. The question from the Chair, as I understand it, and correct me if I am wrong, did anybody from the federal government tell you you have to put up an auxiliary tower. My answer was no. If your question is, are we required to broadcast 24/7/365, the answer is yes. That is what our license requires us to do as a clear channel station.

RAY BLEIER: If you're shutting down for a couple of four hour periods a year, what alternative to an auxiliary tower is there?

MR. HAGELBERG: None.

RAY BLEIER: So you need the auxiliary tower?

MR. HAGELBERG: Correct. Precisely. And the federal government is obviously going to say if you got to go down to fix it, you got to go down to fix it. Because that same federal government has said you can't send workers there while the tower is radiating and we're not real thrilled about sending people up there in the middle of the night. And neither are they.

RAY BLEIER: What type of maintenance is being done on the property now? Not necessarily the tower. I mean just the property itself in general.

MR. KINGCAID: Hi. My name is Craig Kingcaid the Technical Manager and Chief Engineer for a cluster of stations, including WHAM. The general maintenance, if you're referring to the property as a whole, we conscientiously mow it, try to keep the weeds and grass down.

Inside the fence itself, the wooden fence, we have to keep the weeds down in there, too. One of the things that can happen in the propagation of AM signals, that if the weeds and the grass get too tall in that ground plain area, it standards to attenuate the signal, so we like to keep the grass as short as practical without, you know, cutting it, scalping it down to the ground so at least there is some vegetation there.

RAY BLEIER: In the winter, do you have somebody plow the access?

MR. KINGCAID: We try to plow the access to the building. We don't plow the whole site out. We do plow. We have to get in -- the transmitter that we're using right now is extremely dependable so we don't visit it, site visit as often as we used to. We try to get out there once or twice a month. The transmitter we have now is very reliable and very functional. So we do try to keep it plowed so we can at least get entrance to the site if we have to.

RAY BLEIER: I would be anxious to get the Conservation Board's reflection on the alternate site.

KAREN COX: You -- you somewhat answered the question that I had, but are there penalties that the FCC or another governmental agency can levy on you for going off the air to do the maintenance?

MR. HAGELBERG: I'm not aware of -- I mean, with the federal government, there is some -- if -- if we were -- if we were -- I think the proper answer was if we were not broadcasting for reasons within our control, then I think our license -- you could fairly say our license would be in jeopardy.

If we're not broadcasting for reasons beyond our control, such as required maintenance, some repairs that need to be done as long as we can demonstrate to the federal government that we got back up and running as quickly as we were able to, I don't think our license would be in jeopardy.

KAREN COX: Just out of curiosity, how many years or what is the period of time that the existing tower has been being maintained by going out in the middle of the night and doing the maintenance?

MR. KINGCAID: Since its construction.

MR. HAGELBERG: Since 1947.

KAREN COX: And this is -- was there a reason why in 2005 -- the idea of the auxiliary tower came up rather than five, ten years ago?

MR. HAGELBERG: I think there are two reasons. First of all, there is a relatively recent set of FCC guidelines, and I got about 3 inches of paperwork that I would be happy not to show you, that talks about the standards for putting workers near that. That is a -- that is a relatively recent development. It is part of the -- it -- it comes on the heels of OSHA. So those -- those regulations certainly didn't exist in 1947 when this tower was built.

The -- the other -- the other concern, without trying to overly dramatize this is that things that weren't as much of a concern pre911 have become a greater concern post 911, and the ability to make sure that a station such as WHAM, which is this emergency -- has this emergency broadcast responsibility, the ability to make sure that come what may, we're going to be able to broadcast 24/7 has assumed a greater urgency now than it might have had six years ago.

KAREN COX: That is all of the questions I had.

JOHN HELLABY: Well, I got a lengthy list of questions and I might be the guy that wants to see the 3 inches of paper. I have spent probably 40 years of my life growing up in the shadow of that tower and distinctly recall people coming in motor homes spending several days at a time climbing the tower, changing lights, doing maintenance work. I'm quite concerned and I have some issues.

If I could just go down through your letter, page 1, three lines up from the bottom it says poses a potential conflict with the station's obligation under its FCC license. I heard you speak towards the -- putting people in the RF situation on the power tower. Is that the only potential conflict that it addresses, or are there other potential conflicts with the FCC license?

MR. HAGELBERG: No. The -- in -- the -- the portion of my letter of March 30 that you referred to is in the context of the FCC, OET Bulletin 65, and that is what poses the conflict with the station's obligations under its license because we can't continue to operate 24/7/365 and send workers to that tower for any protracted period of time.

JOHN HELLABY: When did that actually come into effect? I'm positive it wasn't in effect in '47. I mean, that is something that probably came in in the last 15 or 20 years.

MR. HAGELBERG: You're right. The -- the OET Bulletin 65 was -- is dated August 1997. And there -- there is a supplement to it which is also in August '97.

JOHN HELLABY: How have you been maintaining your maintenance for the past eight

years?

MR. HAGELBERG: By shutting it down.

JOHN HELLABY: It has not been a problem, I take it?

MR. HAGELBERG: Um, it hasn't been a problem -- in Fiddler on the roof, Tevia says, "It is no great honor either."

JOHN HELLABY: I'm just asking. It -- they still maintain their license.

MR. HAGELBERG: They still maintain their license, and so far we have been able to shut down in the middle of the night and there hasn't been a convergence of shut-down and the need for emergency broadcasts for weather or other events, but that's -- but that's a crap shoot.

JOHN HELLABY: And should, just say for some strange reason it was shut down, the FCC said, "Well, we had an emergency. You couldn't address the emergency. We're going to pull your license," who else would pick up that frequency within a hundred mile area? I don't know of any other 420 foot structure that would even accommodate that type of band.

MR. HAGELBERG: Well, and as long as we preface that by saying this is a stretch argument, but if Clear Channel lost its license, I think there would be a long line in Washington of people who would like nothing better than to pick up a 50,000 watt clear channel station and they would probably use this facility. And Clear Channel would probably sell this facility to whoever the next licensee was, if they lost their license. But I think we're at the outer edge of possibilities here.

JOHN HELLABY: The same page, the bottom line, it is a primary entry point for the Western New York under the FCC's emergency alert system. Can you tell me or give me a rough idea how many other stations in a 100 mile radius are part of that system as well?

MR. KINGCAID: 100 mile radius?

JOHN HELLABY: I mean, I got to firmly believe that yes you're part of the emergency broadcast system, but there are numerous other ones within the Rochester area. I have to believe that.

MR. KINGCAID: We're the primary entry point for the Rochester area.

MR. HAGELBERG: There are no --

MR. KINGCAID: There are no others.

MR. HAGELBERG: We get and forward that information to other stations in this area.

MR. KINGCAID: The other stations in the area monitor us. And specifically, when we talk about the primary entry point, that's -- that's a -- that's around the normal emergency notification for this area. The primary entry point, we get tested once or twice a month from Mount Weather to make sure we have conductivity with Mount Weather in Virginia, and there is another site that tests twice a month in North Carolina, and that is in event of a national disaster.

JOHN HELLABY: Page 2, again, just bear with me. You might have addressed some of these issues.

You anticipate the use is twice a year for roughly four hours for this auxiliary tower?

MR. HAGELBERG: Yes.

JOHN HELLABY: You're doing maintenance on the existing tower?

MR. HAGELBERG: Correct.

JOHN HELLABY: Other stations in the area, some of them shut down from say midnight to six and it all depends. I mean those are standards that are built into their FCC license, so if they're doing maintenance work, it wouldn't affect them, similar to the way it is going to affect you?

MR. HAGELBERG: The way it is set up -- I'm sorry, the way it is set up, there are categories, or classifications of licenses. And the FCC sets this up as A, B, C and D licenses. A Class A station is unlimited time, operates on a clear channel, up to 50 kilowatts.

Class B, unlimited time, can be on a clear channel station, can be at 50 kilowatts, has to come down at night.

Then there are Class C and Class D. And Class D stations operate either daytime, limited time or unlimited time with a nighttime tower of 250 watts, which means you better be like right underneath.

So there are these four classifications of stations that are set up by the FCC. The daytimers obviously have to shut down at night. I think WYSL is a Day-Timer. They have a lot of time from dusk on until I think a half hour after sunrise they can work on their towers there.

JOHN HELLABY: All right. Page 5, relating to the standards for the telecommunications tower, you have already said it yourself, that is a strange situation, and I wholeheartedly believe that that section was set up in this Town Code to cover cellular phone towers and not just this particular circumstance.

MR. HAGELBERG: I'm inclined to agree.

JOHN HELLABY: Therefore, I don't believe that section pertains to this application.

MR. HAGELBERG: Okay.

JOHN HELLABY: That is my own personal opinion. Which leads me to the next thing, on page 3, section A subparagraph 1 –

MR. HAGELBERG: If I can speak to your earlier point for a minute. I agree with you. I don't think the telecommunications ordinance was designed to cover this. However, I would rather -- I would rather have it and not need it than not have it and need it. That is why we addressed it. Back to page 3?

JOHN HELLABY: Yes. Section A, sub paragraph 1, the statement was made that the property is not part and is not within 500 foot of an agricultural zone, however, it appears to me it is in the AC, Agricultural Conservation District and there is active farming going on, directly to the north/south and east of that present tower.

MR. HAGELBERG: That was my understanding from Mr. Kress. I would obviously be pleased to defer to him on that.

JOHN HELLABY: Also on the same token it is in the AC, Agricultural District. The way I interpret the code it is not allowed even as conditional use because it is not for personal use.

MR. HAGELBERG: I think I have addressed that. Because --

JOHN HELLABY: There is a preexisting, nonconforming structure, however, it doesn't make it right for every case in my book to come along. I mean now the new code is in effect. You have to abide by the new code.

MR. HAGELBERG: I think this is auxiliary, accessory to the existing preexisting, nonconforming use, and that's the reason that we believe we're entitled to come in notwithstanding that restriction on personal use.

JOHN HELLABY: Page 3, Item 2. The long form EAF and visual EAF addendum. I notice it is not signed. I do not believe that a full -- all of the information is fully complete, and especially with the visual EAF form.

MR. HAGELBERG: We would be happy to address any concerns you have there.

JOHN HELLABY: Page 5, Item A, site plan shows the proposed structure, including the base of the tower, equipment cabinet and guy wire anchors. Looking at the plans, I see no equipment cabinet or details thereof. You made mention this evening about an aluminum cabinet at the base of the tower, but I have no idea of knowing how big or where it is, because there is no details on this plan.

MR. HAGELBERG: If you bear with me for a moment, it is not shown on the site plan.

There is detail on the tower, the tower base and the guy anchor. You may be right, that we have not specified the size of the cabinet.

Craig (Kingcaid), can you speak to that?

MR. KINGCAID: I don't have that.

MR. HAGELBERG: We can furnish that information on the size of the cabinet and the precise location.

JOHN HELLABY: All right. Page 8, shared use. I know we have touched on this, but I just wanted to make sure that everybody is 100 percent sure it is non-radiating and states non-radiation portions of the auxiliary tower will be available to support other antennas, and I have a big question mark. Is it, or is it not capable of supporting other antenna?

MR. HAGELBERG: Is it capable of supporting other antennas? Yes. We believe it may be. My understanding is about the top 30 feet is non-radiating.

JOHN HELLABY: That's not the answer I'm looking for.

MR. HAGELBERG: I'm sorry.

JOHN HELLABY: I don't want a maybe. Are we planning on some future date putting additional antenna array and/or cellular phones on this tower?

MR. HAGELBERG: That is different from capable of supporting. Are we planning, absolutely not. Subject to the governmental emergency stuff that we discussed earlier.

JOHN HELLABY: You have to clarify that.

MR. HAGELBERG: Telecommunications ordinance has a provision, fairly standard, that says, folks, if you are going to put up a tower and that location is of interest to use by government areas, DPW, or what have you, emergency service, fire, police, ambulance, whatever, you will make every effort to make that available.

JOHN HELLABY: But only to those situations.

MR. HAGELBERG: And we're more than happy to agree to a stipulation on that basis.

JOHN HELLABY: Citicasters, as you mentioned, is a subsidiary of Clear Channel

Communications.

MR. HAGELBERG: Yes, sir.

MR. HELLABY: Do you know how many other radio stations they own, Clear Channel?

MR. HAGELBERG: Clear Channel?

MR. KINGCAID: Over 1,000.

MR. HAGELBERG: Over 1,000 stations.

JOHN HELLABY: 1225. Somewhere in that neighborhood?

MR. HAGELBERG: Quite possibly.

JOHN HELLABY: 37 stations -- 240 radial stations. Out of those 1225, can you tell me how many of these other locations they're proposing to have an auxiliary tower up there?

MR. HAGELBERG: The preliminary question I think would be how many other single antenna clear channel stations do they have, small C? I don't know the answer to that, but I would be happy to find out.

JOHN HELLABY: If you would. The -- in the past the Planning Board has asked that -- specifically cellular tower providers to give the Planning Board computer generated pictures that depict tower placements. I would ask you to do the same from several locations in the area, specifically the top of Ballantyne hill, probably the most prevalent, facing in that direction. I would not just ask your one alternative place be pasted in the photos. I would like to see the one on the east side that you're proposing today, and then the one that I know the Conservation Board had asked for placed way in the back. I would like to see a representation how both of those compare.

MR. HAGELBERG: Other than the top of Ballantyne hill, are there other locations from which you would like these things shot?

JOHN HELLABY: I think that is probably going to give everybody the general gist, unless there are other Board members that might want to know, you know, if you have got something from that intersection of Ballantyne and Brook Road, looking east down Brook Road, it might give it a representation, too.

MR. HAGELBERG: Okay. If I can go back to an earlier question, the -- the cabinet is a -- is fabricated in aluminum weatherproofed housing with hinged key lock front doors, vent doors, meter, window, off white paint finish, 36 inches deep, 40 inches high, 96 inches wide.

JOHN HELLABY: You would furnish the Board with a cut of that?

MR. HAGELBERG: Absolutely.

KAREN COX: I apologize. I just thought of another question.

The people that maintain the structure, are they -- is it a company that maintains it for you, or are they employees of Clear Channel?

MR. KINGCAID: We contract the work out to specialists, for lack of a better term, that do the maintenance work or work that needs to be done on it.

KAREN COX: It is a union type field?

MR. KINGCAID: Could be.

KAREN COX: The purpose behind my question, I'm wondering sometimes pressure from -- or concerns from certain -- from unions can sometimes drive a worker safety issue, and that's what I am wondering if part of this -- if this is some of the driving force behind it.

MR. HAGELBERG: The driving force of it are the FCC regulations. The driving force is not pressure from unions or employees or anything else. We need -- we need to be able to comply with those regulations.

If I may, just -- if I can just interject for a moment, you talked about the underlying reason behind your question. Let me just speak real briefly on the underlying reason behind this application. The underlying reason is we want to broadcast 24/7/365 uninterrupted, and we want to be able to do that, among other things, to continue the role that WHAM has played in this community as -- I'm sounding like a commercial, but it is its place that people turn -- as I recall during the Ice Storm, Alan Harris lived with us for three weeks, and it has an established position in the community, and we're not trying to do this because we're -- once we do it we're going to be able to raise our advertising rates or something else. It will cost us a fair penny to do it. It will not hit the bottom line. The only reason we're doing it is we need to be able to comply with those labor regulations. We need to be able to comply with our license requirements, and we need to be able to know that we can provide that emergency service broadcast, whenever, God forbid, it might be required. So a lot of people coming in there with commercial, if you will, projects, there is a real bottom line incentive. I have trouble thinking of one here. It is not something we want to do because it is profitable to do it. It is something that we need to do in order to fulfill our responsibilities.

JAMES MARTIN: To paraphrase what you just said, if you were not under some obligation to the FCC in order to continue to do this 365/24/7, whatever, would you actually be going ahead with this project?

MR. HAGELBERG: If it weren't for the obligation to the FCC and the corresponding obligation with sending employees up a radiating tower, you wouldn't see us because there wouldn't be any reason.

JAMES MARTIN: In the equipment facility that exists on site now at this point in time, I assume there is auxiliary power available in order to keep the transmitter running in case of, you know, transmission failure to the site.

MR. KINGCAID: That is correct. The Ice Storm that Frank (Hagelberg) spoke about, I'm sure the ones that you all remember --

KAREN COX: The blackout.

MR. KINGCAID: Even going back to the first Ice Storm, way back, in the early '90s.

MR. HAGELBERG: March 3, 1991.

MR. KINGCAID: The site operated on its generator for about two and a half days.

JAMES MARTIN: If the auxiliary site goes forward, the power for that would be created from the same capability?

MR. KINGCAID: That was correct.

JOHN NOWICKI: First, I complement Mr. Hellaby on his research that he did. Excellent job, Mr. Hellaby.

My only question I'm going to have for you is this tower has been there 58 years. These regulations that are governing you or pushing you to get this new tower have been put in place the last seven, eight years. And you're saying to us also, that this tower is not going to be used to expand a business base, and to increase the bottom line here?

MR. HAGELBERG: It would be hard to figure out how to expand the business base or increase the bottom line by putting in an extra tower that can only broadcast at 10,000 watts instead of the existing tower that goes at 50,000. If we were coming in the other way around, then I would have a hard time making that argument, but that is what it is.

JOHN NOWICKI: Just trying to get things on the record here.

MR. HAGELBERG: Appreciate that.

JOHN NOWICKI: We want these positions on the record.

JAMES MARTIN: Just as a clarification on that, my own Signal Corporation days, which goes back a long long time, the transmitter could be tuned to a different frequency, and you could broadcast from that tower on a different frequency. Is that possible technically?

MR. HAGELBERG: Correct me if I am wrong --

JAMES MARTIN: I'm just asking for clarification whether it is technically --

MR. HAGELBERG: It is technically correct, but the first "but" is that we're not authorized to broadcast on anything but 1180, and the second "but" is 1180 nighttime is a clear channel, small c, frequency, so if we -- even assuming that we could move to a different frequency, and I don't believe we could because we're not licensed to do so, if we moved to a different frequency that wasn't clear channel, we would be stepped on by other Class B, C, D stations operating at those frequencies.

JAMES MARTIN: That is not the question that I asked.

I know you broadcast on 1180. That is your current frequency that you broadcast on. I mean, we used to tune up, you know, our transmitters and tune up the radios, and you know, you were broadcasting on various frequencies. Depending on the situation that tower could be used to broadcast on a different frequency, other than 1180 that -- you know, just going from John's question, if -- if for some reason there was another license for another frequency to be broadcast from that tower, you could conceivably do that technically, and that could be a bottom line issue.

MR. HAGELBERG: And if the -- if the Board has any interest in imposing a condition that says that the tower can only be used for back-up purposes for WHAM at 1180 kilohertz, we don't have a problem with that. If that answers your question.

JAMES MARTIN: Yes. That answers my question.

JOHN NOWICKI: That would definitely be a condition when we get to that.

In your cluster, are you involved in the Cobbs Hill towers at all?

MR. HAGELBERG: I have been, yes.

JOHN NOWICKI: But this applicant here?

MR. HAGELBERG: Um, no, because this is radio, and the towers on Cobbs Hill are all television.

Now, that having been said, 13 WHAM TV is owned by Clear Channel, but it is owned by

the television side of Clear Channel, so maybe the radio station, Channel 13 are second cousins on the chart but the application -- this application is not connected with anything that goes on on Pinnacle Hill, other than the fact that is the primary entry point and we may be supplying some of that emergency information to the television stations.

JOHN NOWICKI: I will leave it there unless I hear from the Conservation Board and the audience.

DENNIS SCHULMERICH: How common is it for other AM stations to have auxiliary towers?

MR. HAGELBERG: Um, again, there is -- there are four classifications of stations. The ones that -- that have to shut down or have to power down are probably not facing the same kind of imperative as we are.

In -- in response to Mr. John Hellaby's question, I will go back to Clear Channel and say how many omnidirectional clear channel stations do you have for which you either have or are planning to have auxiliary towers? The question is a hard one to answer, because we're really a subset in that we have got a single tower operating 24/7 with a Class A clear channel license. It -- it is not that easy, but it is easier to make the case for the auxiliary tower in that situation than it is if I have an array of six towers broadcasting an AM station, optimally I want to be able to use all six in order to shape my signal correctly. If one of those six goes down, I can probably, as the Chairman noted, retune the others so that I can approximate the pattern that I have to put out, if I only have five or maybe if I only have four of those stations. If -- antennas. If I have only one antenna, omnidirectional, I can't shape anything. It is either on or off.

DENNIS SCHULMERICH: So maybe my question is better stated, are there other stations out there in a similar position to what you are, and have they put in auxiliary towers?

MR. HAGELBERG: That is closely related to Mr. Hellaby's question. I will secure an answer to that. I can't promise you that I can find it out for every class A clear channel single antenna station in the country. It will be easier for me to find out from Clear Channel.

DENNIS SCHULMERICH: Do you have any other alternatives to an auxiliary tower in the event --

MR. HAGELBERG: Sure. We could put an auxiliary tower somewhere else.

DENNIS SCHULMERICH: But the answer is an auxiliary tower?

MR. HAGELBERG: Yes.

DENNIS SCHULMERICH: It is not as though you could lease a tower from someone else for emergency back-up or scheduled down time.

MR. HAGELBERG: You can't, because -- on the 420 foot existing tower, how much of that is radiating?

MR. KINGCAID: All of it.

MR. HAGELBERG: All of it. And -- it is very hard to go over to another radio station and say, "Do you mind if we radiate a signal out" -- because it sort of interferes with their operation. If you know of an unused one, we would be more than happy to --

DENNIS SCHULMERICH: I will keep that in mind.

MR. HAGELBERG: Thank you.

DENNIS SCHULMERICH: It sounds like your alternate location has mitigated the environmental impact on the wetland issue.

MR. HAGELBERG: We believe so.

DENNIS SCHULMERICH: Do you envision a situation where both towers would be powered up at the same time?

MR. HAGELBERG: No, sir.

DENNIS SCHULMERICH: Clearly it is a back-up.

MR. HAGELBERG: That is the intent.

DENNIS SCHULMERICH: Since you're at maximum wattage, you couldn't use this to boost your signal?

MR. HAGELBERG: Even if you could, the FCC would frown on it. That's a good way to lose your license.

DENNIS SCHULMERICH: Shared services issue is something we'll talk about amongst the Board. Based on my count, you have four variances you will be requesting from the zoning Board of Appeals. I'm sorry, three.

MR. HAGELBERG: I need a variance for height. I need a variance for the fence. And I -- and I need -- I guess I need an interpretation that says that because the use is preexisting, and this is an accessory facility, um, I don't need a variance from the personal, not commercial use restriction in the AC District.

DENNIS SCHULMERICH: That is where I was going. That interpretation is an interesting one to me because if you look at 115-47, it talks about the extension for height, setback and coverage, and -- what we're talking about here is a supplemental power. Now, it becomes an interpretation of whether that supplemental tower is a back-up for the existing, or an extension of or capability of enhancing, and I guess I would be looking to the side table for interpretation on that, because I think that is going to be a fairly important question for both us and the Zoning Board.

MR. HAGELBERG: Not supplementary. Not enhancing. It is alternative, accessory, when the other one is not working.

DENNIS SCHULMERICH: What I interpret the code to say, in terms of extension, references height, setback of coverage. I didn't -- one could say that putting a shorter tower beside it as an alternate to your existing tower, allows you to maintain the capability to broadcast, but another -- to play Devil's advocate would be to interpret a separate tower as separate tower, and I think we need to probe that a bit with the side table to make sure we're together on how we interpret that.

MR. HAGELBERG: It is a question that we have kicked around with Mr. Kress from the first day we walked into Town Hall.

DENNIS SCHULMERICH: I don't know if that is a definition we need to deal with, the Planning Board, or if it is a Zoning Board issue. It seems to me there is a gray area there.

MR. HAGELBERG: I guess the -- you're happy to deal with it. My inclination would be that if it applies, we need a variance. If it doesn't apply, we don't need a variance. That seems to me to be a question for the Zoning Board of Appeals rather than the Planning Board.

DENNIS SCHULMERICH: The reason I'm raising it, one of the conditions I will be asking for is that we approve this pending approval of the variances from the Zoning Board, so I would like to be clear knowing which variances that you will be going for, so that we can build that into our conditions tonight.

MR. HAGELBERG: Understood. And the answer to the question is, that our position today is that we don't believe that variance is required. If we -- if the determination is made that the variance is required, we'll apply for it.

DENNIS SCHULMERICH: We could probably so qualify here, too.

MR. HAGELBERG: Absolutely.

DENNIS SCHULMERICH: A couple more. Okay. The comment regarding the conditional use of the auxiliary tower. That is something we'll talk about later. The sole purpose is backing up WHAM, as opposed to alternate uses.

MR. HAGELBERG: Yes.

DENNIS SCHULMERICH: Thank you very much for a very clear information. Well presented.

MR. HAGELBERG: Thank you.

DARIO MARCHIONI: Frank (Hagelberg), good evening.

MR. HAGELBERG: Good evening.

DARIO MARCHIONI: I appreciate the Conservation Board making the suggestion to relocate. They're basically saying to the northeast corner, and we're proposing the area to the southeast. Could you tell me how far is this tower going to be to the residents next door, the Fantagrossis? To the house.

MR. HAGELBERG: It is going to be approximately 500 feet removed from the distance of the house.

DARIO MARCHIONI: From their residence, let's say, from the front porch how visible is this tower going to be? How much impact is there going to be?

MR. HAGELBERG: It will be visible. The existing tower is visible. The existing tower is both lighted and painted. This one will be neither. This one is approximately -- is less than half the size of the existing one.

DARIO MARCHIONI: The reason I'm bringing this up, by bringing this tower closer to the road, you're almost in line with the house. The other tower is further to the back. I agree with the Conservation Board saying to put it on the northeast -- northeast of the property, in the back part, where it would not be as obtrusive as this location.

As Mr. Hellaby suggested, I would like to see sight distance and also perspective to see how it would look from their property, because it would directly affect their property.

MR. HAGELBERG: We'll add that to the -- to the vantage points on which we'll show you visuals. And I guess, the -- as I understand it, the Chairman of the Conservation Board is here this evening and he could speak for himself, but we -- but we view the Conservation Board as having said two things. One, get it off the corner. Two, move it to the northeast section. We don't have a

problem getting it off the corner. We do have a number of problems with the northeast section because of the additional number of trees that would be removed because of the other things that I noted.

DARIO MARCHIONI: You stated the 1100 for the -- or --

MR. HAGELBERG: The roadway.

DARIO MARCHIONI: The roadway, and -- but on the other hand, we're concerned with the residents.

MR. HAGELBERG: As you should be.

DARIO MARCHIONI: They have been there a long time. I don't know if they're aware, that it is going to be placed right in this position.

MR. HAGELBERG: Um, I would be surprised if they were aware of it before this evening, because --

DARIO MARCHIONI: You had no contact with them explaining it?

MR. HAGELBERG: No, sir, we did not.

DARIO MARCHIONI: I think they should be advised.

MR. HAGELBERG: If they're not here tonight, you may be assured that they will be advised.

DARIO MARCHIONI: I appreciate that. This will have an impact to them.

In dealing with the radiation, don't they have gear to put on, so people have some sort of gear to work around radiation? They go to these nuclear plants, they go all over. Aren't the workers equipped with gear?

MR. HAGELBERG: The regulations -- the restrictions imposed by the regulations say you can't be within a particular distance from the source of the RF or the radio frequency transmissions for a period of longer than X minutes. So the two factors are, or the three factors are, the power that is coming out, the distance between the human being and the power, and the time. The regulations don't speak to requirements of protective gear, and the regulations, to my knowledge, don't say if you have particular protective gear on, you can throw all of the other requirements out. It is a strict requirement of how much power, how close you are to it, and how long you're that close to it.

MR. HELLABY: Can you give the Planning Board the particulars on that, now that you have mentioned that, as far as distance for that particular tower?

MR. HAGELBERG: Yes. Sure. What I would be happy to do, I will supply Mr. Kress with the 3 inches of paper, which will make his day, but I will also try and see if I can get a specification of how these regulations apply to this tower.

JOHN HELLABY: One other follow-up question because you touched on it briefly, was an alternate sites. Has there been any investigation on alternative sites? I do understand that you're heading -- that your equipment is in the building but the broadcasts are coming from a remote site. But in the event of this Homeland Security, if you will, it would make an awful lot more sense it be at a remote site should this happen to a tower. If somebody flies a plane into the tower because it is part of the emergency broadcast system, the other one is sitting right there.

MR. HAGELBERG: The Homeland Security concern is not based on activity directed to this tower. The Homeland Security concern is based on WHAM's ability to get information out in case of an emergency, wherever it occurs. We have no reason, again, to believe that this is going to be a target.

And the concern is not -- the concern is not, oh, this tower is a problem, therefore, we don't want to build an auxiliary nearby. If you have read in the paper, Goldman Sachs refused to put a big office building down near the World Trade Center because of concerns whatever got built at the World Trade Center would become a target.

That is not the situation here. Have we looked at alternate sites? We haven't. The reason we haven't is because as I said before, we think that -- we think that the level of disruption by putting a 199 foot tower on a piece of property where there was nothing like that before, would be infinitely higher than putting a 199 foot tower next to an existing 420 foot tower. If there is a visibility problem, if there -- if there is a -- any kind of problem at that site, it is because of the 420 foot tower that has been there since 1947. There is an incremental harm that will be caused by this, in my view, just my view, it is going to be minimal. The practical situation is, we got a 57 acre or whatever parcel it is out there. We have a large parcel we already own. We have our transmitter out there now. It makes the most sense to put the auxiliary tower there. If we -- if we went somewhere else, we might have marking and lighting situations to the extent we were in the overlay district or to the extent that the FAA determined that we were close to a flight path or any of the other concerns. We know here we have none of those concerns, so we think this is the most

appropriate site.

DARIO MARCHIONI: In talking about maintenance, the gentleman I think is Fred --

MR. HAGELBERG: Craig Kingcaid.

DARIO MARCHIONI: Are you planning on doing anything with the fences around the existing tower? Right now it looks like picket fence.

MR. KINGCAID: The stockade fence. Yes. We plan on replacing that in the near future.

DARIO MARCHIONI: How about the auxiliary building? Do you plan on painting that later on?

MR. KINGCAID: There are two of them out there.

DARIO MARCHIONI: Big white one.

MR. KINGCAID: We'll probably paint that this summer.

JOHN NOWICKI: There is also -- you will have to apply to the Town Board for inclusion in the drainage district. You're not currently in that, and that is something Mr. Kress can help you with. That will be a condition.

MR. HAGELBERG: Is this property part of the drainage district now?

JOHN NOWICKI: No. That is why you have to apply to become part of it. We have a Town wide drainage district. You're not in it.

KEITH O'TOOLE: If it is not too much trouble, when Mr. Hagelberg appears in front of the Zoning Board, if you could cite some legal authority for the argument that one can add an accessory use to a preexisting, nonconforming use, that would be helpful.

DANIEL KRESS: Apart from that issue which I think Keith (O'Toole) has sufficiently spoken to, and I'm sure Mr. Hagelberg will, too, the only other thing I wanted to mention is because we are within the flood plain overlay district in this location, the usual requirements that would apply to habitable structures wouldn't apply because we don't have habitable structures here, but the minimum that will need to be done in the plans eventually submitted is have the flood proofing of power utilities to the site.

MR. HAGELBERG: I missed -- you have the usual requirements for habitable structures are --

DANIEL KRESS: The flood proofing requirements for habitable structures will not apply here. What would be applicable is some documentation that the power supplies to the site will be adequately flood proofed.

MR. HAGELBERG: Okay.

JAMES MARTIN: In Larry (Nissen)'s letter, Town Engineer approval is not required for this. Any comments, Dave (Lindsay)?

DAVID LINDSAY: No.

MR. SCHICKLER: Vice Chairman for Chili Conservation Board. Our main concern was not to have this tower on the intersection of Ballantyne and Brooks Road, and after looking at the locations, we thought the northeast would have been a better location. But as the location is here, it is not quite as bad as it was near the intersection. And seeing that we're moving -- if the tower is going to be moved there, next to a resident, I think we have a 40 foot by 40 foot compound high fence that we could maybe soften the view for the neighbors with some kind of landscaped screening around the compound. Maybe at least the roadside and the property side.

JIM MARTIN: Is that a condition we should add?

JOHN NOWICKI: I think so.

JIM MARTIN: Can you paraphrase it?

JOHN HELLABY: Screening the fences, structure around the base of the tower and where they have the 8 foot fence.

JAMES MARTIN: So you want plantings or something screening those --

MR. SCHICKLER: 6 foot screening away from the fence, you know, where -- something with height to it. Arborvitaes or some kind of pines or something of that nature.

JOHN NOWICKI: Is that something you wanted submit back for approval from the Board?

MR. SCHICKLER: That would be fine.

MR. HAGELBERG: The Planning Board?

JOHN NOWICKI: Conservation Board.

MR. HAGELBERG: The only notation is that we will -- we'll have a restriction against doing any of the plantings along the property line because the RG&E easement runs along the property line, but if we're talking about screening adjacent to the tower base and the cabinet that is there, that is not a difficult thing.

JOHN NOWICKI: He wants the fencing.

JAMES MARTIN: I got the fencing. Plans to be submitted to the Conservation Board.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

HEATH MILLER, 69 Bellmawr Drive

MR. MILLER: I would like to thank our applicant tonight for doing a very thorough job, and I would also like to thank our Board for asking very good questions tonight.

I had a couple points I wanted to bring up. I do believe that this application, the tower falls under the telecommunications code, the telecommunications section in our Town Code. The reason I say that is because of the definitions under Section 115-91, a telecommunications tower is defined as a structure on which transmitting and/or receiving antennas are located, and antenna is defined also in the same section as a system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, radio television and microwave communications. The frequency of these waves generally ranges from 10 hertz to 300,000 megahertz.

I share Mr. Schulmerich's point about Section 115-47 dealing with the continuation of a non-conforming use. In the letter that was supplied to the Town by Mr. Hagelberg dated March 30th, 2005, it mentions on the bottom of page 2, that the AC District regulations provide that communications towers must be for personal, not commercial use. However, the use of the property for commercial broadcast purposes predates the Town's zoning ordinance, and Section 115-47 of the ordinance permits the extension of a non-conforming use.

However, there was an important clause in Section 115-47 that was not included, and I would like to read to you that specific section in the code.

This is from Section 115-47.

It mentions, and this is midway in that paragraph. "If a pre-existing use or structure is legal, and nonconforming, or was conforming under the previous ordinance, but becomes nonconforming through the adoption of this chapter, then it shall become a legal, nonconforming use or structure and subject to the provisions of this chapter. So I understand that to say that the existing WHAM tower is considered a legal nonconforming structure or use.

The beginning of that same section says, subject to the provisions of this article, a non-conforming structure or use may be continued and maintained in reasonable repair, but may not be altered or extended, except that the extension of a non-conforming use at the time this chapter is adopted, shall be permissible. Well, that doesn't apply here. And except that a structure conforming with respect to use, but nonconforming with respect to height, setback or coverage may be altered or extended if the alteration or extension does not deviate further from the standards of this chapter.

Well, I don't believe that the existing WHAM tower is a structure which is conforming with respect to use, because it is used for commercial purposes, and the code clearly states under an AC zone, that telecommunication towers are allowed but only for personal use, not commercial use. So all I would ask is that they come before the Zoning Board to get a variance for that use. I do notice that they are up to come before the Zoning Board next Tuesday. That variance is not listed on the agenda, and I don't believe it is probably included in the legal notice in the paper today. So if that variance is deemed necessary, then they would probably have to come to the Zoning Board the following month, so there is proper notice given in the paper. That was all for now. Thank you.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I heard a -- two comments made regarding 911, and how this is a different situation now than prior to having Homeland Security. I'm very confused, though, because my first thought was, as Mr. Hellaby pointed out, if one tower goes, two are going to go that are that close together.

Then I was hearing that that wasn't the issue, and the two comments seem to conflict with one another. Maybe the Board would have the applicant run through that again. I don't understand why -- what Homeland Security has got to do with two towers on one property side by side and how that is better.

I don't know how many towers we have in Chili right now. But I -- but the last I -- my recollection is five. Five cell towers. Six? Um, the tower at -- on -- at Brook and Ballantyne has been there probably 'til my earliest recollection. It has always been an eyesore, if you will, but always deemed a necessity. And I think people have tolerated it for that reason. It is there, we need it. But to add to it now, without what I deem to be sufficient reason, I don't -- I just can't go along with this.

I hear that it is not required by law, yet we have to do it to satisfy some regulation. There again, it is -- two conflicting statements. That maybe should be clarified. Maybe it is clear to the Board. It certainly isn't to me. There was a definite question to the Board as to whether this was required under the law, and the answer was no, flat out. And yet, I'm also hearing we have to do it to comply with regulations.

Maybe the Board understands that. I don't.

This is obviously not one tower facility. I think if you consider that just an auxiliary attachment to this tower, that you're really, really stretching our law. Because there are many things that come before this Planning Board for site plan approval that could probably consider -- be considered an appendage, auxiliary part of something. They still require the Planning Board to act on them. That is a real stretch to think that a tower that is 200 foot high, 199 foot high, is, you know -- you will not see it. I will -- it is -- it will be the elephant in the room, and you won't notice it is an elephant in the room. Let me tell you, if anybody is going to notice it, it is the people that will live that close. I would not appreciate it if I was that homeowner and had this elephant put across the street from me.

The question was asked, and I believe not answered satisfactorily, was if this tower is so needed, how has WHAM managed so far. And the answer is they have managed just fine.

The question was asked, could the auxiliary tower be put somewhere else? The answer was yes. So that would be -- certainly be my recommendation, put it somewhere in Town that you could hide it a little better than you can there. Or else, move it back on the property where it should be. Not out at the road.

The applicant's attorney has stated they would need to construct an 1100 foot haul road to build in the rear of the old tower. I don't think that should be a concern of this Board. You're not here to assess the economics of WHAM. That is not your worry at all.

As far as removing more trees, so be it. We like to save our trees in Chili, but we also don't like towers on the road.

As far as more money for transmission lines because the tower would be further removed if it were put to the back of the original tower, that also should not be a concern of this Board. Economics of WHAM are your least concern.

I notice, too, with regard to drop zones, the old tower is 420 feet high, and it has a drop zone of 450 feet, leaving 30 foot margin of error, if you will, if the thing came down.

The new tower is 199 feet and yet your drop zone is only 200 feet. We have almost no margin of error on this one. I think the drop zone of the new tower should be certainly the equivalent of the drop zone on the old -- on the prior tower.

I do -- I thank Mr. Hellaby. I thank the entire Board. I think you have done a wonderful job on this application. I thank particularly Mr. Hellaby for his extensive work in checking over the paperwork, and I also had noticed that they were saying that this property is not part of or within 500 feet of an agricultural zone. That is not true, which has been pointed out.

As far as maintenance on the present site goes, I agree with what one member of the Board has said, maybe two have said, that the -- WHAM has not exactly done a bang-up job on maintenance with the present tower. It looks terrible and has for years. That is hardly conducive to giving a request -- giving into a request now for a further tower. I think the maintenance has got to be brought up and shaped up over there. The -- the one gentleman said that they mow the weeds and the grass and maintain the property.

However, when you look at the aerial photographs that you have, you can see that the trees have sprung up all over. That is not evidence of good maintenance and mowing grass on a routine basis. You wouldn't have all those trees and brush having grown up if that had been maintained as he stated.

The change in the application tonight was a surprise to me, because I have looked these papers over before, and where the sign that was posted may technically have met the letter of the law in giving the public notice that this was going to be held tonight, it certainly has not met the spirit of the law in the fact that anybody such as myself would have come to have looked at the records and then come in at the 11th hour and find a totally different location.

A question was asked about the protection, the protection from the power on the -- on the tower when maintenance is needed, and I'm wondering -- that was not asked, but I'm wondering if the workers wear anything similar to a radiation badge that workers would wear around radiation oncology equipment or x-ray equipment so that you can measure how much power a radiation a person is receiving. Is this done?

I -- if this is granted, I would hope that there would be some kind of a clause inserted in the approval saying that the antenna can be used for no other purpose other than broadcasting for this

station.

And I foresee that we will have a call for either police or fire antenna to be added to the top of this. They claim that the top 30 feet can be used for other purposes. They have checked that out. I'm sure they have checked that with good reason.

Also, it was stated that a monopole style of tower will not suffice in this case. I don't know if the Board has seen drawings of what the tower is proposed to look like. Some of these are pretty awesome and ugly. I think it would be -- certainly if you have not seen a picture of it or a drawing of it it, the photographs, the -- the computerized pictures that have been asked for should definitely show the real appearance of what this tower is going to look like.

I thank you for listening, and I hope you continue to really scrutinize this application. Thank you.

JOE HELLABY, 800 Ballantyne Road

MR. JOE HELLABY: I first got a question to the Clear Channel group. I heard them talking about my -- if I'm getting this right, you can transmit your signal from a different location?

JIM MARTIN: What is your question?

MR. JOE HELLABY: The question is, can they transmit from a different location, from another tower, or if they built a tower in a different location, could you transmit from another location, and if so, I know there is -- how many Clear Channel stations in this Town that could let you guys use their service while you're doing your maintenance, and if so, why not.

And the other thing is basically towards the Board, I have lived there 40 years of my life. And this gentleman here said you have -- it may not be a big impact to put another one, because it would be less impact than putting a tower somewhere else. I have lived there. I don't know how many, except for Mr. Hellaby, that live on Ballantyne, or travel Ballantyne. It is kind of ironic I have been in front of this Board before and brought the same conversation up -- I go home every day and back and forth, and I will bet there are ten eyesores on that road. Some of them are pretty major.

Nothing ever seems to come to it. I have got -- I seen more abandoned cars, I have seen business -- I love the dumping ground at the end of Ballantyne. That is beautiful.

You let Monroe Tree grind stumps. We have a mountain, I mean a mountain of junk. There -- I don't know what that little village is with all of the campers. You turn the corner and there is the sports park. It is probably one of the most disgusting things I seen.

Exactly what she said earlier, the radio tower looks like a run-down business. How many eyesores does any neighborhood have to endure? I used to think it was a privilege to where I was living. Now I think it is a curse. When you make your decision, I would think you take into effect what all us neighbors think about. Drive up and down and look at all of the problems we have and maybe solve some, before we incur some more.

JAMES MARTIN: Just to go back to your initial issue, I think they were clear on the fact that yes, they could transmit from a different tower in a different location, if that was, you know, what was needed, but to share a tower with another radio station is something that is not capable of being done. I believe that is what the applicant explained to the Board.

I guess a couple of things. Number one, Ms. Borgus, as far as the radiation that is emitted from this tower, it is a different form of radiation than you would have for a person who is working with x-ray devices in a hospital or something like that. I don't have -- maybe there are badges that exist today. There certainly weren't any years ago that I can remember that would have measured -- maybe there is a clarification, maybe there is something today that would do that.

MR. HAGELBERG: Mr. Chairman, as a clarification in answer to that portion of Ms. Borgus' comments, and I would appreciate an opportunity to answer some but not all of the others.

JAMES MARTIN: Certainly, you -- you go ahead. If you have some answers to some of the issues that she raised.

MR. HAGELBERG: On the badges, I believe that is similar to the question that Mr. Marchioni asked earlier about protective clothing. My understanding of the FCC bulletin is, as I explained earlier, the regulations are a function of the power emitted by the RF source, the distance that the human being is away from that source, and the length of time that the human being is there. There is no provision for protective clothing, and a badge is not going to make any difference, because whatever cover the badge is, you're still only allowed to be near that source for X period of time. With a badge or without a badge. So I -- so I think we're sort of missing the goal here.

Let me respond briefly to a couple of the other points.

Ms. Borgus talked about my comment that part of the impetus here was the post 911 situation

in which the country finds itself, and she said if one tower goes, the other tower will go.

I think that is close to a question that I believe was asked by the Board, and I believe my answer was that if we thought that the existing tower was a target that was -- that had to be protected, then we obviously wouldn't put the auxiliary tower there. The connection with the post 911 climate in which we find ourselves is that it increases our responsibility to be able to broadcast on an uninterrupted basis to make sure we can be a source of emergency information for things that God willing will happen, if they happen, God forbid somewhere else. We're not looking for an attack on the corner of Brook and Ballantyne Roads.

Obviously if that were the case, we wouldn't put the auxiliary tower there. Our concern is to be able to continue to provide emergency service.

Ms. Borgus said there was a conflict in what I said because I was asked whether the law requires an auxiliary tower and I said no, and -- but I also said that our reason for coming before the Board with this application was existing regulations, both our FCC license in terms of when we have to broadcast, and the restrictions on having workmen there.

Um, let me try and be clearer, I guess.

There is no federal regulation that says you shall have an auxiliary tower. There are federal regulations that we are subject to, with the force of law, that say, you got to broadcast 24/7/365 and you can't let workers near it for any length of time. Those are the reasons that we're before the Board. Not because there is some federal directive that we have an auxiliary tower, but we end up in the same place.

How -- how is WHAM managed so far? Ms. Borgus said my response to that question was just fine. Well, it hasn't been just fine, because we have had to shut down the station, and we have had to send workmen there often in the middle of the night. Neither of those are -- we don't believe either of those situations is just fine.

Um, put it where you can hide it. Um, if we could bury it, and it would transmit, we would do it. We haven't figured out how to do that.

Ms. Borgus said remove more trees, so be it. Um, different -- different opinions from different people on the value of removing trees.

There is no margin of error in the drop zone Ms. Borgus said. A -- a guyed tower is guyed on three sides. The purpose of those guys is that if the tower fails, all three guys bring the tower down on itself. It is built in order to collapse on itself. That is the function of the guy wires. However, I learned a long time ago, the first time I did a tower application, that municipal boards want, in an abundance of caution, want a drop zone. The drop zone formula is that you need a clear area equal to the height of the tower.

In other words, the radius of the circle has to be equal to the height of the tower so that if somehow, and I think in the -- in the 15 years or so that I have been interested in this stuff, I have seen it once. If the tower falls, all of the way for its full length, which it is not designed to do and the guy wires are supposed to prevent it from doing, that it will fall within that drop zone.

A 420 foot tower can't fall more than 420 feet from the base. A 199 foot tower can't fall more than 199 foot from the base. The drawings show a 450 foot zone around a 420 foot tower. That is one of the reasons why we have some overlap there, because we don't need a 450 foot drop zone. We don't need 420 foot, but we're providing a 420 foot drop zone. So bottom line, we don't need a margin of error in drop zones.

She said she is unhappy with the site maintenance because the trees haven't been cut down. Let's clarify. I believe Mr. Kingcaid's remarks were that the area of the ground wire radials, which radiate out from the base of the tower, that area has to be kept relatively unencumbered. Beyond the guyed wire radials, there is no requirement for broadcasting purposes that that area be kept clear.

So if, in fact, there are trees and brush beyond the ground wire radials, that is because we chose to leave it that way. If there is -- if there -- I can't imagine how, but if there is some desire to have additional areas cleared, we can talk about that, but I can't imagine.

Drawing of the tower. There is a drawing of the tower that was submitted with the application. I will be happy to give the Board a copy of that so you can take a look at it. And I think, Mr. Chairman, you answered the other questions that Ms. Borgus raised.

In terms of the points raised by Mr. Miller, I think at this point, I disagree with his legal analysis of Section 115-47. I'm happy to meet with Mr. O'Toole. In accordance with his instructions, we'll supply legal arguments supporting the contention that either -- that either that the variance is not required, or if the variance is determined to be required, we'll seek approval for that, and we understand that any resolution that you adopt will have that condition in it. Thank you.

DARIO MARCHIONI: Mr. Chairman, while you're there, Frank (Hagelberg), I was

wondering if I can ask another question.

MR. HAGELBERG: There is a wonderful story about a lady that goes to the lawyer and says, "How much do you charge?"

And the lawyer says, "Three questions for \$420."

And she says, "Don't you think that is a lot?"

And the lawyer says, "No. What's your third question?"

So go ahead. My apologies. It is getting late.

DARIO MARCHIONI: Well, I can't afford that much. (Laughter.)

MR. HAGELBERG: Neither can I.

DARIO MARCHIONI: Frank (Hagelberg), I notice on the site plan, you have the existing tower which is about 468 feet from the road.

MR. HAGELBERG: Yes, sir.

DARIO MARCHIONI: What -- again, tell me, what is the hardship in moving in this also at least in line with the other tower?

MR. HAGELBERG: If we move it up, I believe we'll conflict with a portion of the ground wire system for the existing tower. Now we can take a look at that, but that is my understanding from our earlier discussions.

DARIO MARCHIONI: But if you spin the guy wires --

MR. HAGELBERG: Not the guy wires. The ground wires. There are buried underground wires that radiate out from the tower. Different from the guy wires. Two different things. And we can't -- we can't have -- we can't have ground wires on top of ground wires. The systems -- either system would -- would fail if that were the case. We have to have guy wires on top of ground. Moving it up a little didn't work. Moving it up a lots works, but as I suspected was the case, the Conservation Board was primarily concerned with getting it off the corner. We believe this is a good compromise because we have gotten it off the corner.

DARIO MARCHIONI: What is the furthest away from the road that would be acceptable for you, in other words?

MR. HAGELBERG: We can do that calculation and get back to you.

MR. JACKSON: It's done.

MR. HAGELBERG: I will introduce Mr. Jackson from MRB Group.

MR. JACKSON: This is a trick I learned from Frank (indicating).

We have that tower pushed back as far as it can go. If we move it any further, the ground wires are going to be intermingled. Because there is a 30 foot RG&E easement along the property line, and we have to stay out of there with our ground wires. So if we were to move it back, we would have to move it back past that circle.

DARIO MARCHIONI: How far back?

MR. JACKSON: We would have to move that back 400 -- somewhere 450, 500 feet back.

DARIO MARCHIONI: Not 1100 feet as previously stated.

MR. HAGELBERG: That was to the location as suggested by the Conservation Board.

What Mr. Jackson has just told you is that in order to move this north, and clear the ground wire situation, we would have to move it a minimum of 400 more feet.

JOHN NOWICKI: North?

MR. HAGELBERG: Yes. That is what I meant.

JAMES MARTIN: Away from Brook Road.

MR. HAGELBERG: Yes.

DARIO MARCHIONI: 625 feet or 700 feet rather than 11?

MR. HAGELBERG: Yes.

DARIO MARCHIONI: This is something to consider.

JAMES MARTIN: Technically with some repeater or repeater amplifiers that would be capable of being done? Clarification on that issue.

MR. KINGCAID: We need a 10,000 watt repeater to compensate for the loss.

JAMES MARTIN: But if the tower were moved back, 400 and whatever feet, technically you could still transmit at 10,000 watts from that tower.

MR. KINGCAID: I would have to do a study on that, because now we're talking about increasing the length of the transmission line, and you're going to get losses in it, and the transmitter we were proposing to use, I don't know if it can make up the loss in the transmission line.

JAMES MARTIN: Are there transmitters that exist that are capable of that technical requirement?

MR. KINGCAID: Yes, there are.

MR. MILLER: I did go onto the Clear Channel website. I was just curious to learn a little bit more about the company. I notice that at least it looks like you own several other stations in Rochester like Hot Talk 1280 AM. Is it possible to -- if a scenario were to happen where the existing WHAM tower somehow becomes non-functional, and we're in a crisis, the proposal is that we have this auxiliary tower which would then be able to transmit information on 1180.

However, it is only going to be able to transmit at 10,000 watts as opposed to 50,000 watts. If such a scenario were to happen, would there be any difference from transmitting the same kind of emergency information from a tower that transmitted say information for 1280 AM, or one of the other -- there is like 95.1, the Fox. Mix 100.5.

MR. KINGCAID: They're FM.

MR. MILLER: What about 1280 AM?

MR. HAGELBERG: The question, once again, is it technically possible, the answer is, it is technically possible, and -- and assuming you could retune the transmitter, and you take WHTK off the air, you could technically possibly put WHAM on there in case of an emergency. It doesn't, however, solve the maintenance and repair issue, and I hope that we're not seriously considering switching WHTK to 1180 every time there is a maintenance or repair requirement at WHAM because what little hair he (indicating) has left will curl.

It would be -- I think that would be -- I think the suggestion only answers half of the problem.

JAMES MARTIN: I move at this point we close the public hearing.

DENNIS SCHULMERICH: Second.

Jim Martin made a motion to close the public hearing portion of this application, and Dennis Schulmerich seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JOHN HELLABY: I personally do not feel that I have enough information at this point to make a -- even a preliminary approval this evening, in regards to the information that was asked for this evening. I would like to get that information and have the ability to digest it. I would like to investigate some other avenues I have heard here this evening. I will be 100 percent honest with you. I have to agree with a couple people in the audience. I'm not rushing this one. They have been 50 plus years operating the way they have been waiting, and I can't see where a month or two is going to devastate these people.

JOHN NOWICKI: They have the Zoning Board to go to the 17th, next week, next Tuesday?

JAMES MARTIN: Yes. It is on the schedule.

JOHN NOWICKI: I would tend to agree with Al (Hellaby). There is other information they have to supply the Planning Board. I don't see any reason why we can't table the application, get the information in there, and if it is all complete and furnished and they have done the right job, we have always been able to waive final.

JAMES MARTIN: Let me --

JOHN NOWICKI: If it gets to that point.

JAMES MARTIN: Let me go through some of the things -- I think if we follow this plan of action, okay -- that I think are mandatory at this point.

Certainly, we need an updated site plan showing the location and size of the auxiliary equipment building. That is something that needs to be done.

We would like you to provide the topographic prospectus from several sites around the proposed tower location.

MR. HAGELBERG: Topographic or visual?

JAMES MARTIN: Visual.

MR. HAGELBERG: It is late.

JAMES MARTIN: Topographic. I will change that. Visual perspectives from several sites surrounding the proposed tower location. Certainly the drainage district application should be filed.

Insure that in your planning and in your approval process, that all your utilities are in compliance with the FCC requirements. You need to go back to the Conservation Board with proposed screening in place around the tower base, and fencing to have them take a look at that again.

JOHN NOWICKI: That -- can I interrupt for a minute? They will also be thinking about the possibility of moving this back.

JAMES MARTIN: Well, and -- I will get into that.

JOHN NOWICKI: Because that would interfere a little bit with how they will look at it at the Conservation Board.

JAMES MARTIN: Given the fact that, you know, we're talking 400 and plus feet rather than 1100 feet, certainly, I would like to see, you know, an alternative proposal around the location of the tower further north from Brook Road. I believe that is what we had talked about.

Those are the ones that I listed. Some other ones certainly would be conditions as we move forward. If this does go forward, you can talk about the fact this can only broadcast 1180 kilohertz, WHAM type of thing, for the ZBA approval. But as far as information back to the Planning Board, those are the issues that I feel are pertinent.

JOHN HELLABY: Some of the FCC regs that -- either supplied to the Planning Board or through the Building Office for our review.

MR. HAGELBERG: As we said, we'll not only do that, but we'll try to give the Board a site specific interpretation of those regs so you can make sense of it for this purpose.

JAMES MARTIN: That would be good.

MR. HAGELBERG: There were a couple other things -- I have got them.

JOHN HELLABY: Review the meeting minutes, and I think that will cover it.

JAMES MARTIN: It will pop out. Clearly highlight those areas that are you feel are pertinent in there.

Then certainly, your discussions with Mr. O'Toole, and the interpretation of the code.

MR. HAGELBERG: Yep.

JAMES MARTIN: And we'll be interested in results of that conversation.

DARIO MARCHIONI: The Fantagrossi's residence, if they're aware, if they stick with this location. If it goes further back, I don't think it would create that much impact on the residence, but if you stick with this location, I think they should be contacted. To see if they have any impact on this.

KAREN COX: Maybe contact them anywhere even if it moved back.

DARIO MARCHIONI: I believe that it will impact them.

KAREN COX: Correct. I'm just saying we have asked other developers to talk to surrounding residents, you know, for -- so even if it moves back, adjoining property owners should be aware it is being proposed.

MR. HAGELBERG: We'll -- we're happy to notify anybody that you think we ought to notify, but if we're talking adjoining property owners, or if we are talking property owners within some distance on the other side of Brook Road, let's define it.

KAREN COX: The house next door.

MR. HAGELBERG: The Fantagrossi property?

DARIO MARCHIONI: Yes.

MR. HAGELBERG: Ms. Cox, are you suggesting others also?

KAREN COX: No, I don't think there are other adjoiners other than the Fantagrossi house.

DENNIS SCHULMERICH: When you referenced Section 115-47 with Mr. O'Toole, I am -- I'm assuming that means the next time we see this applicant, we'll know what the outcome of that is. That that will not be an unknown or it will not be something that is still pending Zoning Board. We either know it is going to the Zoning Board on a given date or it will have been to the Zoning Board.

MR. HAGELBERG: You may know it is going to the Zoning Board but is not resolved.

DENNIS SCHULMERICH: Yes.

JAMES MARTIN: Clarification on where that issue stands. Critical.

Anything else? Based on that, I think what I'm hearing is that we would entertain a motion to table this, pending all that input.

JOHN HELLABY: I will make a motion to table it.

DARIO MARCHIONI: Second.

JAMES MARTIN: We have a motion and a second. We'll table this application pending input of all that information we have requested.

DECISION ON APPLICATION #1: Unanimously tabled by a vote of 7 pending the submission of additional information requested by the Board. For review purposes, the request included:

1. A revised site plan showing the location and size of the auxiliary equipment building.

2. Results of the Zoning Board of Appeals hearing on all required variances.
3. Provide visual perspectives from several locations surrounding the proposed tower.
4. A drainage district application should be filed with the Town Clerk.
5. Information assuring the Board that all utilities and structures will be in compliance with the flood plain overlay requirements.
6. Plans for screening tower base and all fencing to be submitted for approval by the Conservation Board.
7. The Board requests that serious consideration be given to moving the tower location to a location further north of Brook Road.

DECISION ON APPLICATION #2: Unanimously tabled by a vote of 7 pending the submission of additional information requested by the Board. For review purposes, the request included:

1. A revised site plan showing the location and size of the auxiliary equipment building.
2. Results of the Zoning Board of Appeals hearing on all required variances.
3. Provide visual perspectives from several locations surrounding the proposed tower.
4. A drainage district application should be filed with the Town Clerk.
5. Information assuring the Board that all utilities and structures will be in compliance with the flood plain overlay requirements.
6. Plans for screening tower base and all fencing to be submitted for approval by the Conservation Board.
7. The Board requests that serious consideration be given to moving the tower location to a location further north of Brook Road.

There was a recess in the meeting.

3. Application of Balbir Singh, 1210 Scottsville Road, Rochester, New York 14624 property owner: Pinni Enterprises, Inc.; for preliminary site plan approval to erect a 20' x 25' addition to convenience store at property located at 1210 Scottsville Road in G.B. zone.

Rick Santiago and Ramesh Singla were present to represent the application.

MR. SANTIAGO: Basically what we're looking to do is a 500 square foot addition to an existing approximate 300 square foot mini-mart that is there right now. The purpose of it is for additional retail space.

JAMES MARTIN: I have a question. Seems to be a little conflict. The application was signed, I believe, by Mr. Singh. Is he the owner of the property?

MR. SINGLA: Yes.

JAMES MARTIN: You own the property?

MR. SINGLA: I don't, but he is.

JAMES MARTIN: I'm sorry, could you please come up and address the Board, please?

MR. SINGLA: Good evening. Everybody. Yes, Balbir Singh is the owner of the property.

JAMES MARTIN: So Pinni Enterprises, Incorporated is that you?

MR. SINGLA: No. I'm the corporate accountant. I'm not the owner.

JAMES MARTIN: I'm still confused.

MR. SINGLA: Balbir Singh is not here today, but he is the owner. I'm the accountant.

JAMES MARTIN: You're the accountant?

MR. SINGLA: Yes.

JAMES MARTIN: So does Balbir Singh own Pinni Enterprises?

MR. SINGLA: That was correct.

DARIO MARCHIONI: I was looking at your site plan here, that is lacking a lot of the information that we usually are used to in a site plan approval.

For example, it is lacking architectural details. We like to see exterior lighting, signs, dumpster locations, outdoor storage, handicapped locations, parking. Drainage. Setbacks. I think you have to go back.

MR. SANTIAGO: We have been there several times, and we have been asking what is it that you're looking for, and all they keep saying is the only thing they want to see was the landscaping.

JOHN NOWICKI: Who kept telling you that?

MR. SANTIAGO: Initially, we came to apply for a permit, wherever you apply in the next building, and they viewed the whole application and basically they require site plans for the addition, and the only setbacks we got when we went to the April 25th Conservation Board meeting was that they wanted to see where the new landscaping was going to be.

JOHN NOWICKI: Did they give you specific information of what you require on our site plans at the Building Office? Did they tell you what we needed to see? Who did you talk to, a girl or a man?

MR. SANTIAGO: Both.

JOHN NOWICKI: Both.

DANIEL KRESS: Mr. Nowicki, they talked to me and I referred them to Article 5 of the zoning regulations which completely spelled out what should be on a site plan.

JOHN NOWICKI: That is what I am trying to find out. That you is what we have to have, what you have to comply with. We don't have that.

JAMES MARTIN: No, we don't.

JOHN NOWICKI: We don't have anything that comes close to that. You have to take that information that is in this document, right here, that he is telling you about, and get that to the Planning Board, because we don't have enough information here to even act on this application.

MR. SANTIAGO: Okay.

JOHN NOWICKI: As Mr. Marchioni indicated, everything is lacking. There is nothing here. You have got -- you have a drawing here that shows a proposed addition, but we have no elevations. We have no architectural treatment of this building. Drainage, parking requirements, all these things are in that code.

JOHN HELLABY: Marty Rose (phonetic) stamped the plans. Did you tell him you needed a full site plan?

MR. SANTIAGO: I was looking for help, and I kept asking.

JOHN HELLABY: Mr. Rose should be quite familiar with what we need --

JOHN NOWICKI: He has been here before.

JAMES MARTIN: He is very familiar with the code, so I think if you tell him you need a full site plan, he will do something that is appropriate.

JOHN NOWICKI: Mr. Santiago, who are you with? Are you with the owners?

MR. SANTIAGO: We're actually going to be building the addition. I'm with Rochester Contracting, and we were contracted by Pinni.

JOHN NOWICKI: You're a contractor. You're Rochester Contracting?

You're representing the owner tonight?

MR. SANTIAGO: That is correct.

JOHN NOWICKI: Well, we have a little bit of a way to go here.

JAMES MARTIN: I believe that -- Mr. Rose should be very familiar with what is required on a full-blown site plan in order to make this thing appropriate for the Planning Board to hear. What has been submitted, even with the modification that you show with the planters, all right, in front of the building, is not adequate, all right, for the Board to hear the application. So at this point, I -- anybody have anything else?

JOHN NOWICKI: Yes. If you're -- are you going back to the owner and telling him that you have to do these things to get this thing done right?

MR. SANTIAGO: Well, I'm looking to go back to the architect to ask him why I got this. I mean, apparently --

JOHN NOWICKI: You have to listen to Mr. Kress, when he says you will comply with this document, you have to comply with this document. That will get you into -- for example, exterior lighting, signs, dumpsters, outdoor storage, parking, drainage, all kinds of issues here. We have to have that information. On that particular site -- he visited that site. I'm sure most of the Board has. There is a lot of work that has to be done. That place is not exactly tip-top shape. I will tell you right up front that needs a lot of work over there before I get too excited about doing anything over there. So take that home with you too. Thank you.

JOHN NOWICKI: I make a motion to table this one until we have the information.

JOHN HELLABY: General knowledge to share with the architects, if you go to Town of Chili.org, that is the Town's website, you pull up their home page and on the left-hand side, there is a column that will show you the zoning code, and you can read exactly what you need to cover all that.

MR. SANTIAGO: Okay. Are we going to get another date to come bring this to you, to the Board?

JOHN HELLABY: It will probably depend how fast you can turn the drawings around, as far as when that would happen.

JAMES MARTIN: Next DRC is on the 19th -- is that right, Dan (Kress)?

DANIEL KRESS: 26th.

JAMES MARTIN: The next cut-off date --

DANIEL KRESS: Next cut-off date is Friday.

JAMES MARTIN: This Friday. So --

MR. SANTIAGO: You would need the --

JAMES MARTIN: That would be for the June Planning Board meeting. You would need a complete site plan into the Building Department by this Friday. Even to make that requirement if not, then you're off until July.

MR. SANTIAGO: Okay.

JAMES MARTIN: Thank you.

RAY BLEIER: I just want to touch a little bit more on what John started to bring up and I observed also.

Behind the building and on the side, you have got weeds that are 3 and 4 feet high, and also your dumpster enclosure, the door is off it.

MR. SANTIAGO: The addition has nothing to do with that.

JOHN HELLABY: It does whether it gets approved.

JAMES MARTIN: Take this consultation back to the owner, okay, that there is a lot of property maintenance that needs to be done that the Planning Board observed from site visits. We go out and look at these places, prior to the hearing, and there are rollers from the carwash that are thrown aside. There are all kinds of stuff behind the carwash and the place needs to be spruced up. So that is another message to be taken back to the owner, that the Planning Board is not going to be happy, all right, with the appearance of the property the way it currently exists.

MR. SANTIAGO: Have letters been sent out to them? In regards to the clean-up that apparently needs to take place?

KEITH O'TOOLE: We could prosecute them if you would like.

MR. SANTIAGO: I'm just saying, this is new to me here.

KEITH O'TOOLE: That is fine. Bring the message back and hopefully get the issues resolved before the next meeting.

DENNIS SCHULMERICH: Lack of maintenance of the property is more than enough reason for us not to approve anything.

JOHN NOWICKI: Housekeeping is not complicated. Just bending over, picking up things and cleaning it up. I want to see that happen before we vote on this.

JAMES MARTIN: Cutting down weeds.

DENNIS SCHULMERICH: Moved to table.

JOHN NOWICKI: Second.

DECISION: Unanimously tabled by a vote of 7 yes for the following reason:

1. Inadequate site plan. Please have your engineer prepare an adequate site plan in compliance with all Town regulations.
4. Application of Stephen Carozza, Carozza Properties, P.O. Box 126, Pittsford, New York 14534 for preliminary site plan approval for a change of use to allow a landscaping/paving

company at property located at 271 Paul Road in L.I. & FPO zone.

5. Application of Stephen Carozza, Carozza Properties, P.O. Box 126, Pittsford, New York 14534 for conditional use permit to allow a landscaping/paving company at property located at 271 Paul Road in L.I. & FPO zone.

Stephen Carozza was present to represent the application.

MR. CAROZZA: The last time we had a little discussion around some of the things, additional requirements that you guys requested, and basically I have got a stamped architectural drawing that shows where trucks are going to be parked and where mulch and/or topsoil might be sitting on the property.

JAMES MARTIN: There were questions last time about the application itself and the filing and all those things. Those have all been resolved properly?

DANIEL KRESS: I believe we finally have something we -- we have a complete application that the Board can review.

RAY BLEIER: Well, I'm looking at -- now your landscaping business there, on your little map, you're showing storage of some occasional shrubs and stone and topsoil. Now I -- I assume that will be all out of there during the winter months?

MR. CAROZZA: Correct.

RAY BLEIER: Actually, what will you be doing in the winter months, business wise?

MR. CAROZZA: Snowplowing.

RAY BLEIER: Just snowplowing?

MR. CAROZZA: Yes.

RAY BLEIER: So you will have some of these trucks, like the landscape trailers, et cetera? Will they stay on the property, park there over the winter?

MR. CAROZZA: Yes.

RAY BLEIER: Will you just use the dump trucks?

MR. CAROZZA: All of the trucks we have have plows on the front. We would put them on and then they would go out to the job site to plow.

RAY BLEIER: So you will be having some plow blades and that stored on the property, as well?

MR. CAROZZA: Correct.

RAY BLEIER: During the summer?

MR. CAROZZA: Correct. They're shown on the diagram.

RAY BLEIER: Lower right-hand side. Over here (indicating). Okay. I see them on the side there.

What is going to be actually inside the building? Storage? Office space?

MR. CAROZZA: The front of the building, yes, it would be office space for myself. Secretary, and a couple of my foremen. There are two high-bay garages, and they would basically be used for storage and/or service of the equipment.

RAY BLEIER: During the summer, what are your typical hours of operation?

MR. CAROZZA: Um, paving crew usually leaves the shop at 7, and we're usually back before 5 o'clock. It depends on the day. We usually go seven to three, but if we have a job that extends over...

RAY BLEIER: Monday through Friday?

MR. CAROZZA: Monday through Friday. The asphalt plants aren't open on Saturday, so we don't typically do work then.

RAY BLEIER: Landscaping?

MR. CAROZZA: Not on Saturday, no. Saturday we do some equipment maintenance, that type of thing.

RAY BLEIER: So nothing in the way of the business is going to be out in front of the building. That is strictly like customer parking?

MR. CAROZZA: That is right. Customer or employees.

KAREN COX: The stockpile, or the locations where you're showing sometimes possible storage of materials, how high would those piles be?

MR. CAROZZA: They're marked on the print. 4 to 5 feet.

KAREN COX: Okay. I missed that. And how long would those typically be there? You know, will you get a delivery of mulch --

MR. CAROZZA: Not that long. I don't like to inventory materials. Um, so -- you know, it

is something that I might order a week ahead if I know I have a job or something like that.

KAREN COX: What is going to happen -- there is a building marked temporary tool shed, existing.

MR. CAROZZA: There is a shed that exists there right now.

KAREN COX: You will keep that?

MR. CAROZZA: Um, for now, yes. I mean, it is part of the property. It was part of the rest of the structure.

KAREN COX: Is it something you would envision storing materials in? You know, because it is considered temporary, that is the concern I have. If you got the room inside the building to store, what you might be storing in the temporary shed, could that be removed?

MR. CAROZZA: I suppose the shed could be removed.

KAREN COX: Okay. That was all I had.

JOHN HELLABY: I don't recall, are you buying this building?

MR. CAROZZA: No. This is one of the contingencies.

JOHN HELLABY: You'll be purchasing that building.

MR. CAROZZA: If you guys approve it, yes.

KAREN COX: No pressure.

JOHN HELLABY: Not at all.

Does your landscaping business include cutting grass?

MR. CAROZZA: Yes.

JOHN HELLABY: I see trucks, but I don't see any mowers. How many mowers?

MR. CAROZZA: They are in the trailers.

JOHN HELLABY: Enclosed trailers?

MR. CAROZZA: Correct. Enclosed trailers.

JOHN NOWICKI: Good idea.

JOHN HELLABY: And I guess at this venture, the only other thing I have is the suggestion, be careful on what you bring into this site. I can recall that one or two of your predecessors, mysteriously boats started showing up, motor homes. It is not part of the deal.

JOHN NOWICKI: That is true.

JOHN HELLABY: That's all.

JOHN NOWICKI: Are you right now operating with a lease, or an option to buy? How are you situated on this property?

MR. CAROZZA: I'm not on the property.

JOHN NOWICKI: How are you proceeding to buy it? What are you operating under? Are you renting?

MR. CAROZZA: Yes. A lease, a building in the city.

JOHN NOWICKI: You have a lease?

MR. CAROZZA: In the city. Not this structure.

JOHN NOWICKI: On this property here?

MR. CAROZZA: I have nothing with this property.

JOHN NOWICKI: If you get approved, what is the intent here?

KAREN COX: He just said he will buy it.

JOHN NOWICKI: That is what I am asking. So you have a contract with somebody at this point?

MR. CAROZZA: Yes.

JOHN NOWICKI: You do.

The sign up front, is that the permanent sign that is there now?

MR. CAROZZA: Yes.

JOHN NOWICKI: That is already there.

JOHN NOWICKI: Landscaping and asphalt work, right?

MR. CAROZZA: Yes.

JOHN NOWICKI: Other than what Al (Hellaby) mentioned, as long as we keep it to the business of landscaping and asphalt work, I will not have a problem here. As long as the place is kept up. When you say employee parking out front, that is not the trucks in the back?

MR. CAROZZA: No. They wouldn't fit in the parking spaces any ways.

DENNIS SCHULMERICH: Do you have any anticipated changes to the facade, the lighting or parking from what is there today?

MR. CAROZZA: No.

DENNIS SCHULMERICH: And one question that comes to mind is when you consider the amount of equipment you will have stored in the back, do you have lighting back there for security

of the vehicles, or will that be dark area?

MR. CAROZZA: Um, I believe there are a couple existing lights on the outside of the building right now.

DENNIS SCHULMERICH: They project far enough back to give some visibility to the equipment?

MR. CAROZZA: Yes.

DARIO MARCHIONI: I'm looking at the instrument survey map, and then I'm looking at the site plan map. For some reason, that building doesn't look the same, you know, on the -- on the instrument survey it looks like the building is at an angle from the westerly border, property line, and on the site it looks parallel. I was wondering which one is correct.

MR. CAROZZA: Um --

DARIO MARCHIONI: Do you know what I am talking about?

MR. CAROZZA: I can double check with the architect. I know he took everything off of the survey plan to make this drawing. So the survey is probably --

DARIO MARCHIONI: The site plan is correct?

MR. CAROZZA: The site plan.

DARIO MARCHIONI: The site plan is correct? But the survey shows -- you see what I am trying to say?

MR. CAROZZA: I don't think I have --

DARIO MARCHIONI: You see the way the property is here -- the building is cut this way (indicating). Then if you look at the site plan, it is almost parallel, exactly the same line. Unless it is my imagination. Which one is correct?

MR. CAROZZA: It should be the site plan.

DARIO MARCHIONI: The site plan?

MR. CAROZZA: Correct.

DARIO MARCHIONI: Not this one.

MR. CAROZZA: That is just a rough survey map.

DARIO MARCHIONI: So the site plan is the correct one. Okay.

How many employees did you say you have?

MR. CAROZZA: I have 13.

DARIO MARCHIONI: 13 employees. Most of the time they will be on the road anyways.

MR. CAROZZA: The only person that would be there would be my secretary.

DARIO MARCHIONI: Inside the building right now in the office, there are bathrooms and everything there?

MR. CAROZZA: Yes.

DARIO MARCHIONI: Would you store any chemicals or anything in the building for the lawn or for spraying?

MR. CAROZZA: I don't do any chemical treatment. Strictly maintenance.

JOHN NOWICKI: Are you aware the property across the road, the intermodal project could be changed in front of your building? Are you aware of that?

MR. CAROZZA: Somebody mentioned that.

JOHN NOWICKI: You're aware of that and know what could happen?

MR. CAROZZA: Yes.

JOHN NOWICKI: Okay. Just to make you aware of that.

MR. SCHICKLER: Conservation Board has a couple of questions in regards to when you -- when you're going out to asphalt jobs, landscaping jobs, you have debris coming back. We don't want to see any debris, asphalt, or brush piled and left on site for any time.

The other question is, are you going to have any oil or gas, kerosene storage on your property?

MR. CAROZZA: Am I going to? Yes. I do have a fuel tank.

JOHN NOWICKI: Is that shown on the site plan?

MR. CAROZZA: No. No, it is not.

KAREN COX: This to be above-ground?

MR. CAROZZA: Yes.

JOHN NOWICKI: Where do you think it is located?

MR. CAROZZA: Probably on the back side of the building, right where the shed is.

JOHN NOWICKI: Where the temporary tool shed is?

MR. CAROZZA: Yes.

JOHN HELLABY: You will need a permit from the Fire Marshal for that, too.

JAMES MARTIN: You want to maintain the current landscaping of the site?

MR. SCHICKLER: Yes.

JOHN NOWICKI: Keith O'Toole, what kind of ground are we on in regards to this application? If we vote on this tonight -- we'll be voting on two applications, preliminary site plan, conditional use permit. He has some kind of an agreement to buy this property. I would like to know if we do approve it, if we'll have some evidence that he has bought it. Is that possible?

KEITH O'TOOLE: We'll have the deed.

JOHN NOWICKI: You will have a deed?

KEITH O'TOOLE: Yes.

JOHN NOWICKI: All right. Can that be presented to the Building Department, a copy of that deed so we have that for our records?

KEITH O'TOOLE: I'm sure the applicant would have no objection to eventually providing a copy of the deed.

JOHN NOWICKI: We'll make that a condition.

MS. SARKIS: It is my understanding it will all be recorded with the Monroe County Clerk's Office. It is all public record, but if you want a copy, we'll provide it.

DENNIS SCHULMERICH: Question regarding information on the site plan. We're showing heights of 4 ½ to 5 foot on the mulch and the landscaping stone and the topsoil. Occasionally. Occasional storage. The fact that you're showing a height on the site plan, does that then become part and parcel to the approval? Or do we need to condition that in the --

KAREN COX: I guess that would be a question for --

JOHN NOWICKI: We did that -- Mr. Kress, we did that with Lyell Metals. We have height restrictions on their piles over there, so we can enforce the -- and they keep them pretty good. They do a good job over there. We can do that. We can make that a condition.

So whatever is on this drawing, if that is what you want, so be it.

DENNIS SCHULMERICH: Not to exceed 5 foot. In height or --

JAMES MARTIN: With mulch, stone and what is the other one?

DENNIS SCHULMERICH: He has 15 maximum radius.

KAREN COX: Topsoil.

DENNIS SCHULMERICH: Topsoil. There is a radius on the diagram of 15 feet. You may want to extend that to 20.

JAMES MARTIN: Topsoil piles not to exceed 5 feet, nor 20 foot radius.

DENNIS SCHULMERICH: Maximum radius 20 feet.

RAY BLEIER: Do you do any vehicle maintenance? Do you plan to do any in the garage?

MR. CAROZZA: Yes.

RAY BLEIER: Just vehicles that are involved in the businesses.

MR. CAROZZA: Just my trucks. Backhoe, that type of stuff, any of the equipment that I own.

JAMES MARTIN: We modified the radius requirement to 15 feet.

MR. CAROZZA: That is what I got on the drawing.

DENNIS SCHULMERICH: Are you into conditions at this point?

JAMES MARTIN: No. We have to go to the public hearing portion. I'm writing everything down.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I had looked through the material that was in the Building Department, and I did notice that there included in the paperwork was a flyer, if you will, from CB Richard Ellis, with -- listing the sale requirements, prices and the information about the property, and I see that on there it said, and I quote, "Ideal for small industrial user." If this gentleman grows at that site, I'm wondering if this is really going to be sufficient property, because it is .86 acres, and that is an awful lot to put on there to begin, let alone, grow on that site. So it is -- it is almost too much on too little when he begins. And as the realtor, the seller's realtor has indicated, that that is their belief, as well. Small industrial user.

I'm wondering, too, if the DEC information has been received on the site. When I looked at the paperwork in the Building Department, that had not been received as yet.

KAREN COX: The Phase 1 and Phase 2 site investigations?

MS. BORGUS: There was just a note there from Passero Associates that they were awaiting DEC information on the site.

MS. SARKIS: It has been provided and approved.

JAMES MARTIN: I'm sorry?

MS. SARKIS: It has been provided and approved. We have had Phase 1 completion and Phase 2. So maybe those records are not, you know, as of today's date.

JAMES MARTIN: We don't have a record of that, Dan (Kress); is that correct?

DANIEL KRESS: I have Phase 1 and limited Phase 2 site assessment here dated March 24th, 2005.

MS. BORGUS: So you're all set on that?

JAMES MARTIN: I think.

MS. BORGUS: Also in the -- also in the paperwork, I notice that he, the applicant had used periodically, in quotes, and it is a quoted term, periodically store extra ground mulch in rear yard area during spring mulching. I am wondering if the Board will pass this, if they can put a condition in there about having it removed when the season is over. Will this sit there if it is left over? Will this sit there then until the next spring season, mulch and landscape stone and topsoil and -- it is a small site. I think the Board has to be very careful of it.

JAMES MARTIN: We'll take it under consideration at this time.

MS. BORGUS: Um, now, also in looking through the material that was in the Building Office, Bedford Paving was mentioned. Is that also a company that is going to be operating on this site?

MR. CAROZZA: Yes. Bedford Paving is the paving company.

JOHN NOWICKI: So two companies.

MS. BORGUS: So there are --

MR. CAROZZA: One is landscape company. One is a --

JAMES MARTIN: So.

MR. CAROZZA: Carriage Enterprises owns everything. That is the corporation.

JOHN NOWICKI: This is confusing. We have an application that is advertised on Carozza Properties.

JAMES MARTIN: Your application is Carozza Properties, LLC.

MR. SARKIS: That is true on the advice of Mr. Carozza's personal business transaction attorney. Carozza Properties was developed distinctly for the purchase of this building, but Bedford Paving is the actual paving company that operates as paving company and holds itself out in the community as paving company. Carriage Enterprises is a landscaping company that holds itself out, takes care of developments like Pumpkin Hill, not that specific one, but just for example, and maintains its books in that capacity.

JAMES MARTIN: I'm sorry. Could you back up? I missed your name.

MS. SARKIS: Melanie Sarkis, one of the attorneys for Bedford Paving.

But it is just done for ease, and quite frankly, I recommend it to all my clients all of the time, and you probably do, as well, Keith (O'Toole), to develop these corporations. You want to protect your assets. You want to protect your name and your corporate entities and your corporate assets, so just for the ease of the purchase of the property, and appearing before today, it is very simple to develop a corporation and file the paperwork with the Monroe County Clerk's Office. I don't know if that explains it.

JOHN NOWICKI: Carriage Enterprises, Inc. owns the property?

MR. CAROZZA: No.

MS. SARKIS: Carriage Enterprises is the corporate name that owns the landscaping business. That is the landscaping business.

JOHN NOWICKI: Who is the owner there? Who is the person that owns that?

MS. SARKIS: Steve Carozza.

JOHN NOWICKI: Does he own a paving company? Bedford Paving.

MR. CAROZZA: Yes.

JOHN NOWICKI: Does he also own Carriage Enterprises?

MR. CAROZZA: Yes.

JOHN NOWICKI: All corporate milieu.

MR. CAROZZA: Yes.

DENNIS SCHULMERICH: All yours?

MR. CAROZZA: Yes. Just for bookkeeping purposes.

JAMES MARTIN: Keith (O'Toole), are you okay with the application as it stands?

KEITH O'TOOLE: Yes, that is fine.

MS. BORGUS: Since this is a paving company, and it will be probably a major part of this business, what happens to the leftover paving materials that are left at the end of every job?

JAMES MARTIN: I will ask Mr. Carozza to answer that question, please.

MR. CAROZZA: The plants that manufacture the asphalt take all of the broken up asphalt as well as leftover materials from the job site back at the plant.

JOHN NOWICKI: It is all recycled.

MR. CAROZZA: All recycled.

DENNIS SCHULMERICH: None comes back to your property?

MR. CAROZZA: No.

MS. BORGUS: Does it come to the property and be picked up and -- at the end of the day is it taken immediately back to the plant?

JAMES MARTIN: I understand it is picked up at the asphalt plant and returned to the asphalt plant.

MR. CAROZZA: That's correct.

MS. BORGUS: Okay. I was very pleased to hear Mr. Hellaby's questions or comments about being very careful about what appeared on the site because trailers, boats and so forth have shown up there in the past. That is a very apropos comment because we have buses and limousines and RVs now showing up at the Chili Paul Plaza.

JAMES MARTIN: In our defense, that never came before the Planning Board.

DENNIS SCHULMERICH: But they're very nice limos.

MS. BORGUS: No, not where they are.

JOHN NOWICKI: Nobody disagrees with you.

JAMES MARTIN: I move to close the public hearing at this time.

DENNIS SCHULMERICH: Second.

Jim Martin made a motion to close the public hearing portion of this application, and Dennis Schulmerich seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JAMES MARTIN: Point of discussion. One of the issues Ms. Borgus raised about removal of any stored materials during off season, do we want to propose that as a condition?

JOHN HELLABY: Point well taken.

JAMES MARTIN: So removal of stored material.

JOHN NOWICKI: At end of season.

The Board discussed the proposed conditions.

DENNIS SCHULMERICH: I raise it because it was indicated there would be none. Do we want to consider a condition, no storage of residual asphalt or asphalt materials on site?

KAREN COX: Can't hurt.

The Board further discussed the proposed conditions.

For Applications 4 and 5, Jim Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the applications to be unlisted actions with no significant environmental impact, and the Board all voted yes on the motion.

Jim Martin reviewed the proposed conditions with the Board.

DECISION ON APPLICATION #4: Unanimously approved by a vote of 7 yes with the following conditions:

1. No cut brush or debris to be stored on site.
2. Permit required from Fire Marshal for fuel storage tank.
3. Provide a copy of the deed of sale to the Chili Building Department.
4. Height of mulch, stone and topsoil piles not to exceed 5 feet, nor a radius of 15 feet.

5. Removal of stored seasonal material at end of season is required.
6. No storage or parking of vehicles not directly associated with the business are permitted.
7. Conditional use permit is approved for a period of two years.
Note: Final site plan approval has been waived by the Planning Board.

DECISION ON APPLICATION #5: Unanimously approved by a vote of 7 yes with the following conditions:

1. No cut brush or debris to be stored on site.
2. Permit required from Fire Marshal for fuel storage tank.
3. Provide a copy of the deed of sale to the Chili Building Department.
4. Height of mulch, stone and topsoil piles not to exceed 5 feet, nor a radius of 15 feet.
5. Removal of stored seasonal material at end of season is required.
6. No storage or parking of vehicles not directly associated with the business are permitted.
7. Conditional use permit is approved for a period of two years.

The meeting ended at 10:00 p.m.